

Too Much of a Good Thing? Assessing Access to Civil Justice in Russia

Kathryn Hendley

Institutions and their inhabitants often share organizing and self-justifying myths. Courts are no exception. The statues of a blindfolded lady justice holding a scale that greet visitors to courts around the world convey a universal aspirational myth of impartial and even-handed justice. But how courts go about doing justice varies, as do the ways that judges think about their lot in life. Likewise the image that judges have of themselves does not always match the vision society has of them.¹

Russia presents an intriguing case study of this phenomenon. The popular image of the Russian judicial system is dominated by two contradictory narratives. One emphasizes its dysfunctional elements, focusing on the public's distrust of the courts. This narrative delights in presenting high-profile cases in which the outcomes are blatantly dictated by the desires of the Kremlin as representative. The other looks more to the day-to-day reality of the courts and stresses the burden on judges caused by the avalanche of cases brought before them. There is a logical inconsistency to the two images.² Remarkably, both have more than a kernel of truth to them. To a considerable extent, they feed on one another. Overworked and exhausted Russian judges make mistakes that contribute to low public esteem for courts. Yet court administrators continue to push judges to absorb ever-greater numbers of cases as a way of proving the value of courts.

I focus primarily on the second narrative in this article, critically examining the workload of Russian judges. A reevaluation of the data has convinced me that the burden on judges has been overstated. Indeed, I take the argument a step further and put forward the controversial position that, from an institutional perspective, Russian civil justice is actually too accessible. I advocate for reforms to procedural rules and to the more amorphous legal culture that would remake the landscape of litigation.

The field research reported on in this article was funded by a Fulbright research grant and a Title VIII Hewett Policy Fellowship from the National Council for Eurasian and East European Research. Additional funding was provided by the Law School at the University of Wisconsin, Madison. Earlier versions of this article were given as a keynote address at the conference on "Changing the Russian Law: Legality and Current Challenges," in Helsinki, Finland, as part of the series on "Property Rights, Power, and the Rule of Law" at Northwestern University, and at the University of South Carolina. The article benefitted from comments received at these venues as well as from comments by the anonymous reviewers for *Slavic Review*.

1. Inga Markovits, *Imperfect Justice: An East-West German Diary* (Oxford, 1995).

2. On the question of why Russians continue to flock to courts that, according to public opinion polls, they do not trust, see Kathryn Hendley, "The Puzzling Non-Consequences of Societal Distrust of Courts: Explaining the Use of Russian Courts," *Cornell International Law Journal* 45, no. 3 (Fall 2012): 517–67. The analysis shows that trust in the courts is not a key motivating factor for individuals or firms when deciding whether to take disputes to court.

Slavic Review 72, no. 4 (Winter 2013)

By limiting the analysis to civil justice, I am mostly sidestepping the issue of politicized justice in Russia. In doing so, I do not intend to deny the continuing existence of this phenomenon. Recent history has provided a series of cases—those involving Mikhail Khodorkovskii and the punk rock band Pussy Riot are only the most prominent—in which the decisions reached can only be understood as Kremlin edicts.³ Nor am I denying the sad reality of the multitude of businessmen who have been jailed as a result of trumped-up cases brought by former business partners.⁴ The bulk of these cases involve criminal charges, though politics can certainly rear its head in civil cases as well.⁵

Regardless of whether these cases are civil or criminal, I would not be so bold as to suggest that any procedural rule could rein in the will of the politically powerful. At the same time, the vast majority of cases proceed through the Russian judicial system without any outside attention. These are the cases that interest me. Their sheer numbers are choking the system, providing an illustration of the classic quandary of how to balance justice and efficiency. On the side of justice is the goal of giving full access to the courts. On the side of efficiency is the necessity of limiting access in order to allow judges to have enough time to make proper rulings. Hanging over all this are budgetary realities. At some point, attempts to solve the problem by expanding the capacity of the courts by increasing the number of judges and courthouses simply becomes too expensive.

This problem of courts drowning in cases is not unique to Russia. Interestingly, it has not attracted much attention among sociolegal scholars. Perhaps this is because the problem is less intense in the United States than elsewhere.⁶ Courts with civil law legal traditions in Europe, Latin America, and South America are more akin to Russia. The costs of going to court are often minimal (or even nonexistent) and procedural rules are simpler, allowing dis-

3. For a thorough overview of the Khodorkovskii case, see Jeffrey Kahn, "Report on the Verdict against M. B. Khodorkovsky and P. L. Lebedev," *Journal of Eurasian Law* 4, no. 3 (2011): 321–410. On the case brought against Pussy Riot, see David M. Herszenhorn, "Anti-Putin Stunt Earns Punk Band Two Years in Jail," *New York Times*, 17 August 2012.

4. The defendants in such cases typically argue that the charges have been "ordered" (*zakaznye*) by their more politically powerful former business allies as a way to gain the upper hand. The memoir literature that has begun to appear paints a picture of a criminal justice system that can be manipulated by the powerful and wealthy. See, e.g., Olga Romanova, *Butyrka* (Moscow, 2010); and Iana Iakovleva, *Neelektronnye pis'ma* (Moscow, 2008). For an overview of the practice of criminalizing business disputes, see Thomas Firestone, "Armed Injustice: Abuse of the Law and Complex Crime in Post-Soviet Russia," *Denver Journal of International Law and Policy* 38, no. 4 (Fall 2010): 555–80.

5. For example, see Ariane Lambert-Mogiliansky, Konstantin Sonin, and Ekaterina Zhuravskaya, "Are Russian Commercial Courts Biased? Evidence from a Bankruptcy Law Transplant," *Journal of Comparative Economics* 35, no. 2 (June 2007): 254–77.

6. For a sample of the robust literature on the nagging problem of delays within the U.S. system, see Michael Heise, "Justice Delayed? An Empirical Analysis of Civil Case Disposition Time," *Case Western Reserve Law Review* 50, no. 4 (Summer 2000): 813–49. Though superficially similar to the problem I am investigating, in that it also addresses an overloaded judicial system, the very different institutional structures of the courts make any direct comparison specious.

putants to engage the system on their own.⁷ As a result, the civil dockets can become overwhelmed by cases that could better be handled outside the judicial system.⁸ Cross-country comparisons of the burden on judges is rendered almost impossible by the profound differences in institutional structure and legal culture.

Because I am interested in civil justice, I look at caseload data for first-instance civil cases brought before both the economic or *arbitrazh* courts and the courts of general jurisdiction.⁹ The courts publish only summary information, so my analysis is grounded in unpublished data provided to me by the statistics departments of the Higher Arbitrazh Court and the Judicial Department of the Supreme Court. At first glance, the upward trends seem to substantiate the judges' self-image as victims. Upon closer review, however, the data reveal that a significant number of cases are being resolved through summary procedures, suggesting that the official figures for cases decided per judge each month are misleading, thereby undercutting the judges' narrative. Yet it persists. The purpose of this narrative, I believe, has less to do with reality than with giving the judges a self-justifying myth to counter the popular view of them as corrupt and incompetent. Returning to the empirics, however, even when the caseload data are adjusted to reflect reality, they still suggest that the courts are badly overloaded with trivial claims. I conclude by exploring possible solutions to this dilemma.

Recognizing that statistical data can sometimes be misleading, I supplement the analysis of the caseload data with insights gleaned from my fieldwork in the Russian courts. Since the early 1990s, I have been carrying out observational research in the arbitrazh courts. During this time, I have interviewed scores of arbitrazh judges and their staff, observed hundreds of cases, and reviewed the case files of even more. My research on the courts of general jurisdiction began in 2010 and has focused on the justice-of-the-peace courts (JP courts or *mirovye sudy*), a relatively new institution, having been autho-

7. The availability of legal assistance to Russians who lack the means to pay is an important issue, though beyond the scope of this article. Criminal defendants are legally required to be represented and the state pays for attorneys for those who cannot afford them. The same courtesy is not extended to civil litigants. Whether the state should underwrite attorneys' fees in civil cases is being actively debated. See, e.g., L. O. Ivanova, ed., *Predlozheniia po povysheniiu dostupnosti pravosudiia dlia maloimushchikh i sotsial'no nezashchishchennykh grazhdan—uchastnikov grazhdanskogo protsessa* (Moscow, 2011); and O. A. Tarasov, "Problemy zakonodatel'nogo regulirovaniia iuridicheskoi pomoshchi maloimushchim grazhdanam," in V. V. Golovacheva, ed., *Besplatnaia iuridicheskaiia pomoshch' i obespechenie dostupa k pravosudiiu v Rossii* (Moscow, 2010), 70–85.

