

## Assessing the Role of the Justice-of-the-Peace Courts in the Russian Judicial System

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### Abstract

Justice-of-the-peace courts (JP courts) have been in operation for ten years in Russia. The article assesses the extent to which they have fulfilled the original policy goals of diverting mundane cases away from the *raionnye* (district) courts and making the legal system more accessible to ordinary citizens. Policy makers have repeatedly tinkered with their jurisdictional parameters in order to find a proper dividing point between the JP courts and the district courts. The caseload data document that the JP courts now handle almost all first-instance administrative cases, as well as about three-quarters of all civil cases. Their role in criminal justice is more constrained. Their success in processing huge numbers of cases is facilitated by the use of “judicial orders” (*sudebnye prikazy*) in many civil cases, and by the use of a type of plea bargaining (*osoboe proizvodstvo*) in criminal cases. Each of these procedural mechanisms obviates the need for a full hearing on the merits.

### Keywords

access to justice, courts, judicial reform, judicial selection

Over the past decade, the justice-of-the-peace courts (*mirovye sudy* or “JP courts”) have quietly emerged as the workhorse of the Russian judicial system. They were conceived as a way of relieving the pressure on the district courts (*raionnye sudy*). Though some commentators were skeptical of their capacity to do so,<sup>2</sup> the JP courts have proven to be wildly successful according to that metric. According to the official 2010 caseload data, they handled 76% of all civil claims, 95% of all administrative claims, and 46% of all criminal claims.<sup>3</sup> By taking on the simpler cases, the JP courts have freed up the district courts to spend more time on cases

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<sup>2</sup> N.A. Chechina, “Mirovye sudy v Rossiiskoi Federatsii (sudebnaia reforma i novoe zakonodatel’stvo)”, *Pravovedenie* (1999) No.4, 229-237, at 231.

<sup>3</sup> “Obzor sudebnoi statistiki o deiatel’nosti federal’nykh sudov obshchei iurisdiktсии i mirovykh sudei v 2010 godu” (Moscow, 2011), available at <<http://www.cdepru/index.php?id=5>>.

involving serious crimes and complex non-criminal cases. The JP courts were also initially conceptualized as a way of bringing justice to the people. Whether that goal has been as fully realized is less clear.

In this article, the author takes stock of the first decade of the JP courts' operations, beginning with an overview of the initial vision for these courts and assessing the extent to which they have lived up to this. The bulk of the article is devoted to an analysis of the activities of the court, drawing on caseload data and the author's own observations during field research at these courts from 2010 to 2012. The article also incorporates the findings of two recent independent research projects that focused on the JP courts.<sup>4</sup> One is a project carried out by the Institute for Law and Public Policy with funding from the World Bank that monitored the activities of JP courts and queried users about their satisfaction with their experiences.<sup>5</sup> The second is a survey carried out by the Moscow representative office of the American Bar Association (ABA) that tapped into popular attitudes toward these courts.<sup>6</sup> Taken together, the picture that emerges is one of a fledgling court system that has struggled to find its jurisdictional footing and that is struggling to manage the overwhelming demand.

## 1. The Role of the JP Courts Within the Russian Judicial System

The JP courts had been envisioned as part of a grand restructuring of the judicial system undertaken in the wake of the collapse of the Soviet Union in 1991. Other elements of this reform plan had a higher priority. The law creating the JP courts was passed only in December 1998 after several false starts.<sup>7</sup> This federal law was the first step. But before the JP courts could be established in the constituent parts (or "subjects") of the Russian Federation, each subject had to pass its own law. This was a slower process. Most subjects passed the necessary laws in 1999 and 2000, though some took longer.<sup>8</sup> It was not until 2009 that JP courts were

<sup>4</sup> Western funders were interested in how the JP courts were functioning, which explains why these two somewhat similar projects were funded at about the same time. Though the basic questions were similar, the methodologies varied. The Institute for Law and Public Policy used qualitative and quantitative methods to monitor the daily activities of a select group of JP courts. The ABA, by contrast, commissioned a public-opinion survey.

<sup>5</sup> L.O. Ivanova, *Predlozheniia po povysheniui dostupnosti pravosudiia dlia maloimushchikh i sotsial'no nezashchishchennykh grazhdan – uchastnikov grazhdanskogo protsessa* (ОО "Информполиграф", Moscow, 2011).

<sup>6</sup> Sergei Kriuchkov, *Otnoshenie grazhdan k mirovym sudam* (Amerikanskaia assotsiatsiia iuristov, Moscow, 2010).

<sup>7</sup> Peter H. Solomon, "The New Justices of the Peace in the Russian Federation: A Cornerstone of Judicial Reform?", 11(3) *Demokratizatsiya* (2003), 381-96.

<sup>8</sup> See Nikita Aleksandrovich Kolokolov, *Mirovaia iustitsiia* (Unity, Moscow, 2d ed. 2011) for details on 78 subjects. Of this group, 45 (58%) took legislative action in 2000 and 21 (27%) did so in 1999. Of the remainder, one passed the relevant law in 1998, and the remainder did so between 2001 and 2003.

operating in all parts of Russia, with Chechnia as the last subject to get its JP courts up and running.<sup>9</sup>

Since being passed in 1998, the JP law has been amended thirteen times. This high level of legislative tinkering speaks to the initial uncertainty about the proper place for these courts within the Russian judicial system. Those who pushed for the creation of the courts had a relatively clear goal but were less certain about how to achieve it. From a practical point of view, they were keen to move the multitude of simple cases off the dockets of the district courts in order to allow the district court judges to spend the time needed on more demanding cases. From an ideological point of view, they advocated for the JP courts as a return to the justice-of-the-peace courts of the tsarist era, which were created as part of the judicial reform of 1864 and continued to operate until the Bolsheviks came to power in 1917.<sup>10</sup> They waxed philosophical about the merits of having judges who were embedded in a community and who could reflect the specific values of their communities. Interestingly, the experience with “comrades’ courts” during the Soviet period was not invoked during these debates, even though the purpose of these tribunals had been to bring justice to the people.<sup>11</sup> Others have written extensively about the debates surrounding the creation of the JP courts,<sup>12</sup> so this article will not revisit this issue.

