Judicial Power in Russia: Through the Prism of Administrative Justice

Peter H. Solomon Jr.

This article assesses the power of judges in Russia (on courts of general jurisdiction, *arbitrazh* courts, and military courts) in dealing with cases in which the government or one of its officials is a party. Power, that is, the resources of judges to make binding decisions, is understood as including jurisdiction, discretion, and authority to ensure compliance. The article analyzes the dramatic growth of jurisdiction and caseload in administrative justice in post-Soviet Russia to the year 2002 and examines how the courts have performed in handling the review of actions by officials (including in the military), tax cases, electoral disputes, and the legality of normative acts (both regulations and laws of lower governments), especially in the late 1990s. High rates of success for persons bringing suits against the government suggest that judges were able by and large to adjudicate fairly and rule against the state. To a considerable degree (but not always), those decisions were implemented (more often than were constitutional and commercial decisions). Interestingly, citizens who challenged the actions of officials in court had much more success than those who brought complaints to the Procuracy. Finally, the article develops an agenda for future research that would deepen understanding of the significance of administrative justice in the Russian Federation and the power of judges.

How powerful are judges and courts in Russia ten years after the breakup of the USSR? Without answering this question, it is hard to evaluate the ongoing process of judicial reform in the Russian Federation.

That reform has highlighted the struggle to give judges in Russia the basic elements of judicial independence, such as tenure in office, financial security, and administration of their own affairs. At the same time, Russian courts as a whole have acquired many areas of new jurisdiction, ranging from constitutional matters to

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commercial disputes, pretrial detention, and a wide variety of disputes between citizens and the state (judicial review of administrative acts, regulations, and laws or what Russians call administrative justice) (Solomon & Foglesong 2000). In addition to these achievements of the Yeltsin period (1991–1998), judicial reform gained momentum when President Vladimir Putin made it a personal priority. In the first years of the new millennium, his efforts led to major new financial support for the courts, the adoption of three new procedural codes (criminal, civil, and *arbitrazh*), and such major initiatives as the establishment of justice of the peace courts and the expansion of jury trials, not to speak of efforts to improve the consistency of laws among the federal government, the subjects of the federation (regions, territories, republics), and municipalities. Among post-Soviet countries, Russia is engaging in the most far-reaching judicial reform effort, and for this reason alone it deserves special attention.

I have argued elsewhere that it was the combination of newly won autonomy for judges and new power in the form of involvement in matters of public import that led Putin to emphasize the accountability of judges in his judicial reform program of 2001 (Solomon 2002, forthcoming). But thus far there has been little scholarship on the nature of this power.[1] Nor has sufficient attention been paid in the literature on political and legal transitions to the challenge of making courts in post-authoritarian settings independent and powerful at the same time, arguably a crucial part of the achievement of a modern legal order.[2] More than other post-Communist countries, Russia has tried to accomplish these two goals simultaneously, despite the fact that making courts responsible for matters of political or public importance may complicate the realization of judicial independence by increasing the desire of powerful persons to find ways of assuring decisions favorable to their interests and needs. A full assessment of Russia's empowerment of its courts, which this article only initiates, will contribute to an understanding of legal transitions more generally.

Here I explore a particular conception of judicial power (one that may have general utility), distinguishing it from the independence of judges and delineating its features. Then I explain why administrative justice—or the handling by courts of citizen complaints against officials, challenges to the legality of regulations and laws, and electoral disputes—makes a useful focus for an

[1] On the constitutional court, see Trochev 2002a, 2002b; on the commercial dispute decisions by the *arbitrazh* courts, see Hendley 1998a.

[2] Linz and Stepan (1996) recognize the importance of a strong legal order, including courts, for the consolidation of democracy, but they do not explore how such a legal order might come about. The most significant contributions to the theory of legal transition to date address the problem of demand for law (Hendley 1999; Humphrey 2001).

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inquiry about judicial power. Finally, I examine the practice of Russian courts in handling these cases.

Readers need to be aware that post-Soviet Russia in its first decade had three separate court systems: the courts of general jurisdiction, constitutional courts, and *arbitrazh* courts. The courts of general jurisdiction, or regular courts, that hear all cases outside of the jurisdiction of other courts, consist of a traditional hierarchy of district courts, regional (and republican supreme) courts, and the Supreme Court of the Russian Federation (RF) (to which were added, starting in 2001, a new lower rung: the justices of the peace), and a separate hierarchy of military courts. Constitutional courts, with narrowly defined jurisdictions, consist of the Constitutional Court of the RF (founded in 1991) and some dozen republican constitutional and regional charter courts that belong to the governments of republics and regions. The *arbitrazh* courts, established in 1991 to hear disputes among firms and between firms and the government, exist on the level of the region or republic, special districts of five or six regions, and the Higher *Arbitrazh* Court. With the exception of republican constitutional courts (regional charter courts) and justices of the peace, all courts are federal bodies, legally funded by the federal government alone and their judges selected and promoted by the president.

The Concept of Judicial Power

The power of judges consists of the resources that enable them to make binding decisions in disputes. As such, judicial power may be said to have three main dimensions: jurisdiction, discretion, and authority (to ensure compliance). Judges or courts are powerful to the extent that they have legal jurisdiction to hear disputes of public importance (constitutional matters, administrative cases, commercial cases, political crime, etc.). Sometimes authoritarian regimes (Franco's Spain, late Tsarist Russia) succeeded in creating relatively autonomous courts, but kept from those courts cases that mattered to the regime (Wagner 1976; Solomon 1997). As Toharia (1975) put it, Spain had courts that were independent but not powerful. But jurisdiction alone does not make judges powerful. They must also have the discretion within those areas of jurisdiction to make significant choices, and the discretion of judges may be restricted by their judicial or administrative superiors. Thus, in the USSR and post-Soviet Russia, the supreme courts issued policy directives known as "guiding explanations," specifying how judges in lower courts were to apply particular laws. Guiding explanations might deal with sentencing practices in criminal cases or with the criteria to be used in examining particular kinds of civil disputes.

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Finally, the power of judges includes "authoritativeness," in the words of Tyler and Mitchell, "the ability to secure public compliance with judicial decisions" (1994:717). Judicial authority is connected to the court's legitimacy and the reservoir of diffuse public support for courts as institutions, as well as to variations in public approval of a court's current work. New courts, and courts with recently acquired jurisdiction, often have difficulty inducing compliance. A good example is the Constitutional Court of the RF, some of whose ventures into areas of political controversy have gone unrealized, as officials in the executive and legislative branches and in the regions failed to make required changes in legislation. For a time, the Russian Constitutional Court also had trouble getting other courts to respect its rulings. At the same time, difficulties in implementing debt collection decisions of the Russian *arbitrazh* courts led to the establishment of a new service of bailiff-executors (Trochev 2002; Konstitutsionnyi Sud RF 2001; Solomon & Foglesong 2000:Ch. 8; Kahn 2002).

While power consists of the resources that allow judges to make authoritative decisions, independence refers to the mechanisms that insulate members of the judiciary from pressures, external or internal to it, that might affect the impartiality of their decisions. Security of tenure, good salaries and well-funded courts, and control of at least key aspects of the administration of courts represent basic protections. Also useful are limitations on the leverage of the chairs of courts and on pressures associated with the judicial bureaucracy, evaluation, and advancement in careers. Although the power and independence of judges are distinct phenomena, they can intersect and influence each other. For example, the failure to insulate judges from potential influences on their conduct effectively reduces their discretion in particular cases—the range of choices that they feel free to make. To be sure, judges cannot and should not be totally insulated from their environment and should face some accountability for their choices. But there is a difference between maintaining enough public support to protect the legitimacy of courts as institutions and deferring to powerful political forces, inside or outside of government.