8. Several intriguing studies were commissioned by the World Bank as part of its effort to improve court management. See, e.g., World Bank, "Brazil—Making Justice Count: Measuring and Improving Judicial Performance in Brazil," Report No. 32789-BR (Washington, D.C., 2004); and Bo Svensson, "Judicial Modernization Projects in Guatemala and El Salvador" (unpublished manuscript, 7 July 2007). For a discussion of caseload trends within the European Union, see Bo Svensson, "Civil and Criminal Justice—Swedish Experiences" (unpublished manuscript, 11 December 2006).

9. For an overview of the structure of the Russian judicial system, see Kathryn Hendley, "Russian Federation," in Herbert M. Kritzer, ed., *Legal Systems of the World: A Political, Social, and Cultural Encyclopedia* (Santa Barbara, Calif., 2002), 3:1377–83.

rized in 1998 and put into place over the past decade.¹⁰ I have interviewed 65 justices of the peace (JPs or *mirovye sud'i*) and their staff and observed more than a hundred different types of cases. My research has taken me to a variety of locales across Russia, including Ekaterinburg, Moscow, Omsk, Rostov-na-Donu, Petrozavodsk, Pskov, Saratov, St. Petersburg, Velikie Luki, and Voronezh.

The Evidence of Overworked Courts in Russia

The judges' rhetoric about being overworked appears to have a strong foundation in the official caseload data. Tables 1–3 present information about the number of cases handled by the Russian courts, then break the data down to show the average monthly caseload for a single judge. To make sense of these data, it is important to recognize that the same judge handles the case from start to finish and is expected to write an opinion that will be posted on the Web site of her court.¹¹

Table 1 focuses on the arbitrazh courts, documenting the increase in cases decided over the two decades these courts have been in existence.¹² Between 1994 and 2002, the docket experienced a threefold expansion. From 2002 to 2011, it doubled again. Yet the number of judges did not expand at the same rate. Only 48 judges were added, representing an increase of 1.8 percent. This explains why the average workload per judge exploded. In 2002, arbitrazh judges were expected to resolve about 32 cases per month. By 2011, this had grown to 52 cases. The regional data show remarkable variation and document the particularly heavy load carried by judges in the major commercial centers of Moscow, St. Petersburg, and Ekaterinburg (Sverdlovsk oblast). The Moscow City Court is the busiest court within the arbitrazh system. Not only does it hear cases arising within Moscow, but parties located elsewhere regularly opt for it through contractual forum selection clauses. That this court has the heaviest average monthly caseload is thus not surprising. In 2011, Moscow judges were deciding an average of 94 cases per month, a 283 percent increase over their 2002 workload. More modest, but still significant, increases were experienced in St. Petersburg and Ekaterinburg.

Tables 2 and 3 center on the courts of general jurisdiction. Table 2 presents

10. Kathryn Hendley, "Assessing the Role of the Justice-of-the-Peace Courts in the Russian Judicial System," *Review of Central and East European Law* 37, no. 4 (2012): 373–93.

11. As of July 2010, all opinions and other judicial acts are required to be posted on the Internet. "Ob obespechenii dostupa k informatsii o deiatel'nosti sudov v Rossiiskoi Federatsii," *Rossiiskaia gazeta*, 26 December 2008, at www.rg.ru/2008/12/26/sud-internet-dok.html (last accessed 19 July 2013).

12. For an overview of "state arbitrazh," from which the arbitrazh courts evolved, see Stanislaw Pomorski, "State Arbitrazh in the U.S.S.R.: Development, Functions, Organization," *Rutgers-Camden Law Journal* 9, no. 1 (Fall 1976/Winter 1977): 61–115. With the shift in status to a full-fledged court, the jurisdiction of the arbitrazh courts was expanded to include all types of disputes involving legal entities, including those involving the state as well as bankruptcy. See Kathryn Hendley, "Remaking an Institution: The Transition in Russia from State Arbitrazh to Arbitrazh Courts," *American Journal of Comparative Law* 46, no. 1 (Winter 1998): 93–127.

Table 1
Trajectory of Caseload at the Russian Arbitrazh Courts

	2002				2011			
	No. of judges	Monthly per judge caseload	Cases decided	Change in docket: 2002 cases decided as % of 1994 cases	No. of judges	Monthly per judge caseload	Cases decided	Change in docket: 2011 cases decided as % of 2002 cases
All Arbitrazh Courts	2710	32.3	697,085	334	2758	52	1,403,706	201.4
Moscow City Court	157	33.2	43,089	247.3	160	94	149,541	347.1
St. Petersburg and Leningrad Oblast Court	94	43.5	37,737	423.3	99	75	73,673	195.2
Sverdlovsk Oblast Court	61	49.9	25,519	349.7	90	64	57,015	223.4
Saratov Oblast Court	34	44.1	14,370	389.8	47	61	27,923	194.3
Omsk Oblast Court	28	45.7	12,338		37	51	18,420	149.3

Sources: Unpublished statistical reports available from the author.

Table 2
Trajectory of Caseload at the Russian JP Courts

	Total Cases: 1995	Total Cases: 2000	Total Cases: 2005	Total Cases in 2005 as % of Total cases in 1995	Total Cases: 2010	Total Cases in 2010 as % of Total cases in 2000
Total Cases	6,194,600	8,795,900	14,118,500	227.9	20,422,100	232.2
Criminal	1,074,900	1,330,500	1,148,200	106.8	1,065,200	80
Civil	2,806,600	5,057,400	5,212,600	185.7	14,045,800	277.7
Administrative	1,927,300	1,464,300	4,287,600	222.4	5,311,100	362.7
Other	385,700	942,100	1,582,100	410.2	N/A	N/A
All Noncriminal	5,119,600	7,463,800	12,230,500	238.9	19,356,900	259.3

Sources: Unpublished statistical reports available from the author.

aggregate data for the courts. It shows that the total number of cases decided in these courts over the past decade has more than doubled, representing a pace of growth only slightly less rapid than that of the arbitrazh courts. When these data are broken down into the various types of cases, an interesting trend emerges. Belying the popular wisdom that the state is becoming more aggressive in pursuing criminal charges against its citizens, it is actually non-criminal cases that account for this growth spurt. The number of administrative cases grew by over 360 percent from 2000 to 2010, and the number of civil cases increased by over 275 percent during this period. The incidence of criminal cases, by contrast, witnessed only an 80 percent increase.

Table 3 bores in on the lowest level and busiest court in this hierarchy, the JP courts. It lays out the overall average monthly caseload per judge for JPs as well as the average number of civil and administrative cases decided by JPs in 2009 and 2011. During this period, the average JP decided more than 200 cases every month, a pace that seems incredible. The bulk of these cases were not criminal, which reflects the jurisdictional realities of the JP courts. They are limited to criminal cases in which the maximum penalty is three years' incarceration. By contrast, they hear virtually all administrative cases brought to the courts of general jurisdiction as well as three-fourths of all civil cases.¹³ To some extent, the regional variation is a function of the courts' jurisdictional parameters. The Central okrug, which includes Moscow, exhibits one of the lower per judge caseloads. When doing fieldwork in 2011 and 2012, I found that the Moscow JP courts were idler than courts I observed elsewhere. The Moscow JPs with whom I spoke pointed to the statutory limit of 50,000 rubles for civil disputes, explaining that the higher cost of living in Moscow resulted in fewer disputes of this magnitude.¹⁴ Although this helps make sense of the lower figures for civil cases, it does little to explicate the lower number of administrative cases. Traffic violations account for about a third of administrative cases and anyone who has visited Moscow would find it difficult to believe that Muscovites did not receive more than their share of traffic violations. It is possible that fewer show up in court records because Muscovites may be more likely to pay off traffic police on the spot rather than going the legalistic route of getting a summons to appear in court. Whether this is the explanation deserves further investigation, as do the reasons for the other patterns exhibited in table 3, such as why there are so many cases in the Far East okrug and so few in the South and North Caucasus okrugs. When these data are recalculated and normalized to reflect the population of these okrugs, the basic pattern does not change. The JP courts of the Central okrug remain the least busy and those in the Far East the busiest.¹⁵

Not surprisingly, the comparison of the workload of JPs over this rather short time period reveals more modest changes than seen in the data for

13. Hendley, "Assessing the Role," 393.

14. Kathryn Hendley, "The Unsung Heroes of the Russian Judicial System: The Justice-of-the-Peace Courts," *Journal of Eurasian Law* 5, no. 3 (2012): 337–69.

15. This recalculation for 2011 reveals that, for civil cases, the per capita workload in the Central okrug was 0.002, whereas for the Far Eastern okrug, it was 0.024. For administrative cases, it was 0.00133 for the Central okrug and 0.0122 for the Far Eastern okrug. Hendley, "Unsung Heroes," table 1.