### *1.1. Judicial Districts*

The goal of having courts that are active parts of a community is reflected in the law by requiring that there be a justice of the peace (JP) for every 15-30,000 people.<sup>13</sup> In 2006, this ratio was adjusted by mandating a JP for every 15-23,000 people.<sup>14</sup> This change might appear to be motivated by bringing the JP closer to

<sup>9</sup> “Obzor sudebnoi statistiki o deiatel’nosti federal’nykh sudov obshchei iurisdiksiii i mirovykh sudei v 2009 godu” (Moscow, 2010), available at <<http://www.cdep.ru/index.php?id=5>>.

<sup>10</sup> Solomon, *op.cit.* note 7, 382.

<sup>11</sup> For an overview of these tribunals, see Yoram Gorlizki, “Delegalization in Russia: Soviet Comrades’ Courts in Retrospect,” 46(3) *American Journal of Comparative Law* (1998), 403-25. For an ethnographic account of how they operated, see George Feifer, *Justice in Moscow* (Dell Publishing Co., New York, NY, 1964). When justices of the peace were asked whether they saw parallels between the comrades’ courts and the *miroye sudy*, they were uniformly taken aback by the question. Indeed, in some cases, they almost seemed insulted by the question. They reminded the author that the comrades’ courts had been lay institutions designed to inculcate Soviet values, and saw no similarity with their courts, which resolve disputes according to the law, not in accordance with societal norms. The implication that the JP courts were akin to the comrades’ courts also seemed to call their own status as full-fledged judges into question. From an institutional point of view, the JPs’ arguments are well-founded. At the same time, the informality of the two tribunals and the effort to make them easily accessible to the public are shared features.

<sup>12</sup> See, e.g., Solomon, *op.cit.* note 7.

<sup>13</sup> “O mirovykh sudakh v Rossiiskoi Federatsii”, *Sobranie zakonodatel’stva RF* (1998) No.51 item 6270, Art.4(4).

<sup>14</sup> Zakon “O vnesenii izmenenii v star’iu 4 Federal’nogo zakona ‘O mirovykh sudakh v Rossiiskoi Federatsii’”, *Sobranie zakonodatel’stva RF* (2006) No.11 item 1147. Writing in 2006, the chairman of

her community. In reality, however, the ability of a single judge to manage the disputes that arose from 30,000 people proved to be overwhelming. The shift downward was a compromise that was aimed at making the workload more manageable, while not imposing an overwhelming additional burden on the state budget. After all, each additional JP comes with an assistant (*pomoshchnik*), a secretary, and a staff member to handle case intake (*zaveduiushchii kontsiliariei*), so the costs quickly add up. For example, in St. Petersburg, this simple change resulted in the creation of 47 new judicial districts.<sup>15</sup>

The goal of having similar workloads for each JP has proven extremely difficult to achieve in practice. As the authors of a handbook for potential users of the JP courts in St. Petersburg wrote in 2008:

“In judicial districts where there are many enterprises, farmers’ markets, or communal apartments, the number of cases greatly exceed the workload for judges in ‘calmer’ districts. The difference in the burden can differ by a factor of 4 or 5.”<sup>16</sup>

Reality far outstripped these scholars’ estimates. The JP court for the busiest district in St. Petersburg had an astonishing monthly workload of 718.5 cases in 2011, whereas the JP court for the least busy district heard only 51.4 cases per month in 2011.<sup>17</sup> In Pskov *Oblast’*, the JP courts that serve the city of Pskov are consistently busier than those for the outlying rural areas.<sup>18</sup> Not only is there variation in the sheer number of cases but, also, in the type of case. Again taking Pskov as an illustration, it turns out that the district that heard the largest number of administrative cases was not in the city of Pskov, but in OPOCHKA, which is probably due to the presence of a major highway.<sup>19</sup> In other examples from the author’s field work, one judge in Petrozavodsk who had a large shopping center in

the Penzenskaia *Oblast’* court and his assistant advocated for a further reduction of the ration to allow for a JP for every 18,000 citizens, arguing that the consequent increase in the number of JP’s would increase the capacity of Russians to access the system in an efficient and effective manner. In particular, they noted that the introduction of the JP courts had led to a drastic decrease in the percentage of cases in which the *raionnye* courts exceeded the statutorily mandated deadlines for resolving cases. See V.A. Terekhin and V.V. Zakharov, “A nuzhno li nam mirovaia iustitsiia?”, *Rossiiskaia iustitsiia* (2006) No.4, 48-50. Other regions also agitated for more JP courts, so as to further alleviate the pressure on the *raionnye* courts. See, e.g., G. Borisov and A. Khapilin, “Ot mirovykh sudei – k mirovym sudam”, *Rosiiskaia iustitsiia* (2002) No.3, 39-41. (A statistical analysis of caseload data in Belgorodskaiia *Oblast’* led administrators to request the creation of 93 districts, but only 66 were established.)

<sup>15</sup> Elena Bogdanova, Liubov’ Ezhova, and Irina Olimpieva, *Chto nuzhno znat’ o mirovykh sud’iakh* (Aleteiia, St. Petersburg, 2008), 25.

<sup>16</sup> *Ibid.* All translations from Russian to English are by the author of this article unless otherwise noted.

<sup>17</sup> The website for the JP courts of St. Petersburg has posted workload data for 2008-2011. District No.4, located in the heart of the Admiralteiskii Region, is consistently the busiest. In 2011, district No.18, located in the Vasileostrovskii Region, had the lowest workload, but it did not claim that honor for all four years; available at <<http://mirsud.spb.ru/21/2172>>.

<sup>18</sup> In 2010, the busiest urban court heard 83 criminal cases, 2,023 civil cases, and 632 administrative cases, while the court for the Porkhovskii District (located to the southwest of the city of Pskov) heard 54 criminal cases, 623 civil cases, and 336 administrative cases. “Mirovye sud’i Pskovskoi oblasti 2010”, available at <<http://usd.psk.sudrf.ru/modules.php?name=stat&id=10>>.

<sup>19</sup> *Ibid.*

her judicial district was plagued by cases of shoplifting. The author observed several involving pensioners, whose pleas for leniency based on their circumstances were heartbreaking. In Ekaterinburg, judges whose districts were composed mostly of housing heard an undue number of household disputes, both divorces and spats among family members, whereas those whose districts included forest areas saw their dockets dominated by disputes over *dacha* ownership and property lines. In Rostov-na-Donu, the JP handling a downtown district was so overwhelmed by the caseload generated by the banks in her district that a decision was made to bring in a second JP to share the duties for that district. In Voronezh, the territory of the city center was divvied among all the JPs in an effort to even out the workload. As a result, however, the districts were not contiguous.

