

B. The Courts of General Jurisdiction

1. What are the Courts of General Jurisdiction?

The courts of general jurisdiction are just what their name implies. They are the general courts and have jurisdiction over all cases of any kind which may be heard by a court in the Russian Federation and which are not specifically assigned to the jurisdiction of another court. The “general jurisdiction” of the courts does not, however, imply a broad overlap with the jurisdiction of the other courts in the system — the arbitrazh courts and the Constitutional Court. As a rule, a particular dispute or legal matter will be considered to fall within the jurisdiction of only one of the courts in the system. For example, a law may state that cases or disputes that arise concerning it are to be resolved by a court or arbitrazh court. This might, at first glance, appear to suggest alternative jurisdiction in the two types of courts or the right of a plaintiff to choose where to file. Such a provision, however, is commonly interpreted to mean that those cases under the law which meet the required jurisdictional conditions of the arbitrazh courts will be subject to arbitrazh court jurisdiction, while all other cases will be submitted to the courts of general jurisdiction.

2. Courts and the Continuing Process of Court Reform

The organization, structure and jurisdiction of the courts, as well as the locus of control over their activities, shifted a number of times during the life of the Soviet Union.⁶ In general, the courts had a broad jurisdiction, hearing civil and criminal cases as well as administrative and other matters assigned to the courts. Disputes between enterprises or concerning economic planning issues, however, were never heard by the Soviet courts and were assigned instead to state arbitrazh, as discussed above. Within a given court, the case load might be divided among groups of judges specializing in particular types of cases, or by a geographic division of the territory within the court's jurisdiction. Most cases were heard in the first instance in the local peoples courts, but the superior courts all had some form of first instance jurisdiction over more serious cases, including the USSR Supreme Court. All of the superior courts had presidiums, consisting of the chair and deputy chairs, along with some other members, which exercised supervisory functions and considered "protests" or appeals brought against the judgments of the court. The presidium, and in some cases the plenum, of higher courts also spent a considerable amount of energy in the study of court practice. On the basis of the study of practice, the highest courts could issue "guiding explanations," which discussed common mistakes or misinterpretations and gave general instructions concerning the proper interpretation and application of the laws.

The court system included "union level" courts (at the level of the Soviet Union as a whole) and also courts at the level of the union republics (Azerbaijan, Georgia, Ukraine, etc) and several levels of lower courts serving defined regions. Despite some elements of federalism in the structure of the state and in some legislative patterns, however, the court systems were not divided along horizontal lines nor between the union or "federal" courts and the lower courts. All of the courts were considered parts of a single, unitary system of courts. This conception of the court system as unitary has been retained by the Russian Federation to the present time.

It should be noted that theories of separation of powers were not accepted in Soviet political and legal theory until the late 1980s, and there was, accordingly, no attempt by Soviet authorities to create in the courts a "third branch" of government, with the corresponding authority and independence. The courts were acknowledged to be subordinate to the higher bodies of the state — specifically to the Supreme Soviet and to the Council of Ministers through the Ministry of Justice — and no court had the power to void or invalidate a legislative or regulatory act.⁷ Judges were appointed for short terms by government bodies at the same territorial level as the relevant court, were subject to

⁶ The reform of courts and legal procedures had been a subject of significant attention and debate during the later part of the pre-Revolutionary period as well. A recounting of the development of the Russian and Soviet courts and the numerous shifts in their structure and the theories of their operation is beyond the scope of this Handbook. The general description appearing in the text applies to the system put in place in the late 1950s, which retained its basic elements and developed in a relatively consistent pattern through the late 1980s.

⁷ Courts did have the power to refuse to apply, in a concrete case, a regulatory act that violated or contradicted a legal act of a higher force.

recall by those bodies and dependent upon their re-nomination for continuation of their judicial careers, and also relied upon those bodies for some parts of both their professional and personal material support. The Ministry of Justice controlled judicial budgets and bonuses, and was responsible for dealing with complaints and evaluating judicial performance.

As a part of the reform efforts begun in the mid to late 1980s, the need for the creation of a “law-based state” was declared and significant attention was focused on the reform of legal institutions, including courts. In 1989, a new set of fundamental principles of legislation on the court system was passed, along with laws defining the status of judges and imposing penalties for disrespect to the court. Among other changes, these laws attempted to reduce interference in judicial decision making by having judges elected by state bodies at a higher level of state administration than that at which the court functioned and imposing fines, or even prison terms, for attempts to improperly influence specific decisions or refusals to carry out legitimate orders of the court.

Changes in this area created by the laws of the Soviet Union continued in force after its dissolution in the Russian Federation, and the process of court reform continued at the level of the Russian Federation. The RSFSR had passed a law in mid-1991 creating a Constitutional Court with broad powers of judicial review and 1992 saw the passage of another law on the status of judges, granting life tenure to most newly appointed judges and creating exclusively judicial bodies for discipline and for participation in judicial nominations. The passage of the 1993 Constitution heralded further changes, including confirmation of the direct effect of constitutional norms and the extension of additional procedural powers to judges. In addition, the text of the new Constitution required the passage of several “federal constitutional laws”⁸ defining the organization of the court system as a whole and the competence and structure of the three highest courts and of all federal courts, offering an opportunity for implementation of various reform and restructuring proposals.

