Russia: Judicial Reform of 1864

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Executive Summary

Basic provisions of judicial reform, aimed at establishing an independent court system, jury trials, and adversarial civil and criminal court procedures, were approved by the Tsar on September 27, 1862, and passed as laws in 1864. Gradual implementation of these laws took almost thirty-five years, depending on regional specifics, and despite some counter-reforms and later-introduced restrictions, remained in force until the Bolshevik revolution of 1917. A bibliographic reference on the subject is provided.

On September 27, 1862, Russian Tsar Alexander II approved the report of the State Chancellor Count Butkov, which contained a plan of legislative work aimed at conducting a reform of judiciary and procedural legislation, prepared by the commission of state officials and legal scholars chaired by Sergei Zarudny. The commission submitted to the Tsar a document entitled The Basic Principles of Judicial Reform in Russia, which was approved by the Tsar on September 29, 1862. The Basic Principles proposed a future national system of court institutions, defined rules of criminal and civil procedure, and regulated the resolution of disputes and minor conflicts on a local level.

These basic principles were as follows:

1) separation of the judiciary from the executive and administrative powers, and removal of prosecutorial functions from the courts;
2) openness of courts and introduction of public trials;
3) inviolability of judges;
4) introduction of separate small claims courts;
5) prosecutorial oversight over application of laws by the courts;
6) establishment of courts with juries;
7) creation of a legal profession, as well as introduction of defense lawyers and their organizations;
8) cancellation of the office review of criminal and civil cases;
9) creation of appellate courts and cassation institutions; and
10) establishment of public notary institutions.¹

Implementing laws were drafted during the next two years, and the package of legislative acts on judicial reform entered into force on November 20, 1864, upon signing by Alexander II.²

The judicial reform of 1864 dramatically changed the existing system of class courts under the control of the governors. A new system of courts open to all citizens, including the former serfs, was established. These courts were designed to be independent and were separated from the executive branch. The inviolability of judges was guaranteed by their life tenure appointments. The judges had the right to interpret the law, and relied upon their conscience in applying the law. On the local level, two simple courts – the justice of the peace courts and the so-called volost (the smallest administrative territorial unit in nineteenth-century Russia) courts - were established. These courts were accessible to ordinary people and handled petty disputes and prosecuted minor violations punishable by a fine up to 300 Rubles or by three-month jail arrests. These courts resolved cases without much expense or written documentation and could apply customary law.

The new laws brought adversarial elements to the previously exclusively inquisitorial court process. The office review of criminal and civil cases was substituted by a trial of parties represented by their lawyers who contested the issues in public before a judge or a panel of judges. For the most serious cases, trial by jury became an option, with all the unpredictability of the outcome which that institution entailed. Reform statutes included special provisions for cases involving government officials and some political cases.

The establishment of a new judiciary required the change of the entire legal culture. The law required that all judges, prosecutors, court investigators, defense attorneys and public notaries possess formal legal education. Law schools were founded in all major universities; the bar association became an independent and influential professional organization; and substantial changes occurred within the law enforcement agencies, affecting the duties of police and prosecution. New laws regulating the application and execution of penalties also were passed.

Initially, the reform was implemented in the ten major provinces of Central and Western Russia. The implementation was delayed in Siberia and in the northern territories occupied by the indigenous population in order to accommodate their ethnic specifics. It took about thirty-five years to establish the new homogeneous system of courts and court procedures over the entire country.

According to Peter Solomon, the adoption of this judicial reform became possible because of the combination of several factors, such as “the adoption of the whole series of reforms emanating from and related to the emancipation of the serfs, presence of a cadre of enlightened jurists in high places in the bureaucracy who wrote the reform legislation, a broad public consensus that the old system was so bad as to constitute an embarrassment to Russia, and recognition among the gentry dispossessed during the emancipation that the protection of their new property rights required strong law and courts.”

The authors of the reform could not foresee that the judicial system produced by the 1864 reform would challenge the unlimited power of the Tsar. They assumed that independent courts staffed by legal specialists not only were compatible with autocratic power but would even strengthen it by ensuring the observance of the Tsar’s laws. In practice, however, some judicial decisions failed to meet the expectations or interests of the Tsar, and it became clear that the law was no longer a reliable instrument.

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2 POLNOE SOBRANIE ZAKONOV ROSSIISKOI IMPERII [Full Collection of Laws of the Russian Empire, official publication] V. 39, Title 2, No. 41473, St. Petersburg, 1887.

3 Id., No. 41476, Section II, Chapter I, art. 262-277.


5 Id., p. 97.

of autocratic power. As a result, over the decades of implementing the reform, the Tsars and their ministers tried to minimize the loss of imperial prerogatives. More political offenses were removed from the regular courts and trial by jury, and special emergency regimes in parts of the country were introduced. The scope of the justice of the peace courts was limited, and some adjudicatory functions were transferred to the administrative officials. In 1885, the Minister of Justice obtained the right to ask judges to explain any of their actions and to issue instructions about decisions in cases completed or procedure in future cases. Disciplinary proceedings against judges were introduced, and grounds for their dismissal were increased. The transfer of judges from one bench or court to another by the Ministry of Justice was allowed.\(^7\)

Despite serious attempts at counter-reform during the last two decades of the Nineteenth Century, the judicial reform of 1864 was the most successful Russian reform of the 1860s, and its achievements lasted for the five decades preceding World War I. What progress had been made under the Tsars toward the strengthening of judicial independence was, for the most part, reversed by the Soviet regime established in 1917.\(^8\) The Soviet authorities restored the traditional subordination of law to political power, made judicial appointments of limited duration and subject to party approval, and reinforced the cooperation of judges with their political masters, although judicial independence was declared in the 1936 Constitution.\(^9\)


Prepared by Peter Roudik
Senior Foreign Law Specialist
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\(^7\) MINISTERSTVO IUSTITSII ZA 100 LET [Ministry of Justice during the last 100 years], St. Petersburg, 1902, p. 79.


\(^9\) USSR Constitution, adopted December 5, 1936, Section IX.