The law on JP courts mandates that JPs are to carry out their activities within the borders of their judicial districts (*v predelakh sudebnykh uchastkov*).<sup>20</sup> At first glance, this language might be read to require the JP to be situated within the judicial district she serves. But this is not how the language has been interpreted. It has been taken to mean that all cases heard by a JP must have occurred in the judicial district she serves. When the parties to a case live in different districts, jurisdiction is determined by the residence of the defendant.<sup>21</sup>

Requiring JP courts to be located in the judicial district would have been an ideal way of realizing the goal of bringing justice to the people, and has been achieved in many rural areas of Russia. In more urban settings, it has often proved to be impractical. Finding space for a judge and her staff within each district has been not only difficult but also prohibitively expensive. Instead, economies of scale have been achieved by having multiple JP courts in a single building.<sup>22</sup> For example, rather than each judge having to have bailiffs (*sudebnye pristavy*) to maintain security, this function can be centralized. The JP's can interact with each other more frequently and can learn from one another. The disadvantage is the potential inconvenience to litigants, who have to travel further to reach the court. To the extent possible, JP courts have been made accessible to public transportation. When doing research in Ekaterinburg in October 2011, the author visited the Ordzhonikidze Region, where the JP courts for the ten judicial districts within that region are centralized in a single building. Without exception, the judges extolled the virtues of sharing quarters, telling the authors about the ease with which they can ask for advice and organize seminars on new developments in the law. The author's experiences in Petrozavodsk, Moscow, Rostov-na-Donu, and St. Petersburg yielded similar testimonials.

As to the conditions of the JP courts, the monitoring project organized by the Institute for Law and Public Policy in Moscow in 2010 provides a broader

<sup>20</sup> "O mirovykh sudakh", *op.cit.* note 13, Art.2(1).

<sup>21</sup> M.N. Marshunov, *Kommentarii k zakonodatel'stvu o sudoustroistve Rossiiskoi Federatsii* (Izdatel'skii Torgovyi Dom "Gerda", Moscow, 2d ed. 2000), 431.

<sup>22</sup> Bogdanova, *op.cit.* note 15, 27.

picture.<sup>23</sup> Over a period of two and one-half months, two teams of twenty trained monitors observed judicial proceedings in Leningradskaia *Oblast'* and Permskii *Krai*. In each region, more than 900 cases were observed. In about 100 of those cases, the monitors followed the case from start to finish, attending all hearings. In the remaining cases, a single hearing was observed.<sup>24</sup> The monitors not only paid attention to the substantive elements of the hearing but, also, to the creature comforts. A somewhat different picture emerges as to the two regions. In Leningradskaia *Oblast'*, the premises in which the hearings were held were large enough to accommodate all the participants, whereas in Permskii *Krai*, this was true in only 60% of the observed hearings. Along similar lines, 90% of the courtrooms in Leningradskaia *Oblast'* were equipped with a cage that could house a criminal defendant in more serious cases, whereas only 30% of courtrooms in Permskii *Krai* were similarly equipped. On the other hand, 80% of the JP courts observed in Leningradskaia *Oblast'* were working with obsolete computers, as compared to only 40% in Permskii *Krai*. Monitors found the temperature noticeably chilly in the premises in about 30% of the cases observed in Leningradskaia *Oblast'* and in about 20% of cases in Permskii *Krai*. In only a small percentage of cases did the monitors note that the buildings where cases were heard were in need of capital repairs.<sup>25</sup> In terms of the more obvious markers of judicial power, the monitors noted that typically the courtrooms were equipped with the legislatively required flag and seal of the Russian Federation. In the vast majority of cases, JPs wore their robes.<sup>26</sup> Though it is not possible to generalize on the basis of these two regions, these data do suggest that the administrators of the JP courts continue to struggle with getting the facilities up to muster. This is hardly surprising, given that they started from nothing and have had to cadge funding from a variety of sources.

### 1.2. Jurisdiction

Article 3 specifies the jurisdiction of the JP courts. It is the single most-amended portion of this law. These amendments reflect an effort to modulate the number of cases and demonstrate the ongoing struggle to strike a balance between the JP courts and the district courts. Anytime the jurisdiction of the JP courts was curtailed, this meant that these cases would now be heard as a matter of first instance by the district courts. Of course, the hierarchical nature of the system means that the district courts serve as appellate courts for the cases heard by the JP courts, so the district courts can never fully escape from these cases. Given that only a small percentage of the decisions of the JP courts are appealed, the

<sup>23</sup> Ivanova, *op.cit.* note 5.

<sup>24</sup> *Ibid.*, 6.

<sup>25</sup> *Ibid.*, 70-71.

<sup>26</sup> *Ibid.*, 71.

reality is that situating the responsibility for trying the case in these new courts effectively liberates the district courts from responsibility for all but the most troublesome cases.

Under Russian law, cases are generally divided into three categories: administrative, criminal, and civil. Article 3 of the 1998 law included nine categories of cases that were to be within the exclusive competency of the JP courts. Only one of these nine addressed administrative cases, which are cases that involve a state organ (*e.g.*, tax collection agency, pension agency) in a non-criminal setting. It was framed in such a general way that it did not require frequent changes. It simply said that the JP courts would hear any administrative cases that were funneled to it under the terms of the administrative procedure code. This is a clever way of avoiding specificity in the JP law yet providing clarity on the category of cases for which the JP courts were responsible. A quick review of the Administrative Procedure Code reveals that it takes a similar tack. The types of cases to be heard by the district and other types of courts are listed; the JP courts are ceded all other cases.<sup>27</sup> No doubt in large measure due to the approach taken, this section has only been amended once. In February 2005, the administrative cases to be heard by the JP courts were expanded to include not only those delegated to it by the Administrative Procedure Code, but by any law of the Russian Federation.<sup>28</sup> The Plenum of the Supreme Court, in an explanatory decree in March 2005, confirmed that “as a general rule” the JP courts heard cases involving administrative violations.<sup>29</sup> According to one of the authoritative commentaries on the Administrative Procedure Code, “the majority of cases about administrative violations [...] are subject to review by justices of the peace”.<sup>30</sup>

Article 3 includes only one category for criminal cases. As with the section dealing with administrative cases, this section is a catch-all. Initially, JP courts were given responsibility for all cases for which the maximum punishment was imprisonment for two years. In February 2005, this was changed to three years, which naturally expanded the number and types of cases.<sup>31</sup> Even so, as we will see, criminal cases take up the smallest portion of the docket of JP courts.

