

RUSSIAN FEDERATION

Country Profile prepared by the ICJ Centre for the Independence of Judges and Lawyers

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The Russian judicial system is highly sophisticated, but despite advances in reforming the legal and judicial system, obstacles to the establishment of an independent judicial branch remain. Notwithstanding guarantees and safeguards in the Constitution, law and the judicial Code of Conduct, a number of factors work to undermine the independence of the judiciary in the Russian Federation, including among other things: a lack of understanding of judicial independence by judges and the fact that they remain prone to undue influence from actors outside the judiciary; the appointment and promotion process, which does not adequately safeguard against appointment or promotion for improper motives or ensure high standards; the implementation of the disciplinary system; and the administration of the courts and the excessive powers of the court presidents therein.

This profile is at the moment limited to the introduction and the section on judges. The other sections will be made available as the ICJ concludes its research on those sectors of the judicial system.

A. Introduction

1. Legal tradition

The Russian legal system is generally classified as a civil law system. It is a code-based legal system and the organization of judicial review closely mirrors that of Western European civil law countries. However, the Russian tradition developed separately from other European legal cultures during the early period when the civil law system was being developed,¹ and a number of features distinguish the Russian legal tradition from other civil law based systems, including historically the recognition by the State of non Civil Code-based legal orders² and the unique institutional framework of the system of the administration of justice, including the important role of the procuracy within the system, which is responsible for the administration of judicial oversight and the prosecution of crimes.³

The Russian judicial system is highly sophisticated, however there continue to be impediments to the establishment of an independent judicial branch, despite advances in reforming the legal and judicial system, especially in the early 1990s. Operating under the 1993 Constitution, the legacy of the Soviet Union, where the judiciary formed part of the law enforcement system and the judge had no more institutional or personal independence from the Executive than a police officer or a clerk, however remains powerful. It is far from clear that the executive and legislative branches have wholeheartedly or consistently embraced the changes, and the lack of political will or consensus is a significant factor in the slow and uneven progress of reform.⁴

¹ Until the nineteenth century, the Russian judicial system was subject to an administrative hierarchy headed by the Tsar. Richard Wortman, *The Development of the Russian Legal Consciousness* (1976).

² During the Tsarist period, *volost* courts applied locally generated customary law rather than the Civil Code. This tradition was continued in the Soviet period in the form of 'comrade courts' and people's courts. William Partlett, 'Re-Classifying Russian Law: Mechanisms, Outcomes, and Solutions for an Overly Politicized Field', 2 *Columbia Journal of East European Law* 1 (2008), p. 48.

³ William Partlett, 'Re-Classifying Russian Law: Mechanisms, Outcomes, and Solutions for an Overly Politicized Field', 2 *Columbia Journal of East European Law* 1 (2008), p. 47-51.

⁴ International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 6-7.

2. Constitutional structure

The Russian Federation is a federal democratic republic.⁵ Its federal sub-entities, called "subjects of the Russian Federation", are republics, territories, regions, cities of federal importance, autonomous regions and autonomous areas.⁶

The Russian Federal Constitution and federal laws have supremacy throughout the territory of the federation,⁷ with the Constitution being the "supreme juridical force" with which all other laws must comply.⁸ The federal sub-entities also have their own charters or constitutions and legislation.⁹ The competence of the federal level includes, among other things, the regulation and protection of the rights and freedoms of man and citizen; the judicial system, procurator's office, criminal law and procedure and criminal-executive legislation, amnesty and pardon, civil law and procedure, arbitration procedure legislation, and legal regulation of intellectual property; and the federal law of conflict of laws.¹⁰ The Federation and the subjects of the Federation have joint competence over, among others, the protection of the rights and freedoms of man and citizen, protection of the rights of national minorities, and ensuring the rule of law and "law and order"; providing for the correspondence of the constitutions and laws of the Republics, the charters and other normative legal acts of the territories, regions, cities of federal importance, autonomous regions or autonomous areas to the Constitution of the Russian Federation and the federal laws; and the personnel of the judicial and law enforcement agencies, the Bar and notaries.¹¹

Pursuant to the federal Constitution, both universally recognized norms of international law and international treaties to which the Russian Federation is a party, are a component of the legal system. Furthermore, when an international treaty provides for other rules than those envisaged in domestic law, the rules of the international treaty apply.¹²

The federal Constitution provides that State power shall be exercised based on a division of powers between the legislative, executive and judicial branches. The bodies exercising legislative, executive and judicial powers shall be independent.¹³

3. International treaty status

As set out in the Constitution: "The commonly recognized principles and norms of the international law and the international treaties of the Russian Federation are a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty apply."¹⁴ It is therefore classified as a monist state.

| | Status (including ratification, accession and succession) |
|--|---|
| International Covenant on Civil and Political Rights | 16 October 1973 |
| ICCPR-OP1 | 1 October 1991 |
| ICCPR-OP2 | No signature or ratification |
| International Covenant on Economic, Social and Cultural Rights | 16 October 1973 |
| ICESCR-OP | No signature or ratification |

⁵ Constitution of the Russian Federation (hereinafter, 'Constitution'), Article 1.

⁶ Constitution, Article 5(1).

⁷ Constitution, Article 4(2).

⁸ Constitution, Article 15(1).

⁹ Constitution, Article 5(2).

¹⁰ Constitution, Article 71.

¹¹ Constitution, Article 72.

¹² Constitution, Article 15(4).

¹³ Constitution, Article 10.

¹⁴ Constitution, Article 15(4).

| | |
|--|------------------------------|
| Convention against Torture and Other Cruel, Inhuman or Degrading Treatment | 3 March 1987 |
| CAT-OP | No signature or ratification |

| | |
|---|------------------------------|
| International Convention on the Protection of All Persons from Enforced Disappearance | No signature or ratification |
|---|------------------------------|

| | |
|---|------------------------------|
| International Convention on the Elimination of All Forms of Racial Discrimination | 4 February 1969 |
| Convention on the Elimination of All Forms of Discrimination against Women | 23 January 1981 |
| CEDAW-OP | 28 July 2004 |
| Convention on the Rights of the Child | 16 August 1990 |
| CRC-OP1 | 24 September 2008 |
| CRC-OP2 | 24 September 2013 |
| CRC-OP3 | No signature or ratification |
| International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families | No signature or ratification |
| Convention on the Rights of Persons with Disabilities | 25 September 2013 |
| CRPD-OP | No signature or ratification |

| | Ratification (including ratification, accession and succession) |
|-----------------------|---|
| Geneva Convention I | 10 May 1954 |
| Geneva Convention II | 10 May 1954 |
| Geneva Convention III | 10 May 1954 |
| Geneva Convention IV | 10 May 1954 |
| Additional Protocol I | 29 September 1989 |
| Additional Protocol I | 29 September 1989 |

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|--------------|------------------------------|
| Rome Statute | No signature or ratification |
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|-------------------------------|------------|
| Convention against Corruption | 9 May 2006 |
|-------------------------------|------------|

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|---|----------------------------------|
| European Convention for the Protection of Human Rights and Fundamental Freedoms | 5 May 1998 ¹⁵ |
| First Protocol | 5 May 1998 |
| Fourth Protocol | 5 May 1998 |
| Sixth Protocol | 16 April 1997 (signature only) |
| Seventh Protocol | 5 May 1998 |
| Twelfth Protocol | 4 November 2000 (signature only) |
| Thirteenth Protocol | No signature or ratification |

¹⁵ The Russian Federation lodged a reservation in relation to Article 5, para. 3-4.

