From the Legal Custom to the Court of Law: Specifics of the Judicial Reform Implementation in Siberia (1864-1896)

February 2003

LL File No. 2002-11983
LRA-D-PUB-001577
This report is provided for reference purposes only. It does not constitute legal advice and does not represent the official opinion of the United States Government. The information provided reflects research undertaken as of the date of writing. It has not been updated.
After the reform of 1864 was implemented in the Western part of the Russian Empire, the task of the Government was to extend legal uniformity to Siberia, to overcome the population's legal nihilism, and to stop the tradition of out-of-court dispute resolution. These goals were achieved through a set of measures, which included the attraction of civil servants to Siberia; the adoption of special legislation that took Siberian specifics into account, decreasing the role of courts for native and nomadic people; and the prevention of delegation of judicial power to police. Legal acts adopted in the Russian Empire between 1864 and 1896 improved the judicial system and simplified the execution of justice in Siberia. Together with the administrative reform and the changes in family and tribal relations, these measures prepared the implementation of the judicial reform in Siberia.

1. Judicial Reform of 1864 and Siberian Legal Institutions

The judicial reform of 1864 was one of the most important events determining the development of the Russian Empire in the second half of 19th century. As result, the courtroom was transformed into "a solemn cathedral, where the sacrament of justice, humanity, and mercy was performed." However, for millions of Imperial Russian subjects in Siberia, the judiciary remained unchanged since the administrative reform of 1822. Western and Russian historians have primarily concentrated on the impact of judicial reform and the role of the reformed courts in the administration of justice. The process of the reform and adjustment of Siberian judiciary to national standards remained outside the scope of contemporary legal and historical research.

The entire history of juridical institutions in Siberia shows the Government's search for ways to modify Siberian courts, which were the instruments of rusification of the territory and implementation of official policy. The Government did not intend to implement the Court Charters simultaneously in all provinces of the Russian Empire. The basic Provisions of Judicial Transformation in Russia, adopted on September 29, 1862, stated that the procedure for the enforcement of the Court Charters would be

---

3 ZHURNAL MINISTERSTVA IUSTITSII, 1862, No. 10, at 1-71.
determined by Russian legislation on a case-by-case basis. The chronology of the adoption of major decisions in this field shows the gradual and cautious approach of the Government to the introduction of new judiciary. The judicial system that existed in Siberia after the reform of 1864, could not regulate the relations between the center of the empire and its Eastern outskirts. Because the Court Charters of 1864 excluded Siberian provinces from its jurisdiction, the Governor Generals of Siberian provinces kept all functions of executive and judicial power and put courts in a position subordinated to their administrations. Special legislation adopted for Siberian provinces also supported the arbitrariness of local chiefs. However, the ongoing changes affected the courts in Siberia and those who depended on their rulings. In the third quarter of the 19th century, justice institutions in Siberia received only scant treatment in statutory law. They were reformed and brought into conformity with the national judicial model in the latter part of the century in order to create adequate legal mechanisms for new forms of property and pursue traditional social and political goals. Descriptions of court trials, statements of the litigants, and internal documents of Russian government authorities (e.g., Governing Senate, Ministry of Justice, State Council) reflect the work on reforming courts and court procedures in Siberia.

Such novelties as courts with jurors, election of the justices of the peace, defense attorneys, independence and irremovability of judges, which were introduced by the reform of 1864, were not extended to Siberia. Before the 1880s, criminal and civil provincial (gubernskie) court chambers and district (uezdnye) courts were the leading judicial institutions in Siberia. Magistrates were the courts for the city population, and commercial courts were created later for arbitration in business disputes. The district court was the court of first instance for small criminal and civil cases of all categories of population, except of city people. District courts were in charge of zoning oversight, local fiscal control, and notary activities. Together with local police, district courts introduced owners of the possession into operation.

The inquisitorial criminal process was based on the theory of formal evidence, and usually the case entered the chancery of the court after being investigated by police. The secretary of the court prepared a detailed description of the case, explaining the positions and arguments of the parties, citing reference sources and relevant laws. Parties or their representatives had to sign this document. Then, the secretary reported the short version of the case to the court. Court sessions were held in an isolated room, access to which was limited to the judges only. As a rule, several cases were resolved during the court session. The civil process was based on the same principles and differed from the criminal in some formal details. Court rulings could be appealed in higher courts, including the Governing Senate. Often, cases were given to an administrative agency for overview and revision.

---

4 M.G. Korotikh, SADOEREZHAVIE I SUDEBNAYA REFORMA 1864 GODA V ROSSIY 53 (Voronezh 1989).
5 N.P. Eroshkin, ISTORIYA GOSUDARSTVENNOI UCHEBEZDENII DOREVOLUTSIONNOY ROSSIY 179 (Moscow, 1983).
Courts of verbal confession (слова́нные расправы) tried cases when the native or nomadic people of Siberia were involved. The tribal administration served as a court of first instance within a tribe. The Agency for Native People Affairs (инородная управа) served as the appellate court, and the local community police (zemская полиция) had the jurisdiction over the disputes between people from different tribes and/or localities. All criminal cases were included in the jurisdiction of the local community police. The investigation of these cases was conducted under simplified procedural rules, and the assault and battery in regard to the accused outlawed in the European Russia were not only allowed here but strongly supported by local customs. The only requirement was that the accused person who was beaten during investigation should survive at least three days after the beating to justify that methods of investigation did not cause his/her death.⁶

The backgrounds and experiences of pre-reform judicial personnel prevented them from commitment to the integrity of the law and from devoting their lives to the legal service. Considering such service onerous, local residents generally tried to avoid any contacts with the justice system. The structural maze through which an interested person would follow, required a significant investment of time and money in order to pursue the case. The collection of documents, petitions, and depositions from litigants; the preparation of reports by court scribes; and the review of these materials by several courts, which could continue for years were beyond the comprehension of a regular Siberian brought to the court. Bribery and assistance of well-connected persons were used to expedite the resolution of the cases. Disreputable individuals serving as surrogate attorneys undermined the respect for the court also. A systematic study of Imperial law was not generally available at this time. The scarcity of published sources of law and of specialized legal literature and the limited extent of public discourse on juridical questions contributed to the application of customs and traditional forms of punishment more than codified laws.