<sup>27</sup> Art.23(1), Part 3, Administrative Procedure Code.

<sup>28</sup> Federal’nyi zakon “O vnesenii izmenenii v stat’iu 3 Federal’nogo zakona ‘O mirovykh sudakh v Rossiiskoi Federatsii’” (14 February 2005) No.2-FZ, *Rossiiskaia gazeta* (17 February 2005), available at <<http://www.rg.ru/2005/02/17/sudii-doc.html>>.

<sup>29</sup> Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii “O nekotorykh voprosakh, voznikaiushchikh u sudov pri primenenii Kodeksa Rossiiskoi Federatsii ob administrativnykh pravonarusheniakh” (24 March 2005), No.5, *Rossiiskaia gazeta* (19 April 2005), pt. 3(g), available at <<http://www.rg.ru/2005/04/19/administrativnye-razjasnenia-dok.html>>.

<sup>30</sup> N.G. Salishcheva (ed.), *Kommentarii k kodeksu Rossiiskoi Federatsii ob administrativnykh pravonarusheniakh* (Prospekt, Moscow, 7th ed. 2011), 965.

<sup>31</sup> Federal’nyi zakon, *op.cit.* note 28.

This leaves only civil cases. Seven of the nine subsections of Article 3 dealt with civil cases.<sup>32</sup> Only one has been entirely eliminated by subsequent amendments. Subsection 7 gave JP courts jurisdiction over labor cases, though it left it to the district courts to deal with demands for reinstatement to one's place of work. This section was eliminated in the set of amendments passed in February 2005, though cases for back wages continue to come to the court.<sup>33</sup>

The civil jurisdiction of the JP courts covers a myriad of cases. They hear disputes between family members, disputes dealing with real property, and a grab-bag of other cases involving monetary damages. Each of these categories has been tinkered with over the years. Their parameters are set by the subject matter of the case and/or the demands raised by the parties. A separate category of cases come to the court on procedural grounds. Cases that can be heard through the simplified procedure of judicial orders (*sudebnye prikazy*) have always been part of their mandate.<sup>34</sup> This responsibility has never been altered and, as we will see, constitutes a substantial portion of the workload of the courts. Unlike the other types of cases heard by the JP courts, which require full-fledged hearings at which all interested parties have an opportunity to present their arguments, cases decided pursuant to judicial orders are decided based solely on the pleadings of the plaintiff. They are used only when the case revolves around requests for monetary damages; demands for injunctive relief cannot be decided using judicial orders.<sup>35</sup> As one commentary to the Civil Procedure Code explains the logic: judicial orders are appropriate in cases "that do not present particular difficulties in terms of the legal assessment of the conflict [...]"<sup>36</sup>

The JP courts have jurisdiction over a wide variety of family-law disputes. But they are limited to cases that are relatively straightforward and/or in which the amount of money in question is not terribly significant. They handle divorces, but only if the parties have no dispute over their children.<sup>37</sup> If either spouse raises questions about custody, then the case is transferred to the district court. It is worth noting that the judge does not inquire into the details of the custody arrangement. She simply asks the parties if they are agreed; if they say they are, then the judge moves on. Often, one of the parties will provide specifics. In the many divorce cases that the author observed, when details were provided, the

<sup>32</sup> Much as with administrative cases, the jurisdictional rules for civil cases laid out in the law governing JP courts is replicated in the Civil Procedure Code. See Art.23, Civil Procedure Code. Whenever the JP law has been amended, there have been parallel amendments to the Civil Procedure Code.

<sup>33</sup> Federal'nyi zakon, *op.cit.* note 28.

<sup>34</sup> "O mirovykh sudakh", *op.cit.* note 13, Art.3(2). For the rules governing judicial orders, see Arts.121-122, Civil Procedure Code.

<sup>35</sup> G.A. Zhilin (ed.), *Kommentarii k Grazhdanskomu Protsessual'nomu Kodeksu Rossiiskoi Federatsii* (Prospekt, Moscow, 2011), 257.

<sup>36</sup> *Ibid.*, 74.

<sup>37</sup> "O mirovykh sudakh", *op.cit.*, note 13, Art.3(3).

parties had agreed that the child would live with the mother. The wording of this part of the law has not been changed since 1998. But the subsection dealing with disputes between divorcing spouses over property acquired during the marriage has been amended several times. At the outset, all such disputes were within the purview of the JP courts.<sup>38</sup> In 2008, its jurisdiction was curtailed to include only those cases demanding less than 100,000 rubles.<sup>39</sup> In 2010, cases to be brought to the JP courts were capped at 50,000 rubles.<sup>40</sup> The purpose of these amendments was twofold. The most important goal was to limit the number of cases in an effort to make the caseload of the JP courts more manageable. It is also reasonable to assume that the disputes become more complex as their value increases. Shifting such cases to the district court was entirely appropriate.

The law includes a provision that grants jurisdiction over “other” family disputes, but carves out exceptions for cases likely to be particularly contentious.<sup>41</sup> Initially, the exhaustive list included cases challenging paternity or maternity, cases seeking the termination of parental rights, and adoptions. In 2010, the list was expanded to include cases seeking marriage annulments and any other case dealing with children.<sup>42</sup> This last item is entirely consistent with the fact that district courts were already handling all custody cases.

In addition to family-law cases, the JP courts also hear disputes over monetary damages and cases dealing with disagreements over land rights. As to the former, the parameters have been changed several times in an effort to regulate the case flow between the JP courts and the district courts. Initially, the value of such cases was capped at 500 times the minimum wage under the law when the case was filed.<sup>43</sup> As with disputes over marital property, the first amendment concretized the cap at 100,000 rubles in 2008<sup>44</sup> but then reduced it to 50,000 rubles in 2010.<sup>45</sup> In a conversation with an administrator of the JP courts in Sverdlovsk *Oblast'* in October 2011, the author learned that court officials were considering another adjustment. Some believe that they overshot the mark with the 2010 amendments and now advocate inching the amount

<sup>38</sup> *Ibid.*, Art.3(4).