Table 3
Average Monthly per Judge Caseload in the Russian JP Courts

	2009				2011				
	Total judges	Total cases per judge	Total civil cases per judge	Total admin cases per judge	Total judges	Total cases per judge	2011 total as % of 2009 total	Total civil cases per judge	Total admin cases per judge
Russian Federation	7444	217.9	130.7	80.9	7444	200.9	92.2	117.2	64.5
Central okrug	1855	145.7	78.7	61.6	1858	140.6	96.5	75.8	51.1
Northwest okrug	708	232.7	142	84.7	708	236.5	101.6	135.6	79.5
South and North Caucasus okrug	1205	183.1	107.3	71.2	740	191.7		111.5	62.7
North Caucasus okrug*					466	113.4		57.8	49.1
Volga okrug	1583	282.6	184.4	91.3	1583	250.7	88.7	144.6	69.7
Siberian okrug	1079	241.2	141.6	92.2	1079	229.1	95	139.9	64.9
Urals okrug	621	234.5	126.8	99.3	621	232.2	99	131.3	74.8
Far East okrug	389	287.8	187.9	93.5	389	275.4	95.7	166.4	84.2

* In January 2010, the South Caucasus okrug was divided, thereby creating a separate okrug for the northern Caucasus.

Sources: Unpublished statistical reports available from the author.

arbitrazh judges. The total number of JPs expanded by only four. The number of JPs is controlled by statute, which dictates that there be a JP for every 15,000 to 23,000 citizens.¹⁶ Even so, the per judge caseload remained fairly steady between 2009 and 2011. Where changes are visible, they reflect downward turns. The reduction of the statutory cap for civil cases from 100,000 to 50,000 rubles occurred in 2010, which may partially explain this trend.¹⁷ Yet the number of administrative cases also fell during this period without any accompanying amendment to the jurisdictional boundaries. Since their creation, the JP courts have had primary responsibility for all administrative cases.¹⁸ Despite their penchant for tinkering with the jurisdictional limits of the JP courts, legislators have left this part of the law alone.¹⁹

When the time period under review is expanded, a different picture emerges. Though I do not have the full unpublished workload data for the JP courts for years before 2009, glimpses of the situation during these years is provided through the scholarly literature. In an interview, Valerii Budko, the head of the department that manages the JP courts in Stavropol krai, revealed that the average monthly per judge caseload across Russia was 65 in 2002.²⁰ The tripling of the burden on JPs between 2002 and 2011 is akin to the upward curve for the arbitrazh courts. At the same time, the limited regional data suggest that there was considerable variation. For example, JPs in Samara oblast heard 119 cases per month in 2003, while JPs in Kamchatka heard 211 cases per month in 2006.²¹

In interviews, court administrators and judges regularly allude to the caseload data. Sometimes they even argue that these data fail to fully capture the horror of their situation. For example, Boris Balandin, the chairman of the arbitrazh court for Nizhnii Novgorod, commented that the official per month figure of 89 cases did not take into account the fact that arbitrazh judges regularly cover for their colleagues who are on vacation. The actual monthly burden, in his estimate, is 100–150 cases.²² Noting the high turnover, Anton Ivanov, the chairman of the Higher Arbitrazh Court remarked: “Judges are

16. Originally the law mandated a JP for every 15,000 to 30,000 citizens. The adjustment was made in 2006 due to the undue burden on some JPs in heavily populated regions. “O vnesenii izmenenii v stat’iu 4 Federal’nogo zakona ‘O mirovikh sud’iakh v Rossiiskoi Federatsii,’” 11 March 2006, at base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=58966 (last accessed 19 July 2013).

17. “O vnesenii izmenenii v stat’iu 3 Federal’nogo zakona ‘O mirovikh sud’iakh v Rossiiskoi Federatsii’ i stat’iu 23 Grazhdanskogo protsessual’nogo kodeksa Rossiiskoi Federatsii,” *Rossiiskaia gazeta*, 15 February 2010, at www.rg.ru/2010/02/15/miroviye-dok.html (last accessed 19 July 2013).

18. “O mirovikh sud’iakh v Rossiiskoi Federatsii,” 17 December 1998, with amendments through 4 March 2013, at base.garant.ru/12113961/ (last accessed 19 July 2013).

19. Hendley, “Assessing the Role,” 383.

20. “Mirovaia iustitsiia: Sotsial’nyi barometr,” *Mirovoi sud’ia*, no. 10 (2009): 18–24.

21. V. V. Tkachev, “Rabota mirovikh sudei s naseleniemi,” *Mirovoi sud’ia*, no. 5 (2004): 2; S. A. Iusipova, “Interv’iu mirovogo sud’i sudebnogo uchastka No. 24 Zhalud’ Igoria Iur’evicha, naznachennogo na dolzhnost’ 26 apreliia 2005 goda Sovetom narodnykh deputatov Kamchatskoi oblasti,” *Mirovoi sud’ia*, no. 6 (2006): 30.

22. Iana Piskunova, “Vysokaia nagruzka i effektivnost’ pravosudiia—veshchi nesovmestimye,” *Zakon*, no. 4 (April 2009): 98.

voting with their feet.”²³ Alla Bol’shova, the retired chairman of the Moscow City Court, posed the rhetorical question of whether arbitrazh judges could make good decisions given the heavy caseload. Her emphatic response: “Alas, no! [*Uvy, net!*]”²⁴ Since 1995, I have spent many summers observing the arbitrazh courts. Over that time, I have seen a wide variety of styles of judging and have had the good fortune to witness numerous changes in procedural rules. What has not changed, irrespective of time or place, is the arbitrazh judges’ self-image as overworked and underappreciated. In my conversations with them, many lamented their inability to spend more time on cases, telling me that they felt themselves to be little more than conveyor belts of justice. Their sarcastic tone indicated their ironic use of the word *justice*. As I discuss in more detail below, judges feel obliged to handle cases quickly, not just because they want to provide timely service to litigants, but more importantly because the Russian procedural codes prescribe the time allowed for resolving the various categories of cases.

Immediately after my research in the JP courts began in 2010, I was struck by the similarity in the rhetoric of the judges from different courts. Like their colleagues in the arbitrazh courts, JPs expressed dissatisfaction at the necessarily quick pace of their work. They are also called upon to pick up the slack for their coworkers on vacation or on maternity leave, meaning that the official data are likely to underreport the number of cases they actually handle. In interviews published in the scholarly press, JPs pulled no punches. One JP from the town of Kameshkogo in Vladimirskaya oblast commented: “The post of judge does not allow for any free time or a personal life—the workload is insane [*sumashedshaia*].”²⁵ A Voronezh JP joked that the workload would be manageable if only there were 48 hours in a day.²⁶ It is important to remember that judicial hearings account for only part of the judges’ workday. The Kameshkogo judge reckoned that he spent about 40 percent of his time in the courtroom. He spent more time (50 percent) working with documents, for example, preparing for hearings or writing opinions. The rest of his time is split between organizational tasks and working with his staff.²⁷

A 2011 survey that included over 750 Russian judges confirms that many feel overwhelmed. Slightly less than half of the judges surveyed (46.5 percent) considered their workload too high. Only 2.2 percent said it was too low. A bare majority (51.3 percent) characterized it as normal.²⁸ This, of course, may reflect the internalization of unreasonable expectations. To that end, the sur-

23. Natal’ia Shiniyaeva, “Vstrecha predsedatelia Visshego Arbitrazhnogo Suda s predstaviteliami SMI,” *Pravo.ru*, 20 February 2012, at pravo.ru/review/view/68916/ (last accessed on 19 July 2013).

24. A. K. Bol’shova, “Sostoianie i perspektivy sokrashcheniia nagruzki na sudei,” *Zhurnal Rossiiskogo prava*, no. 10 (October 2010): 86.

25. A. A. Trunina, “Kakoi on—mirovoy sud’ia? Vzgliad s kresla mirovogo sud’i. Resul’taty sotsiologicheskogo issledovaniia, provedennogo redaktsiei zhurnala mirovoy sud’ia,” *Mirovoy sud’ia*, no. 4 (2004): 30.

26. M. N. Razinkova, “Interv’iu s mirovym sudei sudebnogo uchastka No. 7 Sovetskogo raiona g. Voronezha Kudrinoi Galinoi Vasil’evnoi,” *Mirovoy sud’ia*, no. 3 (2004): 32.

