



UNITED NATIONS HUMAN RIGHTS COMMITTEE

113th Session

16 March to 2 April 2015

**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION TO THE
HUMAN RIGHTS COMMITTEE IN ADVANCE OF THE EXAMINATION OF
THE RUSSIAN FEDERATION'S SEVENTH PERIODIC REPORT UNDER ARTICLE
40 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

February 2015

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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INTERNATIONAL COMMISSION OF JURISTS

SUBMISSION TO THE HUMAN RIGHTS COMMITTEE IN ADVANCE OF THE EXAMINATION OF THE RUSSIAN FEDERATION'S SEVENTH PERIODIC REPORT UNDER ARTICLE 40 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

1. During its 113th session, from 16 March to 2 April 2015, the Human Rights Committee ('the Committee') will examine the Russian Federation's implementation of the provisions of the International Covenant on Civil and Political Rights (ICCPR), including in light of the State Party's seventh periodic report under article 40 of the Covenant.
2. In the context of this review, the International Commission of Jurists (ICJ) wishes to bring to the Committee's attention some of its concerns about the Russian Federation's implementation of the ICCPR. In particular, this submission highlights a number of concerns relating to the independence of the judiciary in the Russian Federation. Judicial independence remains weak in the Russian Federation, with many judges lacking an understanding of what it means in practical terms to exercise independent judicial power. In many cases, judges are prone to undue influence, either from outside interests, or from inside the judicial hierarchy. This submission addresses three aspects of the administration of the judiciary which are of particular concern in protecting judicial independence:
 - The selection, appointment and promotion process for judges, in which a gap between law and practice, and "extra-procedural" influence and shortcuts persist;
 - The judicial disciplinary system, in particular dismissals of judges; and,
 - The recent process of appointment of judges to the new Supreme Court.Without comprehensive reform addressing these structural deficiencies, the right of everyone to fair proceedings before competent, independent and impartial tribunals established by law, guaranteed under Article 14 of the ICCPR, is impeded.
3. These concerns are also relevant for the Committee's evaluation of the Russian Federation's implementation of other Covenant rights, including for example the State's obligations under articles 2, 7 and 9 of the ICCPR.
4. Issues of the independence and accountability of the judiciary, which impact on protection of the Covenant rights which the ICJ seeks to bring to the attention of the Committee, are addressed in three reports, issued by the ICJ since the Committee's last examination of the Russian Federation's implementation of the ICCPR:
 - International Commission of Jurists, *The State of the Judiciary in Russia* (2010), available at: <http://www.icj.org/russian-federation-icj-calls-for-systemic-reforms-to-strengthen-the-judiciary/>;
 - International Commission of Jurists, *Securing Justice: the Disciplinary System for Judges in the Russian Federation* (2012), available at: <http://www.icj.org/russia-disciplinary-measures-must-not-hamper-the-independence-of-judges/>;
 - International Commission of Jurists, *Appointing the Judges: Procedure for Selection of Judges in the Russian Federation* (2014), available at: <http://www.icj.org/icj-report-structural-deficiencies-undermine-independence-of-the-judiciary-in-the-russian-federation/>.
5. As noted above, this submission addresses some (but not all) of the ICJ's concerns about the Russian Federation's implementation of the ICCPR, including with respect to articles 14, 2, 7 and 9.

SELECTION, APPOINTMENT AND PROMOTION OF JUDGES

6. In its Concluding Observations following its examination of the Russian Federation's sixth periodic report, the Committee expressed concern "about the appointment mechanism for judges that exposes them to political pressure". The Committee recommended that the State party consider "establishing ... an independent body responsible for matters relating to the appointment and promotion of judges."¹ Although since the Committee issued its Concluding Observations the appointment system has undergone reform, the ICJ remains concerned that it does not conform with international standards on judicial independence, as outlined below.
7. The concerns with regard to the appointment and promotion of judges in the Russian Federation outlined below are situated against a backdrop of a judiciary that is amenable to undue pressures that compromise its independence and that suffers from long-standing institutional weaknesses. In such a fragile context, the ICJ considers that it is of the utmost importance that a selection system be in place that leads to the appointment and promotion of highly competent judges who are and perceive themselves to be free to assert their individual independence.
8. International standards specify that judges should be appointed through an open process on the basis of prescribed criteria based on merit and integrity.² This Committee has noted that an appropriate method of appointment is a prerequisite for the independence of the judiciary,³ and has repeatedly recommended the use of bodies that are independent from the executive.⁴ The Special Rapporteur on the Independence of Judges and Lawyers has recommended that the appointing bodies should be plural and composed mainly (if not solely) of judges and members of the legal profession.⁵ They must apply transparent procedures,⁶ and the process must enable and lead to the selection of individuals of integrity and ability, with appropriate