<sup>39</sup> Federal'nyi zakon “O vnesenii izmenenii v stat'iu 3 Federal'nogo zakona ‘O mirovykh sudakh v Rossiiskoi Federatsii’ i stat'iu 23 Grazhdanskogo protsessual'nogo kodeksa Rossiiskoi Federatsii” (22 July 2008) No.147-FZ, *Rossiiskaia gazeta* (30 July 2008), available at <<http://www.rg.ru/2008/07/30/sudii-gpk-dok.html>>.

<sup>40</sup> Federal'nyi zakon “O vnesenii izmenenii v stat'iu 3 Federal'nogo zakona ‘O mirovykh sudakh v Rossiiskoi Federatsii’ i stat'iu 23 Grazhdanskogo protsessual'nogo kodeksa Rossiiskoi Federatsii” (11 February 2010) No.6-FZ, *Rossiiskaia gazeta* (15 February 2010), available at <<http://www.rg.ru/2010/02/15/miroviye-dok.html>>.

<sup>41</sup> “O mirovykh sudakh”, *op.cit.* note 13, Art.3(5).

<sup>42</sup> Federal'nyi zakon, *op.cit.* note 40.

<sup>43</sup> “O mirovykh sudakh”, *op.cit.* note 13, Art.3(6).

<sup>44</sup> Federal'nyi zakon, *op.cit.* note 39.

<sup>45</sup> Federal'nyi zakon, *op.cit.* note 40.

upward. As the author talked with judges, however, they proved to be unaware of these discussions. Moscow JPs consistently told the author that they believed the cap of 50,000 rubles ruled out most disputes for them. They argue that the higher cost of living in Moscow makes the cap play out differently.

As to disputes dealing with property rights, the amendments have gone more to the substance of the cases rather than the amounts at stake. This makes sense because these cases seldom involve monetary damages but, rather, seek a type of declaratory judgment establishing ultimate ownership. The initial wording spoke of property disputes involving the ownership of plots of land, the structures on them and other disagreements over real property (*nedvizhimoe imushchestvo*).<sup>46</sup> In 2005, legislators—no doubt spurred on by court officials—thought better of this provision and adopted simpler and more sweeping language. The law now provides that JP courts can hear any cause of action seeking clarification of the rights of use of property (*pol'zovanie imushchestvom*).<sup>47</sup> This new language opens the door to hearing cases about all types of property rights, not just those related to real property.

### 1.3. Selection of Justices of the Peace

In the years since *perestroika*, the method of selecting judges in Russia has undergone a remarkable transformation. The Soviet practice of single-candidate elections has been replaced by a system that resembles that of other countries with civil-law legal traditions. Vacancies are announced publicly. The merits of candidates are assessed by non-partisan commissions (*kvalifikatsionnaia kollegiia*) on the basis of their performance on oral exams on Russian law. The background of candidates and their families is thoroughly reviewed.<sup>48</sup>

When the idea of bringing back the JP courts was being debated, some advocated recruiting non-legal professionals as justices of the peace.<sup>49</sup> In England, for example, magistrates (who are akin to JPs) need not have formal legal education.<sup>50</sup> The idea of electing JPs in Russia was also floated. This would have mirrored some jurisdictions in the United States, where JPs are elected and need not have a law degree.<sup>51</sup> Such a system might have produced JPs who were truer

<sup>46</sup> “O mirovykh sudakh”, *op.cit.* note 13, Art.3(8).

<sup>47</sup> Federal'nyi zakon “O vnesenii izmenenii v stat'iu 3 Federal'nogo zakona ‘O mirovykh sudakh v Rossiiskoi Federatsii’” (14 February 2005) No.2-FZ, *Rossiiskaia gazeta* (17 February 2005), available at <<http://www.rg.ru/2005/02/17/sudii-doc.html>>.

<sup>48</sup> Alexei Trochev, “Judicial Selection in Russia: Toward Accountability and Centralization”, in Kate Malleson and Peter Russell (eds.), *Appointing Judges in an Age of Judicial Power* (University of Toronto Press, Toronto, 2006), 375-394.

<sup>49</sup> Solomon, *op.cit.* note 7, 383.

<sup>50</sup> Trevor Grove, *The Magistrate's Tale: An Investigation* (Bloomsbury Publishing, London, 2002).

<sup>51</sup> William Glaberson, “In Tiny Courts of New York, Abuses of Law and Power: Judges without Legal Degrees of Oversight Rule in Arcane System across State”, *New York Times* (25 September 2006), A1.

representatives of the values of the community. Ultimately, however, Russia opted for a unified judicial corps that would include the JPs.

In contrast to other judges within the courts of general jurisdiction, JPs are not appointed by the president. The JP law leaves it to the regions to decide exactly how to pick JPs, specifically leaving the door open to direct election of JPs.<sup>52</sup> One of the reasons why it took several years to roll out JP courts throughout the entire country was the time needed for the legislatures of the constituent parts of the Russian Federation to pass laws on this question. None of the regions opted for elections. Instead, the selection systems represent a mix of appointment by regional legislatures and by executive organs at the regional level.<sup>53</sup> In several roundtables between the judicial corps and civil-society organizations in the spring of 2012, the idea of pushing for a change in the law to allow direct elections of JPs was put forward.<sup>54</sup> Activists in Permskii *Krai* are preparing a draft law, but whether it will go forward remains unclear.

As originally conceived, the JP law set out the specific prerequisites for JPs. The language was rather detailed but mirrored the general rules for trial-level judges laid out in the law on the status of judges.<sup>55</sup> Candidates had to be at least 25, hold a law degree, have at least five years of experience working in the legal profession, have passed the qualifying exam, and have received the recommendation of the non-partisan judicial selection commission. But there were a few odd features to this section. There was a subsection that listed the various jobs that sitting judges were prohibited from holding, as well as clarifying that JPs were forbidden from being members of political parties. The purpose of this section of the law was to ensure the independence and neutrality of JPs.<sup>56</sup> Candidates who had previously served as judges in the courts of general jurisdiction were exempted from the requirement of the qualifying exam. This last quirk to the law probably reflects the transitional nature of the system. No doubt it served as a way of encouraging sitting judges to populate the new JP court system. Over time, however, this section of the law was pared back. In 2010, it was simplified to state that the law on the status of judges would control the prerequisites for JPs.<sup>57</sup> The law now puts JPs in the same category as *arbitrazh* court judges,

52 "O mirovykh sudakh v Rossiiskoi Federatsii" (with amendments through 18 July 2011), available at <<http://base.garant.ru/12113961>>.