How much power judges in a country or on a particular court possess is not within their control. The term *empowerment* of the courts is useful, in that jurisdiction, discretion, and authority all reflect the actions of others—politicians, chiefs of the courts, bureaucrats, and the public at large. Formally, jurisdiction is conferred upon courts by legislatures, and in practice the flow of cases within any particular mandate depends upon decisions of petitioners to bring their complaints to the courts (rather than another place). Discretion also starts with law, but, as we have seen, it depends in practice upon the degree to which judges are insulated

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from improper influences. (In this limited sense, judicial independence may serve as a constituting element of judicial power.) The authoritativeness of judicial decisions or the readiness of government officials and members of the public to comply stems from a mixture of ingrained attitudes toward courts and short-term calculations. At the same time, the conduct of judges also matters. The more that the public, including parties to cases, perceives the courts as fair and impartial, the greater the authority of judges.

Assessing the power of judges in a particular setting is a challenging task. On the one hand, it involves exploring the nature of each particular resource—jurisdiction, discretion, and authority—in law and in practice, probing the realities that may limit jurisdiction or discretion and may reduce the court's authoritativeness with the public or officials. On the other hand, one might also examine how judges exercise the power that they have, that is, use their resources in hearing cases, and in turn how that process affects their power. In this analysis of administrative justice in Russia, I do some of both, but I contend that a deeper understanding of these matters calls for field research to create relevant data.

Administrative Justice as a Focus

Apart from the constitutional sphere, administrative justice in Russia includes some of the most important aspects of public life. These include challenges to the legality of decisions taken by officials affecting the rights and freedoms of citizens, including by police and local government, tax and customs officials, and officers in the armed forces. Also included in the administrative sphere are challenges to the legality of normative acts, brought by citizens or procurators, and disputes relating to elections. Much of this jurisdiction did not exist in Russia before 1993, and caseloads relating to administrative-legal relations grew constantly through the rest of the decade and as of 2003 were still on the rise. Unlike the Constitutional Court of the RF (and the regional constitutional courts), whose strengths and weaknesses (including problems of compliance) have been the object of serious study, the actual handling of administrative disputes by courts of general jurisdiction, *arbitrazh* and military courts has received little analysis, in Russia or abroad.[3]

Further, administrative justice differs from constitutional adjudication in fitting more naturally into the civil law tradition and being more consistent with the *rechtsstaat* ideal associated with that tradition (Merryman 1985; Unger 1976; Starilov 2001:198–203). To be sure, judicial scrutiny of challenges to acts of officials has

[3] Starilov (2001) provides the best overview.

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involved the exercise of more power than French politicians have been willing to entrust to the courts, for example, and administrative tribunals are now located within the executive branch. But in other civil law countries, administrative courts stand as part of the court system. Moreover, the task of keeping normative acts consistent with one another and assuring that officials at all levels act in accordance with legislation has served to advance the cause of legal positivism and does not involve the invocation of legal principles outside or beyond the state. In form at least, administrative justice calls for the application of laws more than the creation of legal rules. In other words, in a country like Russia, for which the development of simple hierarchy of legal norms has remained challenging and much sought after by the political leadership of Vladimir Putin, the short-term prospects for the development of judicial power in the administrative realm may be greater than they are in the constitutional one, especially with regard to compliance.

In the Soviet period, supervision of public administration by officials of the procuracy served as a substitute for administrative justice. While courts had a small area of jurisdiction regarding citizen complaints, members of the public could turn to the procuracy to challenge almost any act taken by an official. (Note that the procuracy retains the right to handle citizen complaints and does so for a large number of citizens to this day. We will compare its activity with that of the courts.) In practice, procurators helped citizen complainants (with authoritative protests to the officials and agencies involved) primarily in those subject areas that were not politically sensitive (such as policing dissidents) and where the interests of the state coincided with those of the citizen complainants. Procuracy reviews of citizen complaints helped ensure that officials operating the welfare state (labor protection, pensions, housing) observed legal norms (Smith 1978, 1997).

The Development of Administrative Justice in Russia

By 2002, the courts of the RF, taken as a group, had a large administrative jurisdiction and were hearing a substantial and growing number of cases that involved disputes between citizens and state agencies or officials (close to half a million in total). (This is not counting trials of "administrative offenses," violations of laws and regulations that did not qualify as criminal.) The development of this jurisdiction and its use by citizens occurred gradually over the course of fifteen years.

The promoters of judicial review of administrative acts in the USSR had no tradition of administrative justice to revive. Before World War I, liberal jurists in Russia had pushed for judicial review,

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and in 1917 the provisional government approved the establishment of administrative courts, but the Bolshevik Revolution intervened before they could be established. Under the Bolsheviks, discussion of such courts continued, but by the mid-1920s the idea of a broad judicial review had been rejected (Khamaneva 1997:76–83; Starilov 2001:1–11). Over the years courts gained the right to review a short list of specific complaints. The 1964 Civil Procedure Code of the RSFSR listed among others these complaints: errors in electoral disputes, seizure of property to cover unpaid taxes, fines and license suspensions imposed by the police, the actions of judicial enforcers (implementing debt collection decisions), and certain complaints against housing officials (Treushnikov 1997). As of 1980, courts were hearing annually around 11,000 such cases, especially against tax collectors (90%) and the police (9%) (Barry 1978:249–50; Oda 1984:124–25). However, in the 1970s Soviet legal scholars had already begun discussing the expansion of the scope of judicial review of administrative acts and in 1977 succeeded in securing a entry for this subject in the 1977 Constitution of the USSR (Article 58) (Sharlet 1978:94–95; Barry 1978; Chechot 1973; Salishcheva 1970). In the decade that followed, Soviet jurists sought the extension of judicial review to acts of state compulsion (such as compulsory treatment for alcoholism and the razing of structures) and acts of omission (failure to give residence permits or housing), but no extension took place until the Gorbachev period.

The starting point was the adoption in 1987 of the first of a series of laws establishing the right of citizens to complain to courts about illegal actions of officials that affected their rights and freedoms and of courts to hear such complaints (Zakon SSSR "O poriadke obzhalovaniia v sud nepravomernykh deistvii . . . " ot 30.06.1987). The 1987 law (from the Soviet period) did not apply to decisions taken in the name of a collegial body, and it required that the complainant exhaust all administrative remedies before turning to the courts (Barry 1989). A 1989 law eliminated the first of these constraints (Zakon SSSR "O poriadke obzhalovaniia v sud nepravomernykh deistvii . . . " ot 2.11.1989), and finally in April 1993 the Russian government removed the second, in the process creating a broadly based right to judicial review of actions and inactions by officials (Zakon RF "Ob obzhalovanii v sud deistvii . . . " ot 27.04.1993). In 1995, the target of complaint was expanded from "officials" (*dolzhnostnye litsa*), or persons in responsible positions, to any and all government employees (*sluzhashchie*), and complainants gained the right to receive, or at least see, documents and materials that related to their rights (Khamaneva 1997:100–15; Federalnyi zakon "O vnesenii izmenenii i dopolnenii v Zakon RF 'Ob obzhalovanii v sud deistvii . . . '" ot 15.11.1995). As is discussed below, Russians found much to complain about, and

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the number of suits against officials rose steadily—from 4,944 in 1990, to 20,326 in 1994, to 56,659 in 1997, to approximately 160,000 in 2000 (Solomon & Foglesong 2000:68–71; Verkhovnyi Sud RF 2000).[4] Almost all of these suits were heard in the district courts, the lowest rung of the system of federal courts in Russia. Since 2000, new justice of the peace courts have been created to deal with lesser disputes and petty offenses, but they do not hear complaints against officials (Solomon 2003a).