¹ Human Rights Committee, Concluding Observations on the Russian Federation, UN Doc. CCPR/C/RUS/CO/6 (2009), para. 21.

² UN Basic Principles on the Independence of the Judiciary, Principle 10. Also see 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.

³ 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.

⁴ 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.

⁵ UN 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 also 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 for Judges, para. 1.3; Venice Commission, Judicial Appointments, CDL-AD(2007)028.

⁶ UN Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), para. 32; UN 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).

training and qualifications in law.⁷ Promotions must be based on objective factors, particularly ability, integrity and experience.⁸

9. The ICJ notes that the selection and appointment system for judges in the Russian Federation does not guarantee transparency, fairness and predictability. There is a detailed legal framework and institutional structure governing the appointment process, which begins with examinations overseen by Examination Commissions, followed by selection process by Qualification Collegiums, which may be vetoed by a Court President, and appointment by the President upon advice of his advisory commission. Despite this detailed legal framework, in practice, decision-making does not always follow the procedure enshrined in law. The unchecked discretionary power exercised at key stages throughout the selection procedure is a serious systemic shortcoming.
10. In 2014, ICJ mission delegates notably heard serious concerns regarding the improper influence of court presidents in the appointment procedure, which was said typically to be the decisive factor in nominating candidates for judicial positions. In addition to exercising their extensive powers in the judicial appointment process set out in the law,⁹ court presidents also exert unofficial influence. Given that the Qualification Collegiums (see below, para. 14) ordinarily have close links with the judicial hierarchy, they are often apt to accept the court president's objections and instructions.
11. In her report to the Human Rights Council, following an official visit in April 2013, the UN Special Rapporteur on the Independence of Judges and Lawyers said, "the selection process of judges is worrying. While the law is clear regarding the criteria that have to be fulfilled to become a judge, the Special Rapporteur was told that, in practice, the mandatory examination lacks both transparency and anonymity. She is concerned about reports that the examination process can be, and often is, manipulated by the president of the court where the vacancy is located. There is also a real risk that newly appointed judges may feel indebted towards the president of their court."¹⁰ The UN Special Rapporteur equally expressed concern that the mechanism for appointing judges "may expose them to undue political pressure."¹¹
12. A number of authorities and officials are involved in the selection and appointment procedure for judges in the Russian Federation: the Examination Commissions; the Qualification Collegiums of Judges of the Subjects of the Russian Federation and the High Qualification Collegium of Judges of the Russian Federation; the [Presidential] Commission for preliminary examination of candidates for judicial positions of federal courts; and the President of the Russian Federation.

⁷ 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.

⁸ 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.

⁹ Federal Law "On the status of judges", Article 5-6.

¹⁰ UN Special Rapporteur on the Independence of Judges and Lawyers, Report to the Human Rights Council on a Mission to the Russian Federation, UN Doc. A/HRC/26/32/Add.1 (2014), para. 19.

¹¹ UN Special Rapporteur on the Independence of Judges and Lawyers, Report to the Human Rights Council on a Mission to the Russian Federation, UN Doc. A/HRC/26/32/Add.1 (2014), para. 17.