27. Trunina, “Kakoi on,” 31.

28. Vadim Volkov, Arina Dmitrieva, Mikhail Pozdniakov, and Kirill Titaev, *Rossiiskie sud’i kak professional’naiia gruppа: Sotsiologicheskoe issledovanie* (St. Petersburg, 2012), 46.

veyed judges reported receiving 30 new cases each week. A quarter of these judges said that they handled between 11 and 20 cases per week. Another 20 percent said they managed 21–30 cases, while 30 percent claimed to have handled more than 30 cases on a weekly basis. Remarkably, about 12 percent said they heard more than 50 cases each week. A minority of 22 percent said they dealt with fewer than ten cases per week.²⁹ Reports of having to take work home were routine.³⁰ This study properly stresses that the pace of work greatly outstrips that recommended by the norms established for judges in 1996 by the Ministries of Labor and Justice.³¹

Taken at face value, the evidence on the workload of Russia's judges cries out for institutional reform. Policymakers have taken note of the problem. In late 2010, then President Dmitrii Medvedev issued an order to explore methods to remedy the judges' workload.³² The Council of Judges, which took up this challenge, had already adopted a decree that prioritized the need for legislation to standardize norms for judicial workloads.³³ A year later, in October 2011, at a meeting with top judicial officials, Medvedev laid down the challenge: "I would like to hear your proposals for reducing the workload on justices-of-the-peace with regard to civil cases." He suggested adjusting the jurisdictional boundaries by lowering the threshold value for property disputes or rethinking the procedures for tax cases, but made it clear he was open to all ideas. He intimated that the previous changes made along these lines (such as reducing the threshold amount from 100,000 to 50,000 rubles) had not yet solved the problem, noting that "on average each month a JP handles 44 civil cases."³⁴ Several months later, at a celebration of the twentieth anniversary of the founding of the arbitrazh courts, Medvedev got an earful about the workload of arbitrazh judges. Describing the judges as overworked, Veniamin Iakovlev, the former chairman of the Higher Arbitrazh Court, pushed for legislative reforms. Vera Iashina, the chairman of the Riazin arbitrazh court, echoed his sentiments: "the workload data show 16 cases per month, but we do not have a single judge with such a workload. It is two or three times greater."³⁵

Reevaluating the Evidence of Overwork in the Courts in Russia

The caseload data, which judges regularly cite when putting forward their narrative of exploitation, are problematic. The per judge workload figures are

29. *Ibid.*, 45.

30. *Ibid.*, 47.

31. *Ibid.*, 46.

32. "O khode vypolneniia porucheniiia Prezidenta Rossiiskoi Federatsii ot 5 dekabria 2010 g. No. Pr-3250 po podgotovke predlozhenii o putiakh optimizatsii nagruzki na sudei," *Postanovlenie Soveta sudei Rossiiskoi Federatsii ot 26 maia 2011 g. No. 278*, at www.ssrif.ru/page/650/detail/ (last accessed 19 July 2013).

33. "O neobkhodimosti zakonodatel' nogo uregulirovaniia norm nagruzki sudei sudov obshchei iurisdiktсии, arbitrazhnykh sudov i rabotnikov apparatov sudov," *Postanovlenie Soveta sudei Rossiiskoi Federatsii ot 20 maia 2010 g. No. 259*, at www.ssrif.ru/page/636/detail/ (last accessed 19 July 2013).

34. "Medvedev schitaet neobkhodimym snizit' nagruzku na mirovykh sudei," *Vesti.ru*, 10 October 2011, at www.vesti.ru/doc.html?id=593638 (last accessed 19 July 2013).

35. P'er Sidibe, "Sud' i pozhalovalis' Medvedevu na bol'shuiu nagruzku," *Izvestiia*, 27 January 2012, at izvestia.ru/news/513412 (last accessed 19 July 2013).

grounded in an assumption that cases are fungible. Anyone who has spent time at a court or has read case decisions appreciates the fallacy of that assumption. Cases vary in terms of their complexity, which can arise either from underlying law or from the facts of a particular case. Complexity matters because it affects the time needed to resolve the case. In the United States, many jurisdictions weight their cases to account for differing levels of complexity. Not only does this help calculate workload statistics more accurately, but it also assists in allocating cases among judges. The intake forms for the Russian courts, from which caseload statistics are derived, focus on objective facts, such as the type of case and the amount sought. The sort of information that would be needed to index cases by complexity, such as the clarity of the facts or the amount of evidence that will have to be assembled, is not sought. To introduce it would require subjective assessments that may be beyond the abilities of the staff members who typically handle intake, most of whom have little more than a high school education. The idea of weighting cases has not been much discussed in the Russian scholarly press.

Some scholars have paid lip service to the existence of relatively simple cases on the docket of Russian courts, but no one has attempted to address this question systematically.³⁶ The way in which these data are collected do not make it easy. They group cases by subject matter, which limits their usefulness.

In my fieldwork in the arbitrazh courts, judges repeatedly identified several categories of cases as “empty” (*pustoi*). By that, they meant that there was no real dispute, that is, the basic facts were not at issue. As I have argued elsewhere, Russian economic actors have grown accustomed to using the courts as a debt collection agency.³⁷ The low costs, measured in terms of money, time, and relational damage, have discouraged them from turning to alternative mechanisms for resolving these disputes. Judges and their staffs often grumbled that the cost of revving up the judicial machinery was more than the amount at stake in many of these cases. They were even more annoyed by the time lost to handling these cases. Frequently they waited in vain for anyone to show up for scheduled hearings.

As a crude way of estimating the incidence of “empty” cases, I analyzed two categories of contractual disputes—insurance and energy supply—that were consistently identified by judges as typically being bereft of content. I confirmed this during my fieldwork. The defendants rarely showed up or offered any affirmative defense in writing. Indeed, often neither side appeared in person. Table 4 shows that insurance complaints have grown exponentially as a percentage of the total contractual cases heard by the arbitrazh courts. This trend is particularly noticeable in the larger financial centers. For example, in the Moscow City Court, as a percentage of all contractual claims, these cases increased from 0.8 percent in 2003 to 11.4 percent in 2007 and then to 37.5 in 2011. A similar trajectory is evident in St. Petersburg and Ekaterinburg. On the other hand, the growth of cases dealing with nonpayment of utility bills is more startling in the hinterlands than in the center.

36. Volkov, Dmitrieva, Pozdniakov, and Titaev, *Rossiiskie sud'i*, 46.

37. Kathryn Hendley, “Business Litigation in the Transition: A Portrait of Debt Collection in Russia,” *Law and Society Review* 38, no.2 (June 2004): 305–47.

Table 4
The Incidence of Cases involving Energy Supply and Insurance as Percent
of All Contractual Cases heard by the Russian Arbitrazh Courts

	2003		2007		2011	
	Energy supply cases as % of all contractual cases	Insurance cases as % of all contractual cases	Energy supply cases as % of all contractual cases	Insurance cases as % of all contractual cases	Energy supply cases as % of all contractual cases	Insurance cases as % of all contractual cases
Moscow City Court	2.6	0.8	3.6	11.4	3.2	37.5
St. Petersburg and Leningrad Oblast Court	5.7	1.2	6.3	2.9	5.3	31.1
Sverdlovsk Oblast Court	8.8	0.4	18.3	5.6	17.7	20.9
Saratov Oblast Court	12.4	0.1	13.9	1.6	19.5	5.7
Omsk Oblast Court	10.4	0.9	3.6	3.6	24.8	5.1

Sources: Unpublished statistical reports available from the author.

Within the courts of general jurisdiction, the official caseload data provide a better window into the incidence of “empty” cases. Such cases are handled in a summary fashion through the use of a “judicial order” (*sudebnyi prikaz*). This procedural mechanism was introduced through a 1995 amendment to the civil procedure code.³⁸ When confronted with a case that presents no real controversy, judges are empowered to resolve it solely on the basis of the pleadings.³⁹ Plaintiffs who want to go this route must so indicate in their complaint. The judge must resolve these cases within five days of filing.⁴⁰ The order is sent to the defendant, who has ten days to lodge a protest.⁴¹ If a defendant does so, the order is automatically vacated.⁴² The court does not inquire into the basis for the objections.⁴³ The plaintiff is notified and can opt for a hearing on the merits. The procedural code provides a financial incentive for using *sudebnye prikazy* by halving the filing fees.⁴⁴ Issuing a judicial order takes much less time than resolving a case on its merits. The suitability of the petition for this procedure has to be verified, following which the order is prepared. Though the judge has to review and sign the final document, the actual work can be done by staff. In my fieldwork in JP courts across Russia, the story was consistent. The heavy lifting of *sudebnye prikazy* is done by the staff based on standardized documents.⁴⁵

From the outset, litigants embraced this new procedural mechanism. During the first half of 1996, immediately after it was created, over 15 percent of all cases were decided via judicial orders. For the first half of 1997, that percentage shot up to 40.9.⁴⁶ More recent data document the continuing popularity of *sudebnye prikazy*. More than half of the civil cases decided between 2008 and 2011 made use of this procedural tool. Because the simpler cases are concentrated in the JP courts, it is no surprise that *sudebnye prikazy* predominate.⁴⁷

38. “O vnesenii izmenenii i dopolnenii v Grazhdanskii protsessual’nyi kodeks RSFSR,” *Sobranie zakonodatel’stva Rossiiskoi Federatsii*, no. 49, art. 4696, 1995. For a fuller discussion of the history of the use of judicial orders in Russia, see M. A. Cheremin, *Prikaznoe proizvodstvo v rossiiskom grazhdanskom protsesse* (Moscow, 2001), 24–54.