An exception was the initiative of the Irkutsk provincial court staffers who, in October 1861, initiated so called “juridical evenings” where legal journals and monographs were read and the most interesting court cases were discussed.⁷ The issue of legal education in Siberia was of special interest to the attendees. For example, at a meeting held on September 19, 1863, participants discussed the necessity of mandatory teaching of laws and legal science to young men in public educational establishments, and suggested the addition of an extra year to the curriculum of Siberian gymnasiums and dedicate this year to legal training. The establishment of an Attorney’s School in Irkutsk was proposed also.⁸ Later, legal societies of Eastern Siberia were established on the basis of these evenings. The issue of judicial transformation in Siberia became even more acute after the approval of the Basic Provisions on September 29, 1862. This

⁶ N.N. Kostrov, ИСТОРИЧЕСКИЕ ОБЫЧАИ КРЕСТЬЯН-СТАРОЗИЛОВ ТМСКОЙ ГУБЕРНИИ 37 (Tomsk 1876).
⁷ E.P. Karnovich, ОСОБЫЕ НАШИХ ПОРЯДКОВ АДМИНИСТРАТИВНЫХ, СУДЕБНЫХ И ОБЩЕСТВЕННЫХ 64 (St. Petersburg 1873).
⁸ Id. at 68.
problem was intensively debated by local and national Russian newspapers, and, during the next 30 years, the Government continued to work on the improvement of the Siberian judiciary and the expansion of the legal reform.

2. Recommendations of the Commission on Transformation of Russian Judicial Institutions for Siberia

In 1867, a Special Department was created at the Commission on Transformation of Judicial Institutions in Russia. The department was chaired by Mr. V. P. Butkov and included primarily those who worked in Siberia or who were familiar with the Siberian affairs through their civil service. Suggestions of the Special Department were discussed at the general meeting of the Commission and then transferred to the relevant ministries and heads of Siberian administrations. The major disagreement in the Commission was about the election of the justices of the peace and the introduction of courts with jurors. Taking local specifics into account, some suggestions related to the court for native people and the court for people in exile were also brought forth.9

The election of justices of the peace was complicated by absence of gentry and local communal institutions (zemstva). Some recommendations were suggested to permit the election of those who received state pensions or dividends in a particular amount because it was important for the justice of the peace to be “personally interested in preservation of order and justice, and to have people’s trust due to personal characteristics rather than to be a property owner.”10 In regard to the local community institutions, it was suggested to introduce them immediately or to organize electoral meetings on some other grounds.

The majority of the Commission’s members favored the creation of courts with jurors in Siberia. They believed that the general level of public development allowed the introduction of this institution with lower requirements. In support of this position, they stated that ethnic Russians, who form the majority of the population, are legally equal to the rest of the Empire’s population. In regard to the distances, it was mentioned that in the populated areas distances were no bigger than in the Western provinces and the remoteness of the courts can be compensated by the creation of local courts.11 Special lists of on-call jurors, including military personnel and state servants, were recommended for remote locations and for the courts for native people. Because lower courts in the Iakutsk, Amur, and Primorsk regions were so far away from the court chamber in Irkutsk, the application of criminal procedure there was complicated. Some problems were associated with the application of law to those who were living in gold mine villages. These people were exempt from the jurisdiction of general courts being regulated by the Mining Charter. Mining district courts had been in existence since the late 18th century in the gold

---

9 See, M.N. Ignatieva, UPRAVLENIE V SIBIRI VO VTOROI POLOVINE XIX Veka (Iakutsk 1995).

10 SANKT-PETERBURGSKIE VEDOMOSTI, 1867, No. 329, at 1.

11 SANKT-PETERBURGSKIE VEDOMOSTI, 1867, No. 330, at 1.
mining areas along the basins of major rivers and extended their jurisdictions to all
gold mining personnel and their families. Proposals to eliminate these separate courts
and combine them with the general justice of the peace system were not supported by
the Ministry of Justice.  

The moral and religious conditions of the population such as extensive illiteracy,
indifference to social problems, and the lack of intentions for spiritual development
complicated the implementation of the judicial reform. Because law was applied to
situations which were not foreseen by legislation, members of the Commission believed
that the introduction of the bar in Siberia would help to change people’s legal conscience.
However, because very few people in Siberia had the required higher legal education
and five-year long experience of working in the judiciary, it was recommended to decrease
the mandatory educational level for private attorneys. Under section 11, article 19,
and section 11, article 33 of the Siberian Statute (Uchrezzhdenie Sibirskoe), administrative
staff of the state authorities in Siberian provinces had the right to be involved in
investigations, appeal court decisions, and submit protests to provincial procurators
on behalf of private individuals. Town and communal police officials were eligible
to participate in the trial also. It was expected that these people might serve as
potential private attorneys.

The Commission recommended that the court reform be conducted in Siberia and
extended the jurisdiction of the Court Charters, taking the suggested amendments into
consideration. Similar proposals were drafted by the Ministry of Internal Affairs, which
recommended the introduction of the institution of court investigators in Siberia.  

No decision was made on this issue. In 1870, the Special Department of the Commission
was terminated. Without interfering in the Commission’s work, the Ministry of Justice
attempted to implement some preliminary measures aimed at the improvement of the judiciary
in Siberia. It summarized and reported to the Second Department of the Emperor’s Chancery
relevant opinions of the Governor Generals of Siberian provinces, and in November 1867,
the Ministry drafted the Temporary Rules on Improved Court Procedures and Procuratorial
Supervision of Judicial Establishments in Siberian Provinces.  The Rules provided for
general exemptions from the Court Charters, especially related to the appointment of
judges, due to the absence of local communal institutions in Siberia, which had to elect
judges in other Russian provinces.