13. The Examination Commissions (at regional level) and High Examination Commission (at federal level) examine the applicants for judicial office's knowledge, experience and skills.¹² These Commissions were created in 2002¹³ with a view to improving selection procedures. Pursuant to amendments to the law,¹⁴ Examination Commissions became independent bodies of the judicial community in 2011. However, the ICJ was informed that these bodies remain flawed; concerns about them include that their work is not transparent; the quality of their assessments is poor and they remain prone to external influence. In particular, court presidents have significant powers in shaping the composition of these bodies. According to information received by the ICJ, court presidents sometimes use their powers to arbitrarily compose Examination Commissions according to their personal preferences, rather than based on clearly established criteria.
14. Furthermore, there is no uniform standard applied across the country for the examination of judicial candidates; depending on the region, questions may vary from very basic to very difficult. Whether there is a sufficiently sophisticated and complex examination, which tests not only legal knowledge but also other relevant competencies, such as analytical skills, remains an open question.
15. Qualification Collegiums of Judges have initial responsibility for the selection of judges from amongst those who have qualified through the examination process and make recommendations regarding judicial appointments to the President of the Russian Federation.¹⁵ The ICJ considers that despite the fact that Qualification Collegiums, in accordance with the law, are composed of a majority of judicial members¹⁶ and the fact that the law includes a number of other safeguards of independence,¹⁷ they are susceptible to pressure and informal influence from the judicial hierarchy. Court presidents play a significant role in the composition of the Collegiums and may have, informally, a decisive role in their decision-making. In addition, the fact that representatives of the Russian president serve as members of the Qualification Collegiums heightens both real and perceived influence of the executive on the judicial selection process.¹⁸ According to information provided to the ICJ during a mission to the Russian Federation in May 2014, the High Qualification Collegium, which is the main body responsible for the selection of candidates for judges of the highest courts and certain intermediate court levels, shares many of the flaws of the

¹² Federal Law "On the status of judges in the Russian Federation", Article 5, para. 4.

¹³ Federal Law "On the bodies of the Judicial Community in the Russian Federation".

¹⁴ Federal Law No. 388-FZ "On amendments to certain legislative acts of the Russian Federation in connection with the improvement of the operation of the Examination Commissions for qualifying examination for the position of a judge" (3 December 2011).

¹⁵ They select judges of the Supreme Court of the Republics, kray, regional courts and courts of cities with federal subject status, courts of autonomous regions and courts of autonomous areas, commercial courts of the Subjects of Russia, Justices of the Peace, judges of district courts (including district court presidents and deputy presidents), as well as, where the laws of the Subjects of the Russian Federation so provide, judges of the constitutional (charter) courts of the Subjects of Russia. See Federal Law No. 30-FZ of 14 March 2002 "On bodies of the judicial community in the Russian Federation", Article 19, para. 1.

¹⁶ Federal Law No. 30-FZ of 14 March 2002 "On bodies of the judicial community in the Russian Federation", Article 11, para. 1.

¹⁷ Including stipulations that Presidents and Deputy Presidents of courts must not be members (Federal Law No. 30-FZ of 14 March 2002 "On bodies of the judicial community in the Russian Federation", Article 11, para. 7); that members cannot be elected as chair or deputy chair for more than two consecutive terms (*ibid.*); and that a Qualifications Collegium can operate only if it is composed of at least two-thirds of its members (Regulation on Qualification Collegia of Judges, Article 2, para. 1).

¹⁸ Report of the Special Rapporteur on Independence of Judges and lawyers, Mission to the Russian Federation, 30 April 2014, A/HRC/26/32/Add.1, para. 18.

regional Qualification Collegiums and also lacks independence in its decision-making and functioning.

16. The final stage of the selection process for judges is appointment by the President of the Russian Federation. In this process, the Commission under the President of Russia for preliminary consideration of candidates for federal courts plays an important role as an advisory body to the President.¹⁹ It helps the President to select, evaluate and appoint federal judges. According to the law, it is not a body of the judicial community. Its operation and functions are not described by any of the laws that regulate the operation of the judiciary. Due to the lack of transparency of its operation, it is unknown which, if any, criteria it uses to evaluate and select the candidates. Many experts with whom the delegates of a 2014 ICJ mission met, expressed concern about the selection of judges by a non-judicial body.²⁰ In practice, the significant role of the Commission of the President diminishes the role of the independent bodies established to govern appointments.
17. The absence of strict selection criteria consistently applied in practice may lead to arbitrariness in judicial appointments, arising from a nebulous procedure and/or impropriety in the decision-making process.
18. For those appointed as judges, their judicial career may also be affected by a lack of fairness and transparency. Court presidents have significant influence over the career of judges practicing in the courts they lead; their endorsement is sought in order to gain promotion. In the absence of clear criteria for judicial assessment and advancement, uniformly and consistently applied to ensure a predictable career path, there is a risk of bias and other abuse in the assessment of a judge's professionalism. Reports indicate that some judges' performance evaluation included criteria that may in themselves undermine the independence of judges such as, for example, the number of decisions overturned on appeal. As prescribed by international standards,²¹ judges must be able to decide the cases before them based on their interpretation of the facts and the law without any improper influence, pressure, threat or interference from any authority, which is not the case if they are made to fear consequences for their professional advancement for disagreeing with a higher court on the interpretation of the law or the facts in a specific judicial proceeding.
19. As a result of these weaknesses in the appointment and promotion system, those candidates most likely to become strong, highly competent and independent judges