39. For a list of the causes of actions that can be resolved via judicial orders, see *Grazhdanskii Protsessual’nyi Kodeks Rossiiskoi Federatsii* (GPK RF), art. 122. For an analysis that advocates expanding the types of cases for which judicial orders can be used, drawing on the experience of other former Soviet countries, see S. K. Zagainova, “Ob osnovnykh tendentsiakh razvitiia prikaznogo proizvodstva,” *Mirovoi sud’ia*, no. 4 (2007): 16.

40. GPK RF, art. 126, with amendments through 26 April 2013, at base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=145448 (last accessed 19 July 2013).

41. *Ibid.*, art. 128.

42. *Ibid.*, art. 129.

43. Zagainova, “Ob osnovnykh tendentsiakh,” 15.

44. GPK RF, art. 123.

45. For a discussion of how other European countries manage such “empty” cases, see Erhard Blankenburg, “Patterns of Legal Culture: The Netherlands Compared to Neighboring Germany,” *American Journal of Comparative Law* 46, no. 1 (Winter 1998): 17–21. He compares the Netherlands, where many cases are diverted through alternative mechanisms, and Germany, where courthouse staff take responsibility for these cases. When I raised these sorts of options with Russian judges and court administrators, I was met with blank stares.

46. Cheremin, *Prikaznoe proizvodstvo*, 3.

47. The appropriateness of this procedural mechanism for the JP courts is reflected in the fact that, in the law authorizing these courts, cases involving *sudebnye prikazy* are

Over this three-year period, more than 70 percent of all civil cases resolved by the JP courts went this route.

The use of judicial orders would not affect the analysis of workload if these cases boomeranged back to the JP courts, but less than 7 percent of *sudebnye prikazy* are challenged. A full explanation of why is hampered by the fact that the available data provide only the total number of challenges; they are not broken down by type of case. Nor do the data reveal whether the parties had the benefit of legal counsel.⁴⁸ Leaving aside the question of why these orders are not being challenged more often, the bottom line is clear. Judicial orders are a powerful weapon in the battle to lessen the burden on JPs. When taken into account, they drastically alter the picture, chopping the workload by over two-thirds.

Why court officials and judges themselves overstate their burden is ultimately unknowable. But their tendency to puff up their contributions may be part of an effort to distract public attention from the narrative popularized by the mass media, which places them in a much less flattering light. The emphasis on the sheer quantity of cases may serve as a counter to press accounts that call the quality of their work into question by stressing high-profile cases with political overtones.

Alleviating the Heavy Workload on Russian Judges

Even if the official workload data make the situation for judges out to be worse than it is, no one questions that Russian judges are handling too many cases. Though their image of themselves as besieged by endless paperwork is exaggerated, it is not inaccurate. This basic fact has not gone unnoticed, and a number of institutional reforms have been undertaken to ameliorate the situation.⁴⁹ Other improvements in the planning stages also hold out great promise. But absent deeper changes in behavior within the judicial system and in the legal culture more generally, they are unlikely to be permanent solutions.

The JP courts are a perfect illustration of the quandary involved in find-

singled out as being within the jurisdiction of the JP courts (Art. 3, part 1[2], O mirovykh 1998). Between 2008 and 2011, more than 99 percent of all *sudebnye prikazy* were issued by the JP courts.

48. In a 2010 study that monitored the activities of JP courts in Leningrad oblast and Perm krai, researchers found that about one-third of plaintiffs and one-seventh of all defendants were represented. Ivanova, ed., *Predlozheniia po povysheniiu dostupnosti*, 18–19.

49. A change in the rules for several categories of administrative cases is a good example. As the chairman of the arbitrazh court for Nizhnii Novgorod explained: “The court has been freed from a huge quantity of tax cases. Previously all tax collection cases proceeded through the court. The amount at issue could be 50 kopeks, yet the tax inspection would put in a complaint. In reality, these cases lacked any real dispute [*besspornye*]. The taxpayers clearly understood that they owed the state 50 kopeks but did not want to wait in a long line to pay their debt. Now the tax inspectorate can simply send a bill for these trivial amounts. If taxpayers feel that their rights have been violated, they can appeal to the court and challenge the bill. But almost no one makes such challenges.” Piskunova, “Vysokaia nagruzka,” 98.

ing the balance between justice and efficiency. Rolled out in the early years of the twenty-first century as a way of lessening the burden on the *raionnye* courts, then the first port of entry for the courts of general jurisdiction, the JP courts have now become part of the problem; they are prisoners of their own success. The existence of a court to handle trivial claims has attracted more and more such claims. Now officials are puzzling over how to deal with this avalanche of cases.

Similarly, increasing the number of judges and building new courthouses is only a stopgap measure. Certainly, the decrepit state of many of the courthouses inherited from the Soviet period necessitated an upgrade. The gleaming new buildings that now dot the Russian landscape provide modern facilities and arguably make a political statement about the state's commitment to the importance of the courts. But the continuing spectacle of politicized justice in high-profile cases reveals the shallowness of the commitment to the full independence of the courts in Russia.

As I noted above, in late 2010 then President Medvedev challenged the judicial establishment to think outside the box to relieve the pressure on judges. In response, the staff of the Higher Arbitrazh Court, working in cooperation with the Council of Judges, drafted legislation that was sent to the Duma on 4 May 2011.⁵⁰ Reasoning that higher costs will likely drive down demand, the legislation calls for an increase in filing fees for the appeal of certain types of cases.⁵¹ The failure to raise fees for bringing initial claims reflects a reluctance to risk compromising access to the courts. In an effort to give judges more time to focus on trials, the draft law empowers their clerks to handle pretrial hearings. The most controversial elements of the legislative proposals are two articles that provide for judges and their staff to be paid more when they have to handle an unreasonably large number of cases.⁵² The Council of Judges parted company with the Higher Arbitrazh Court on this question, refusing to endorse these two articles of the proposed legislation.⁵³ Despite public agitation for lengthening the deadlines for deciding cases, the draft was silent on this issue.⁵⁴ The draft has already languished in the Duma for more than a year, raising doubts about its passage.

50. "O vnesenii izmenenii v otdel'nye zakonodatel'nye akty Rossiiskoi Federatsii v sviazi s sovershenstvovaniem primiritel'nykh protsedur," 22 December 2011, at http://www.arbitr.ru/_upimg/60E211AF589F7B2C88310DEA054F8857_Проект_ФЗ_примир.pdf (last accessed 19 July 2013).

51. In a February 2012 press conference, the chairman of the Higher Arbitrazh Court reiterated his support for higher filing fees but noted that it was not a politically popular position. Shiniyaeva, "Vstrecha predsedatelia."

52. The draft law provides that judges who deal with more than the number of cases approved by the Council of Judges are to receive an additional 1 percent of their salary for every additional 5 percent of cases they handle. "O neobkhodimosti zakonodatel'nogo uregulirovaniia norm."

53. "O khode vypolneniia."

54. E.g., R. E. Volosat'ykh, "Neobkhodimo naiti razumyi balans mezhdu nezavisimost'iu sudei i ikh otvetstvennost'iu pered obshchestvom," *Sud'ia*, no. 4 (April 2012), at zhurnalsudya.ru/archive/2012/4/?article=528 (last accessed 19 July 2013); and N. Latsheva, "Piat' let ispolnilos' sudebnym uchastkam mirvovyykh sudei Plesetskovo raiona," *Mirovoi sud'ia*, no. 4 (2007): 23–24.