The 1993 Law on Complaints against Officials also authorized military courts to hear actions brought by members of the armed forces against superior officials and officers. Even earlier, in November 1992, the Supreme Court of the RF had declared that soldiers had such a right. The Court and the legislators recognized that in the process of movement of troops back from former republics of the USSR, there were many violations of soldiers' rights, especially in the social realm (housing, pensions, etc.) (Khamaneva 1997:105). But the habit of complaint would grow. Whereas in 1993, 3,504 complaints against officials were brought to military courts, that number would rise to 13,501 in 1994, and grow to 47,000 in 1999, and explode to 190,500 in 2000 (Voronov & Kholodkov 2000:268–71; Petukhov & Zhudro 2000; Petukhov 2001).

Furthermore, the 1993 law facilitated complaints against fines imposed administratively (some of which could be reviewed in court beforehand) and opened the door to judicial review of decisions and actions of tax authorities, along with the development of new tax laws that accompanied privatization of the economy. By the new millennium, tax disputes had come to loom large in the work of both the regular courts (of general jurisdiction) and the *arbitrazh* courts, the new courts that assumed responsibility for commercial disputes and conflicts between legal persons and the state. In the regular courts, the number of tax disputes, over income or other taxes, rose from 23,800 cases in 1996 to 83,427 in 1999 (Verkhovnyi Sud RF 1998, 1999a, 2000b). In the *arbitrazh* courts, the number of tax disputes rose from less than 10,000 in 1995 to 31,073 in 1998 to 85,334 in 1999 to 138,192 in 2000 to 188,162 in 2001. *Arbitrazh* courts also heard complaints from firms about the imposition of duties and fines. The total number of cases in the *arbitrazh* courts relating pitting firms against the state reached 315,551 in 2001, or 49.4% of their caseload (Vysshii Arbitrazhnyi Sud RF 2002).

[4] Unless otherwise noted, henceforth data on courts of general jurisdiction come from the series of reviews of court statistics for the year and estimated data from the series of data on the first half of the year.

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There were two kinds of cases relating to administrative justice that, while smaller in numbers, involved issues of high political salience: disputes over the conduct of elections, and challenges to the legality of normative acts. Based on a provision of the RSFSR Civil Code of 1964 (written when elections were noncompetitive), in the early 1990s judges were already drawn into disputes about electoral lists, but through the Electoral Rights Law of 1994, the 1995 President Elections Law, and the 1995 State Duma Elections Law, courts gained responsibility for a variety of electoral disputes (Federalnyi zakon "Ob osnovnykh garantiiakh izbiratelnykh prav grazhdan Rossiiskoi Federatsii" ot 6.12.1994; Federalnyi zakon "O vyborakh Prezidenta Rossiiskoi Federatsii" ot 17.05.1995; Federalnyi zakon "O vyborakh deputatov. . ." ot 21.06.1995). These laws gave the regular courts at all three levels responsibilities for handling disputes over such matters as the drawing of electoral districts, registration of candidates or parties, rules of fundraising and electoral campaigns, organization of elections, and the counting of votes, and could even involve challenges to the outcomes of elections. Disputes concerned not only national elections (to the Duma or for President), but also elections of governors and regional legislatures, as well as mayors and local councils. Whereas in the first half of 1997, courts heard 447 electoral disputes, that number rose to 2,320 for 1999 and to more than 1,700 in just the first half of 2000 (Kniazev 2001; Verkhovnyi Sud RF 1998, 1999a, 2000b).

The legality of normative acts (especially regulations and laws of lower levels of government) is a crucial issue in Russia, a country that has lacked a strong legal hierarchy in the past—far too often, regulations and instructions of government agencies go beyond or contradict laws and, in the context of struggles within the federal system, some subjects of the federation seek their own legal space. The right of courts to hear challenges to the legality of regulations and legislation from lower levels of government has developed gradually and unsystematically, through a series of laws, sometimes in a not fully transparent way and hard even for Russian commentators to keep track of. Here are just a few examples. The 1992 Law on Regional Legislatures and Administrations gave procurators the right to challenge legal acts of regional legislatures and executives in court (Zakon RF "O kraevom, oblastnom Sovete . . ." ot 5.03.1992). Individual citizens, though, did not have this right until the year 2000, although it was included in draft civil procedure codes from the middle of the decade. In 1995, through amendments to the Civil Procedure Code, the Supreme Court gained the right to review challenges to normative acts produced by the federal bureaucracy (as long as they affected the rights and freedoms of citizens) (Federalnyi zakon "O vnesenii izmenenii i

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dopolnenii v Grazhdanskii protsessualnyi kodeks RSFSR" ot 30.11.1995). The Law on Local Self-Government of 1995 gave courts (by and large at the district level) jurisdiction to review challenges (even from citizens) to the way local ordinances and executive orders corresponded to the local charters—laws of the subjects of the Federation including their charters, federal laws, and even the Constitution of the RF (Federalnyi zakon "Ob obshchikh printsipakh . . ." ot 28.08.1995). Another law from 1995, On Public Associations, gave courts the right to review the legality of regional, interregional, and local public organizations (Federalnyi zakon "Ob obshchestvennykh ob'edineniiakh" ot 19.05.1995).[5]

The development of the rights of regular courts to review the legality of normative acts was further complicated by the ambitions of the Supreme Court of the RF. From October 1995 to June 1998, that court asserted a right for courts of general jurisdiction to review the *constitutionality* of legislative acts from various levels of government and declare them null and void if appropriate, but the Constitutional Court rejected and overruled the Supreme Court's action, insisting in June 1998 that only the Constitutional Court could rule on the constitutionality of a normative act, and that regular courts could review even the legality of laws and regulations only when legislators had given clear direction (Postanovlenie Konstitutsionnogo Suda RF ot 16.06.1998). This ruling created a situation where judicial review of normative acts was at best partial. Consider the central administration. While the Supreme Court could review the legality of nonnormative acts of the government and the president (discrete orders affecting only a concrete situation), and the Constitutional Court could assess the constitutionality of normative acts from those sources, no body could review their consistency with federal legislation (Krug 1997; Solomon & Foglesong 2000:77–78)! This anomalous situation did not last for long. Two years later, in the context of President Putin's commitment to the harmonization of laws (to be discussed), the Presidium of the Supreme Court decided that the Court's collegia had not only the power but also an obligation to hear challenges to normative acts of the government. The Court reasoned that since the June 1999 law on military courts (Federalnyi konstitutsionnyi zakon "O voennykh sudakh Rossiiskoi Federatsii" ot 20.05.1999) had given such a power to the military collegium of the Court, by analogy all the Court's collegia had such power! Normative acts of the president, however, would remain free from challenge

[5] For the list of laws and normative acts (1991–2001) bearing on administrative justice, including the review of the legality of normative acts, see Starilov (2001:273–81), Treushnikov (1997), Lebedev (2000a:92–111), and Abrosimova (2002).

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(Chernikov 2001:20). At the same time, conflicts continued over the jurisdiction of various courts to review normative acts. Thus the twelve regional charter/republican constitutional courts have asserted considerable jurisdiction in this area, but much of this was challenged in 2000–2001 by the Supreme and Higher *Arbitrazh* courts (Trochev 2001a, 2001b:23–30).