¹⁹ Decree No. 1185 of the President of Russia of 4 October 2001 "On the Commission under the President of Russia for preliminary consideration of candidates for federal courts", para. 1.

²⁰ International Commission of Jurists, *Appointing the Judges: Procedures for the Selection of Judges in the Russian Federation* (2014), p. 24-25.

²¹ Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 22: "The principle of judicial independence means the independence of each individual judge in the exercise of adjudicating functions. In their decision making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organisation should not undermine individual independence." Also see UN Basic Principles on the Independence of the Judiciary, Principles 1-7, in particular Principle 2; Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 11; 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.

are likely to be discouraged from even applying for judicial office. When they do, they are likely to face significant obstacles to appointment and later, to promotion. The system has produced a judiciary in which the majority of judges appointed are former court employees, many others are former prosecutors, and very few have represented private clients as lawyers. The system has fostered a conservative corporatism and has led to the appointment of judges who are reluctant to assert their independence in the course of judicial decision-making. This, in turn, impedes the capacity of judges to uphold the rule of law, and in particular, to ensure the fair administration of justice.

Appointment of judges to the new Supreme Court

20. In a highly significant reform of the judiciary, a new Supreme Court was created in 2014. Explained by the President of the Russian Federation as being necessary "in order to ensure unified approaches to the resolution of disputes with participation of both citizens and organizations, as well as disputes with State bodies and municipal bodies,"²² the newly created Supreme Court was conceived as a merger between the former Supreme Court and the High Arbitration Court. The reform did not result in an automatic merger of the two higher courts with all the judges maintaining their positions. Rather, judges of the new Supreme Court were selected through a special procedure.
21. The ICJ has serious concerns regarding the process of appointing judges to the new Supreme Court. These concerns pertain to the composition of the body responsible for appointment, the procedure for appointment and the criteria for selection, which are inconsistent with the international standards on appointments (cited in paragraph 8 above), as well as standards pertaining to judges' security of tenure. 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.²³ Moreover, "a judge should not receive a new appointment or be moved to another judicial office without consenting to it, except in cases of disciplinary sanctions or reform of the organization of the judicial system."²⁴

²² Official website of the President of the Russian Federation, The plenary session of the St Petersburg International Economic Forum, 21 June 2013. <http://www.kremlin.ru/news/18383> (last accessed 9 January 2015).

²³ 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 Article 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 European Court of Human Rights (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).

²⁴ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 52. See however ECtHR, *Baka v. Hungary* (Application No. 20261/12), judgment 27 May 2014: "91. The Court considers that the issue at the heart of the present case is whether the applicant's mandate as President of the Supreme Court was terminated **solely as a result of the reorganization of the judiciary** in Hungary ... 95. The Court is not convinced by the Government's arguments that the impugned measure was **a necessary consequence** of the fundamental changes in the functions of the supreme judicial authority in Hungary and its president." (emphasis added). It follows that it is not legitimate to re-appoint