53 Kolokolov, *op.cit.* note 8, 380-399.

54 Examples include roundtables held in Perm' (27 February 2012) and in Nizhnii Novgorod (19-20 March 2012).

55 "O statute sudei v Rossiiskoi Federatsii" (with amendments through 8 December 2011), available at <<http://base.garant.ru/10103670/#5>>.

56 Marshunov, *op.cit.* note 21, 440.

57 Federal'nyi zakon "O vnesenii izmenenii v stat'iu 1 i 5 Federal'nogo zakona 'O mirovykh sudakh v Rossiiskoi Federatsii' i stat'iu 6 Zakona Rossiiskoi Federatsii 'O statute sudei v Rossiiskoi Federatsii'" (8 December 2010) No.338-FZ, *Rossiiskaia gazeta* (13 December 2010), available at <<http://www.rg.ru/2010/12/13/mirovie-sxudii-dok.html>>.

judges of *oblast*-level constitutional court judges, and district court judges.<sup>58</sup> The amendment to the JP law that references the law on the status of judges did not lead to a substantive change.

JPs differ from other judges within the Russian courts of general jurisdiction in terms of their tenure. District court judges enjoy life tenure after weathering a three-year probation period. JPs also have this initial probationary period, but then serve for a period that is specified in the laws setting up the JP courts in each of the subjects of the Russian Federation. Most of these laws provide for five-year terms, though some allow for longer terms of eight<sup>59</sup> or ten years.<sup>60</sup> They may be appointed to successive terms.<sup>61</sup> This aspect of the law has remained unchanged.<sup>62</sup> The disadvantage of short and repeated terms is that they lessen judges' job security and may lead them to rule in ways that they believe will endear them to the officials who decide whether to reappoint them. On the other hand, it allows the system to rid itself of incompetent or inefficient judges with a minimum of rigmarole.

## 2. The JP Courts in Action

Table 1 lays out the trajectory of the JP courts and their evolving contribution to the overall workload of the courts of general jurisdiction since the JP law was passed. The court docket is broken into the three basic types of cases: criminal, civil, and administrative. The story is clear. The JP courts started from nothing in 1998, and their share of the cases has steadily increased. The low percentages in 2001 reflect the fact that JP courts had not yet been established in all subjects. Even when the laws had passed, as was the case in 67 subjects, it took time to get the courts fully staffed. By 2003, JP courts had been set up in all parts of Russia except for Chechnia and the Nenetskii Autonomous *Okrug*.<sup>63</sup> By 2009, they were operating in all corners of the Russian Federation. The data for 2004 begin to document the critical role of the JP courts. Incredibly, within a few years of their creation, the JP courts were handling about a third of all criminal cases, over one-half of all civil cases, and close to 85% of all administrative cases.

58 "O statuse sudei", *op.cit.* note 55.

59 The Republic of Chuvashiia has opted for eight-year terms. Kolokolov, *op.cit.* note 8, 398.

60 See, e.g., Vologodskaia *Oblast'*, Irkutskaia *Oblast'*, Kamchatskaia *Oblast'*, Koriakskii Autonomous *Okrug*, Kurskaia *Oblast'*, Marii El Republic, Mordoviia Republic, Orenburskaia *Oblast'*, Permskaia *Oblast'*, Rostovskaia *Oblast'*, Samarskaia *Oblast'*, Tambovskaia *Oblast'*, Tul'skaia *Oblast'*, Republic of Tyva, Khabarovskii *Krai*, Khakasiia Republic, Chitinskaia *Oblast'*, and Iamalo-Nenetskii Autonomous *Okrug*. See Kolokolov, *op.cit.* note 8, 380-399.

61 "O mirovykh sudakh", *op.cit.* note 13, Art.7.

62 "O mirovykh sudakh v Rossiiskoi Federatsii" (with amendments through 18 July 2011), available at <<http://base.garant.ru/12113961>>.

63 "Obzor sudebnoi statistiki o deiatel'nosti federal'nykh sudov obshchei iurisdiksii i mirovykh sudei v 2004 godu" (Moscow, 2005), available at <<http://www.cdep.ru/index.php?id=5>>.

These proportions only grew as the JP courts gained full strength. By 2010, they were handling almost half of all criminal cases, three-fourths of all civil cases, and 95% of all administrative cases. How was this accomplished? On average, every JP is expected to handle six criminal cases, 136 civil cases, and 78 administrative cases each month.<sup>64</sup>

Every JP with whom the author spoke noted the heavy workload as a constant challenge. Interviews with judicial officials, published in the Russian press, likewise emphasize the pressure on judges to manage a large caseload.<sup>65</sup> Russian commentators have chimed in to call for legislative changes to relieve this pressure.<sup>66</sup> As president, Dmitrii Medvedev supported efforts to reduce the number of cases in the JP courts by reconfiguring the jurisdiction of the courts to send some cases back to the district courts.<sup>67</sup> As noted below, whether the burden is as great as the data would seem to indicate is unclear. A detailed analysis of this question is beyond the scope of this article.

These data leave little doubt that the goal of diverting simpler cases to the JP courts in an effort to free up the district courts to handle more complicated cases has been achieved. Whether the more idealistic goal of bringing the judicial system closer to the people has been achieved is more difficult to assess. The steady increase in the number of cases filed provides evidence of Russian citizens' willingness to make use of the courts. The growth spurt is most noticeable for civil cases, which increased by an amazing 141% between 2004 and 2010. Unlike criminal and administrative cases, where the parties are often in court against their will due to their allegedly anti-social behavior, civil cases are discretionary and are brought at the initiative of a private citizen or firm. Whether this translates into greater trust of the courts is unclear.