Not long after assuming the office of president, Vladimir Putin made the creation of a hierarchy of laws and normative acts into a cause and launched a campaign to harmonize the laws of different governments and to deal with regulations as well. This led to changes to the civil procedure code in August 2000, giving regional courts the right to hear challenges to normative acts of the regional executive brought by citizens (Federalnyi zakon "O vnesenii izmenenii i dopolnenii v Grazhdanskii protsessualnyi kodeks RSFSR" ot 7.08.2000). At the same time, procurators and officials of the Justice Ministry were encouraged to identify and, if need be, challenge in court laws and instructions of subjects that did not conform with federal law (Hahn 2001; Huskey 2001; Sharlet 2001). Finally, the President committed himself to establishing a whole system of administrative courts, which would take over most of the jurisdiction for administrative justice cases handled by the regular courts and some of those belonging to the *arbitrazh* courts. As of fall 2003, the realization of this commitment was on hold, awaiting further work on procedures for administrative justice cases and the implementation of other costly judicial reforms during 2003 and 2004 (establishment of more justice of the peace courts, expansion of jury trials) (Lebedev 2000b; Gosudarstvennaia Duma 2000; Salishcheva & Abrosimova 2001; Rossiiskaia akademiia pravosudiia 2001; Starilov 2001:169–84; "Stanovlenie administrativnoi iustitsii v Rossii" 2002). In February 2003 a new civil procedure code (adopted in November 2002) went into effect, which clarified the jurisdiction of particular courts over the review of normative acts (Grazhdanskii protsessualnyi kodeks Rossiiskoi Federatsii ot 14.11.2002).

The growth of cases challenging the legality of normative acts corresponded to the expansion of jurisdiction and the political salience of the issue. Whereas in 1996, courts heard 1,203 challenges to normative acts, that figure grew to 1,636 in 1997, an estimated 3,100 in 1998 (2,016 in district courts, 780 in regional ones), 3,899 in 1999, an estimated 4,000 in 2000, and an estimated 6,600 in 2001 (Verkhovnyi Sud RF 1998, 1999a, 1999b, 2000a, 2001, 2002).

Clearly, conflicts between citizen and state became a major area of court jurisdiction in the RF during the 1990s. It remains to consider the nature of those conflicts and how they were resolved, and to assess, to the extent possible, the discretion judges possessed and how judicial decisions were implemented.

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Citizen Complaints Against Officials

In the last year for which there are complete official data, 1999, the courts of general jurisdiction in the RF heard more than 140,000 cases of complaints against officials (not counting another 95,000 cases of complaints against levies of taxes or administrative penalties/fines). Unfortunately, there are no national level data to tell us the main topics of complaint and against which officials or agencies they focused. The official statistics forms that the staff of each court must complete periodically, on which national court statistics are based, include only gross categories: complaints against illegal acts of officials, violations of tax law, administrative penalties, violations of electoral law, the legality of normative acts, and "other."[6] For each of these large categories, one can learn how many cases arrived at court, how many were adjudicated, with what results, and what fee was charged.

Although judges and scholars in Russia were impressed with the variety of complaints against officials, they were aware of patterns of concentration.[7] A good window into these patterns is provided by the decisions on complaints against officials rendered by the Moscow district court of Tver and the regional court of Arkhangelsk. In Tver, twenty-four cases relating to administrative-legal relations from 2000 to 2002 had decisions placed on that court's Web site. In Arkhangelsk, twenty-nine such cases were heard (all cases heard originally at district courts in the region and brought to the regional court in cassation), which were included in a published collection of decisions of the regional court and described by the book's editors as "the most interesting and significant decisions of the Arkhangelsk regional court for 2000 and the first half of 2001" (Moskovskii raionnyi sud 2002; Arkhangelskii oblastnoi sud 2001:95–125).[8]

The decisions published by these two courts included cases relating to elections and taxes (subjects I treat later on), but each

[6] See the form "Otchet o rabote sudov pervoi instantsii po rassmotreniiu grazhdanskikh del," used for semiannual and annual reporting of civil cases by mail. The form was revised most recently in December 1998. A normative act creates a rule applicable to a class of situations, in contrast to a nonnormative act, which decides a single issue. For example, a presidential edict that appoints one or more new judges is nonnormative, but an edict that establishes procedures for handling judicial nominations when they arrive at the presidential administration is normative.

[7] Interviews with Elena Abrosimova, Maria Miakina, Vladimir Radchenko, Valerii Rudnev, and Nadezhda Salishcheva, Moscow, Russia, June 2002.

[8] Each of these sources is unique. The court in Tver, a small city with a population of 461,000, is the only district court in Russia to publish its decisions on the Web. On court Web sites in Russia, see Trochev (2002c). The Arkhangelsk regional court, located in a northern region with a population of 1,440,000, is the first regional court to publish its decisions. The Tver project was supported by the Open Society Institute; the Arkhangelsk project by a USAID-funded project with the state of Maine.

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group also featured concentrations of cases relating to fines (of various kinds), the actions of bailiff-executors (the officials responsible for compulsory implementation of decisions in divorce and debt collection cases), registration in cities and passports (internal and external), and social benefits, including pensions, jobs and unemployment compensation, and housing. Administrative fines cases included a dispute over the removal of a shed from what was now public property, a drunk driving levy, impositions by the fish inspectorate, and fines for violations of the rules for selling alcoholic beverages. Cases against bailiffs focused on seizures of excessive amounts of property (including, in one case, the telephone), the taking of an apartment occupied by a wife and children to pay a husband's debt, the refusal to allow repayment of debts over time, a variety of procedural violations, and inappropriate fines. Registration cases (more than one) concerned passport offices' refusal to register complainants in apartments and a case that involved residency issues and assessing taxes on foreign income. Cases in the social realm ranged widely and included eligibility for an early pension for an unemployed person, improper refusal of an employment office to classify a claimant as unemployed, a returning draftee's attempt to get on a list for government-supplied housing, certification that a claimant was a World War II veteran (and eligible for benefits), the provision of benefits to a 20-year veteran of the armed forces, the provision of housing subsidies, provision of medical benefits to a person with radiation-related conditions from his participation in the Chernobyl cleanup, and the refusal of employers (especially the police) to hire young men who had not yet served in the army.

In addition, the cases from Tver and Arkhangelsk reflected the concerns of small-business people (a dispute over city regulation of hours of business, a fine levied on a small-business man), the draft (the refusal of authorities to grant a deferment to an orphan wanting education), and the responsibility of the postal authorities for the nondelivery of a document (loss or theft must be demonstrated). Some cases revolved around procedural issues, such as which court should hear the complaint (regular or *arbitrazh*), or whether judges had gathered sufficient evidence before rendering their decisions.

There is every likelihood that all four of these categories of complaints against officials are found throughout the RF, for concerns about fines and levies (whose number and variety have always been great in Russia and the USSR, as impoverished local authorities sought sources of income), about the actions of bailiffs, about registration and passports (when local authorities, notwithstanding rulings of the Constitutional and Supreme Courts, try to limit the arrival of newcomers, including immigrants from other

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parts of the former Soviet Union), and about the whole gamut of social benefits, so crucial to older and poorer persons in the deteriorating welfare state.

Particular regions and districts, however, may also feature cases related to their peculiar social and economic situations. Thus, courts in rural districts probably have more disputes over land registration, use, and ownership; and social benefits cases may well be more frequent in poorer parts of the country.