The required new law on the Constitutional Court was passed in 1994, but other legislation was slower, with the new law on the arbitrazh courts passing in 1995, and the new law on the court system in general in 1996. A number of steps remain to be taken, especially in relation to the courts of general jurisdiction. Dialogue continues concerning the proper distribution of judicial power between the federation and the regional and local governments and the means to ensure adequate financing and provision for the courts at all levels while preventing undue influence on them from the sources of support. In part due to continuing questions about these issues, the required federal constitutional law on the courts of general jurisdiction has not yet been passed at the time of this writing, leaving open significant questions about the structure of that court system and the possibility of additional, substantial change in the near future.

⁸ A federal constitutional law is a law required by the text of the constitution. Passage of federal constitutional laws requires a super-majority in the two chambers of the parliament and a federal constitutional law stands a step higher in the hierarchy of legal acts than other federal laws passed through the standard legislative procedures.

3. Current Structure and Jurisdiction of the Courts

The courts of general jurisdiction have jurisdiction over all cases which may be heard by a court in the Russian Federation and which are not assigned to the jurisdiction of the arbitrazh courts or within the jurisdiction of the Constitutional Court. This includes jurisdiction over:

- all criminal cases;
- civil cases involving a citizen who is not an individual entrepreneur as at least one of the parties;
- appeals of administrative and other state actions which do not fall within the jurisdiction of the other courts;
- cases establishing facts having legal significance with respect to citizens (such as recognition of a person as dead or as legally incompetent);
- cases concerning family matters (custody of children, division of property);
- inheritance issues;
- cases concerning rights to housing, pensions and benefits, and other matters of social protection;
- other types of cases.

Most of the cases heard by these courts are not “commercial” in their nature. There are, however, a few types of cases of particular interest to businesses that do remain in their jurisdiction, either because of the status of one of the parties or because they are not specified in the jurisdictional provisions governing the arbitrazh courts. These cases are discussed in more detail in the next chapter.

As indicated above, the structure and organization of the courts of general jurisdiction is subject to some uncertainty at the time of this writing, as legislation defining the system in detail has not yet been passed. The Law “On the Court System of the Russian Federation,” which passed in 1996, provides for the Supreme Court of the Russian Federation to be the directly superior court in relation to the supreme courts of the subjects (constituent parts) of the Federation⁹ and in relation to military courts.¹⁰ The law also envisions regional courts, which are to consider cases in the first and the second instance, and to exercise other authority as defined by a federal constitutional law. The specific organization, authority, and jurisdiction of military courts and of the supreme courts of the subjects of the Federation is also to be determined by a federal constitutional law, as are the internal organization and specific jurisdiction of the Supreme Court of the Russian Federation. The required federal constitutional laws, however, have not yet been

⁹ The constituent parts of the Russian Federation are referred to as a group as the “subjects of the Federation.” The different “subjects” are called by differing names, including “republics,” “regions,” “territories” and others. Which name attaches to a particular subject depends upon a number of factors, including the history of its inclusion into the territory of the Russian Empire or the Soviet Union and the basis for its definition as a separate subject (i.e. homeland of a national or ethnic group, purely geographic and administrative considerations, and so forth). They will be referred to in the Handbook using the current Russian terminology as the “subjects of the Federation.”

¹⁰ Because military courts do not play a role in the resolution of the types of disputes with which this Handbook is concerned, they will not be discussed here.

passed. One contentious issue at the time of this writing is the question of the possible role and authority of courts organized by the subjects of the Federation. Current legislation provides that all courts, except possibly the peace courts,¹¹ are federal courts, but there is strong feeling among many subjects of the Federation that more of a judicial branch is required by the subjects, for the enforcement of local and regional laws and regulations.¹²

Until the new laws are passed, the courts of general jurisdiction will operate in the structure in which they currently exist. This structure includes, at the lowest level, the peace courts, which may hear minor criminal, administrative or civil cases in accordance with the laws establishing them. In many areas, these courts have not yet been established, and the lowest level of the general court system in those areas is the district courts. These district courts hear the majority of civil, criminal and other cases in the first instance, and also consider appeals from decisions of the peace courts. The next level of the system consists of the courts of the subjects of the Federation. These courts hear appeals from the decisions of the district courts. They also hear a limited number of more serious cases in the first instance, and can review cases in supervisory procedure, on the basis of a protest of certain court officials and procurators.

Finally, there is the Supreme Court of the Russian Federation, which has a small first instance jurisdiction over the most serious cases. It also hears cases in cassational review (for errors of law only) and reviews cases in supervisory procedure on the basis of a protest of the Chair or Deputy Chair of the Court or of the Procurator General or his deputies. The Supreme Court also issues guiding explanations concerning the proper application of particular laws, and has the right to submit legislative proposals directly to the parliament.

¹¹ Peace courts are treated by Article 4 of the 1996 Law on Court Structure as courts of the subjects of the Federation. Their authorities are to be defined by both federal law and the laws of the subjects of the Federation. Their decisions, however, are subject to complete *de novo* review by the federal district courts, the decisions of which can be appealed up the hierarchy in the usual fashion

¹² The subjects of the Federation may organize separate courts to rule on issues concerning their charters or constitutions, and a number of them have done so.

CURRENT STRUCTURE OF THE COURTS OF GENERAL JURISDICTION

Supreme Court of the Russian Federation

Cassational review and supervisory review of cases, very small first instance jurisdiction, issues explanations and guiding instructions, supervision of all lower courts

Courts of the Subjects of the Federation

Review of cases on appeal from district courts in cassation and in supervisory procedure, limited first instance jurisdiction over serious cases

District Courts

Hear the majority of cases in first instance, review *de novo* of decisions of peace courts

Peace Courts

First instance consideration of minor criminal, administrative and civil cases, not yet established in many regions