3. Specifics of Customs and Legal Conscience in Siberia

The implementation of the reform required taking into account the existing legal
customs because the Siberian society consisted of several stable isolated social groups,
such as old time Orthodox residents, old believers, and native and nomadic people. Each

---

12 MATERIALY PO SIBERNOI REFORME V ROSSIĬ 1864 GODA 75 (vol. 244, St. Petersburg 1896).
Supra note 11.
13 ZHURNAL MINISTERSTVA IUSTITSII, 1867, No. 12, at 19-24.
group kept and preserved its customs, including legal procedures. After the reform of 1861, these groups were supplemented by resettlers from European provinces, forced migrants from Russia's Northwest, and exiles from all over Russia. Even though these people were able to dilute the legal views of the old timers with their knowledge of law, they started to follow the existing customs and rules soon after their arrival in Siberia. Definitions of morality and law were completely separated in the legal conscience of the Siberians. Committing a crime was not considered as something blamable. Kostrov cites conversations among the Siberians approving the making of fortunes through murder or robberies. According to a popular saying, it was more profitable to kill a vagabond than a squirrel because the squirrel's skin could be sold for 15 kopeks but stealing from a vagabond guaranteed at least 1 ruble.

Legal conscience approved the committing of crimes and was lenient toward criminals. Behavior defined as criminal according to the law was not considered illegal by the population. Severe circumstances were not taken into account neither by the judges nor by the people participating in peasant meetings discussing submitted claims. Regardless of whether a crime was committed at night or day, with or without the application of force, with or without break-in, the punishment was always the same. Courts did not differentiate between what later would be defined as crimes, misdemeanors, and administrative violations. The same procedures and customs in applying punishment were used in prosecuting real crimes and acts recognized as mean tricks or mockery. Among them were smashing windows, cutting off tails of a cow, hanging a dead chicken in the front of the house, or throwing tar on someone's door. Adultery, incest, and lewd activities were recognized as crimes only after 1880. Before then, local courts fined the accused in such activities, not for their indecent behavior, but for diverting the attention of the court to such minor things. Usually, the authorities tried to limit the indecent behavior of the population to the borders of their settlements, investigating the cases when people from different settlements were involved.

Only aimless crimes were disapproved by public opinion. The public was very liberal toward prosecuting criminals, and codified crimes always provided for much stronger punishment than judges applied. Such crimes as assault or sexual crimes were considered as prank. For example, in June 1866, a local court in Tomsk province tried a case of a local man accused of the rape of two women. A peasant met two women in the forest and threatening to kill them ordered them to perform sexual act with him. Later, during the trial, the accused stated that he was drunk and wanted just to scare the women without the intention to rape them. The court found the peasant not guilty because, as it was stated in the ruling, the accused did not force these women, and both women performed

---

15 Supra note 5, at 67.

16 D. Ia. Samokvasov, Sbornik Obshchego Prawa Sibirskikh Inorodtsev 65 (Warsaw 1876).

17 Otechestvennye Zapiski, 1872, No. 10, at 477.
sex with him without resistance.¹⁸

Until the 1880s, special regulations that granted wide discretionary authority to state administrators, peasant communal bodies, and tribal leaders superceded the general provisions of Imperial law. The purpose of dispute resolution was to preserve social order and to enforce officially sanctioned religious and public morals rather than to protect individuals, especially women and children. Court statistics show that court rulings always favored men. Acquittals of those who forced their wives to perform sex for money with other men were usual and, as a rule, courts did not accept demands for the prosecution of rape related crimes citing the lack of evidence. Even if rape was prosecuted, the accused was requested just to pay three to five rubles to the victim. Kostrov reports about an unusual case heard in Barnaul when an individual accused of raping a woman was brought to justice. The rarity of the case is that the formal investigation started after the justice of the peace sentenced the accused to beating by birchrods and paying the victim a 25-ruble fine. The district administration protested the sentence saying that this would create a bad example for the victim's fellow village women of getting rich through being raped and ordering criminal prosecution of a man.¹⁹

While defining the authority of husbands and parents broadly and their obligations vaguely, Imperial law imposed few constraints on the exercise of matrimonial or parental authority being under the influence of the tradition of obedience of children to their parents and wives to their husbands inculcated by the Orthodox Christian moral during past centuries. To support the broad, general authority of older generations, judges usually granted husbands and parents specific powers to control the activities of their wives and children. Deciding cases on separations from parental households with the purpose to conduct independent business, regular peasant courts demanded that such separations depended on parental will, and unwarranted leaving of the parental house was punished by five strikes with birchrods. Children were barred from bringing legal actions against their parents except in narrowly defined circumstances.

Customs did not determine major civil law institutions and were applied to particular situations. For instance, if a down payment for a sold house was paid, but the buyer was unable to pay the rest of the amount, the house was supposed to be returned to the seller, and the down payment was counted as a rent paid by the buyer for the time while living in the house. Partnerships were created according to the existing customs also. Usually, all partners provided equal contributions and had equal shares. Income was divided evenly on a monthly basis. The person who administered the business was eligible for remuneration. Economic disputes often ended with the reconciliation of the parties and their traditional hand shaking. A hand shaking with witnesses was considered as a legitimate conclusion of a contract. The court intervened when problems with the execution of the contract appeared. Sometimes, a breach of contract could be punished

¹⁸ Supra note 5, at 94.

¹⁹ Supra note 5, at 67.
by a detention for a term of imprisonment up to several days.20

Decisions of local (volostnye) courts show that the legal customs traditional for Orthodox old resident peasants were very similar in different regions and provinces of Siberia. Even though particular situations and individual cases differed, the courts and arbitrators of the peace (mirovye posredniki) used similar customs all over Siberia to make their decisions. Rulings of the peasant meetings were based on customs accepted by local people. The influence of these customs was so strong that they were applied in cases when resettlers from the European part of Russia or Siberian native people were tried by the local justice.