The crucial question is what happened in these cases. When citizens sued the state, what was the likelihood of success? A lot higher than most observers would expect for a country emerging from an authoritarian past, where judges might prove reluctant to rule against state officials. The overall rate of satisfaction for the complainants, according to official statistics in 1999, was 82.8%. This figure was not unusual; the rate for 1996 was 74.4%; for 1997, 83.4%; and for 1998 (first half), 81% (Khamaneva & Salishcheva 2001:36; Verkhovnyi Sud RF 1998, 1999a). These high rates of success suggest that any systematic bias in favor of the government was absent (unless the disincentives to bring cases were so great that virtually every complainant had a strong case). In short, judges retained considerable discretion to rule against the state and its officials.

It remains possible that the likelihood of winning in courts varied: from the courts of one region or even one court to another, from one type of case to another (the subjects of the cases), and by which agency faced a challenge from citizen complainants. Geographical variation could be studied, if one had access to the data. For example, the 1999 statistics for three district courts (located in Kursk, Voronezh, and Kaluga) reveal considerable variation in the volume of cases per judge and per capita population, and the rates of success in that year varied from 62% in one court to 84% and 91% in the other two (Leninskii raionnyi sud goroda Kurska 2000; Leninskii raionnyi sud goroda Voronezha 2000; Kaluzhskii raionnyi sud 2000). But the most interesting data, for example, breaking cases down by the subjects of disputes and the agencies to which the respondent officials belonged, were not recorded by the authorities.

The other major question is the extent to which decisions in cases of complaints against the actions of government officials were implemented. I know of no data on this matter, but also no discussions among jurists or journalists in Russia suggesting that implementation of these decisions was problematic. In contrast, the nonimplementation of decisions in commercial and civil disputes and in constitutional cases has received a great deal of attention. In the absence of complaints, one can assume that the bulk of decisions against officials are implemented without difficulty.

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Competition? The Procuracy and Complaints Against Officials

At the same time as complaints to courts about actions of officials were growing dramatically during the 1990s, the Procuracy retained its long-established power to receive and review complaints and issue protests to the offending agency. (Throughout the Soviet period, the Procuracy combined prosecutorial functions with its original duty to supervise the legality of public life, including the actions of all government agencies.) This service was available to any citizen free of charge. Some proponents of judicial reform in Russia regard the continuation of this alternative to the courts as a obstacle to the growth of judicial power; but others, including top officials of the procuracy, argue that the procuracy complaints mechanism should be maintained, at least in the short run, as a low-cost alternative accessible to the poor and the elderly.[9] In this context, it is instructive to examine the official data of the Procuracy on its complaints process.

In 2000, citizens brought 333,654 complaints to procuracy offices about "the implementation of laws and the legality of legal acts," of which the procuracy satisfied 25.4%. Among these complaints, three of the largest groups concerned social matters—labor law, housing law, and pension law, while other concentrations included land law and the laws on juvenile delinquents. The complaints involving social concerns constituted 37.4% of the total (124,705). Half of all the complaints fell into none of the categories recognized in the procuracy's statistical data forms (Generalnaia Prokuratura RF 2002a, 2002b). It would appear that less-well-off people, including pensioners, the unemployed, and people living in government-owned housing, did use the procuracy complaints process more than the courts and more often than other citizens.

At the same time, turning to the Procuracy was much less likely to produce success than going to court. Remember that the overall rate of success for citizens complaining against the actions of officials in court averaged 80% in the late 1990s. But complaints brought to the Procuracy in 2000 resulted in satisfaction (change in the decision by the official in question) only 25.4% of the time! Complaints in the labor area produced satisfaction 40.8% of the time, in housing 18.9%, and regarding pensions 21.9% (Generalnaia Prokuratura RF 2002a, 2002b). Why was the probability of

[9] The attack on the general supervisory function of the Procuracy, including its complaints procedure, began with "The Conception of Judicial Reform in the RSFSR" (1992), a white paper written by nine legal scholars that gained approval of the Supreme Soviet of the RSFSR in October 1991. For the most part, the Procuracy has successfully resisted attempts to eliminate this function (Smith 1997; Churilov 2001; Rokhlin & Sydoruk 2001:58–61; Gerasimov 2002).

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success so much lower for complaints against officials brought to procurators as opposed to suits in court? Perhaps many of the complaints were frivolous, or at least not well grounded. This might be expected for a cost-free service. It was also possible that in many of its field offices the procuracy lacked the staff to process more than a share of the complaints, if only because the procuracy's responsibilities for criminal prosecution were growing. The capacity of procuracy offices to handle citizen complaints was likely to decrease further after July 2002, when all criminal cases started to require the presence of a procurator in court under Article 246 of the 2001 Criminal Procedure Code ("Ugolovno-protsessualnyi kodeks RF ot 18.12.2001"; Mirza 2001).

Most striking, by 2000 courts were not only more likely to produce results for citizens complaining against officials, but they were actually satisfying a higher absolute number than was the procuracy. Whereas the Procuracy claimed to have satisfied the complaints of 85,029 persons, the regular courts had resolved in favor of the complainant some 128,000 suits, and this latter figure did not include cases relating to elections or tax disputes heard in the regular courts, or the citizen suits against state officials handled by the *arbitrazh* courts or military courts (not to mention cases of nonpayment of wages, which were not treated as matters of administrative justice). As long as most of the 128,000 victories by citizens in suits against officials were implemented, courts were helping more members of the public than was the procuracy.

It appeared that Russians were turning increasingly to the courts rather than the Procuracy, and that the continuation of the less-effective procuracy complaints process did not harm the growth of administrative justice. Moreover, the procuracy complaints process was available to the poor and the elderly who could not afford to go to court and needed help from agencies of the welfare state. What seems to have emerged is a classic split in which "haves" went to court, and "have-nots" followed the traditional Soviet route of a cost-free complaint to the Procuracy. In short, there was no reason to eliminate the procuracy's handling of complaints against officials other than those regarding costs.

Complaints in the Military

Another group of people who depended upon the welfare state consisted of career members of the armed forces and their families. As we have seen, from 1993 soldiers could bring complaints to military courts about decisions of their superiors that affected their legal rights, and in 2000, according to the head of the Military Collegium of the Supreme Court, Nikolai Petukhov, those courts

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handled 190,500 complaints! The bulk of the cases related to compensation, conflicts over moving expenses, indexation for inflation of delayed payments, veterans benefits, and housing. For example, does the allocation of moving expenses require evidence of registration in the new place of residency (sometimes problematic to obtain) or only of the need to move the family because of a transfer to a job in a new location? The cases show the struggles of soldiers to obtain social benefits of all kinds and protect themselves against arbitrary, restrictive, or unimaginative application of the law and against the effects of underfunding (Petukhov 2001; Voronov & Kholodkov 2000; Voennaia Kollegiia Verkhovnogo Suda RF 1999; Leningradskii okruzhnoi voennyi sud 2001).

Already in 1994, when judicial review of administrative decisions in the military was new, the rate of success in military courts was 52.9%, but as of 1999 the rate had reached almost 87%, and in 2000, 90% (Voennaia Kollegiia Verkhovnogo Suda RF 1999; Petukhov & Zhudro 2000). Not infrequently, the cases involved not just one complainant, but dozens of servicemen, even all the officers in a particular unit. Almost one-third of the violations exposed came from the navy, and many from those serving in the rocket forces. Evidently, the discretion of judges on the military courts was not constrained in dealing with typical benefits cases.

