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## HOW TO CONDUCT RESEARCH IN RUSSIAN LAW

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## 1. BASIS OF THE LEGAL SYSTEM IN RUSSIA

The basis of the current and future Russian legal system has been determined in the Constitution of 1993, which proclaims Russia to be a democratic federal law-based state with a republican form of government. Like the basic laws of the majority of the other post-communist states, the constitution balances description with prescription. It is a transformational document, which accepts reality while aspiring to something greater. Therefore, discussing the laws of Russia and of the other former Soviet republics (all of which during the last five years adopted new Constitutions), we have to take into account the realities of political life, which may explain many existing difficulties with the implementation of all these laws.

Russia is a federation with a division of powers between the central government and the local governments. However, the separation of power survives in a rather muted form. In a structure of "superpresidentialism," the president stays above the Constitution's checks and balances, with the power to rule by decree, at least if the Parliament fails to legislate over certain areas. Law-making and law-executing functions are thus partially fused.

The President of Russia is the head of state and guarantor of the Constitution and of human rights and freedoms. With the consent of the lower house, he makes major appointments, defines basic directions of domestic and foreign policy, and may censure the government. The relationship between the President and the Prime Minister is similar to the relations between the President and Prime Minister of France in the Fifth Republic.

The Constitution delegates powers to the federal government and enumerates the powers that can be exercised concurrently by the federal government and its components and then stipulates that the components of the federation may have powers not mentioned in the Constitution. The most important matters of state are reserved for the federal government, including socio-economic policy, the budget, taxation, energy, foreign affairs and defense. Other matters, including the use of land and water, education and culture, health and social security, are jointly governed by the federal and local governments, with the latter also having the right to legislate within their spheres of competence.

Paying tribute to the socialist tradition, the Constitution of the Russian Federation is specific down to the most minute detail and even addresses matters like working conditions, the care of children, social security, state pensions and social benefits, housing, health protection and medical care, education, dual citizenship, and asylum. The Constitution allows Russian citizens to exercise power indirectly by voting for members of federal and local bodies of authority and directly by voting in referenda.

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The federal Constitution is the supreme law and therefore laws that conflict with the federal Constitution are null and void. The supremacy clause, which indicates that whenever there is a conflict between a federal law and a law of a local legislature, the federal law takes precedence was needed because the legal terminology is vague and may create a new war of laws. The interrelationship and relative authority of laws (*zakoni*), resolutions (*postanovleniia*), decrees (*ukazy*), normative acts (*normativnie akti*) and other legal acts is not always clarified.

The federal court system of Russia resembles that of other Western democracies. It has a regionally based system of federal courts of general jurisdiction. Courts of arbitration are assigned to the resolution of economic disputes. The right of judicial review has been granted to the Constitutional Court. The Constitutional Court reviews laws if requested to do so by the authorities in power. Individuals can take their cases to the Constitutional Court in original jurisdiction if they feel that their constitutional rights and freedoms have been violated.

Russia continues to lack a cadre of legal personnel to ensure the fluid, effective operation of the legal system. The first national bar association was created in 1989. Presently, a variety of bar associations exist. Each of them has its own rules of admission. New private and public law schools were created recently. The certification of such schools is in the process of development. On the whole, the professionalism of attorneys remains quite low. Higher educational standards are especially important for judges who have not been well trained to deal with complicated matters. In fact, judges were and remain even in the post-Soviet era among the least qualified lawyers.

## 2. ACHIEVEMENTS AND PERSPECTIVES OF THE CURRENT LEGAL REFORM

Nearly 15 years after Mikhail Gorbachev set the Soviet Union on the path of reform, Russia remains in the midst of a profound transformation. Today the ultimate key to an effective constitutional transition is the development of judicial institutions. The major achievement of the judicial reform is the creation of the Constitutional Court of the Russian Federation, which emerged from the shadow to play a prominent role in the public eye, not by entering politics, but by becoming the defender of rights and liberties in Russia. However, its inexperience, the troubled surroundings, and inadequate support are serious obstacles to its success.

In order to protect the independence of the Court, the new Law on the Constitutional Court gave the Court greater authority to interpret the Constitution directly and address normative acts, to hear individual rights cases prior to their adjudication in the lower courts, and enable it to hear cases both in plenary sessions or in one of two chambers. To promote the creation of a politically neutral court, judges have been concentrating on cases with low visibility, but great impact on individuals (human rights, right to strike, housing rights, criminal appeals). The Court, which has limited possibilities to hear cases on its own initiative, is bound by the order in which petitions are received and by a variety of other detailed restrictions.

The development of courts of first instance and a broader system of appellate courts are needed for establishing stability in the country. Until now courts have been weak and ineffectual, hobbled by their inferiority to the all-powerful procurators and the resulting disinterest of the public in their work. The situation in a latter regard has become one more a dependence than subordination.

The new situation has facilitated a new role for precedents in the decisions of the judicial institutions. Until now *stare decisis* has not been given any clear place in the Russian judiciary. As a common law principle, its role has been limited in the Romanist legal system of Russia. Under Communism, when authorities often recommended to the courts what decision should be made in a particular case, the use of a precedent was totally excluded. Yet increasingly, precedent seems to be gaining a foothold in the Russian judiciary. Its place, however, needs to be better defined, especially in light of the growing role of juries for whom standing precedent can serve as a useful guide.