In March 2013 the legislature adopted a different set of reforms. In an effort to even out the workload among JPs, the chairmen of district courts are now empowered to redistribute civil and administrative cases from overburdened JPs to other JP courts.⁵⁵ Although this is a creative way to solve the nagging problem of uneven workloads, it risks compromising the original concept of JP courts as community-based. Of course, the budget-driven decision in many regions to group urban JP courts together rather than situating each in its own district had already begun that process. More ominous is the determination to give raionnye court chairmen greater leverage over JPs. Surveys of sitting district court judges reveal their fear of their chairmen.⁵⁶ Former judges, who have the luxury of speaking more openly, have complained bitterly about their heavy hand. For example, Mariana Luk'ianovskaia, who was removed from her position as judge hearing criminal cases in the Volgograd oblast in 2009 following a disciplinary review initiated by the chairman of her court, is unforgiving when it comes to that chairman. She says that "independence is only declaratory [*provozglashena*]. In every case, the judge is dependent on his [the chairman's] leadership." She believes she was pushed out due to her refusal to accept the claims made by the police and prosecutors without corroborating evidence. But she emphasizes that this sort of atmosphere had not always prevailed at her court. She quotes the previous chairman, whose mantra was: "My boss is the law [*Moi nachal'nik—eto zakon*]."⁵⁷ JPs have never been entirely free from the oversight of district court chairmen. As a rule, they attend regular meetings with these chairmen at which new laws are presented and perceived shortcomings among the JPs, such as reversals, are discussed. Most JPs work at staying on the good side of the district court chairmen simply because these chairmen act as informal gatekeepers for promotions within the judicial system. At every court I visited, I encountered a few long-term JPs who had no interest in moving on. They cited the absence of a chairman looking over their shoulders as a key reason.

As part of this same set of amendments, JPs are now exempt from the general requirement to write a full-fledged decision (*motivirovannoe reshenie*) unless the parties request it.⁵⁸ Instead, they need only provide a summary decision (*rezoliutivnaia chast'*) at the conclusion of the case, indicating who prevailed and setting out the damages, if any. During my fieldwork, JPs regularly complained about having to write reasoned decisions, arguing that few parties read them and that their rote quality added little to societal knowledge about law when posted on the court Web site. This change has the potential to substantially ease JPs' workload, though only if most parties have no interest in getting a *motivirovannoe reshenie*. How these changes will play out remains to be seen.

55. "O vnesenii izmenenii v otdel'nye zakonodatel'nye akty Rossiiskoi Federatsii," 6 March 2013, at www.rg.ru/2013/03/06/sudju-dok.html (last accessed 19 July 2013).

56. Volkov, Dmitrieva, Pozdniakov, and Titaev, *Rossiiskie sud'i*.

57. Mariia Eismont, "My dolzhny verit' ne dokazatel'stvam, a silovikam na slovo," PublicPost, 25 May 2012, at www.publicpost.ru/theme/id/1495/my_dolzhny_verit_ne_dokazatel'stvam_a_silovikam_na_slovo/ (last accessed 19 July 2013).

58. "O vnesenii izmenenii."

Taking inspiration from the courts of general jurisdiction, the procedural code governing the arbitrazh courts was amended in 2002 to introduce an accelerated procedure (*uproshchenoe proizvodstvo*) to be used for the simple cases that were clogging the docket.⁵⁹ Iakovlev, who was then serving as chairman of the Higher Arbitrazh Court, sang its praises in an online interview from February 2003:

It is a shorter and simpler procedure that uses only the written documents and can take place even without a hearing on the merits. But this form is permitted only if the parties do not object or if the cases are undisputed and trivial. For example, a utility company supplies energy, but the customer fails to pay. Where is the dispute? The customer will say that he has no money. Everything is clear, but even so, we handle these sorts of cases according to general procedural rules, which are rather complicated and difficult. Now everything proceeds differently. As a result, the resolution will be quicker for simple or trivial cases, freeing up judges' time for dealing with more complicated cases.⁶⁰

Initially some judges embraced this new tool eagerly. In three regions, about 30 percent of cases used this accelerated procedure, and an additional eleven courts used it in 15 to 25 percent of all cases.⁶¹ But this initial enthusiasm was not widely shared and, even where it was, it proved short-lived. As table 5 shows, by 2011, less than 2 percent of the cases heard by the arbitrazh courts used *uproshchenoe proizvodstvo*. The differing receptivity to summary procedures is intriguing. Why judges in the courts of general jurisdiction have proven more willing to make use of available mechanisms for accelerating the handling of cases is not entirely clear. No doubt the difference in the population of users for the arbitrazh courts and the JP courts plays a role. The jurisdiction of the arbitrazh courts is limited to legal entities, who tend to be more sophisticated and capable of understanding and mobilizing their rights. The JP courts are the dominion of ordinary citizens, who may be flummoxed by the technical language of *sudebnye prikaz* and may fail to act in a timely fashion to challenge them.

The seeds of the decline in the use of *uproshchenoe proizvodstvo* were embedded in the language of the statute. In my fieldwork soon after the law was changed, I found that many judges were apprehensive about this new mechanism.⁶² Confusion reigned over the proper interpretation of a key provision, which said that the accelerated procedure could be used "if the

59. Arbitrazhnyi Protsessial'nyi Kodeks Rossiiskoi Federatsii (APK), with amendments through 22 April 2013, chap. 29, at base.garant.ru/12127526/ (last accessed on 19 July 2013).

60. "Internet-interv'iu s V. F. Iakovlevym, Predsedatelem Vyshego Arbitrazhnogo Suda Rossiiskoi Federatsii: 'Rabota arbitrazhnykh sudov v 2002 godu,'" 20 February 2003, at www.consultant.ru/law/interview/yakovlev.html (last accessed 19 July 2013).

61. V. F. Iakovlev, "Itogi raboty arbitrazhnykh sudov v 2003 g. Osnovyve zadachi na 2003 g.," 11 February 2004, at www.arbitr.ru/press-centr/news/totals/2003/doklad.html (last accessed 19 July 2013).

62. Kathryn Hendley, "Accelerated Procedure in the Russian Arbitrazh Courts: A Case Study of Unintended Consequences," *Problems of Post-Communism* 52, no. 6 (November/December 2005): 21–31.

Table 5
Use of the Mechanism for Accelerated Procedure
(*uprosychennoe proizvodstvo*) at the Russian Arbitrazh Courts

	2003		2007		2011	
	Number of cases in which accelerated procedure was used	As % of all cases	Number of cases in which accelerated procedure was used	As % of all cases	Number of cases in which accelerated procedure was used	As % of all cases
All Arbitrazh Courts	67,000	8	36,485	6.7	19,999	1.8
Moscow City Court	8,266	16.3	2,307	3.4	752	0.6
St. Petersburg and Leningrad Oblast Court	1,969	4.8	2,268	4.1	286	0.5
Sverdlovsk Oblast Court	7,366	24.2	813	2.5	1,191	2.6
Saratov Oblast Court	55	0.6	1,040	4.7	0	0
Omsk Oblast Court	1,875	18	1,875	13.5	3	0.02

Sources: Unpublished statistical reports available from the author.

defendant raised no substantive objection.”⁶³ Some felt that silence on the part of the defendant was sufficient evidence, whereas others felt that an affirmation from the defendant was needed.⁶⁴ The latter interpretation was safer. It also rendered the new mechanism largely unusable. The sorts of cases where *uproshchenoe proizvodstvo* would be helpful are precisely the cases in which defendants rarely participate. Even though holding a hearing on the merits usually resulted in a one-sided hearing (or a hearing where neither side showed up), judges still preferred it. The one-sided nature of the accelerated process spooked them. They worried that defendants would challenge decisions reached through *uproshchenoe proizvodstvo*. If this happened, the case would have to be reheard on its merits, almost certainly resulting in a violation of the statutory deadline for resolving the case. Judges worked hard to avoid such violations. Their reputation and their chance for advancement depended on managing their docket efficiently. The risk-averse tendencies of *arbitrazh* judges contributed to their unwillingness to experiment with this new procedural tool. These uncertainties sabotaged the efforts by top court officials to stem the pressure on trial judges.