22. A new *ad hoc* body was established to select the judges of the new Supreme Court: the Special Qualification Collegium of Judges (SQCJ).²⁵ No justification has been provided regarding the need to create an *ad hoc* body or why the regular High Qualification Collegium would not be appropriate to select the judges for appointment to the new Supreme Court. The SQCJ was composed of twenty-seven members: one representative of the President of the Russian Federation, one representative of the Civic Chamber of Russia, one representative of the All-Russian Public Association of Lawyers and twenty-four member-judges elected by the regional Councils of Judges²⁶ from among their members. A number of concerns have arisen regarding the composition of the SQJC, including:
- a. Its members comprised judges of courts lower in the hierarchy than the Supreme Court. It hardly seems appropriate that judges of lower courts assess the professional qualification or performance of sitting judges of the highest judicial authorities;
 - b. Allegedly, within the regional Councils of Judges, the representatives of the President of the Russian Federation who are part of these bodies often take the leading role in deciding on recommendations. According to one reliable source with whom the ICJ spoke, in all of the Councils of Judges, the president's representative pointed to the judges they wanted to see nominated to the new Supreme Court. Such information was not made public.²⁷
23. The primary concern of experts who spoke with the ICJ regarding the process was that organizing a competitive process involving sitting judges of the two highest courts and requiring them to apply for appointment could amount to a violation of the principle of irremovability of judges under Russian²⁸ and international law.
24. The failure to identify criteria for appointment in advance of the process and the lack of transparency about the criteria used in the process for appointment of judges to the new Supreme Court is of further particular concern. Reportedly, criteria were developed during the process of selection; however, no list of clear criteria has been made public. Moreover, it was reported that questions that were asked during the interview had not been included in the official minutes, as required by law, whereas it was possible that answers to those questions were taken into consideration in the decision on appointment. In the absence of published, transparent criteria that are consistently applied, it is almost inevitable that arbitrary decisions were made, which has given rise to serious concerns within the judicial community over the fairness of

judges or move them to another office without their consent, where such reform is not undertaken in good faith and designed to protect the tenure of judges as much as possible, using fair processes.

²⁵ Federal Law No. 16-FZ of 5 February 2014 "On procedure for selecting candidates to the initial composition of the Supreme Court established under the Amendment to the Constitution "On the Supreme Court of the Russian Federation and Prokuratura of the Russian Federation", Article 1, para. 5.

²⁶ The regional Councils of Judges function as representative bodies for the judges in the subjects of the Russian Federation. Law on the Bodies of the Judicial Corps in the Russian Federation, Article 7(1).

²⁷ International Commission of Jurists, *Appointing the Judges: Procedures for the Selection of Judges in the Russian Federation* (2014), p. 54.

²⁸ 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. 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. Also see Comment of the High Arbitration Court No. 352924-6 on the proposed Amendment to the Constitution of the Russian Federation "On Supreme Court of the Russian Federation and Prokuratura of the Russian Federation".

the appointment process and its impact on the eventual composition of the new Supreme Court.

25. In light of the above considerations, and in view of the Russian Federation's obligations under the Covenant, including under articles 9 and 14, the ICJ considers that:

- a. Practical measures must be taken to eradicate any arrangements outside of the official procedure for the appointment or promotion of judges, that operate in parallel to the appointment process prescribed by law;**
- b. The law must be reformed in order to ensure that each of the bodies involved in the judicial selection process is independent, in line with international law and standards;**
- c. The role of the Executive, including that of the Presidential advisory body, in judicial appointments should be limited, save in exceptional cases, to formal powers of appointment of individuals proposed by independent bodies on the basis of qualifications, training, ability and integrity following a fair, transparent and inclusive selection process;**
- d. A reform of the legislative framework governing the examination procedure is needed, with a view to establishing a credible process that involves more rigorous and comprehensive testing of the legal knowledge and professional ethics of candidates for judicial office, in line with international standards.**

JUDICIAL DISCIPLINE

26. In its Concluding Observations on the sixth periodic report by the Russian Federation, the Committee expressed concern "about the lack of an independent disciplinary mechanism, particularly in cases of corruption" and recommended that the State party consider establishing "an independent body responsible for ... compliance with disciplinary regulations."²⁹

27. In response, the Russian Federation has referred to "the establishment, under Federal Constitutional Act No. 4-FKZ of 9 November 2009, of a Disciplinary Tribunal as the highest judicial authority for final adjudication of complaints (appeals) concerning the rulings of the Supreme Qualification Board of Judges of the Russian Federation qualification boards of the constituent entities on the removal of judges for misconduct".³⁰

28. This "Disciplinary Tribunal" (or "Disciplinary Judicial Presence"), which served as the main disciplinary appeals body in respect of dismissals of judges between 2009 and 2014, and on which establishment the State party reported in response to this Committee's concerns about the lack of an independent disciplinary mechanism, was however subsequently abolished as an unfortunate outcome of the Supreme Court reform. The establishment of this institution had brought greater fairness to disciplinary proceedings³¹ and could have further contributed to the strengthening of

²⁹ Human Rights Committee, Concluding Observations on the Russian Federation, UN Doc. CCPR/C/RUS/CO/6 (2009), para. 21.