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|--|------------|
| European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment | 5 May 1998 |
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In the course of the Universal Period Review of its human rights record in 2013, in reference to recommendations on the independence of judges and lawyers, Russia accepted several recommendations to continue the reform of its justice system. However, it rejected the recommendation to put in place an independent mechanism charged with appointment, promotion, transfer and dismissal of judges.¹⁶

4. Court structure

Russia has a two-tiered court system with federal courts, and regional courts (or 'courts of the subjects of the Russian Federation').¹⁷

The federal courts are:¹⁸

- Constitutional Court of the Russian Federation;
- First and second instance courts in the subjects of the Russian Federation, military courts, specialized courts, Russian Federation Supreme Court, Russian Federation High Arbitration Court,¹⁹ federal arbitration courts of cassation, arbitration appeal courts and arbitration courts of the subjects of the Russian Federation;
- The Disciplinary Judicial Presence (DJP).

The courts of the subjects of the Russian Federation are:²⁰

- Constitutional (charter) courts of the subjects of the Russian Federation;
- Justices of the Peace.

The creation of extraordinary courts is not allowed.²¹

The courts are divided into constitutional courts, courts of general jurisdiction (including military courts) and courts of special jurisdiction (arbitration courts).

- Courts of general jurisdiction consider criminal, administrative and civil cases. The Supreme Court is the court of highest instance.²² The other federal courts in this category are the supreme courts of republics, courts of territories, courts of cities of federal importance, courts of autonomous regions and courts of autonomous areas (all at the same level); and district (city) courts. Justices of the Peace, at the subject of the federation level, are also courts of general jurisdiction, but cannot adjudicate on cases of robbery, intentional homicide and employment dismissal.²³ Military courts (which are classified as courts of general jurisdiction) form a separate branch subordinate to the Supreme Court.²⁴
- Arbitration Courts consider disputes in the economic sphere. The High Arbitration Court sat at the apex of this category.²⁵ However, a reform law adopted on 22

¹⁶ Human Rights Council, Report of the Working Group on the Universal Periodic Review of the Russian Federation, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, UN Doc. A/HRC/24/14/Add.1 (2 September 2013), para. 25–26.

¹⁷ See Law on the Bodies of the Judicial Corps in the Russian Federation, Article 1.

¹⁸ Federal Constitutional Law on the Judicial System, Article 4(3).

¹⁹ Note, however, the recent amendments discussed below, which will abolish the High Arbitration Court.

²⁰ Federal Constitutional Law on the Judicial System, Article 4(4).

²¹ Constitution, Article 118.

²² Constitution, Article 126.

²³ Federal Law of 17 December 1998 No. 188-FZ on the Justices of the Peace in the Russian Federation.

²⁴ See Council of Europe, 'The court system of the Russian Federation'.

http://www.coe.int/t/dghl/cooperation/cepej/profiles/CourtSystemRussia_en.pdf (Last accessed 17 June 2014).

²⁵ Constitution, Article 127; International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 8.

November 2013²⁶ has abolished the High Arbitration Court and extended the Supreme Court's jurisdiction, which has now become the single supreme judicial body to deal with civil, criminal and administrative, as well as economic disputes, and any other cases under the jurisdiction of the courts. The change purports to guarantee a unified approach in administering justice. However, the reform puts into question the preservation of the achievements of the High Arbitration Court, which has often been commended as a jurisdiction with a greater autonomy and independence.²⁷

- The category of constitutional courts includes both the Constitutional Court of the Russian Federation and the constitutional courts of each of the subjects of the Russian Federation. They consider, among other things, the compliance of the laws of the Russian Federation with the Constitution of the Russian Federation and compliance of the laws of the subjects of the Russian Federation with their Constitutions (Charters).²⁸ The Constitutional Courts implement judicial power separately and independently by means of constitutional judicial proceedings.²⁹ Constitutional courts of the subjects of the Russian Federation are not subordinate to the Constitutional Court of the Russian Federation.

The Disciplinary Judicial Presence (DJP), a federal court, was established in 2010 to hear appeals against the decisions of the High Qualification Collegiums and Qualification Collegiums (cf. *infra*) in cases involving judges' dismissal.³⁰

B. Judges

It is fundamental to the rule of law, to the right to a fair trial, the right to liberty and security of the person, and to the right to effective remedy for violations of human rights, that individual judges and the judiciary as a whole are independent and impartial.³¹ The requirement that courts and other tribunals be effective, independent and impartial "is an absolute right that is not subject to any exception."³²

For the judiciary, safeguards of the requirement of independence include ensuring: a fair, open and transparent procedure for the appointment of judges and prescribed, objective criteria for appointment relating to qualifications, experience and integrity; guarantees for security of tenure until a mandatory age of retirement or expiry of term of office; fair and transparent procedure and criteria governing promotion, transfer, suspension and cessation of their functions; and that executive and legislative branches of power do or do not in practice interfere with judges and judicial decision-making.³³

²⁶ Bill No. 352924-6, "About the Supreme Court of the Russian Federation and Prosecutor's Office of the Russian Federation".

²⁷ See e.g., New York Times, *Legislation Merging Russia's 2 Top Courts Stokes Worries* (6 February 2014).

²⁸ Constitution, Article 125.

²⁹ Federal Constitutional Law on the Judicial System, Article 18(1); Federal Constitutional Law on the Constitutional Court of the Russian Federation, Article 1.

³⁰ Federal Constitutional Law of the Russian Federation About Disciplinary Judicial Presence, Article 1.

³¹ Among others, Universal Declaration of Human Rights, Article 10; International Covenant on Civil and Political Rights (ICCPR), Article 14(1); European Convention on Human Rights (ECHR), Article 6(1); Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 (hereinafter: 'UN Basic Principles on the Independence of the Judiciary'), Principle 1 and 2; Recommendation CM/Rec(2010)12 of the Committee of Ministers [of the Council of Europe] to member states on judges: independence, efficiency and responsibilities, Article 3 and 4; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 1; Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 1 and 2; Magna Carta of Judges, Consultative Council of European Judges CCJE (2010)3 Final, Article 1-2. Generally, see also International Commission of Jurists, *International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners' guide, no. 1* (2007).

³² Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

³³ See Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19; UN Basic Principles on the Independence of the Judiciary.

1. Constitutional and legislative recognition of the principle of judicial independence

The independence of the judiciary must be guaranteed by the State and enshrined in the Constitution or the law.³⁴

The Consultative Council of European Judges has recommended that the irremovability of judges should be an express element of the independence enshrined at the highest level of law.³⁵ In the opinion of the European Commission for Democracy through Law, known as the Venice Commission, at least in new democracies, explicit constitutional and legal provisions are needed as a safeguard to prevent political abuse in the appointment of judges.³⁶

The Constitution of the Russian Federation provides that the courts alone, by means of constitutional, civil, administrative and criminal proceedings, administer justice.³⁷ Furthermore, it states that "judges shall be independent" and submit only to the Constitution and the federal law.³⁸

Several safeguards of the independence of judges are specified in Russian law, which stipulates that judges' independence is to be provided for through:

- a codified procedure for administering justice and the prohibition of interference with the administration of justice;
- the procedure for the suspension and termination of the judge's powers;
- guarantees for a judge's right to retire;
- guarantees regarding judicial immunity;
- the system of bodies of the judicial community;
- guarantees for remuneration that addresses the material and social maintenance of judges by the State, at a level corresponding to each judge's status.³⁹