Though juries are not an element of the civil law system, but rather of the Anglo-American tradition of common law, they are among the most beneficial tools of direct democracy available in the creation of civil society. This is especially true for Russia, where legal professionals, corrupted by the Soviet political system, are proving extremely difficult to reform. Although jury trials are incompatible with a rigid inquisitorial system, since 1994, jury trials have been introduced in 9 out of 89 Russian regional courts. At the insistence of the procurators who opposed the jury system, jury trials were made available only for the most serious crimes. A significant decline of convictions has been noted in trials with participation of jurors. Even though juries are still considered an experiment the carrying out of the death penalty in Russia has been stopped until the total introduction of jury trials in the country.

Another problem is the improvement of still contradictory and convoluted legal codes, including codes on land use and criminal procedure, and the lack of a systematic and fair application of the codes by the courts. These codes, in regulating the activities of both private and public institutions, will help define the constitutional limits of government authority as well as the right of citizens vis-a-vis the government. An especially significant issue is the implementation of individual rights, compliance of Russian laws with international and European standards, and their application by courts

Resolution of these problems will help to combine the legal puzzle of Russian law into unified whole, and transform Russia into a western-like democracy.

### 3. OFFICIAL LEGAL PUBLICATIONS ISSUED BY EACH BRANCH OF GOVERNMENT

- *Rossiiskaia Gazeta*

The daily newspaper is published by the Russian Federation government. In accordance with a Presidential decree, the printing of laws in this newspaper is considered the official act of their publication. The newspaper publishes all federal constitutional laws and federal laws of the RF, the acts of the executive branch, some acts of the federal executive agencies, and the rulings of the Constitutional Court.

- *Sobranie Zakonodatelstva Rossiiskoi Federatsii*

A weekly bulletin, the official gazette of the Russian Federation. Includes legislation and international treaties of the Russian Federation, acts of the Federal Assembly, President, Federal Government and Rulings of the Constitutional Court.

- *Vedomosti Federalnogo Sobraniia*

A biweekly publication of regulations and non-binding resolutions of both chambers of the Russian Federation Federal Assembly (parliament).

- *Biulleten Mezhdunarodnih Dogovorov*

A collection of all international multilateral and bilateral treaties to which the Russian Federation is a party. Treaties are published in the Bulletin after they enter into force. Published monthly.

- *Biulleten Normativnih Aktov Federalnih Organov Iсполnitelnoi Vlasti*

A weekly publication of the RF Ministry of Justice, it includes legal acts issued by the executive agencies that have been registered by the Ministry of Justice.

- *Rossiiskie Vesti*

A daily newspaper owned by the RF Federal Government. Publishes executive regulations and resolutions, including those issued by the agencies.

Official publications of particular authorities, e.g. The Bulletin of the Central Election Commission, The Bulletin of the Supreme Court of the Russian Federation.

Associated legal publications:

- ZAKON (Law),
- IURIDICHESKAIA BIBLIOTEKA (Law Library).

#### 4. MAJOR LEGAL DATABASES

##### INFORIS

<http://www.black.inforis.nnov.su>

##### GARANT

<http://www.garant.ru>

##### KODEKS

<http://www.kodeks.net/rus/htm>

##### Center for Legal Information at the Ministry of Justice

<http://www.scli.ru>

##### Vashe Pravo

<http://www.ist.ru/vp/cgi-bin/request.exe>

##### REFERENT

<http://www.referent.ru>

## 5. BEST SOURCES OF LEGAL INFORMATION ON-LINE

### *official sites*

Official Russia	<a href="http://www.gov.ru">http://www.gov.ru</a>
The RF State Duma	<a href="http://www.duma.gov">http://www.duma.gov</a>
Parliamentary Info Channel	<a href="http://www.akdi.ru/gd/akdi.htm">http://www.akdi.ru/gd/akdi.htm</a>
Federal authorities on the net	<a href="http://www.akdi.ru/internet/ve/gosud.htm">http://www.akdi.ru/internet/ve/gosud.htm</a>
The RF Supreme Court	<a href="http://www.supcourt.ru">http://www.supcourt.ru</a>
The RF Arbitration Court	<a href="http://www.arbitr.ru">http://www.arbitr.ru</a>
Central Election Commission	<a href="http://www.fci.ru">http://www.fci.ru</a>
Central Bank of Russia	<a href="http://www.cbr.ru">http://www.cbr.ru</a>
Russian Foundation for Legal Reform	<a href="http://www.rflr.ru">http://www.rflr.ru</a>
Ministry of Foreign Affairs	<a href="http://www.diplomat.ru">http://www.diplomat.ru</a>
Ministry of Agriculture	<a href="http://www.aris.ru">http://www.aris.ru</a>
Ministry of Transport	<a href="http://www.transport.ru/11/indexo.htm">http://www.transport.ru/11/indexo.htm</a>
Ministry of Atomic Energy	<a href="http://www.x-atom.ru/minatom/minatom.html">http://www.x-atom.ru/minatom/minatom.html</a>
Russian State Tax Service	<a href="http://www.gns.ru">http://www.gns.ru</a>
Moscow City Council	<a href="http://www.mos.ru">http://www.mos.ru</a>
St.Pb. Legislatvie Assembly	<a href="http://www.assembly.spb.ru">http://www.assembly.spb.ru</a>
St.Pb. Administration	<a href="http://www.gov.spb.ru">http://www.gov.spb.ru</a>
Info on Government	<a href="http://www.cityline.ru:8084/politika/prav/pravbook.html">http://www.cityline.ru:8084/politika/prav/pravbook.html</a>

### *news and legal information:*

<http://www.Russiatoday.com>  
<http://www.mk.ru>  
<http://www.interfax-news.com>  
<http://www.securities.com>  
<http://www.nns.ru>  
<http://www.echo.msk.ru/new/index.shtml>