4. Application of the 1864 Reform's Principles in Siberia Before 1896

Despite significant differences in the application of law in the European part of Russia and in Siberia, some principles introduced by the 1864 reform were already known in Siberia and affected trial procedures, activities of judges, and people's involvement in justice, making them receptive to future changes. One such principle was the broad judicial interpretation of law. Even though formally this principle was introduced after 1864, and was not officially established in Siberian courts, local judges and officials who performed judicial functions always interpreted the law according to the local traditions, customs, and understandings of the population. Similarly, public hearings and adversarial procedure, which replaced secrecy and inquisitorial formalism in European Russia, were already known in Siberia because of the close connections inside the community, good knowledge of each other, and people's involvement in internal affairs. Geographical conditions were a factor also. If an individual lived more than 200 miles away from the court location, he could be officially excused from personally appearing at the court session. In such cases, the trial in absentia was allowed and the judges could use written statements, evidence, depositions, etc.

The Siberian population was accustomed to informal participation in the hearings. As a rule, neighbors were almost always present during the trial, they expressed support to one of the parties and interfered with the hearing by their comments and statements. Often, the people's involvement was so active that judges had to use their right to remove an individual from the court session for disruptive behavior or impose fines in the amount from 25 kopeks to 3 rubles for disrespect of a judge.21 Although no trial by jury was established in Siberia, public interference in the court's decision making, including participation in determination of guilt, forced local people play the role of jurors, excluding the possibility of introducing a universal punishment. During all these years, corporal punishments were actively used in regard to the accused in insults, assaults, card games, indecent behavior, violation of family relations, thefts, and other crimes. Strikes with birchrods were used as a form of punishment for a variety of cases, and the number of strikes was exclusively at the discretion of the judge without

20 O.A. Avdeeva, SIBERIANSKAIA SISTEMA VOSTOCHNOI SIBIRI V XVII-XIX V.V. 156 (Irkutsk 1999).
21 D.E. Lappo, PRESTUPLENIIA I NAKAZANIIA PO STEPNOI PRAVU SIBIRSKIH KOJEVYKH INORODSEV 19 (Krasnoiarsk 1905).
consulting with the guidelines. Public involvement did not improve Siberian justice, and people in Siberia, as nowhere else, acted in ignorance or violation of the law or circumvented it when desirable and possible.\textsuperscript{22}

Promoting the idea of further codification of family and civil relations, authorities intended to be involved in issues of gift giving, inheriting, and bequeathing and to control the fulfillment of the obligation to register all business relations with the administration in the prescribed way. In 1869, a single peasant Kopylov of Tomsk province, let another peasant from the same village to live in his house as an adopted son and promised to leave the household to him upon Kopylov’s death. After staying at Kopylov’s house for seven months, the young peasant and his family of four left him. Kopylov petitioned the court to compensate him the expenses related to the accommodation of the young peasant family. The court ordered the young peasant to pay Kopylov half of the requested amount and imposed corporal punishment on both of them because they neither concluded a written contract nor registered it with local (volost) authorities. Similarly, if an adopted child was sent away after living for a while with the foster family, the child was eligible to receive monetary compensation in the amount of the salary that would have been paid during the same period of time to a worker hired to help with housekeeping.

The uniformity in the application of law was a major concern for the state authorities. Regulating in situations often contradictory and unforeseen by legislators required extra flexibility from judges who were often deprived of the possibility to consult statutes and decisions of higher courts. During the first decades after the judicial reform, the opinions and decisions of the Senate’s Cassation Departments did not influence judicial activities in Siberia. Government publications, such as Pravitelstvennyi Vestnik and Zhurnal Ministerstva Iustitsii, and specialized legal journals were not easily accessible in the region. Commentaries on decisions of higher courts published in newspapers usually served as the main source of legal information for those who administered justice in Siberia. Later, uniformed commentaries to the statutory law became known and more often used by legal practitioners, and precedents were introduced into judicial practice despite the fact that they did not have binding force. That allowed, in the 1890s, the application of established legal concepts to different legal relations and guaranteed the prescribed functioning of the judicial system in different parts of the country.

Even though Imperial law applied generally to all subjects of the empire, numerous exceptions were made for different categories depending on the regional specifics and ethnicity, religion, and social status of an individual. For the majority of Siberia, the law specified special provisions that reflected its local customs and conditions of previous political status. Nomadic people and peasants were subject to their own laws and/or customs to a greater or lesser extent. This authority of local customs and laws was challenged in the late Imperial period as centralized state agencies, including

\textsuperscript{22} Friedhelm Kaiser, DIE RUSSISCHE JUSTIZREFORM VON 1864–92 (Leiden, E.J. Brill 1972).
courts, extended its power in new territories. Peasantry and native population remained subordinated to their own courts and customs in most cases involving domestic village life. Outside of their communities, villagers generally fell under the jurisdiction of the new courts.

Minor cases were to be heard in the settlements where they originated by a single justice of the peace appointed by the Minister of Justice. The court district usually coincided with the borders of the administrative district (uezd). Unlike in other Russian provinces, justices of the peace were not elected by the newly created organs of local self-government. Even under the Temporary Rules of 1896, they had to be appointed by the Minister of Justice and all cases had to be resolved without participation of jurors. General Russian legislation required that justices of the peace be no younger than 25 years of age and possess either an adequate education or appropriate experience. The 1896 Temporary Rules added to these provisions such specific requirements for district justices of the peace in Siberia as belonging to local population, possessing university or secondary education, which could be substituted by the passage of required exams, or at least three years of service in the positions where they could become familiar with the practice of handling court cases. Because there were only three gymnasiums, two seminaries, and one military school in Siberia, some proposals suggested the recruit of justices from those who served in administrative positions equal to the grade 8 of the civil service. This proposal was not accepted by the Government. Honorable justices of the peace were elected based on their social status, respect within the community, and involvement in public affairs. All other cases were included in the jurisdiction of territorial courts. Decisions of the court of appeals were not subject to further appeal on substantive grounds. But at a request of litigants or a procurator (in criminal cases), some procedural issues could be reviewed by the Civil or Criminal Cassation Departments of the Governing Senate.