Judges, their family members, and their property, enjoy special protection. The Judicial Department under the Supreme Court is mandated to take the measures necessary to create the conditions for the performance of the activities of the courts.⁴⁰

The Law on the Status of Judges provides that any interference with the judge's administration of justice shall be prosecuted under the law.⁴¹

In addition, the Code of Judicial Ethics clarifies that judges are responsible for maintaining the judiciary's independence and for respecting the principle of independence.⁴² It also underscores that neutrality and impartiality are "essential conditions" for the fair administration of justice.⁴³ The Law on the Status of Judges instructs that in the exercise of their powers and in their other unofficial relations, judges must avoid everything that could detract from the authority of the judiciary, denigrate the judge's dignity, or that could give rise to doubts concerning the judge's objectivity, impartiality or fairness.⁴⁴

³⁴ UN Basic Principles on the Independence of the Judiciary, Principle 1; Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 7; European Charter on the Statute of Judges, para. 1.2; Magna Carta of Judges, Consultative Council of European Judges CCJE (2010)3 Final, Article 3; Consultative Council of European Judges, Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, para. 16; Venice Commission, Report on the Independence of the Judicial System, Part I: the Independence of Judges, CDL-AD(2010)004, para. 22.

³⁵ Consultative Council of European Judges, Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, para. 60(a).

³⁶ Venice Commission, Judicial Appointments, CDL-AD(2007)028, para. 4-6, 46.

³⁷ Constitution, Article 11.

³⁸ Constitution, Article 120(1). Law on the Status of Judges in the Russian Federation, Article 1.

³⁹ Law on the Status of Judges in the Russian Federation, Article 9(1).

⁴⁰ Law on the Status of Judges in the Russian Federation, Article 9(2)-(3).

⁴¹ Law on the Status of Judges in the Russian Federation, Article 10(1).

⁴² Code of Judicial Ethics, Clause 8(1).

⁴³ Code of Judicial Ethics, Clause 9(1).

⁴⁴ Law on the Status of Judges in the Russian Federation, Article 3(2).

A range of bodies, known as the Bodies of the Judicial Community,⁴⁵ are established under Russian law to assist in improving the judicial system and legal protection, to protect the rights and interests of judges, to contribute to the organizational, personnel and resource support of judicial activity, and to strengthen the authority of judicial power and ensure compliance with the requirements of the Code of Judicial Ethics.⁴⁶ The Bodies of the Judicial Community comprise:

- The All-Russian Judicial Congress: the supreme body of the judicial corps, mandated to take decisions on a wide range of issues related to the operation of the judiciary, to adopt a Code of Judicial Ethics, and to endorse acts regulating the activity of the judicial corps. Delegates to the All-Russian Judicial Congress are elected at the General Meetings of judges of the courts, or by the Conference of Judges of the subjects of the Russian Federation⁴⁷;⁴⁸
- The Conference of Judges of the subjects of the Russian Federation: functioning as a representative body for the judges in the subjects of the Russian Federation, it can take decisions with regard to the functioning of the judiciary in the subjects of the Russian Federation;⁴⁹
- The Judicial Council of the Russian Federation: set up by the All-Russian Judicial Congress and composed of federal judges and judges of the Subjects of the Russian Federation, this body appoints and may dismiss the Director General of the Judicial Department, and elects judges to the High Qualification Collegium to replace those who were dismissed during its session;⁵⁰
- The Judicial Council of the subjects of the Russian Federation: elected by the Conference of Judges of the subjects of the Russian Federation, this body elects judges for Qualification Collegiums in the pertinent federal sub-entity, to replace those who were dismissed during its session;⁵¹
- General Meetings of judges of the courts: each court convenes these meetings at least once per year, to discuss issues associated with improving the organization of the work, to express the interests of the judges and to elect delegates to the All-Russian Judicial Congress;⁵²
- Qualification Collegiums of judges of the subjects of the Russian Federation: composed in a majority of judges, as well as representatives of the public and one representative of the Russian President,⁵³ they, among other things, consider the applications for a position of judge and serve as the disciplinary authority for all but senior judges;⁵⁴
- The High Qualification Collegium of the Russian Federation considers the applications of candidates to senior judicial positions and is the first instance disciplinary authority for senior judges. It also approves the procedures applicable in and considers appeals of decisions of the Qualification Collegiums of judges of the subjects of the Russian Federation (except in cases of judges' dismissal, where appeals are heard by the Disciplinary Judicial Presence⁵⁵).⁵⁶

With regard to the Qualification Collegiums, a 2011 study found that in practice the procedure seldom leads to effective public scrutiny, and the quality of the representatives was deemed problematic.⁵⁷ Furthermore, serious concerns persist regarding the unofficial role of court presidents in the determination of the composition of Qualification Collegiums.

⁴⁵ Law on the Bodies of the Judicial Corps in the Russian Federation, Article 1: "The Judicial Corps in the Russian Federation is made up of judges of federal courts of every type and level, judges of courts of the subjects of the Russian Federation, all of whom constitute the judicial system of the Russian Federation."

⁴⁶ Law on the Bodies of the Judicial Corps in the Russian Federation, Article 4.

⁴⁷ For delegates from the Constitutional Court of the Russian Federation, the Supreme Court, federal arbitration courts of circuits, arbitration appellate courts and circuit military courts.

⁴⁸ Law on the Bodies of the Judicial Corps in the Russian Federation, Article 6.

⁴⁹ Law on the Bodies of the Judicial Corps in the Russian Federation, Article 7(1).

⁵⁰ Law on the Bodies of the Judicial Corps in the Russian Federation, Article 8-10.

⁵¹ Law on the Bodies of the Judicial Corps in the Russian Federation, Article 8, 10.

⁵² Law on the Bodies of the Judicial Corps in the Russian Federation, Article 12.

⁵³ Law on the Bodies of the Judicial Corps in the Russian Federation, Article 11(4).

⁵⁴ Law on the Bodies of the Judicial Corps in the Russian Federation, Article 19.

⁵⁵ Federal Constitutional Law of the Russian Federation About Disciplinary Judicial Presence, Article 1.

⁵⁶ Law on the Bodies of the Judicial Corps in the Russian Federation, Article 17.

⁵⁷ Moscow Helsinki Group (ed. Nina Takankina), *The Role of the Representatives of the Republic in Increasing Independence and Effectiveness of Justice in the Russian Federation* (2011), cited at: International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 18.

One of the ICJ's interlocutors during an ICJ mission to Russia in 2012 summarized the situation as follows: "One part of the membership ... are judges of general courts dependent on court presidents; the other part is made up of members of the public, from a list approved by regional court presidents. So, all members can be influenced by court presidents."⁵⁸

Notwithstanding the guarantees and safeguards within the Constitution, law and Code of Conduct, a number of factors work to undermine the independence of the judiciary in the Russian Federation. They are considered in this Profile and include in general terms, among other things:

- A lack of understanding of judicial independence by judges – due to a mind-set rooted in the legacy of the Soviet system – and the fact that judges remain prone to undue influence from the executive and other actors outside of the judiciary;
- The appointment and promotion processes, which cannot always be considered transparent and which do not adequately safeguard against appointment or promotion for improper motives, or ensure high standards in the judiciary;
- The application of the disciplinary system in such a way as to undermine judges' independence; and
- The administration of the courts and the excessive powers of the court presidents therein.