³⁰ Human Rights Committee, Russian Federation: Seventh period report, UN Doc. CCPR/C/RUS/7 (2013), para. 102.

³¹ E.g., an equal split of votes was always considered to be in favour of the judge under investigation in cases of an appeal against a dismissal or a reinstatement as a judge. See

individual judicial independence in the Russian Federation. It will be highly challenging to find an equally effective institutional solution that is sufficiently independent to fairly resolve cases of dismissals of judges.

29. Furthermore, the ICJ considers that the disciplinary system for judges as it currently operates in the Russian Federation can and does operate to undermine judicial independence in practice.
30. The number of dismissals of judges in the Russian Federation is unusually large by comparison with other States.³² The impact of disciplinary action reaches far beyond the dismissed judges: anecdotal evidence gathered by the ICJ suggests that there are frequent instances of judges who are pressured to, or who choose to, resign under threat of disciplinary proceedings. Perhaps most significantly, the example of those judges who have been subject to disciplinary proceedings and dismissal serves to have a chilling effect on the independence of judges, encouraging judges to conform to the practices and expectations that are likely to be acceptable to the judicial establishment and in effect limiting judges' independence in the context of their judicial decision-making.³³
31. International standards specify that complaints about judicial misconduct must be processed expeditiously and fairly under an appropriate procedure that is subject to independent review.³⁴ The body responsible for discipline of judges should be independent of the executive,³⁵ plural and composed mainly (if not solely) of judges and members of the legal profession.³⁶ 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

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

³² See International Commission of Jurists, *Securing justice: the disciplinary system for judges in the Russian Federation* (2012), p. 8.

³³ See also ECtHR, *Kudeshkina v Russia* (Application No. 29492/05), judgment 26 February 2009, para. 100: "Accordingly, it is the Court's assessment that the penalty at issue was disproportionately severe on the applicant and was, moreover, capable of having a "chilling effect" on judges wishing to participate in the public debate on the effectiveness of the judicial institutions."

³⁴ 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.

³⁵ 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.

³⁶ 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.

which the incapacity or behaviour of a judge renders the individual unfit to discharge his or her judicial duties.³⁷ 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).³⁸

32. In the Russian Federation, a number of features of the judicial disciplinary system remain at odds with these standards, including the lack of consistent application of judicial discipline, the composition of the disciplinary body, the flawed procedure and the lack of a uniform standard of proof.

33. First, there is lack of consistency in the application of judicial discipline related to several factors. Disciplinary processes against judges start with a recommendation to initiate proceedings made by a court president or a judicial body of the Judicial Community³⁹ to the local Qualification Collegium.⁴⁰ The body making the recommendation is not required to present a legal assessment of the facts. Court presidents and the Collegiums enjoy considerable discretion when deciding whether or not to initiate proceedings, the extent of which may facilitate arbitrariness and enable abuses. Moreover, 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.⁴¹ There appears to be no common understanding or interpretation of the grounds for disciplinary action by Qualification Collegiums throughout the country, and application of sanctions may often be arbitrary,⁴² which can be explained in part by the fact that eighty different Collegiums are interpreting and applying legal provisions without an effective mechanism in place to ensure consistency. A specific recurrent problem is the initiation of disciplinary proceedings and the imposition of disciplinary penalties against a judge solely because a higher instance court has overturned the judge's ruling, which is inconsistent with international standards (see above, para. 18 *in fine*). The lack of consistency in the application of judicial discipline produced the add-on effect of rendering appeals to the Disciplinary Judicial Presence (while it was in operation, see above) very challenging, as it was difficult to prove that a dismissal is illegitimate or illegal.