However, the realization of these decisions was not a simple matter. Follow-up complaints from the beneficiaries of court rulings have shown that commanders in charge of military budgets have resisted making payments to service members who have won in court, typically on the grounds that financial resources were not available. Of course, in not making the payments to begin with, the officers were violating the instructions of the Ministry of Defense. But many officers dislike having courts instruct them on how spend scarce resources, and some have contended that "judicial decisions in favor of some servicemen infringed on the interests of others who did not turn to the courts!" (Petukhov 2001).

Note that the published materials on military courts do not mention complaints brought by young recruits about hazing or more generally about the conditions of service or incidents in military life that might have violated human rights. Nongovernmental organizations such as the Foundation "Rights of Mother" or the "Soldiers Mothers Committees" have raised such matters, although not usually in military courts ("Pravo materi" 2002; "Soldatskie Materi Sankt-Peterburga" 2003).[10]

[10] A careful reading of the journal *Pravo v vooruzhennykh silakh* might reveal examples of human rights violations during military service. For more details on the handling of complaints by soldiers, see Petukhov (2002).

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Arbitrazh Courts and Tax Cases

In the mid-1990s, *arbitrazh* courts heard a growing number of suits brought by enterprises against government officials, on such matters as nonnormative decisions (i.e., failures to grant permissions, licenses) and the imposition of fines and fees. Courts heard more than 30,000 such cases in 1997, and the average rates of success varied widely from one city to another (26% in Novosibirsk to 63% in Yaroslavl), averaging in the 40–45% range (Starilov 2001:143–46; Hendley 1998b). At this time, suits by firms against the state, called ''administrative cases'' in the world of the *arbitrazh* courts, represented only a small part of the work of those courts. But a revolution was about to occur.

Over the next few years, disputes over the taxes levied on firms, and even more on the penalties imposed by the tax service for late payment, entered the *arbitrazh* courts in large numbers, at first at the initiative of the taxpaying firms, and then from 1999 also of the tax authorities themselves. According to the new tax code that went into effect in 1999, court approval was required for the imposition of penalties and of the seizure of property to cover tax obligations or penalties (Nalogovyi kodeks RF ot 31.07.1998). Data on tax cases resolved by the *arbitrazh* courts in 1999 and 2000 showed that the share of cases initiated by the state went up quickly from the 20–25% range to 85%. At the same time, the absolute number of cases initiated by taxpayers continued to rise substantially (35–40% per year). The overall number of tax related cases rose from 31,073 in 1998, to 85,334 in 1999, to 138,192 in 2000, and to 188,162 in 2001 (Vysshii Arbitrazhnyi Sud RF 2002; Hendley 2002).

How well did the owners and managers of business firms do when they complained in court about taxes and penalties? Very well, according to a careful study by Hendley (2002). Using unpublished annual reports submitted by the nine *arbitrazh* courts to the Higher *Arbitrazh* Court (including the courts of Moscow city, Moscow region, Leningrad region, and St. Petersburg), Hendley discovered that taxpayers prevailed in 65 to 70% of cases that they initiated in 1999 and 2000. Naturally, there was regional variation: in Sverdlovsk in 1999, the rate of success stood at 54.37%, and in Novosibirsk in Leningrad in 2000 the rate was 82.84%. At the same time, when tax authorities themselves initiated cases, they also tended to prevail, although at a slight lower rate, 60–65%, and on average courts authorized recovery of only 50% of the sums requested by tax authorities, as opposed to 70% of the money sought by private firms (Hendley 2002).

There is no reason to suspect that *arbitrazh* court cases relating to tax disputes were not executed. For tax cases (as opposed to debt collection disputes), the problem lay elsewhere. According to the

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chiefs of the Higher *Arbitrazh* Court, many of the tax cases did not belong in court at all, especially those brought by the tax authorities where the taxpayer did not contest the penalty. Further, a sizeable number concerned "petty cases" involving penalties of 50–100 rubles, again often without any dispute. Already, the *arbitrazh* judges were calling for changes in the new tax code to relieve the *arbitrazh* courts of unnecessary cases (Boikov 2002; Iakovlev 2002; Gosudarstvo i pravo 2001).

In addition to the tax cases in the *arbitrazh* courts, in the late 1990s, the courts of general jurisdiction also began hearing a large number of complaints relating to challenges by individual taxpayers to their treatment by tax officials. In 1999, regular courts heard 83,427 such tax cases, and reportedly provided satisfaction 95.8% of the time (Khamaneva & Salishcheva 2001:36)! To explain these results calls for an examination of actual cases and the political context in which they were heard, but it is clear that those who reckoned that they should go to court had their calculations validated.

For their part, the *arbitrazh* courts also heard conflicts between firms and other parts of government besides the tax authorities, including disputes between firms and regional or local governments. A recent study by Frye (2002) reports that according to a recent survey of Russian businessmen, only 49% thought that the courts could defend them against local/regional government, and 38% thought that courts could assure the implementation of decisions that went against these governments. It is unclear whether these negative views were based on experience or reflected generalized cynicism about the work of government.

Electoral Disputes in Court

As citizens of the United States are well aware, the involvement of courts in electoral disputes may have high political salience and expose judges to political pressure. Yet the designers of Russian electoral law chose to make courts the final arbiters of the many disputes that were bound to arise in a country with limited experience with competitive elections. While in the early 1990s courts became involved in a small number of electoral disputes based on Soviet-era provisions (written during an era of noncompetitive elections), by the end of the decade, the number of electoral disputes had become sizeable. In 1999, a year with elections to the State Duma and some regional elections, the number reached 2,320; and in the first half of 2000, a time of gubernatorial and regional legislative elections, the number stood at approximately 1,700. The challengers to decisions of the various electoral

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commissions did well, achieving success in court 47.6% of the time in 1999 (Verkhovnyi Sud RF 2000a, 2000b, 2001; Vlasov & Sechenova 2002).

Electoral disputes concerned a wide range of subjects, including the setting of elections, formation of electoral districts, and composition of electoral commissions; the composition of voters' lists; the registration of candidates and refusals to register on various pretexts; pre-electoral agitation and campaigns; the financing of elections; counting votes; and determining the results of elections. Of these, the most common were disputes over refusals by electoral commissions to register candidates and decisions to cancel registrations already approved. Arguably, the high volume of these cases resulted from the fact that it was easy to disqualify candidates on technical grounds, including the failure to submit on time and in the proper form any of a long list of documents. Other disputes resulted from a lack of clarity in the various laws governing elections (Okunkov, Krylov, & Postnikov 1999; Abramov 1999; Kniazev 2001).

The practice of courts in handling electoral disputes between 1995 and 1997 was marked by rampant inconsistency in the resolution of analogous cases and the interpretation of electoral law. The inconsistencies stemmed in part from the inexperience of judges in dealing with electoral disputes and in part from the need to render decisions immediately. As a result, a large share of initial decisions was reviewed by a second court (in cassation), and some by a third court as well. The Supreme Court of the RF became deeply involved in elections cases, rendering in 1999–2000 more than five hundred decisions. These decisions have been collected and published, and are available for analysis (Tsentralnaia Izbiratelnaia Komissiia RF 2001). In addition, critics note that judges sometimes became inappropriately involved in the substance of disputes—for example, deciding what the actual vote count was, rather than merely invalidating a decision of the electoral commission (Okunkov, Krylov, & Postnikov 1999:84, 123). Courts were also reluctant to set aside elections even when it had been established after the fact that would-be candidates had been improperly disqualified. As a rule, judges acted rigorously in refusing to cancel an election unless "the violations of law would not permit the conclusion that the electoral results reflected the will of the electors" (Okunkov, Krylov, & Postnikov 1999:126). In a decision early in 2002, however, the Constitutional Court of the RF declared this tough standard unconstitutional and instructed courts to cancel electoral results more readily (Postanovlenie Konstitutsionnogo Suda RF ot 15.01.2002). In so ruling, the Constitutional Court sought to raise the stakes for political manipulation of electoral registrations and deter abuses (Okunkov, Krylov, & Postnikov 1999:126; Nikolaev 2002).