2. Appointment and promotion of judges; Security of tenure

To safeguard the independence of the judiciary and the rights to equality before the law and equal access to the profession, international standards clarify that judges should be appointed through an open process on the basis of prescribed criteria based on merit and integrity, and without discrimination.⁵⁹ To ensure that the composition of the judiciary is essentially reflective of the population and to combat discrimination and ensure equality before the law, steps should be taken to ensure the appointment of qualified women and members of minority communities.⁶⁰

As regards appointment criteria, the UN Basic Principles on the Independence of the Judiciary stipulate that persons selected must be "individuals of integrity and ability with appropriate training of qualifications in law".⁶¹

⁵⁸ International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 18.

⁵⁹ Principle 10 of the UN Basic Principles on the Independence of the Judiciary provides in part: "In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory." Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 44; European Charter on the Statute for Judges, para. 2.1-2.2; Magna Carta of Judges, Consultative Council of European Judges CCJE (2010)3 Final, Article 5; Venice Commission, Report on the Independence of the Judicial System, Part I: The Independence of Judges, CDL-AD(2010)004, para. 27. See Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19. Also see ECtHR, *Campbell and Fell v. UK* (Application No. 7878/77), para. 78, where the Court indicates that "the manner of appointment of its members" forms part of the assessment of a bodies' independence; ECtHR, *Zand v. Austria* (Application No. 7360/76), para. 81: to challenge a judge's independence based on his or her manner of appointment, it would need to be shown that the practice of appointment "as a whole is unsatisfactory" or that "at least the establishment of the particular court deciding a case was influenced by improper motives".

⁶⁰ Gabriela Knaul, Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, UN Doc. A/66/289 (2011), para. 22-33, 92; Human Rights Committee, Concluding Observations on the United Kingdom, UN Doc. CCPR/CO/73/UK (2001), para. 15; Human Rights Committee, Concluding Observations on France, UN Doc. CCPR/C/FRA/CO/4 (2008), para. 26; Human Rights Committee, Concluding Observations on Sudan, UN Doc. CCPR/C/79/Add.85 (1997), para. 21; Committee Against Torture, Conclusions and recommendations on Bahrain, UN Doc. CAT/C/CR/34/BHR (2005), para. 7(h); Committee on the Elimination of Racial Discrimination, General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, UN Doc. A/60/18 (pp. 98-108) (2005), para. 5(d); Committee on the Elimination of Racial Discrimination, Concluding Observations on Guatemala, UN Doc. CERD/C/GTM/CO/12-13 (210), para. 8; Committee on the Elimination of Racial Discrimination, Concluding Observations on Colombia, UN Doc. CERD/C/304/Add.76 (1999), para. 13.

⁶¹ UN Basic Principles on the Independence of the Judiciary, Principle 10; Consultative Council of European Judges, Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, para. 25.

An appropriate method of appointment of judges is a prerequisite for the independence of the judiciary⁶² and is a means of ensuring equal access to the profession. On the procedure for judicial appointments, the UN Basic Principles on the Independence of the Judiciary underscore the fact that “[a]ny method of judicial selection shall safeguard against judicial appointments for improper motives”.⁶³ In relation to the appointment and promotion of judges the United Nations Human Rights Committee and the Special Rapporteur on the independence of judges and lawyers have repeatedly recommended the use of bodies that are independent from the executive,⁶⁴ are plural and are composed mainly (if not solely) of judges and members of the legal profession;⁶⁵ and that apply transparent procedures.⁶⁶

Promotions within the judiciary must be based on objective factors, particularly ability, integrity and experience.⁶⁷

It is widely accepted that when judges have security of tenure in office they are less vulnerable to pressure from those who can influence or make decisions about the renewal of their terms of office. Accordingly, international standards prescribe that judges’ tenure must be guaranteed until a mandatory retirement age or expiry of the term of office.⁶⁸ The Council of Europe has recommended that the terms of office of judges be established by law.⁶⁹

While as described below in section 4, judges nonetheless remain accountable throughout their terms of office, as a necessary corollary to the guarantee of security of tenure, international standards specify that during their term of office, judges may be removed only in exceptional, strictly limited and well-defined circumstances provided for by law, involving incapacity or behaviour that renders them unfit to carry out the duties of their office, and following a fair procedure.

⁶² Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

⁶³ UN Basic Principles on the Independence of the Judiciary, Principle 10.

⁶⁴ See e.g. Concluding Observations on the Congo, CCPR/C/79/Add.118, para. 14; Concluding Observations on Liechtenstein, CCPR/CO/81/LIE, para. 12; Concluding Observations on Tajikistan, CCPR/CO/84/TJK, para. 17; Concluding Observations on Honduras, CCPR/C/HND/CO/1 (2006), para. 16; Concluding Observations on Azerbaijan, UN Doc. CCPR/C/AZE/CO/3 (2009), para. 12; Human Rights Committee, Concluding Observations on Kosovo (Serbia), UN Doc. CCPR/C/UNK/CO/1 (2006), para. 20. Also see Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 11; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 9.

⁶⁵ Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), para. 28-29; Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 46-48; European Charter on the Statute of the Judge, para. 1.3. See also Venice Commission, Judicial Appointments, CDL-AD(2007)028; International Commission of Jurists, International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners’ guide, no. 1 (2007), pp. 45-48.

⁶⁶ Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), para. 32. See Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, Preliminary Report to the Human Rights Commission on a mission to Ecuador, UN Doc. E/CN.4/2005/60/Add.4 (2005), para. 5(d).

⁶⁷ UN Basic Principles on the Independence of the Judiciary, Principle 13; Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 44; European Charter on the Statute for Judges, para. 4.1; Magna Carta of Judges, Consultative Council of European Judges CCJE (2010)3 Final, Article 5; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 14.

⁶⁸ UN Basic Principles on the Independence of the Judiciary, Principle 12; Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 49; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 16(b) and 18(c); Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 8; Venice Commission, Report on the Independence of the Judicial System, Part I: the Independence of Judges, CDL-AD(2010)004, para. 38. Also see ECtHR, *Campbell and Fell v. UK* (Application No. 7878/77); ECtHR, *Zand v. Austria* (Application No. 7360/76); ECtHR, *Incal v. Turkey* (Application No. 22678/93); ECtHR, *Yavuz v. Turkey* (Application No. 29870/96).

⁶⁹ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 50. Note however the jurisprudence of the ECtHR to the contrary, see ECtHR, *Engel et al. v. Netherlands* (Application No. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72); ECtHR, *Campbell and Fell v. UK* (Application No. 7878/77).

In Russia, Judges of the Constitutional Court and the Supreme Court are appointed by the Council of the Federation (upper chamber of the Parliament), upon the proposals of the President.