The implementation of the principle of judicial independence had its Siberian specifics also. Despite the fact that the 1864 reform secured the tenure for Russian judges, the transfer, removal, promotion, and dismissal of judges in Siberia depended on the Minister of Justice (1896 Temporary Rules, art. 4). The appointment of Honorable Justices could not exceed the period of three years and the term of ordinary judges was not determined. The Government had to use this procedure because unlike in the European part of Russia, there was no prepared judicial staff in Siberia. The majority of judges continued to work since the pre-reform time. The procedure for filling judicial vacancies in Siberia differed from the process adopted for the rest of the empire. The Minister of Justice was not bound by the requirements of the 1864 Charters when appointing judges in Siberian provinces. In the absence of the nobility, vacancies in the juridical offices were filled by city population, tradesmen, and representatives of other social groups who had no professional or state service experience.

Some flexibility in the removability of judges allowed the Government to appoint new people to judicial positions in Siberian courts. Changes in training, status, and occupational conditions produced a corps of jurists who viewed the law as a noble calling and distinct body of knowledge and rules with the latter requiring specialized expertise
to comprehend and apply. These new appointees had to substitute those who for generations
did not know written laws and built legal relations according to their understanding
of truth and justice based on their way of life. However, decisions made by judicial
personnel in the second part of the 19th century continued to reflect the needs of a
predominantly agrarian society and defined the formal hierarchical relationships and
obligations within and between different social, ethnic, and religious groups.

5. Proposed and Implemented Reform Measures

Every step of the reform was carefully assessed by the Government. The presence
of forces, which could implement the reforms and preparedness of the society to accept
changes was throughly considered. The reforms of the 1860s were not complete and created
a number of social and political conflicts. For example: the equality of the Russians
before the court was not in conformity with the existing social inequality; the popular
representation in the court was not supplemented by the representation in legislative
authorities; the declared irremovability of judges distinguished their status from those
of other civil servants. That required changes and amendments to the Court Charters
and careful adjustment of the declared principles to the specifics of Russia’s regions.
Analysis of the legislative work in regard to the application of the court reform in
Siberia shows gradual implementation of a judicial reform in a multilevel and multiethnic
country.

The immediate introduction of the uniformed political and legal system was impossible
in Siberia because reforms coincided with substantial demographic changes in the region.
The reform of 1861 freed more than 20 million peasants, many of whom moved to Siberia
from different regions of the Empire in search of free land. They were joined by a strong
foreign element represented by Poles, Lithuanians, Germans, and Caucasus forcefully
sent to Siberia to conduct the state service, and assimilating native ethnic groups
of Khanty, Mansi, Tatars, Altai, and Evenki people. In addition to the adaptation to
Siberian civic conditions, these people had to mix with aboriginal population, old-timers,
and resettlers to finish the primary agroindustrial exploration of the region, to introduce
a relatively high level of material culture, and to begin to assimilate local ethnic
groups. The work of the courts for exiles in Siberia demonstrates the extension of
the general justice system. Before 1860, these courts resolved up to 70 percent of
all criminal and civil cases when former prisoners were involved. In the 1860s this
rate dropped to 55 percent, and in 1890 most of the exiles were tried by the courts
of general jurisdiction. Only 26 percent of cases went to the specialized courts on
matters of exiles. It should be added that during the researched period, no political
matters were decided by Siberian courts and criminal juridical statistics remained on
the same level for the entire region.13

The legislative activity aimed at the improvement and transformation of the Siberian
judiciary was especially intensive in the 1880s. The Ministry of Justice strongly

13 Supra note 5, at 63.
supported the adoption of the required changes. The position of the Ministry was reflected in its report to the Emperor's Chancery of February 20, 1883, which stated that “even transitional measures adopted in the European Russia before the introduction of new judiciary did not touch Siberia.” The Cabinet of Ministers was well informed about the problems associated with the Siberian courts. On August 18, 1881, the Russian Government's Chief of Staff submitted to the Minister of Justice extracts of the annual report of Tobolsk Governor Lisogorsky who recommended “at least to increase salaries of the judicial personnel in Siberia if the substantial court reform is still impossible.” Salaries of court officials in Siberia had not changed since 1856.

In December 1882, the Ministry of Justice adopted the Temporary Rules on Improved Court Procedures in the Previously Established Courts in Siberia. The Rules extended the jurisdiction of Regulations of October 11, 1865, and March 10, 1869, which determined the handling of cases in the courts created before the Court Charters entered into force. Under the Rules, district courts of the administrative circuits within the Siberian provinces received the rights of the provincial courts in cases of felonies and misdemeanors. This decision applied to all provinces except Tomsk and Tobolsk, which were excluded from the West Siberian General-Gubernatorship under the Law of May 18, 1882. Based on the provisions of this law, the phrase “Western Siberia” was excluded from legal acts and substituted by Tomsk and Tobolsk Provinces. The name of the Tobolsk district court, which encompassed Tobolsk and Surgut judicial districts, was changed to the Tobolsk-Surgut Court District. The civil service in these two provinces was subordinate directly to the ministries and other relevant executive agencies in St. Petersburg.

According to this Law, administrative functions toward courts and court employees exercised previously by the Governor General were transferred to the Ministry of Justice, and the position of a Deputy Regional Procurator for Sakhalin Island, subordinate to the Primorsk Regional Procurator, was established. However, because of financial restraints, the introduction of the Rules was postponed until January 1, 1884.