A review of the official caseload data for the JP courts for 2010 reveals a number of interesting stories. Analysis of the criminal docket is complicated by the fact that 38% of criminal cases have been dumped into a general category of "other crimes".<sup>68</sup> But in this category, as in the more well-defined categories, the vast majority of cases are resolved through an accelerated "special process"

<sup>64</sup> The author relied on a data from an unpublished 2010 report on the workload of the JPs called "Sluzhebnaia nagruzka mirovykh sudov". The report was prepared by the Judicial Department operating under the Russian Supreme Court.

<sup>65</sup> "Zaiavlenie v mirovoi sud možno budet podat' po elektronnoi pochte", *Stavropol'skaia Pravda* (17 February 2011), available at <[http://www.stapravda.ru/20110217/zayavlenie\\_v\\_mirovoy\\_sud\\_mozhno\\_budet\\_podat\\_po\\_elektronnoy\\_pocht\\_51443.html](http://www.stapravda.ru/20110217/zayavlenie_v_mirovoy_sud_mozhno_budet_podat_po_elektronnoy_pocht_51443.html)>. (interview with the head of the office that manages the JP courts in Stavropol *Krai*); and "Nagruzku na sudei snizit sovershennyi zakon" (3 October 2011), available at <[http://trapsinews.ru/judicial\\_analyst/20110310/252004621.html](http://trapsinews.ru/judicial_analyst/20110310/252004621.html)> (interview with the chairman of the Khabarovskii *Krai* court, which is the top court for that region).

<sup>66</sup> Mikhail Podzniakov, "Potogonnaia sudebnaia sistema", *Vedomosti.ru* (16 February 2012), available at <[http://www.vedomosti.ru/opinion/news/1505100/potogonnaya\\_sudebnaya\\_sistema](http://www.vedomosti.ru/opinion/news/1505100/potogonnaya_sudebnaya_sistema)>.

<sup>67</sup> See <<http://ria.ru/justice/20111007/451905510.html>> (7 October 2011).

<sup>68</sup> "Obzor", *op.cit.* note 3.

akin to plea bargaining (*osobyi poriadok sudebnogo razbiratel'stva*).<sup>69</sup> For cases in this grab-bag category, as well as cases of theft and fraud, which are two of the most common types of crimes that are heard by the JP courts, about two-thirds of all cases go through this special process.<sup>70</sup> In these cases, the defendant acknowledges his or her guilt, obviating the need for a full-fledged hearing on the merits. As a rule, the prosecutor and defense counsel confer on the sentence (or fine) to be imposed. Needless to say, this helps JPs clear their dockets more quickly. The cases that tend to soak up an extraordinary amount of time for the JPs and about which they invariably complain are the “private prosecutions” (*chastnoe obvinenie*). These are cases brought by individual citizens against others in which they complain about verbal or physical abuse. Often these cases involve neighbors or family members. As a rule, these are cases that the police have refused to pursue. Judges chafe under them because the parties are typically unable to muster the necessary evidence or even to understand what sort of evidence is needed. Judges have to take on the responsibility of investigating them, which can be very time-consuming. On the other hand, many of these cases disappear before reaching judgment. In 2010, the complainant withdrew the complaint in about 72% of such cases.<sup>71</sup> This does not mean that the judge did not spend a lot of time on the case. In the several *chastnoe obvinenie* cases that the author observed, the judge often acted as a quasi-mediator, trying to find common ground between the parties. As the dispute fades in the memory of the victim s/he may be willing to drop the complaint. The judge has to find a way to make this happen while still signaling to the perpetrator that the original behavior was unacceptable.

The 2010 caseload data for civil disputes shows that only about one-quarter of all cases decided by the JP courts have full-fledged hearings.<sup>72</sup> The vast majority of the civil cases are resolved through “court orders” (*sudebnye prikazy*). These orders are considered appropriate in cases “that are not particularly complicated”.<sup>73</sup> They can only be used to award monetary damages; if the petitioner seeks an injunction or other equitable types of relief, then *sudebnye prikazy* are not an option.<sup>74</sup> Thus, disputes over damages suffered during traffic accidents are not candidates for decrees because the parties invariably have different versions of what hap-

<sup>69</sup> Peter H. Solomon, Jr., “Sdelka s pravosudiem po-russki: znachenie osobogo poriadka sudebnogo razbiratel'stva”, *Sud'ia* (2011) No.9, 48-52.

<sup>70</sup> “Otchet o rabote sudov pervoi instantsii po rassmotreniiu ugovnognykh del za 12 mesiatsev 2010”, available at <<http://www.cdep.ru/index.php?id=79>>.

<sup>71</sup> *Ibid.*

<sup>72</sup> “Otchet o rabote sudov pervoi instantsii po rassmotreniiu grazhdanskikh del za 12 mesiatsev 2010”, available at <<http://www.cdep.ru/index.php?id=79>>.

<sup>73</sup> Zhilin, *op.cit.* note 35, 74.

<sup>74</sup> *Ibid.*, 257.

pened. By contrast, however, 98% of wage disputes and 97% of disputes over tax arrears were handled through this mechanism.<sup>75</sup> Three-fourths of all requests for child support (*aliment*) and all petitions for loan repayment are resolved through *sudebnye prikazy*.<sup>76</sup> This helps us understand how the JPs are able to cope with a caseload that seems to be impossibly high. In the cases that are decided by a judicial order, there is no hearing. The JP decides based solely on the pleadings. The losing side has the right to challenge the order, which triggers a hearing on the merits. In 2010, only 6.5% of all judicial orders were challenged.<sup>77</sup>

The limited data suggest that users of the JP courts have been satisfied with their experiences. A 2009 survey commissioned by the Moscow office of the American Bar Association was conducted by the Institute for Social and Economic Research among a random sample of 1,200 citizens from Nizhnin-ovgorodskaiia *Oblast'*, Rostovskaiia *Oblast'*, and Leningradskaiia *Oblast'*.<sup>78</sup> About one-half of those surveyed had been to the JP courts. Most had been only once, though a small group (about 15%) had been several times.<sup>79</sup> Interestingly, their assessment was highly correlated with their level of experience. Among those who had had only one case at the JP courts, 54.4% reported being completely satisfied with the result. An additional 26.7% were partially satisfied, and only 13.8 described themselves as dissatisfied. Though the level of dissatisfaction did not rise significantly for those with more experience, they were less likely to be fully satisfied. Only about one-third put themselves in that category, while another one-third saw themselves as partially satisfied.<sup>80</sup> Even so, a dissatisfaction rate of less than 15% is lower than would be anticipated given the abysmal reports about the courts that are legion within the Russian press.<sup>81</sup> In response to a question as to whether they would use the JP courts again, only 5.2% ruled it out. 46% said they would return to the JP courts if it was necessary, and 39.1% said they would do so only as an absolutely last resort.<sup>82</sup>

The 2010 monitoring project of the Institute for Law and Public Policy in Moscow also included semi-structured interviews with litigants and their

<sup>75</sup> "Orchet", *op.cit.* note 72.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> Kriuchkov, *op.cit.* note 6.