Judges of other federal courts are appointed by the President of the Russian Federation, according to rules fixed by federal law.⁷⁰

In accordance with the Constitution, individuals who are appointed as judges must be Russian citizens, over 25 years of age with a higher education in law and a law service record of not less than five years.⁷¹ Individuals appointed as judges to the Constitutional Court or Supreme Court must however have a longer law service record.⁷²

Time spent in work in a post or exercising a profession requiring legal education in government bodies, legal services or academia qualifies as part of a "law service record". While judges who have served for twenty years or more cannot be appointed as prosecutor, investigator or interrogator,⁷³ no such restriction exists as regards judicial appointment.⁷⁴

Selection, based on the principle of competition,⁷⁵ begins with an examination carried out by examination commissions under the Qualification Collegiums of judges.⁷⁶

In addition to concerns about the independence and fairness of the judicial appointment process that relate to the composition of Qualifications Collegiums, discussed above in Section 1, the ICJ notes that the examination process lacks clear, unified standards: exam questions, for example, are drafted by each examination commission and differ per region. Furthermore there are no unified standards for ensuring a transparent and objective evaluation of exam results, which can lead to arbitrariness and manipulations.⁷⁷

Once a vacancy for a judicial position is opened in a court, the president of that court informs the relevant Qualification Collegium. In turn the Collegium then publicly announces the vacancy through the media and the Internet. Individuals who have successfully passed the examination and meet the other criteria set out in law and the Constitution, may submit their application (including relevant documents) to the Qualification Collegium. The ICJ received reliable reports that applicants for judicial office must in addition also collect and submit more than a dozen authorizations, including from the prosecutor's office, police, intelligence services and other law enforcement bodies. Concerns were voiced that the requirement to submit such authorization operated in fact as an extra-legal, additional approval process for individuals seeking judicial appointment.⁷⁸

In accordance with the procedure prescribed by law, the Qualification Collegium considers the applications submitted and either, recommends one or more candidates to the court's president, or declines to do so. The court president can either agree with and approve the Qualification Collegium's recommendations, or disagree and remit the issue back to the Collegium, providing reasons for doing so. The Collegium may overturn the court president's rejection of its recommendations by a vote of two-thirds in favour of appointment.⁷⁹ However, the ICJ has received reliable information that indicates that in practice sometimes the Qualification Collegiums vote on candidates in accordance with pre-approved lists that have been drafted by someone outside the Collegium. The court presidents also heavily influence the recommendations made for judicial appointment by Collegiums.⁸⁰

⁷⁰ Constitution, Article 128(1)-(2). See Law on the Status of Judges in the Russian Federation, Article 6.

⁷¹ Constitution, Article 119.

⁷² Law on the Status of Judges in the Russian Federation, Article 4(1).

⁷³ Law on the Status of Judges, Article 3(4).

⁷⁴ International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 14.

⁷⁵ Law on the Status of Judges in the Russian Federation, Article 5(1).

⁷⁶ Law on the Status of Judges in the Russian Federation, Article 5.

⁷⁷ International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 12.

⁷⁸ International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 12-13.

⁷⁹ Law on the Status of Judges in the Russian Federation, Article 5.

⁸⁰ International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 13.

Once the Qualification Collegium has decided on the individual it recommends for appointment to fill a judicial vacancy, it passes its recommendation on to the President of the Russian Federation, for appointment (in the case of federal judges) or in order to introduce the applicant for the office of Justice in the Supreme Court (and formerly, the High Arbitration Court) for appointment by the Council of Federation (i.e., the upper house) of the Federal Assembly of the Russian Federation.⁸¹ He may refuse to appoint a judge recommended to him or her for appointment by the Qualification Collegium, and such refusal is final and need not be reasoned.⁸² The President's wide, final and unaccountable refusal power in the judicial appointment process undermines safeguards of independence, transparency and fairness in the judicial appointment process in Russia.

During a 2010 mission in the country, the ICJ was told that practicing lawyers do not often get appointed as judges in Russia. Most appointees for judicial office are either court clerks or individuals who have worked in judges' offices, such as former researchers.⁸³

In view of the above the ICJ expressed concern, in its 2010 report on the *State of the Judiciary in Russia*, that elements of law and practice in the appointment process do not adequately safeguard the independence and the quality of the judiciary. The International Commission of Jurists is currently examining these issues further. Concerns include:

- The requirement for candidates to secure authorizations, outside of the legal procedure for appointment;
- The composition of the Qualification Collegiums and the influence of the court presidents in these bodies;
- The role of the executive in the appointment processes; and
- The examination standards.

Because of these flaws, the judicial appointment process cannot always be considered transparent. Further, it does not adequately safeguard against appointment for improper motives.

Promotion:

There is no formal system for judicial promotion in Russia. Judges are promoted by applying for a new position, so the promotion process suffers from the same problems as the appointment process. Given their important role in the courts' administration, defects in the appointment of court presidents that undermine their independence are likely to also impact negatively on the independence and impartiality of judicial decision-making, considered as a whole. In the course of a 2010 mission, the ICJ received consistent information that "political sensitivity" is an important factor in determining whether a judge will be promoted,⁸⁴ in spite of international standards requiring that promotion be based on objective factors related to merit. As noted above, the ICJ is currently researching the appointment and promotion process further.

Security of tenure:

Federal judges in Russia are appointed for life. However, Justices of the Peace, the lowest level courts in the subjects of the Federation, are appointed for a period of five years.⁸⁵ Until 2009,⁸⁶ newly appointed judges had to go through a probation period of three years, which reportedly not only served to filter out appointees who proved incompetent, but also to remove judges for political or personal reasons.⁸⁷

⁸¹ Constitution, Article 128.

⁸² See Law on the Status of Judges in the Russian Federation, Article 6(5).

⁸³ International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 14.

⁸⁴ International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 14.

⁸⁵ Law on the Status of Judges in the Russian Federation, Article 11. See Law on the Bodies of the Judicial Corps in the Russian Federation, Article 2.

⁸⁶ Law on Introducing Amendments to Articles 6 and 11 of the Law of the Russian Federation on Status of Judges and Articles 17 and 19 of the Federal Law on the Bodies of the Judicial Community in the Russian Federation (17 July 2009), N 157-FZ.

⁸⁷ International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 16.

The Constitution and the law provide that judges shall be irremovable and that their powers can only be ceased or suspended on the grounds and according to the rules fixed by law.⁸⁸ The law provides for three disciplinary sanctions: a warning, a reprimand and an early termination of the judge's office, which can be imposed for committing a disciplinary offence, which is defined (overly) broadly as a violation of the norms of the Law on the Status of Judges or the Code of Judicial Ethics.⁸⁹

3. Financial independence of the judiciary

At the institutional level, international standards make clear that it is the duty of the State to provide adequate resources to enable the judiciary to properly perform its functions.⁹⁰ As a safeguard of judicial independence, the courts' budget shall be prepared "in collaboration with the judiciary having regard to the needs and requirements of judicial administration".⁹¹

Furthermore, the remuneration and pensions of judges must be secured by law at an adequate level that is consistent with their status⁹² and is sufficient to safeguard against conflict of interest and corruption. The European Charter on the Statute of the Judge adds a guarantee for judges acting in a professional capacity against social risks linked with illness, maternity, invalidity, old age and death.⁹³

According to the Constitution, "Everyone shall be guaranteed judicial protection of his rights and freedoms"⁹⁴ and "No one may be deprived of the right to the consideration of his or her case" by a competent court.⁹⁵ The Constitution provides that the courts shall be financed from the federal budget, so as to "ensure full and independent administration of justice in accordance with federal law".⁹⁶ Despite this provision, however, for many years the judiciary was underfinanced and working conditions for judges were poor.⁹⁷

In a 2010 report on *The State of the Judiciary in Russia*, the ICJ noted that an insufficient number of courts and their accessibility to people within the country remained a problem, which was becoming more acute, as courts' caseloads grow. High caseloads sometimes resulted in slow trials, or superficial consideration of cases.⁹⁸

The gradual and regular increase of judges' salaries has been pointed out as a successful aspect of judicial reform in Russia. Significant resources were invested for this purpose: the Special Rapporteur on the Independence of Judges and Lawyers noted a ten-fold

⁸⁸ Constitution, Article 121; Law on the Status of Judges in the Russian Federation, Article 12.