The Temporary List of Staff Members for Court Establishments and Procuratorial Supervision in Siberia was approved by the Minister of Justice together with the Temporary Rules. This document provided for the liquidation of the town courts in Krasnoyarsk, Irkutsk, and Eniseisk, and magistrates in Achinsk, Nerchinsk, and Verkhneudinsk. The duties of these institutions were given to the relevant district courts. The election of assessors, whose role was to observe investigation and trials in district courts for traders and town people, was outlawed. Two new provincial courts (Tomsk and Tobolsk) were created. Each of them encompassed 15 district courts. Both courts were supposed to have 22 court investigators. Two provincial courts were established in Eastern Siberia.

24 Supra note 12, at 31.
27 RAZVITIE RUSSKOGO PRAVA VO VTOROI POLOVINE XIX-NACHALE XX VEKA 211 (Moscow 1997).
Thirteen district courts and 16 investigators were subordinate to each of them. Some of these courts, e.g., the district court in Vladivostok, started to work even before 1884. 28

On March 22, 1884, the State Council decided that the major condition for the improvement of justice in Siberia would be the introduction of the institution of court investigators. The issue was included in the agenda of the State Council under request of the Governor General of Eastern Siberia Anuchin, who asked Russian authorities to speed up the implementation of judicial reform in Siberia in order to separate judicial and executive powers, to liberate state institutions from unusual burdens to conduct justice, and to prepare conditions for the administrative reform. 29 In June 1884, the State Council ordered to exclude the Baikal, Amur, Primorsk, and Vladivostok regions (oblasti) from the jurisdiction of the Main Department for Eastern Siberia and charged the newly appointed Amursk Governor General with the supervision of courts on the territory of the province (gubernii); therefore, the need for a new law that would regulate the activities of the judiciary in Siberia identically to the rest of the country became even more important. The document entitled “The Temporary Rules and Changes to the Judicial System and Court Proceedings in Tobolsk, Tomsk, Priamursk Provinces and Eastern Siberia” was drafted by the State Council and became a law after the Emperor’s confirmation on February 25, 1885. 30

This Law eliminated the positions of judicial clerks (striapchie) in provinces, regions, districts, and towns. Court secretaries in Tobolsk and Tomsk provinces, investigative bailiffs, and police inspectors on criminal and civil matters were excluded from the juridical staff also. The establishment of procuratorial control over the judiciary according to the general gubernatorial organization 31 was another novelty introduced by the law. Newly created positions for deputy provincial and regional procurators helped to unify the prosecution in Siberia with the rest of the country. Procurators were appointed for the Amursk and Primorsk regions, and procuratorial staff possessed the rights and duties prescribed by articles 276-287 of the Court Charters. 32 General supervision was conducted by the Minister of Justice, higher courts, provincial procurators, and their deputies. Personnel issues were resolved usually by the Minister of Justice. At the same time, the Law allowed the Irkutsk and Priamursk Governor Generals to make decisions regarding the lay assessors of district courts and court investigators. Judicial officers in the district courts of the Iakutsk and Priamursk regions were transferred to the jurisdiction of provincial courts, and the appointment and dismissal

28 Sbornik Glavneishih Ofitsialnyh Dokumentov po Upravleniiyu Vostochnoi Sibiri 115 (Part 1, Irkutsk 1884).
29 Ministerstvo Iustitsii Za Sto Let 1802-1902 153 (St. Peterburg 1902).
30 Materialy po Sibirskoj Reformie v Rossii 1864 g. 6 (vol. 148, St. Petersburg 1885).
31 Polnoe Sobranie Zakonov Rossii1skoi Imperii 3 (PSZ-3), vol. 5, No. 2770, at 82-86.
32 Id. at 80-81.
of low level clerks could be made by procurators. Decisions related to vacation, promotion, awarding, and punishment of justice officials in Siberia were made under national legislation, however, local particularities had to be taken into account. Salaries of the court personnel were increased; they became equal to the wages received by police officers. Salaries of provincial court judges were regulated by a separate law of June 30, 1868. All court personnel was entitled to the full amount of privileges prescribed to civil servants for service in Siberia. Some extra perks, such as extended annual leave (two months) and early retirement, were given to the court staffers also.

Criminal cases were investigated by police or court investigators. Court investigators could join the investigation under suggestion from the procuratorial office or under their own decision. In Eastern Siberia and in the Priamursk region, the Governor General decided which specific cases were to be investigated by court investigators. Article 17 of the Temporary Rules defined district courts as courts of first instance, which were subordinate to provincial courts. In the Iakutsk, Zabaikalsk, Amursk, and Primorsk regions, and in the Vladivostok military district all criminal cases were included in the jurisdiction of district courts. The Irkutsk province court resolved all cases of service crimes of officials, cases in which the accused could be punished by exile to Siberia, and cases which could be appealed at the Governing Senate. In addition, the Primorsk district court had jurisdiction over all cases initiated on Sakhalin Island.

The legal treatment of exiles changed also. Special legislation was repealed, and the exiles were included in the jurisdiction of local police. Uniformed investigative measures were applied to them like to the rest of Siberian population. The law required the exiles to be interrogated, detained, and put on bail the same way as other citizens of the Russian Empire. Application of battery was outlawed. If exiles were involved, provincial courts had the authority over such cases. Sentences in such cases were executed under article 345 of the Exile Charter.