<sup>79</sup> *Ibid.*, 16-17.

<sup>80</sup> *Ibid.*, 30.

<sup>81</sup> See, e.g., Vladislav Naganov, "Vasha chest' nam slishkom dorogo obkhoditsia", *Novaia gazeta* (22 March 2012), available at <<http://www.novayagazeta.ru/politics/51767.html>>; Valerii Gabisov, "Ne po zakonu i ne po sovesti", *Novaia gazeta* (19 March 2012), available at <<http://www.novayagazeta.ru/politics/51720.html>>; and "Ot redaktsii: Osobyie sud'i dlia osobykh del", *Vedomosti.ru* (27 December 2011), available at <<http://www.vedomosti.ru/opinion/news/2011/12/27/1463840>>.

<sup>82</sup> *Ibid.*, 33.

representatives.<sup>83</sup> These interviews revealed that the respondents were generally favorably impressed by the JP's. For example, very few questioned their impartiality or independence. In Leningradskaia *Oblast'*, 94.5% rated their judges as impartial and 96.6% thought their judge had been independent in reaching her decision. The percentages were a bit lower in Permskii *Krai*, but the basic story was the same. Some 84.3% said their judge had been impartial and 87.2% found her to have acted independently.<sup>84</sup> Indeed, a majority of those interviewed said that they had experienced no problems at the JP courts.<sup>85</sup> Those who did report problems were troubled by the unavailability of legal counsel and the difficulty of assembling the requisite evidence.<sup>86</sup> As with the ABA-sponsored survey, these respondents were queried as to their satisfaction levels. Three-quarters of the respondents described themselves as completely satisfied by the results. An additional 10.7% were partially satisfied and 14.3% were dissatisfied.<sup>87</sup> Perhaps contributing to their satisfaction was the relatively rapid pace at which their cases were handled. About 60% were resolved within a month of filing. Another one-third were decided within three months of filing. As this indicates, less than 10% dragged on for months on end.<sup>88</sup>

### 3. Preliminary Conclusions

While deserving of more in-depth analysis, these data suggest that the JP courts are coping rather successfully with the mountain of cases that has been dumped on them. As a relatively new institution, the JP courts are still finding their role. They have taken on the job of handling the hundreds of thousands of mundane cases brought by ordinary citizens. Indeed, administrative cases have been almost completely removed from the docket of the district courts. The JP courts' jurisdiction over all criminal cases that are punishable by up to three years in prison means that they handle the bulk of the petty crime. By making active use of the "special process" for accelerating criminal cases and judicial orders in civil cases, they have kept their heads above water. Indeed, the JP courts have emerged as a

<sup>83</sup> In Leningradskaia *Oblast'*, they interviewed 240 plaintiffs, 237 defendants, and 142 representatives. In Permskii *Krai*, they interviewed 227 plaintiffs, 218 defendants, and 122 representatives. Ivanova, *op.cit.* note 5, 6. The monitoring revealed that many litigants had not retained counsel. About one-third of plaintiffs were represented compared to less than 15% of defendants. Among those that were represented, 47% had hired a licensed lawyer (*advokat*), 45% had hired a non-licensed lawyer (*iurist*), and the remainder were represented by laymen. *Ibid.*, 19. *Advokaty* are mandatory only for criminal cases.

<sup>84</sup> Ivanova, *op.cit.* note 5, 43.

<sup>85</sup> *Ibid.*, 50-51.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*, 53. Those with incomes below the poverty line were more likely to be fully satisfied. Of this group, 69.8% put themselves in that category, compared with 63.6% of those who had higher incomes. *Ibid.*, 53.

<sup>88</sup> *Ibid.*, 59-60.

training ground for judges at the higher levels. As in other countries with civil-law legal traditions, Russian judges move up through the hierarchy if they are able to establish their competency. The requirement to manage a heavy caseload and to be a jack-of-all-trades has proven to be good training. How the role of the JP courts will evolve in the coming years remains to be seen.

*Table 1: The Evolution of the Russian Justice-of-the-Peace Courts in Handling Cases Heard by the Courts of General Jurisdiction: 1998-2010.*

	1998 <sup>(a)</sup>	2001 <sup>(a)</sup>	2004 <sup>(a)</sup>	2007 <sup>(a)</sup>	2010 <sup>(b)</sup>
<b>Criminal</b>					
<b>Total cases heard</b>	1,137,200	1,384,000	1,042,800	939,700	1,065,200
<b>% heard by JP courts</b>	0	11.1	30.5	25.2	45.7
<b>Civil</b>					
<b>Total cases heard</b>	4,751,900	4,923,900	5,831,500	9,009,000	14,045,800
<b>% heard by JP courts</b>	0	25.1	51.4	75.6	75.8
<b>Administrative</b>					
<b>Total cases heard</b>	1,813,400	1,498,700	3,979,400 <sup>(c)</sup>	5,553,500	5,311,100
<b>% heard by JP courts</b>	0	2.4	84.7 <sup>(c)</sup>	95.4	95

Sources:

(a) “Rassmotrenie del sudami obshchei iurisdiktsii po I instantsii za 1995-2007 gody”, (Moscow, 2008), available at <<http://www.cdep.ru/index.php?id=5&pg=2>>.

(b) “Obzor”, *op.cit.* note 3.

(c) The data reported in the overview of 1995-2007 (see “Rassmotrenie” in (a) above) was revised in the summary report for 2010 (“Obzor”, *op.cit.* note 3), which included a retrospective table tracking the evolution of the role of the JP courts in handling administrative cases. The author has used these revised data in the table.