⁸⁹ Law on the Status of Judges in the Russian Federation, Article 12.1.

⁹⁰ UN Basic Principles on the Independence of the Judiciary, Principle 7; Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Articles 32-37; European Charter on the Statute for Judges, para. 1.6; Magna Carta of Judges, Consultative Council of European Judges CCJE (2010)3 Final, Article 4; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 33.

⁹¹ Consultative Council of European Judges, Opinion No. 2 (2001) on the funding and management of courts with reference to the efficiency of the judiciary and to article 6 of the European Convention on Human Rights, para. 10; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 34. See Venice Commission, Report on the Independence of the Judicial System, Part I: the Independence of Judges, CDL-AD(2010)004, para. 55.

⁹² UN Basic Principles on the Independence of the Judiciary, Principle 11; Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 53-54; European Charter on the Statute for Judges, para. 6.1; Consultative Council of European Judges, Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, para. 61; Venice Commission, Report on the Independence of the Judicial System, Part I: the Independence of Judges, CDL-AD(2010)004, para. 51; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 16(a); Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 13.

⁹³ European Charter on the Statute for Judges, para. 6.3.

⁹⁴ Constitution, Article 46(1).

⁹⁵ Constitution, Article 47(1).

⁹⁶ Constitution, Article 124.

⁹⁷ International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 24.

⁹⁸ International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 25-26.

increase of salaries.⁹⁹ Although the Judicial Department remains in charge of financial, logistical and other measures “aimed at creation of conditions for full and independent administration of justice”¹⁰⁰, many of the increases of judges’ salaries resulted from Presidential Decrees,¹⁰¹ rather than a regular budget allocation. Instead of strengthening the independence of the judiciary, resort to and reliance on Presidential Decrees for salary adjustments for judges undermined the independence and appearance of independence of the judiciary, as it meant that ensuring the adequate remuneration of judges was dependant on the goodwill of the executive. In some cases, it has led to the perception that the executive had corrupted the judiciary.¹⁰²

Furthermore, while under the law the courts’ funding comes from the federal budget, in practice local authorities provide supplementary funding and benefits, including in particular housing for judges. The ICJ was informed during its 2010 mission that the allocation of these benefits to judges remains under the discretion of court presidents. The value of such benefits including healthcare access, end-of-year bonuses and other benefits received by a judge has sometimes exceeded his or her annual salary. The lack of uniformity of benefits among judges and the fact that there is no criteria for the exercise of the Court president’s decisions regarding allocation of benefits is a factor which raises concern about its impact on judicial independence.¹⁰³ Justices of the Peace, who are not federal judges, are even more vulnerable: in practice, for them desired promotion and the attached benefits depend to a large extent on personal relationships.¹⁰⁴ The fact that a judge’s salary and entitlement to benefits are at least in part dependent on the goodwill of the executive and the personal relationship with the court president undermines the appearance of independence of the judiciary, and potentially also weakens the judge’s independent and impartial decision-making.

4. Independence and impartiality; Judicial integrity and accountability

Respect for the rule of law is founded on public trust of the judiciary and, to maintain that trust, judges must uphold the highest standards of independence, impartiality and integrity, and must be accountable to those standards.

The guarantee of judicial decisions by independent tribunals means that judges must be free to “decide matters before them impartially, on the basis of the facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason”.¹⁰⁵ Thus, both state actors and non-state actors alike must respect the independence of the judiciary and refrain from action aimed at improperly influencing members of the judiciary, undermining their independence and impartiality. While respecting the hierarchy between the courts of first instance and higher courts, international standards clarify that other judges must also respect the independence of their colleagues within the scope of the exercise of judicial functions: “No one must give or attempt to give the judge orders or instructions of any kind, that may influence the judicial decisions of the judge, except, where applicable, the opinion in a particular case given on appeal by the higher courts.”¹⁰⁶

⁹⁹ Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, Report on a Mission to the Russian Federation, UN Doc. A/HRC/11/41/Add.2 (23 March 2009), para. 64.

¹⁰⁰ Russian Federation Law On the Judicial Department under the Supreme Court of the Russian Federation, Article 1(2).

¹⁰¹ See e.g., Presidential Decree of 29 October 2013 on Increase of the Salaries of the Judges of Courts of the Russian Federation and the Prosecutor’s Office Employees, N 810.

¹⁰² International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 24-25.

¹⁰³ International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 25.

¹⁰⁴ International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 25.

¹⁰⁵ UN Basic Principles on the Independence of the Judiciary, Principles 1-7, in particular Principle 2; Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 11, 22; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Articles 2-8; Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 1; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 1-4.

¹⁰⁶ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 23; Magna Carta of Judges, Consultative Council of European Judges CCJE

*In the course of the exercise of judicial functions, judges must be impartial, and be seen to be impartial. Judges "must not allow their judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other." Further, even where an individual judge might in fact be able to ignore a personal relationship to one of the parties to a case, he or she should step aside from the case to protect against an apprehension of bias: "the tribunal must also appear to a reasonable observer to be impartial."*¹⁰⁷

*Judges must also ensure that their conduct is above reproach in the view of a reasonable observer. They must avoid impropriety and the appearance of impropriety in all their activities. Their behaviour must reinforce the people's confidence in the integrity of the judiciary.*¹⁰⁸

*A judicial code of conduct, drafted primarily by judges and members of the legal profession and consistent with international standards,¹⁰⁹ can help to safeguard judicial integrity and protect against conflicts of interest.¹¹⁰ Pursuant to international standards, such a judicial code of conduct, which should be enshrined in the law, should serve as the basis for the determination of cases of alleged judicial misconduct within a fair disciplinary system.¹¹¹ The Council of Europe has recommended that this code of conduct should not only include duties that may be sanctioned by disciplinary measures, but should also offer guidance to judges on how to conduct themselves.*¹¹²

Complaints about judicial misconduct must be processed expeditiously and fairly under an appropriate procedure that is subject to independent review.¹¹³ The judge in question has the right to a fair hearing before an independent and impartial body. The body responsible

(2010)3 Final, Article 10; Consultative Council of European Judges, Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, para. 64; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 4; Venice Commission, Report on the Independence of the Judicial System, Part I: the Independence of Judges, CDL-AD(2010)004, para. 72.

¹⁰⁷ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 21; UN Basic Principles on the Independence of the Judiciary, Principle 2; Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 60; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 25; Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 2 and 4; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 5.

¹⁰⁸ Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 3 and 4; European Charter on the Statute for Judges, para. 4.3; Consultative Council for European Judges, Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, para. 50(i)-(iv); Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 5-7. See Venice Commission, Report on the Independence of the Judicial System, Part I: the Independence of Judges, CDL-AD(2010)004, para. 62. Also see ECtHR, *Fey v. Austria* (Application No. 14396/88), para. 30: "What is at stake is the confidence which the courts in a democratic society must inspire in the public and, above all, as far as criminal proceedings are concerned, in the accused."

¹⁰⁹ See Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 73; Consultative Council for European Judges, Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, para. 49; Magna Carta of Judges, Consultative Council of European Judges CCJE (2010)3 Final, Article 18; Bangalore Principles of Judicial Conduct; International Bar Association Minimum Standards of Judicial Independence, para. 35-42.

¹¹⁰ See Bangalore Principles of Judicial Conduct, Preamble and 'Implementation'.