34. Second, given the composition of the Qualification Collegiums these bodies, which serve as the disciplinary authority for all but senior judges,⁴³ cannot be considered to be independent and impartial. As noted above, while the majority of the members of each of the Qualifications Collegiums are judges, representatives of the public and one representative of the Russian president also serve on them with a view to ensuring public scrutiny.⁴⁴ However, a 2011 study found that the quality of the

³⁷ 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.

³⁸ 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.

³⁹ See Law on the Bodies of the Judicial Corps in the Russian Federation, Article 1.

⁴⁰ Regulations on the Operation of the Qualification Collegium of Judges, Article 28.1.

⁴¹ Law on the Status of Judges in the Russian Federation, Article 12.1.

⁴² Y.V. Romanets, *Generalisation of the Practice of Application by Qualification Collegiums of legislation on disciplinary responsibility of judges*.

⁴³ Law on the Bodies of the Judicial Corps in the Russian Federation, Article 19.

⁴⁴ Law on the Bodies of the Judicial Corps in the Russian Federation, Article 11(4).

representatives of the public was problematic.⁴⁵ Importantly, serious concerns persist regarding the unofficial role of court presidents in the determination of the composition of Qualification Collegiums. One of the ICJ's interlocutors during a 2012 mission to the country 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."⁴⁶

35. Third, the procedure in disciplinary cases does not include sufficient safeguards of fairness or guarantee equality of arms. The judge under investigation has the right, *inter alia*, to be informed of the complaint,⁴⁷ to a representative,⁴⁸ and to familiarize her or himself with the materials and to present objections and remarks.⁴⁹ However, at the disciplinary hearing, a sitting judge may represent the body that brought the complaint against the judge,⁵⁰ but the judge complained of may not be represented by another judge. In light of the influence that sitting judges wield, especially those of higher courts, depriving one party of the opportunity to be represented by a sitting judge represents a serious imbalance. Moreover, there is no provision in the law that sets out the right of the judge under investigation to call and question witnesses in the course of the hearing. Thus, whether to call a witness is left to the discretion of the Collegium, as is the admission of evidence, which is virtually unregulated.

36. Fourth, in the absence of a prescribed standard of proof, obviously flawed evidence that would not be permitted in other legal proceedings can be considered admissible as ultimately, it is left to the Qualification Collegium to decide if the evidence is sufficient to prove misconduct.

37. In light of the above considerations, and in view of the Russian Federation's obligations under the Covenant, including under article 14, the ICJ considers that:

- a. The arbitrary dismissal, and threat thereof, of judges contributes to a lack of judicial independence, in violation of article 14 and other Covenant rights;**
- b. The lack of due process in judicial disciplinary proceedings and the lack of institutional independence from the executive and court presidents of the bodies responsible for judicial disciplinary**

⁴⁵ 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). The study examined 74 regional laws governing such appointments and found that they generally provide for nominations to be made by a range of civil society organizations, such as labour organizations, NGOs and religious organizations, as well as by deputies, governors, or others with public positions. In practice, it was found that the largest proportion of appointees are lawyers or others with a legal background, such as legal academics, followed by representatives of 'labour collectives', and then by retired police officers, judges and prosecutors. It found that only one percent of appointees fall outside of these groups. In practice, the procedure for appointment was said seldom to lead to effective public scrutiny.

⁴⁶ International Commission of Jurists, *Securing Justice: The disciplinary system for judges in the Russian Federation* (December 2012), p. 18.

⁴⁷ See Regulations on the Operation of the Qualification Collegium of Judges, Article 28.3.

⁴⁸ Regulations on the Operation of the Qualification Collegium of Judges, Article 16.4.

⁴⁹ 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.

⁵⁰ See Aulov, *Procedural Equality of Arms as an Anti-corruption Component of the Disciplinary Process* (2011).

proceedings are, *in se*, a violation of the due process rights of the judges under review.

Accordingly, the ICJ considers that comprehensive reform must be undertaken, with a view to:

- a. Clarifying the grounds for disciplinary action;**
- b. Ensuring the independent composition of, and independent, impartial and transparent functioning of the disciplinary bodies;**
- c. Establishing strong and effective procedural guarantees of fairness; and,**
- d. Ensuring the application of a uniform standard of proof for such proceedings.**