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A crucial question is the extent to which political bias or pressure, say, in favor of the interests of the local and regional establishment, has affected the decisions of courts in electoral cases. It is probable that some of the decisions of electoral commissions challenged in court reflected political influence and that the challenges themselves involved political interests, and no doubt some court decisions at the first instance reflected political priorities. But there is no reason to assume that there has been systematic bias, especially when the results of appeals are taken into account. In fact, in an unusual and exemplary study of the universe of court decisions relating to registration disputes involving candidates in single-member districts in the 1999 State Duma elections, Popova (2002) demonstrated that the outcomes of cases bore no relationship to the political affiliation of the challenger. It made no difference whether or not the claimant was connected to the local political establishment.

Most court decisions relating to electoral disputes were likely implemented, if only because the victors were watching closely and ready to create scandals if the decisions in their favor were ignored or resisted.

The Legality of Normative Acts

In contrast to other areas of administrative justice that involve challenges to individual decisions of officials, judicial review of the legality of normative acts can lead to the rewriting of rules, the suspension of regulations, and even their cancellation. What is at stake is the consistency of laws enacted by different levels of government, and even more the consistency with both federal and regional laws of the huge volume of regulations (orders, instructions, and decrees) issued by the Council of Ministers, the central ministries, and agencies within lower levels of government. As we saw previously, Russian law allowed the review of some, but not all, of these normative acts, but under President Putin there had been a dramatic increase in the number of challenges brought, especially by procurators, as part of the campaign to harmonize the laws and regulations and eliminate inconsistencies (Zhengel 2002). Thus, the total number of such cases rose from 1,636 in 1997, to 3,899 in 1999, to more than 6,500 in 2001. Overall, nearly three quarters of these challenges (from 72 to 75%) were reportedly successful (Verkhovnyi Sud RF 1998, 1999a, 2000a, 2001, 2002).

Many of these cases concerned challenges to the enactments of local governments. This was the case in the Vologda region, where the district courts heard 26 such cases in 2000 and 55 in 2001. The

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bulk of these cases were initiated by procurators, and the rate of success stood around 60% (Vologodskii oblastnoi sud 2002).

The legal database "SPS Konsultant Plius" includes several hundred decisions and determinations of the Russian Supreme Court issued between 1998 and 2002 that relate to normative acts. My reading of these cases (which represent most, but not necessarily all of the Court's rulings on normative acts) indicates that challengers were successful, at least in part, more than one-third of the time. Agencies whose regulations were called into question included the customs agency, the tax service, the transportation authorities, the Central Bank, and the Ministries of Finance, Defense, Labor, Economic Development, and Internal Affairs, and their Soviet predecessors. Challenges were also brought to resolutions of the federal cabinet itself, and between 1998 and 2002 more than forty of these led to rulings at least partly in favor of the challenger. The subjects of these cases included business regulations (regulation of brand names for alcoholic beverages, licensing of production and trade in alcoholic beverages, licensing of the mining and refinement of precious metals and ferrous metal), taxes and fees (measures to ensure that customs revenues reached the state budget, methods of taking fees for compulsory medical insurance, fees for electricity), and matters of compensation (for savings lost in state banks, for citizens who suffered from Chechnya-related displacement deprivations, for servicemen of various categories). Most of these cases were brought not by procurators (who were always in attendance) but by private citizens and organizations of other government agencies. As a rule, decisions of the Supreme Court that invalidated part or all of a normative act were published.[11]

The lower rate of success in challenges to normative acts of central agencies (as opposed to those of lower levels of government) was found as well in the Supreme Court's review of challenges to orders and instructions issued by the Ministry of Internal Affairs in 1999, 2000, and the early months of 2001. A separate booklet devoted to these cases reprints or refers to thirty-eight cases heard in this period (as opposed to thirteen during 1996–1998), and makes clear that in fourteen of these cases (or 36.8%) the challenge proved successful, but not necessarily because of the Court's decision. While in six cases the Court declared a Ministry of Internal Affairs regulation to be partly or wholly illegal, in eight other cases the Court uncovered significant illegalities that had

[11] The Russian Supreme Court decisions on the legality of normative acts of government agencies and the government itself, and the group of decisions invalidating in whole or in part government resolutions, were collected by Alexei Trochev from the database "SPS Konsultant Plius."

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already been corrected during the case, either through amendments or replacement regulations. Some of these illegalities concerned not the substance of the regulations in question but the failure of the Ministry to either register or publish them (legal requirements since 1993) (Chernikov 2001).

The regulations of the Ministry directly or indirectly affected by the Supreme Court's rulings concerned three subjects: the issuing of passports and residency permits, the regulations governing the police, and rules on the conduct of traffic police. Thus, two decisions confirmed and implemented an earlier Constitutional Court decision that a registration permit could not be treated as a requirement for the issuing of a passport. Other decisions refined or challenged the rules of service in the police force, the period of probation, and the system of police discipline. Finally, another group of decisions concerned regulations allowing police to collect fines through force (contradicting the 1997 law on implementation procedures [Federalnyi zakon "Ob ispolnitelnom proizvodstve" ot 21.07.1997] that accompanied the founding of the bailiff service), authorizing police to seize vehicles lacking technical inspections, and placing thirty-day limits on temporary licenses issued when a license was held pending the payment of a fine (Chernikov 2001).

I have little information on the implementation of court decisions invalidating normative acts of government agencies. There are indications that successful challengers to the tax laws and regulations of the subjects of the RF from 1994 to 1997 often did not get their money returned, even though the normative act in question was suspended. This situation may have been corrected in subsequent years, after a decision of the Constitutional Court further chastised subject governments that exceeded their power to tax and new attention was paid to the problem of implementing court decisions (Postanovlenie Konstitutsionnogo Suda RF ot 30.01.2001; Opredelenie Konstitutsionnogo Suda RF ot 9 aprelia 2002 No. 69-O; Opredelenie Konstitutsionnogo Suda RF ot 10.04.2002 No. 107-O; Opredelenie Konstitutsionnogo Suda RF ot 07.03.2003 No. 120-O). Data on losses sustained by the government in tax cases indicated a substantial rise in 1998 and 1999 (Zadvorianskii 1999; VEK 2002). Now it seems to be easier for victorious challengers to gain satisfaction than to ensure the rapid repeal or revision of regulations and to have laws declared invalid.

The Big Picture: The Power of Judges in Administrative Justice

As we have seen, during the 1990s, courts in Russia (general jurisdiction, military, and *arbitrazh*) acquired substantial jurisdiction

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over complaints against decisions of state officials and their issuance of normative acts. The public responded to the new jurisdiction by bringing a large and ever-increasing number of complaints in almost every category. The key questions become the extent to which judges were able to address those complaints impartially—i.e., their discretion, and the degree of implementation of judgments that went against the state.

The statistical data on the outcomes of cases in the late 1990s indicate that for every type of complaint against officials the complainants stood a good chance of victory, and in many instances victory was probable. For general complaints, the rate of success stood around 80%; for complaints in the military, 87%; for tax cases involving firms, around 70%, and individuals, 95%; and for electoral disputes, 48%. Even challenges to normative acts succeeded nearly three-quarters of the time (especially acts issued by lower levels of government). Many of these cases were brought by procurators and were part of the President's campaign for the harmonization of laws.