¹¹¹ UN Basic Principles on the Independence of the Judiciary, Principle 19; Magna Carta of Judges, Consultative Council of European Judges CCJE (2010)3 Final, Article 19.

¹¹² Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 72. Also see Magna Carta of Judges, Consultative Council of European Judges CCJE (2010)3 Final, Article 18: "Deontological principles, distinguished from disciplinary rule,".

¹¹³ UN Basic Principles on the Independence of the Judiciary, Principle 17 and 20; Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 69; Consultative Council for European Judges, Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, para. 77; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 28.

for discipline of judges should be independent of the executive,¹¹⁴ plural and composed mainly (if not solely) of judges and members of the legal profession.¹¹⁵ The judge's rights to a fair proceeding, including to notice of the accusations against him or her, to adequate time and facilities to prepare and present a defence including through counsel, to challenge the evidence against him or her and present witnesses must be respected. Decisions must be based on established standards of judicial conduct, and sanctions must be proportionate. Decisions to suspend or remove a judge must be limited to cases in which the incapacity or behaviour of a judge renders the individual unfit to discharge his or her judicial duties.¹¹⁶ Decisions and sanctions in disciplinary proceedings should be subject to independent judicial review (although this may not apply to decisions of the highest court or the legislature in impeachment proceedings).¹¹⁷

In order to safeguard the independence of the judiciary, individual judges should also enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.¹¹⁸

In the Russian Federation, judges remain prone to undue influence. A 2010 ICJ mission learned that the phenomenon of "telephone justice" remained widespread: reportedly, judges are often – as a matter of routine – directly instructed by the court president how to resolve a specific case. The ICJ's interlocutors also stressed the fact that as judges are aware of the expectations of a particular outcome in a case over which they preside regardless of the evidence, there is often no need to give direct instructions. Furthermore when such expectations are not met, a judicial decision may be overturned or not implemented and the judge may face discipline as a result of having issued an "erroneous" decision. Two types of cases, in which "telephone justice" is particularly prevalent, were singled out: criminal cases for conduct considered to be terrorism-related and cases related to the exercise of the rights to freedom of expression or peaceful assembly.¹¹⁹

In successive missions to the Russian Federation between 2010 and 2014, the ICJ has consistently been told that the judges' mind-set can also be an obstacle to their independence: partially for historical reasons – Soviet courts were notoriously an extension of the communist party and criminal trials had a strongly accusatory character – criminal

¹¹⁴ Human Rights Committee, Concluding Observations on Azerbaijan, UN Doc. CCPR/C/AZE/CO/3 (2009), para. 12; Human Rights Committee, Concluding Observations on Honduras, UN Doc. CCPR/C/HND/CO/1 (2006), para. 16; Human Rights Committee, Concluding Observations on Kosovo (Serbia), UN Doc. CCPR/C/UNK/CO/1 (2006), para. 20.

¹¹⁵ Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), para. 28-29. See Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 27; European Charter on the Statute for Judges, para. 1.3, 5.1; Magna Carta of Judges, Consultative Council of European Judges CCJE (2010)3 Final, Article 13; Consultative Council of European Judges, Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, para. 60(b); Venice Commission, Report on the Independence of the Judicial System, Part I: The Independence of Judges, CDL-AD(2010)004, para. 32; Venice Commission, Judicial Appointments, CDL-AD(2007)028, para. 27-34, 48-51.

¹¹⁶ UN Basic Principles on the Independence of the Judiciary, Principle 16; Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 50, 69; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 20; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 10.

¹¹⁷ UN Basic Principles on the Independence of the Judiciary, Principle 17-20; Consultative Council for European Judges, Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, para. 77(v); Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 26-31; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 8 and 11.

¹¹⁸ UN Basic Principles on the Independence of the Judiciary, Principle 16; Magna Carta of Judges, Consultative Council of European Judges CCJE (2010)3 Final, Article 20; Consultative Council for European Judges, Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, para. 75(ii)-76; Venice Commission, Report on the Independence of the Judicial System, Part I: the Independence of Judges, CDL-AD(2010)004, para. 61; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 20; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 10. Also see Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 67: "Only the state may seek to establish the civil liability of a judge through court action in the event that it has had to award compensation." and European Charter on the Statute for Judges, para. 5.2.

¹¹⁹ International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 27.

trials rarely concluded with an acquittal of the accused. The ICJ has heard, including from judges themselves, that many judges continue to see themselves as agents of the State whose goal is to protect its interests, in Soviet tradition. Coinciding with the legacy of the Soviet system, it is clear that the current system of judicial selection and promotion and the way in which disciplinary proceedings are used and conducted, demonstrate that excessive deference to the Executive remains part of the system.¹²⁰

Furthermore, the prosecution services – said to be the least reformed institution in Russia since Soviet times – retain undue influence in criminal proceedings. Reportedly, as a matter of course more weight is given to the prosecution's arguments than to the defence's and judges may face consequences, including dismissal, if they are not perceived as being “attentive” enough to the prosecution's demands. Likewise, judges reportedly may face consequences if they refuse to order pre-trial detention and/or grant too many acquittals. Also pressure emanating from law enforcement agencies remains strong.¹²¹

Moreover, allegations of corruption within the judiciary persist. Allegedly, some judges provide “services” to organizations and individuals, for example accepting bribes to expedite the consideration of a case or to make a particular decision. Judges are said to be vulnerable before powerful interests.¹²²

Hence, a number of undue influences potentially affect judicial decision-making, serving to undermine the judiciary's independence and the judge's impartiality and the appearance thereof.

However, while outside pressure on the judiciary is often visible, the internal mechanisms have been most significant in undermining judges' independence. In particular the disciplinary system can and does operate to undermine judicial independence.¹²³ As noted above in Section 1, the quality of the representatives in the Qualification Collegium is deemed problematic and concerns persist regarding the unofficial role of court presidents in the determination of the composition of Qualification Collegiums. Furthermore the procedures themselves do not guarantee the rights of judges who are accused of misconduct.

A disciplinary offence is defined (overly) broadly as a violation of the norms of the Law on the Status of Judges or the Code of Judicial Ethics.¹²⁴ Under the law, three types of disciplinary sanctions can be imposed: a warning, a reprimand and the early termination of a judge's office (i.e., dismissal).¹²⁵ Dismissal results not only in termination of office and judicial salary but also in the individual's loss of judicial pension and other social benefits.¹²⁶

Disciplinary processes against judges start with a recommendation made by a court president or a Body of the Judicial Community judicial body to the local Qualification Collegium to initiate proceedings against a judge.¹²⁷ The court president or Body of the Judicial Community that makes the recommendation does not appear to be required to present a legal assessment of the facts.¹²⁸

¹²⁰ International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 29-30.

¹²¹ International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 27-28; International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 27.

¹²² International Commission of Jurists, *The State of the Judiciary in Russia* (November 2010), p. 28.

¹²³ International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 44.

¹²⁴ Law on the Status of Judges in the Russian Federation, Article 12.1.

¹²⁵ Law on the Status of Judges in the Russian Federation, Article 12.1(1).

¹²⁶ International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 31. See International Commission of Jurists, *Russian Federation: Draft Law Amending the Law on the Status of Judges – Comment by the ICJ*, p. 5.

¹²⁷ Regulations on the Operation of the Qualification Collegium of Judges, Article 28.1.

¹²⁸ International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 33.