Well before Medvedev’s call to action, the staff of the Higher *Arbitrazh* Court was busy working on amendments to make the accelerated procedure more user-friendly. The draft legislation was discussed by the Presidium of the Court in December 2010, and a resolution endorsing the proposal was adopted by the Court’s Plenum in March 2011.⁶⁵ Its goal is to spur greater use of *uproshchenoe proizvodstvo* by minimizing judicial discretion. Rather than opening the door for judges to use this mechanism as the prior law did, these new provisions mandate its use in specified categories of cases, including claims for damages and for administrative fines that are less than 100,000 rubles. Though the draft lays out the mechanisms for providing notice to the parties, concerns were raised about the possibility that their rights could be compromised. Ivanov defended the changes: “Unquestionably, accelerated procedure lowers the guarantees for litigants. But we have to remember that we are introducing this, not as a way to improve life, but as a way to deal with the overwhelming workload.”⁶⁶ The legislature adopted the proposed changes to the procedural code in June 2012, and they went into effect on 24 September 2012.⁶⁷ The impact was immediately apparent. The percent of cases in which this mechanism was used increased from 1.8 percent of cases in 2011 to 5 per-

63. APK, art. 229.

64. E.g., Piskunova, “Vysokaia nagruzka,” 98; and Aleksei Belousov, “Ia iskrenne ubezhden, chto arbitrazhnaia sistema—odin iz effektivno deistvuiushchikh gosudarstvennykh institutov, koikh v Rossii ne tak uzh mnogo,” *Zakon*, no. 5 (May 2012): 83.

65. “O vnesenii v Gosudarstvennuiu Dumu Federal’nogo Sobraniia Rossiiskoi Federatsii projekta federal’nogo zakona ‘O vnesenii izmenenii v Arbitrazhnyi protsessual’nyi kodeks Rossiiskoi Federatsii i chast’ vtoruiu Nalagovogo kodeksa Rossiiskoi Federatsii v sviazi s sovershenstvovaniem uproshchennogo proizvodstva,’” *Postanovlenie Plenuma Vysshego Arbitrazhnogo Suda Rossiiskoi Federatsii*, No. 29, 24 March 2011, at www.arbitr.ru/as/pract/post_plenum/34390.html (last accessed 6 August 2013).

66. Shiniaeva, “Vstrecha predsedatelia.”

67. “O vnesenii izmenenii v Arbitrazhnyi protsessual’nyi kodeks Rossiiskoi Federatsii v sviazi s sovershenstvovaniem uproshchennogo proizvodstva,” 27 June 2012, at www.rg.ru/2012/06/27/apk-dok.html (last accessed 19 July 2013).

cent of cases in 2012.⁶⁸ In conversations in June 2013, officials at the Higher Arbitrazh Court were bullish about its future prospects. Though conceding that this change is unlikely to reduce the number of cases brought to the arbitrazh courts, these officials were nonetheless hopeful that it would allow many pro forma or “empty” cases to be resolved expeditiously, thereby freeing up trial judges to concentrate on the complex cases that deserve greater attention. In other words, the effect of these amendments could be akin to what is already happening in the JP courts thanks to the use of judicial orders.

This tinkering with the rules, while helpful and perhaps even necessary, is unlikely to provide a permanent solution to the problem. For the most part, the reforms are designed, not to discourage Russians from going to court, but rather to introduce new procedural tools that allow cases to be decided more quickly. When I ask why Russians persist in bringing simple cases to the courts when the result is clear from the outset, the answer is always the same: this is their right under Russian law. Fair enough, but this does not entirely answer the question I posed. My conversations with Russian judges and court officials reveal a hesitancy to create disincentives to using the courts. They are justifiably proud of the low barriers to access to justice in Russia, and increasing filing fees or requiring litigants to use lawyers when bringing claims is distasteful to them. Once again, this may have its roots in the desire to prove the value of the courts in light of the counternarrative that paints them as politically pliant, corrupt, and incompetent. When talking to several high-level judicial officials about the public opinion polls that seem to document low levels of trust in the courts, they pooh-poohed them, drawing my attention instead to the caseload data.⁶⁹ They argued that these data document Russians’ eagerness to turn over their disputes to the court, which they see as more compelling evidence of trust than polls.

The introduction of mediation offered the possibility of a Solomonic solution. The law, which went into effect at the beginning of 2011, authorized mediation as an alternative for cases already filed with the court by permitting judges to bring in neutral third parties to help the disputants find a way out of their problems.⁷⁰ Many judges and court officials were hopeful that media-

68. Kontrol’no-analiticheskoe upravlenie, Vysshii arbitrazhnyi sud Rossiiskoi Federatsii, “Analiticheskaiia zapiska k statisticheskomu otchetu o rabote arbitrazhnykh sudov Rossiiskoi Federatsii v 2012 godu,” at arbitr.ru/_upimg/DFE18C5F128D5D4EF1164A800A18CD1E_1.pdf (last accessed 19 July 2013).

69. Public opinion surveys consistently show low levels of trust in the courts. For example, in a poll fielded by the Foundation for Public Opinion in March 2011, only 16 percent of respondents saw the courts in a positive light. “Otsenka raboty rossiiskikh sudov,” at bd.fom.ru/report/map/dominant/dominant2011/dom1111/d111118 (last accessed 21 August 2013). In a June 2012 poll of the Levada Center on trust in various state institutions, only 21 percent of respondents said the courts deserved their trust. “Doveria institutam vlasti,” at www.levada.ru/02-11-2012/doverie-institutam-vlasti (last accessed 8 August 2013). In a country with three types of courts, simply asking about courts may produce more noise than information.

70. “Ob al’ternativnoi protsedure uregulirovaniia sporov s uchastiem posrednika (protsedure mediatsii),” *Rossiiskaia gazeta*, 30 July 2010, at www.rg.ru/2010/07/30/mediacia-dok.html (last accessed 19 July 2013).

tion would lessen the pressure on judges.⁷¹ After all, Russians view litigation as a last resort, turning to the courts only when informal mechanisms of dispute resolution fail.⁷² Mediation allows disputants to take back power over the case. But it turned out that once Russian litigants brought a case to court, they preferred to take a back seat and to leave it in the hands of judges. Though a full rehashing of the possible reasons why Russians have resisted the lure of mediation is not feasible here (I have explored these elsewhere), they generally stem from a combination of a lack of familiarity with the general idea of alternative dispute resolution and an absence of incentives to bypass the courts.⁷³ As to the latter, the story is familiar. Litigants are loathe to bypass the court when it provides a quick and cheap way to resolve disputes.⁷⁴

A key stumbling block to mediation is a generalized resistance to settling once a claim has been filed with the courts.⁷⁵ This aversion helps explain the failure of mediation to catch on. It also helps us understand why Russian litigants go to court even when the outcome is obvious to all. This marks Russia as somewhat unusual when compared to western countries, such as the United States, where lawsuits are often filed as a way to stimulate a settlement. The antipathy to settling cases is deeply rooted in Russian legal culture.⁷⁶ Once again, the low costs associated with litigation facilitate this behavior but cannot fully explain it. A greater willingness to settle either before initiating a lawsuit or before the hearing on the merits would do wonders to alleviate the workload problems of the Russian courts. But there is no easy reform to stimulate settlements. Though material incentives are key, there are many other factors at play, including the way law is taught (which does not emphasize the value of settlement); the fee structure for trial lawyers (which typically pays them by the judicial hearing, thereby creating an incentive to go to court and to drag out the process), the widespread perception that settlement reveals weakness, and the relative simplicity of the procedural rules (which facilitate representing oneself). The low level of trust among Russians that is the flip side of their increased autonomy may also be driving them to take their prob-

71. Bol'shova, "Sostoianie i perspektivy"; A. S. Krasnopen'tsev, "Opyt primeneniia medatsii v mirovykh sudakh Sankt-Peterburga," *Treteiskii sud*, no. 3 (2011): 144–47; and N. V. Fedorenko, "Mediatsiia: Ekonomicheskie i pravovye aspekty," *Treteiskii sud*, no. 5 (2007): 156–62.

72. A. K. Gorbuz, M. A. Krasnov, E. A. Mishina, and G. A. Satarov, *Transformatsiia rossiiskoi sudebnoi vlasti: Opyt kompleksnogo analiza* (Moscow, 2010): 367–74.

73. Kathryn Hendley, "What If You Build It and No One Comes? The Introduction of Mediation to Russia," *Cardozo Journal of Conflict Resolution* 14, no. 3 (Spring 2013): 727–58.

74. Sergei Viktorovich Lazarev, "Chto sderzhivaet razvitie primiritel'nykh protsedur?," *Treteiskii sud*, no. 6 (2010): 117; and Lazarev, "Opros iurfirm po itogam praktiki za 2010 god," *Zakon*, no. 12 (December 2010): 30–46.

75. A crude marker for settlement is the incidence of cases resolved through "peaceful agreements" (*mirovye soglashiia*). For 2011, these accounted for 2.7 percent of cases at the arbitrazh courts, and 0.7 percent of cases at the JP courts. Hendley, "The Unsung Heroes of the Russian Judicial System," tables 1 and 2.