In regard to the appeal procedures, the 1885 Law provided an official interpretation of article 47 of the 1865 Rules and allowed persons sentenced by the courts, which substituted criminal chambers, to submit complaints directly to the Governing Senate. As before, district courts accepted appeals on the decisions of local (volost) courts and municipal administrations. Under article 84 of the Laws on Court Procedures and Civil Sanctions, complaints on police rulings could be submitted to provincial courts only. The Iakutsk and Priamursk regions were the exception to this rule. Claims initiated by the nomadic and wondering native population could be brought to circuit courts only if all other venues to resolve the dispute were exhausted. Rulings of circuit courts in such cases

33 Id. at 82.
34 Supra note 30.
35 Supra note 32.
36 Supra note 29.
could be appealed according to the common procedure, despite the fact that Temporary Rules of 1885 stated that all resolutions of cases by Siberian circuit courts shall be considered final. The Rules did not allow appeal of such cases to the Governing Senate. A relevant explanation was issued on June 6, 1885.\footnote{SOBRANIE UZAKONENII I RASPORAZHENII PRAVITELSTVA, 1885, art. 873.}

In civil cases, the jurisdiction depended on the amount of the suit. If the amount did not exceed 30 \textit{rubles}, cases had to be ultimately resolved by district courts, and the decisions in such cases could not be appealed. In the Irkutsk province, court rulings in suits up to 1,000 \textit{rubles} were not the subject of appeal. If the amount of the suit was more than 1,000 \textit{rubles}, the case was eligible for appeal at the Governing Senate. Appeals against decisions of Siberian Governor Generals had to be submitted to the Governing Senate. In 1892, the Law on Civil Court Procedure was enforced in all provinces and regions of Siberia. Under general rule, all claims had to be resolved at the court where the defendant resided.\footnote{Supra note 14, at 38.} In exceptional situations when several defendants resided in different provinces or in jurisdictions of different circuit courts within the same province, cases could be heard by the Chambers of Criminal and Civil Court. Article 55 of the Law determined that circuit courts had jurisdiction over the cases when no more than 1,000 \textit{rubles} were at stake. Claims bigger than 1,000 \textit{rubles} were to be resolved by provincial courts. In the Iakutsk and Primorsk regions all cases were heard by the circuit courts. On Sakhalin Island all claims for the amount of 30 \textit{rubles} and more were included in the jurisdiction of the Primorsk circuit court. Individual complaints for rulings and decisions of the Court Chambers and other court establishments had to be submitted to the Governing Senate.\footnote{Id., at 44.} The Irkutsk provincial court was established as the appellate institution for courts in Siberia. If the amount of the claim exceeded the established maximum, the case could be appealed at the Governing Senate.

The supervisory authority of the administrative institutions over the judiciary, which was established in 1822,\footnote{PSZ-2, vol. 2, No. 886, at 267.} was not repealed by the Temporary Rules. Article 34 of the Temporary Rules stated that individual complaints against district courts or against provincial and regional administrative departments had to be submitted to the gubernatorial administrations whose decisions could be appealed in Eastern Siberia to the Main Department for Eastern Siberia, in Primorsk region to the Governor General, and in Tomsk and Tobolsk provinces to the Governing Senate.\footnote{Id. at 211-212.}
As soon as the 1885 Law entered into force, the caseload of courts significantly increased. The Chairman of the Tobolsk provincial court wrote to the Minister of Justice on June 2, 1886, that court hearings were continuously postponed because judges were extremely busy and suggested dividing the court into two departments - one for criminal and the other for all other cases. This statement was supported by the Tomsk provincial court, members of which “strongly believed that the division of the courts into two departments depending on local conditions would be extremely beneficial” for securing justice. The Ministry of Justice agreed with the proposal of the courts, however, it noted that the implementation of this measure was impossible in the Irkutsk and Eniseisk provinces because provincial courts there consisted of only five judges. The Legislative Department of the Ministry of Justice drafted the Law that would give the Minister of Justice the right to divide provincial courts, including Siberian, into departments. This Law, adopted on November 3, 1886, supplemented the right of the Minister of Justice to combine and/or close courts of the first and second instances in the Western, Astrakhan, and Ural provinces given to him in 1865. In the Irkutsk and Eniseisk provinces and in the Iakutsk region, positions of deputy provincial procurators and court investigators were created in order to strengthen the prosecution, according to the opinion of the State Council of January 9, 1885.

Immediate changes in the number of judges and procuratorial staff together with qualitative improvement of their work entailed the attempts to rewrite the Temporary Rules of 1885 in different parts of Siberia. On April 19, 1888, the State Council issued its opinion, which ordered the creation of an increased number of vacancies in Zabaikals regional courts associated with the Irkutsk court chamber. This act gave a new interpretation of article 41 of the 1885 Temporary Rules, under which the most senior assessor of the circuit court could now substitute the deputy procurator in case of his absence. New positions of circuit court assessors and deputy regional procurators were announced. Funds for hiring technical staff were increased. Similar acts were adopted in June 1888, for the Priamursk and Amursk regions, and in December 1889, for the Iakutsk regional and the Irkutsk provincial judicial institutions. Rights and

42 V.G. Grafskii, N.N. Efremova, INSTITUTY SAMOPOVLENIA: ISTORIKO-PRASOVOE ISSLEDOVANIE 274 (Moscow 1995).
43 SUDOUSTRISTVO I UGOLOVNYI PROTISSESS Rossií 1864 god., Sbornik normativnykh aktov (Voronezh 1997).
44 MATERIALY PO SUDERENOI REFORE v Rossií 1864 g. 18 (vol. 19, St. Petersburg 1865).
45 PSZ-3, vol. 15, No. 1228.
46 Id. vol. 5, No. 2770.
47 Id. vol. 8, No. 5309.
48 Id. vol. 8, No. 5155.
49 Id. vol. 8, No. 5612.
50 Id. vol. 9, No. 6434.
duties of the procurators were specified by the Charters of Criminal Court Procedures and the Temporary Rules of February 25, 1885.

Because circuit courts had the biggest caseload, the decree of the Governing Senate No. 628 of April 29, 1891, prohibited provincial and regional administrations from imposing administrative punishments on these courts. If complaints were received against these courts for long and slow trials, relevant administrations could just discuss the issue without making any decisions. Later, this measure turned out to be one of the most effective decisions aimed at securing the independence of judges.