Court presidents and the Qualification Collegiums appear to enjoy considerable discretion when deciding whether or not to initiate disciplinary proceedings. The extent of discretion may facilitate arbitrariness and enable abuses of power by court presidents.¹²⁹

If the Qualification Collegium decides to proceed with the complaint, it holds a hearing in the matter. As a general rule, hearings in such proceedings against judges are public, although exceptions to this rule are possible.¹³⁰ The attendance, with the right to express an opinion, of the court president¹³¹ who submitted the motion for disciplinary action against the judge has been challenged, but the Constitutional Court has decided that this is not contrary to the Constitution.¹³²

The burden of proving the case against a judge lies with the person who signed the recommendation for disciplinary action (i.e., the court president or body of the judicial community).¹³³ Doubts in proving the commission of an act of disciplinary misconduct should be interpreted in favour of the judge.¹³⁴

At the hearing, the Qualification Collegium's Chair or rapporteur sets out the essence of the case,¹³⁵ after which the Collegium's members can ask the rapporteur questions¹³⁶ and hear the explanations of the judge under scrutiny, persons who possess information about the materials considered and the opinions of an expert.¹³⁷ Next, a number of exhaustively listed persons¹³⁸ are asked for their opinion¹³⁹ and the participants in the session make final statements, before the Collegium begins its deliberations.¹⁴⁰

Many of the ICJ's interlocutors during a 2012 mission to Russia made unfavourable comparisons between the disciplinary procedure before the Qualification Collegiums and court procedures that adequately safeguard the right to a fair trial. The judge under investigation has the right, *inter alia*, to be informed of the complaint,¹⁴¹ has the right to a representative¹⁴² and to familiarize him or herself with the materials and present objections and remarks.¹⁴³ However, at the disciplinary hearing, sitting judges can and do¹⁴⁴ represent the body that initiated the proceedings, while the judge under investigation cannot be represented by another judge. In light of the influence of sitting judges, especially those of higher courts, depriving one party to the proceedings of this opportunity constitutes a serious imbalance. There is no provision in the law that sets out the right of the judge accused of misconduct to call and question witnesses in the course of a disciplinary hearing. Thus, whether to call or question a witness is left to the discretion of the Collegium. Furthermore, the judge under investigation always has to carry his or her own costs.¹⁴⁵

The admission of evidence is virtually unregulated, and left to the discretion of the Qualification Collegium. Sometimes, in the absence of a prescribed standard of proof,

¹²⁹ International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 35.

¹³⁰ Regulations on the Operation of the Qualification Collegium of Judges, Article 4.1-4.2.

¹³¹ Law on the Bodies of the Judicial Corps in the Russian Federation, Article 21(6).

¹³² Decision of the Constitutional Court (28 February 2008), N 3-, para. 5.4; International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 36.

¹³³ Regulations on the Operation of the Qualification Collegium of Judges, Article 28.4.

¹³⁴ Regulations on the Operation of the Qualification Collegium of Judges, Article 28.5.

¹³⁵ Regulations on the Operation of the Qualification Collegium of Judges, Article 16.6.

¹³⁶ *Ibid.*

¹³⁷ Regulations on the Operation of the Qualification Collegium of Judges, Article 16.7.

¹³⁸ The presidents and deputy presidents of the courts; heads of the Judicial Department under the Supreme Court and the bodies within its system; chairs and deputy chairs of the Councils of Judges; and chairs and deputy chairs of other Qualification Collegiums or their representatives.

¹³⁹ Regulations on the Operation of the Qualification Collegium of Judges, Article 16.9.

¹⁴⁰ Regulations on the Operation of the Qualification Collegium of Judges, Article 16.10.

¹⁴¹ See Regulations on the Operation of the Qualification Collegium of Judges, Article 28.3.

¹⁴² Regulations on the Operation of the Qualification Collegium of Judges, Article 16.4.

¹⁴³ Law on the Bodies of the Judicial Corps in the Russian Federation, Article 21(2); Regulations on the Operation of the Qualification Collegium of Judges, Article 28.3.

¹⁴⁴ See Aulov, *Procedural Equality of Arms as an Anti-corruption Component of the Disciplinary Process* (2011), cited at: International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 39.

¹⁴⁵ International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 37-39.

obviously flawed evidence that would not be permitted in other legal proceedings is considered admissible and ultimately, it is left to the Qualification Collegium to decide if the evidence is sufficient to prove misconduct.¹⁴⁶

Following a hearing and finding of misconduct, a Qualification Collegium can impose a warning, it can reprimand a judge, or it can terminate the judge's tenure in office. If the Qualifications Collegium is considering termination of a judge's tenure, it does so by vote, taken in secret; and a decision to do so must be reasoned. Even in cases where it does not impose a disciplinary penalty, the Collegium can still draw the judge's attention to the legal and ethical norms it considers that the judge has violated, if it considers that there is sufficient reason to do so.

Decisions of a Qualification Collegium to dismiss a judge on disciplinary grounds can be appealed to the Disciplinary Judicial Presence, by either the judge concerned or by the president of the Supreme Court.¹⁴⁷ The procedure before the Disciplinary Judicial Presence is regulated in much greater detail than that of the Qualification Collegiums, and is similar to that before ordinary courts.¹⁴⁸ However, the vagueness of the disciplinary grounds makes it very difficult to prove that a dismissal was illegitimate or illegal.¹⁴⁹

A Supreme Court study pointed to a lack of consistency in the application of disciplinary action against judges. The study indicates that it is common for the same or similar behaviour of judges to lead to very different outcomes, depending on which Qualification Collegium decides the case. There appears to be no common understanding or interpretation of the grounds for disciplinary responsibility by Qualification Collegiums throughout the Russian Federation, and application of sanctions may often be arbitrary.¹⁵⁰ Arbitrariness can be explained in part by the fact that eighty different Qualification Collegiums are interpreting and applying the legal provisions on judges' discipline and the Code of Judicial Conduct, without an effective mechanism in place that aims to ensure consistency.¹⁵¹

In the past, the lack of a statute of limitations on bringing a disciplinary complaint against a judge facilitated abusive resort to the disciplinary system, and created insecurity for judges.¹⁵² However the law now requires¹⁵³ that disciplinary action must be taken within two years of the time of the alleged misconduct or six months from the moment the misconduct became known, provided that this knowledge is attained within two years of the alleged misconduct.¹⁵⁴

On a number of issues, however, the Russian judicial disciplinary system remains at odds with international standards. Most importantly, the composition of the Qualification Collegium, in combination with the role of the court president therein and the flawed procedure that does not guarantee equality of arms, entail that the right of a judge accused of misconduct to a fair hearing before an independent and impartial body is not always respected. The lack of a common understanding or interpretation of the grounds for

¹⁴⁶ International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 38.

¹⁴⁷ Law on the Bodies of the Judicial Corps in the Russian Federation, Article 26(5).

¹⁴⁸ International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 20, 42-43.

¹⁴⁹ International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 28-29.

¹⁵⁰ Y.V. Romanets, *Generalisation of the Practice of Application by Qualification Collegiums of legislation on disciplinary responsibility of judges*, cited at: International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 27.

¹⁵¹ International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 27-28.

¹⁵² International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 29-30.

¹⁵³ Law amending the Law of the Russian Federation on the Status of Judges in the Russian Federation, N 179 FZ, 2 July 2013.

¹⁵⁴ Law on the Status of Judges in the Russian Federation, Article 12.1(4).

disciplinary responsibility, which in any case are too vague, and the often-arbitrary application of sanctions undermine legal certainty.¹⁵⁵

¹⁵⁵ International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 44-47.