76. Sergei Viktorovich Lazarev, *Osnovy sudebnogo primireniia* (Moscow, 2011); and I. V. Reshetnikova, ed., *Metodika sudebnogo primireniia* (Ekaterinburg, 2011).

lems to the JP courts rather than working them out privately, as might have been done during the Soviet era.⁷⁷

The behavioral changes needed to reduce the number of cases heard by the courts are not limited to litigants and their lawyers. Trial-level judges need to toughen up their stance toward disputants who are unable to sustain their burden of proof. The procedural codes embrace adversarialism and require parties to produce sufficient evidence to convince the court that they should prevail.⁷⁸ These codes also give judges the right (arguably even the obligation) to dismiss cases when plaintiffs fail to live up to this duty. In my fieldwork in both the arbitrazh courts and the JP courts, judges consistently told me that they rarely do so. They are convinced that the appellate courts will overturn their rulings on the grounds that dismissal precluded the parties from having the opportunity to present relevant evidence. This fear causes trial judges to grant numerous extensions and to tell litigants what sorts of evidence to present (rather than waiting for them to figure this out for themselves, as the adversarial model would seem to require). As the statutory deadlines approach, judges typically lose patience, but by that time, they may have held two or three unproductive hearings. Not only does this take up valuable time and waste state resources, it also sends a clear message to litigants and their representatives that judges will turn a blind eye to sloppy preparation.

Russian trial judges continue to feel a quasi-pedagogical responsibility that dates back to the Soviet era.⁷⁹ Over and over again, judges told me of their commitment to ensuring that the two sides are evenly matched. When the parties were patently unequal, either due to the fact that one was represented and the other was not (or both were represented, but the lawyers were clearly operating at different skill levels) or due to the fact that one was simply more attuned to the requirements for winning the case, judges felt obliged to step in. Sometimes this amounted to granting multiple continuances. In other instances, it took a more substantive form, as judges strongly urged the weaker side to engage legal counsel or even gave such parties mini-tutorials in the underlying law. Though this might be viewed as a violation of the principle of an independent judiciary, judges were motivated by a desire to ensure justice, which they felt required a relatively even playing field. This practice demonstrates the limitations of having the “right” law on the books. The law clearly empowers trial judges to dismiss cases when parties show up empty-handed, and it just as clearly limits the right of appellate judges to rethink findings of fact. But the reality is different. To change these behavioral patterns would require, in the first instance, a recognition of the problem. Then it would require top judicial officials to support trial-level judges when they crack the whip and to chastise appellate judges when they overreach.

The Russian judicial system exists in a no-man’s land between adversarialism and inquisitorialism. Its civil law heritage means that judges have

77. Olga Shevchenko, *Crisis and the Everyday in Postsocialist Moscow* (Bloomington, 2009).

78. APK, art. 9; GPK RF, art. 12.

79. Harold J. Berman, *Justice in the U.S.S.R.: An Interpretation of Soviet Law*, rev. ed. (Cambridge, Mass., 1963).

a strong commitment to the principle that their job is to uncover the truth through a full airing of both sides of civil disputes. If the parties themselves are not capable of doing this, judges feel an obligation to help. Though they pay lip service to the rule forbidding them from giving advice to litigants, the line often grows blurry in practice. Adversarial principles clearly take a back seat. The combination of their deep theoretical belief in the courts' obligation to find the truth and their practical need to get cases resolved within the statutory deadlines provides powerful incentives for judges to continue to run the show in court.

Further complicating the situation is the practical reality that Russian judges are evaluated based on their ability to manage their docket efficiently. Statistics are kept that show the percentage of cases in which judges have taken longer than the statutorily mandated period to reach a decision and the percentage of cases in which judges' decisions have been overturned.⁸⁰ Both are seen as black marks.⁸¹ As these percentages rise, a judge's chances for promotion to a higher court and for salary increases recede. These features are, of course, commonplace for countries like Russia that have a civil law legal tradition.⁸² But the effect on Russian judges is to make them extremely risk-averse. In order to avoid violations of the statutory deadlines, judges aggressively manage the pace of the cases and often give parties a detailed list of the evidence to be presented.⁸³ The implicit violation of the principles of adversarialism is a small price to pay for preserving their reputation, according to the judges with whom I spoke. Similarly, judges bend over backwards to avoid being reversed. To reduce the sense of fear that underlies the behavior of trial judges, these incentives for survival and advancement in the Russian judicial corps will have to be rethought. The 2010 law that allows litigants whose cases have been unduly delayed to seek compensation from the courts, passed in response to criticism from the European Court of Human Rights, has only redoubled judges' obsession with handling cases expeditiously.⁸⁴

Prospects for the Future

Can courts be too open to civil disputants? The very idea seems absurd. Surely courts should be available to everyone who needs help. Yet the reality is that courts provide a finite resource, namely the time and attention of judges and their staffs. If the doors are thrown open to all comers, then judges may be

80. Piskunova, "Vysokaia nagruzka," 101.

81. For a historical perspective on the use of such indicators, see Peter H. Solomon, Jr., "The Bureaucratization of Criminal Justice under Stalin," in Peter H. Solomon, Jr., ed., *Reforming Justice in Russia, 1864–1996: Power, Culture, and the Limits of Legal Order* (Armonk, N.Y., 1997), 247.

82. John Henry Merryman and Rogelio Perez-Perdomo, *The Civil Law Tradition*, 3rd ed. (Stanford, 2007).

83. Kathryn Hendley, "Are Russian Judges Still Soviet?" *Post-Soviet Affairs* 23, no. 3 (July–September 2007): 240–74.

84. "O kompensatsii za narushenie prava na sudoproizvodstvo v razumnyi srok ili prava na izpolnenie sudebnogo akta v razumnyi srok," *Rossiiskaia gazeta*, 4 May 2010, at www.rg.ru/2010/05/04/razumnisrok-dok.html (last accessed 19 July 2013).

overwhelmed by trivial claims and lack the time needed for the thorny disputes that have defied the disputants' efforts to resolve. Comparative experience shows that many countries have created barriers to the use of courts that have had the effect of discouraging the filing of lawsuits over petty disputes. Russia demonstrates what happens when policymakers take the opposite approach. The costs of using the courts have been kept low as part of a deliberate effort to maximize accessibility. The result is a civil docket that is clogged and an overwhelmed judicial corps.

At the same time, to take a leaf from William Shakespeare, the analysis of the caseload data suggests that Russian judges and judicial officials "doth protest too much." The raw data clearly support the judges' self-image as civil servants drowning in a sea of paper. Yet the reality of "judicial orders" in the JP courts and "empty" cases in the arbitrazh courts paint a somewhat different picture. Nevertheless, even when the data are adjusted to reflect the true reality, the number and types of cases still suggest considerable dysfunction. The monthly caseload may not be as extreme as it appears at first glance, but the courts remain inundated with niggling claims. This raises serious questions about whether state resources are being used as effectively as they could be. Russian individuals and entities have grown accustomed to using the courts for the sorts of cases that, with a bit of effort, could easily be settled by the parties. Yet the low filing fees, combined with the judges' impressive ability to resolve cases within the statutory deadlines, have made going to court a low-cost option. In a weird twist of fate, the Russian courts are a victim of their own success. Though those familiar only with the high-profile cases of politicized justice might resist putting a positive spin on the Russian judicial system, the very fact that more and more people are using these courts throws into question the common wisdom about the hopelessness of the courts.

Russian authorities remain deeply committed to an open-door policy at the courts. Rather than taking action to reduce demand by increasing filing fees, their efforts have focused on the supply side of the equation. By freeing JPs from the obligation to write full-fledged opinions, they have made it possible for JPs to handle more cases. More profound changes, such as encouraging parties to settle cases and tossing out cases when the parties fail to sustain their burden of proof, remain off the table. The political will for such changes is absent.

In Russia, neither judges nor the society they serve seem able or willing to critically reevaluate the story they tell themselves about the courts. Judges harp on the caseload data to tell their tale of woe. Indeed, suggestions that the data may be overstating their plight are resisted. Most judges are openly offended by any intimation that they are not badly overworked. The cynical among us might argue that these judges are posturing to ensure a steady increase in funding for the courts. The Cassandras within the leadership of the Russian judiciary are almost certainly politically motivated, but I doubt that trial-level judges are. Instead, they are simply trying to justify their lives. Their image among ordinary Russians as corrupt, craven, and incompetent only seems to redouble their commitment to a self-image as martyrs committed to doing justice. For its part, society is able to have its cake and eat it too.

When queried by pollsters, Russians express distrust in the courts. But when problems arise, many flock to these same institutions for help rather than sitting down with their counterparts and working out compromises. Their attitudes and behavior reflect an underlying pragmatism that recognizes the dual realities of Kremlin-orchestrated show trials and the capacity of JP courts to resolve mundane cases according to the law.