Further unification of rules regulating the general organization of judicial institutions, including Siberian, was achieved in 1892, through the adoption and implementation of the Act on Local Court Establishments Previously Created. Linking courts with the administrative system, the Act confirmed the existence of provincial courts in Tobolsk, Tomsk, Irkutsk, and Eniseisk and provided for the creation of circuit courts in these provinces. Also, the Act required the creation of a circuit court in each of the following regions: Jakutsk, Zabaikalsk, Amursk, and Primorsk. The procuratorial supervision was conducted by provincial and regional procurators, procurator of the Vladivostok circuit court, and their deputies. Provincial and regional procurators participated in the gubernatorial administration. Court investigators were members of the circuit courts. Their rights and duties were prescribed by the 1892 Law on Judicial Procedures (sudoproizvodstvo). Under article 8 of this Law, circuit courts in the Jakutsk, Zabaikalsk, Amursk, and Primorsk regions served as courts of first instance for almost all criminal cases. Together with the cases originated in its own region, the Primorsk circuit court tried cases initiated on Sakhalin Island. Provincial courts and, for some cases, the Governing Senate were the courts of the second level.

The biggest share of the cases was transferred to the jurisdiction of justices of the peace. Justices of the peace were appointed by the Minister of Justice for a three-year term and were controlled by circuit courts. Siberian justices were to be older than 25 years and satisfy the same requirements as justices in other Russian provinces. However, property qualifications were not used in Siberia. Because justices of the peace were not elected in Siberia, their conferences were not established in Siberian provinces. Duties of such conferences were given to circuit courts. In addition to deciding all small claims, the prosecution of vagabonds was included in their jurisdiction. Usually, such cases were resolved jointly with police. Cases involving exiles were excluded from their jurisdiction and were tried by circuit courts. Justices of the peace had the power to issue a reprimand, citation, warning, detention up to three days, or fine up to 100 rubles. Territorial justices of the peace executed investigative functions. Cases on child protection and guardianship were also included in their jurisdiction. In Omsk, guardianship matters were excluded from court jurisdictions and were given

---

51 SVOD ZAKONOV ROSSIISKOGO IMPERI, vol. 16, part 2, at 44.
52 SOBRANNIE UZAKONENII I RASPORAZHENII PRAVITELSTVA, 1891, art. 623.
to the Gubernatorial Guardianship Board, which included a justice of the peace, a representative from the provincial administration, and a circuit court judge. Special orphanage courts were created in the towns of the Omsk province. The preparation of the cases was conducted by circuit courts. In remote areas, duties of justices of the peace, notaries, and preliminary investigations were imposed on local police chiefs or other police officials elected or appointed according to a joint decision of the Governor General and provincial procurator.

Investigation procedures changed in 1896, when court investigation was introduced in Siberia. Each provincial and regional court, except the Iuakutsk regional court, had an associated court bailiff. The Tobolsk provincial court had two bailiffs. The court bailiffs had authority in regard to all citizens except their spouses and relatives of four generations. Court bailiffs existed also in such big cities as Irkutsk, Krasnoiarsk, Tobolsk, Tomsk, Tiumen, and Vladivostok. In other places, regular police officers fulfilled their duties. It was intended that the procurators' control over investigation would secure the uniform application of laws. The Government tried to control the investigation and took measures aimed at the punishment of those who did not follow newly established procedures. Consequently, that entailed some adjustments in local courts, however, the old methods were still widely popular. D.E. Lappo cites the following conversation with the chief of the Abakan city administration occurred in 1896:

Is it true that thieves are beaten up in your courts by the audience?

It cannot be done without beating. Some fear is needed. But now we don't let all the people do it, to avoid talks, only trusted ones are involved. Otherwise, you know, cavils will be spread, and we'll be in a trouble.54

In the provinces of Siberia, the justice and territorial administration were not separated, and many years of experimenting with judicial elements, principles, and institutions as well as the recognition of them by social figures and the general population were needed to create a working judiciary. All changes related to the court establishments were accompanied by the administrative reform aimed at the unification of government and the creation of a single national power system. The multiplicity of administration was stopped in 1889, after the implementation of the Statute on Local Municipal Administrators (zemskie uchastkovye nachalniki), which freed them from juridical duties and created the basis for the national justice system linking justices of peace, provincial administration, and the Governing Senate. Administrative reform in the province of Tomsk of June 6, 1894, entailed some significant changes in the provincial court system, which made the Tomsk judiciary similar to the court institutions in the Western part of the country. Often, the implementation of the court reform in Siberia is considered

---

54 D.E. Lappo, PRESTUPLENIIA I NAKAZANIIA PO PRAVU SIBIRSKIH INOROTSEV 23 (Krasnoiarsk 1905).
55 PSZ-3, vol. 9, No. 6196.
as the exposition of the counter-reform. In reality, institutions introduced by the 1864 reform were introduced on new territories in other conditions. The Government did not reject the principles of 1864 and did not refuse to implement them.

These measures led for the implementation of the Court Charters in Siberian provinces, overcoming opposition to liberal reforms and making courts in Siberia more democratic than other political institutions. The Temporary Rules for Application of the Court Chapters, proclaimed on May 13, 1896, brought Siberian courts in correspondence with the level of economic relations of this time and blended within the existing system of state institutions preserving specifics familiar to the population.

A gradual introduction of legal novelties allowed the country to prepare for full implementation of the judicial reform. Soon after the creation of major juridical institutions in Moscow and St. Petersburg, the new judicial system was extended to Western Siberia. It reached Eastern Siberia between 1897 and 1899, with the establishment of Court Chambers in Irkutsk and Omsk. In 1902, the power continued to administer and reform courts for native people in Zabaikalsk. By the turn of the century, the only area of the Empire unaffected by the reform was the Grand Duchy of Finland, which retained its own judicial structure. The statistics of cases submitted to the new courts showed a great and steady increase in the number of cases and expansion of the judiciary.  

Prepared by Peter Roudik
Senior Legal Specialist
Eastern Law Division
Law Library of Congress
February 2003