Rates of success well above 50% may indicate an unusual (but not atypical) situation in which members of the public stay away from court unless their cases are very strong and/or they have a strong sense of grievance. In Russia, as in other post-Soviet states, public attitudes toward the courts remain ambivalent at best, and much of the public sees courts as inefficient and biased, if not also corrupt. People may go to court, but only when necessary or highly likely to produce results. If this is the case, one should anticipate a continuing growth in the number of challenges to acts of state officials in Russia. For in the long run, as the public learns about high rates of success of citizens in suits against the state, it will go to court even more often and its attitudes toward courts will improve. The rapid growth of complaints by members of the armed forces in 2000–2001 regarding benefits suggests that many soldiers realized that, with the shortage of funds, only those who went to court were likely to receive benefits owed to them. Of course, if more people with weaker cases went to court, rates of success might start to decline.[12]

The performance of the courts in these cases suggests that on a global level judges had the discretion to rule against the state. In fact, there were no system-wide legal constraints on that discretion, such as directives from higher courts curtailing either their jurisdiction or the nature of their rulings. Furthermore, the overwhelming majority of the complaints against officials did not matter to politicians or their friends, and an unbiased hearing might be

[12] There were unconfirmed reports that this had started to happen by 2003 (Kornia 2003).

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seen as serving the interest of the state's leaders in holding officials accountable for their acts. Yet for courts in a post-authoritarian state to act consistently on behalf of individual complainants against state officials represented a significant accomplishment, which, if known by the public, would enhance respect for the courts!

It would be naïve not to recognize that in individual cases that mattered a lot to powerful persons on the local level, judges might experience inappropriate attempts to influence outcomes and sometimes accede to them. Although by 2000 the majority of judges in Russia had life appointments, the most junior ones did not. Moreover, the majority of courts still depended for their well-being on supplementary payments or allocations provided by local or regional governments.[13] Most judges were not involved, but as long the chairs of courts controlled case assignments, they could direct to a "mature" judge any case that mattered to a "sponsor" of the court. Some judges, especially on the *arbitrazh* courts, were also susceptible to bribes.[14] But I am convinced that irregularities were less common than the Russian public believes and more likely to occur in cases involving large sums of money than in cases of administrative justice.[15]

The question of implementation of court decisions in administrative justice cases represented the greatest test of judicial power. It was clear that courts in Russia had yet to achieve the generalized legitimacy and support that would move officials to follow their decisions. On the other hand, officials were unlikely to resist implementing court decisions without good reason. The difficulties encountered in the implementation of decisions of the Constitutional Court often involved power conflicts, and those in debt collection and alimony cases involved a shortage of funds or the ability of respondents to hide assets. Neither of these applied to most court decisions in response to citizen complaints, and there is no reason to suppose that officials failed to comply with them. In fact,

[13] In 2001, President Putin approved a five-year plan to dramatically increase federal spending on the courts to, among other things, reduce, if not eliminate, financial dependency on local governments. The program of new spending is coordinated by the Ministry of Economic Development and Trade rather than directly by the Judicial Department (Pravitelstvo RF 2001; Solomon 2002).

[14] The subject of corruption in the courts is a difficult question that deserves special attention. One of the best treatments to date is Eniutina (2001), which defines corruption in a broad way to include inappropriate influence on judges from governmental officials that do not have a monetary component. Her article contains many examples of different kinds of judicial corruption but does not resolve the question of their frequency.

[15] On the reality and appearances of judicial misconduct and mechanisms of accountability, see Solomon (2002). On the problem of public perception of courts in Russia, see Solomon (2003b). Frequently, polls of public opinion in Russia have not asked the public to distinguish corruption of judges from that of police or between judges at particular courts. A partial exception is the recent study of corruption conducted by INDEM (2002).

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in contrast to the problems of implementing constitutional decisions and commercial awards, the press hardly mentions officials' resisting court decisions relating to media acts or omissions. The one exception is decisions of military courts on benefits and payments, which, as we have seen, military administrators were loathe to supply at the expense of other spending priorities. In electoral cases or tax cases of large value, officials who lost at trial routinely appealed decisions to higher courts. They may at times have found ways to evade negative rulings, but they did not resist systematically.

Finally, there is the matter of compliance with decisions rendering regulations and laws inoperative because they contradict other laws or more authoritative normative acts. One might expect resistance to some of these decisions, especially those with political connotations (for example, relating to the laws or instructions of republics such as Bashkortostan and Tatarstan that resisted central rule) or economic significance (for example, canceling local taxes, as we have seen, or protectionist rules that support a regional or local economy). At the same time, in 1999–2002 a significant portion of the cases against normative acts were brought by procurators as part of Putin's campaign to harmonize the laws, and reporting requirements prompted procurators to monitor implementation of the relevant decisions. Remember that implementation means not only not applying the act in question but also rewriting or repealing it Imagine, for example, the incomplete execution of a controversial ruling, such as the Supreme Court's decision in December 2000 that authorities must process passport applications not only from persons with permanent residency in their districts but also from those with temporary residence permits (Reshenie Verkhovnogo Suda RF ot 29.12.2000 No. GKP-1287). Apart from the particular case, how easy it would be for passport officials in particular localities to refer applicants back to their place of permanent residence (if they had one).

Conclusion

In their first ten years, the courts of the RF developed a significant jurisdiction and sizeable caseload in administrative justice, including a wide variety of official actions that might infringe on the rights of citizens. In handling this caseload, judges had sufficient discretion to rule against state officials most of the time, and the bulk of decisions in cases challenging the actions of officials and the legality of regulations and laws were implemented (a higher proportion than of constitutional and commercial rulings). Through the prism of administrative justice, courts in post-Soviet

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Russia had gained considerable power, enough power to explain the concern with the accountability of judges demonstrated by President Putin in 2000–2001 (Solomon 2002).

To complete the picture of judicial power in Russia would call for a similar analysis of constitutional jurisprudence (the work of the Constitutional Court of the RF) and of the handling of high-stakes business disputes by the *arbitrazh* courts. Moreover, within the realm of administrative justice it would be desirable to construct a sociological portrait of complaints against officials, or to determine for particular courts in particular locations the type of complainants, (socioeconomic status), officials, subjects, decisions, and implementation. From such data one might then determine whether certain officials were protected by the courts and gain a fuller picture of biases in judicial decisionmaking and obstacles to the implementation of court decisions.

It would also be instructive to compare the Russian experience of the expansion of judicial review of administrative acts with that of other post-Communist countries, especially those of Central and Eastern Europe, many of which had well-developed traditions of administrative justice from the pre-Communist period and had begun reviving judicial review starting in the 1960s (Oda 1984; Kuss 1989). But one should not forget that the challenge faced by Russia (and other post-Soviet states) was qualitatively different. Russia was subjecting public officials to court scrutiny on a broad scale for the first time in its history, a history in which no *rechtsstaat* had ever existed and which for a long period denied the validity of the concept. Viewed in this context, the achievements of the first decade of post-Soviet Russian administrative justice are substantial.[16]

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[16] Another post-Soviet country to watch is Ukraine, which in its new law on court organization of March 2002 authorized the creation of a Supreme Administrative Court and which began experimenting with "model" administrative courts (Fakty i kommentarii 2001). Note that in 1999 the regular courts in Ukraine heard 28,837 cases of complaints against the actions of administration or officials, roughly proportional to the number heard in Russia (Stefaniuk 2000).

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