



Introduction: The Institute for the Rule of Law and its Research

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PETER H. SOLOMON, JR. AND VADIM VOLKOV

Introduction: The Institute for the Rule of Law and its Research

Guest Editors' Introduction

This double issue of *Russian Politics and Law* focuses on the work of what is arguably Russia's leading center for empirical sociolegal research, the Institute for the Rule of Law (IRL) of the European University at St. Petersburg. Founded in 2009 and composed of a dozen young researchers, the institute focuses on the actual practice of legal institutions and the ways that laws are applied and implemented in practice (hence the title in Russian “Institut problem pravoprimeneniia” or “Institute for Problems of the Application of Law”).

The institute's team is composed of scholars with interdisciplinary background—sociology, law, economics, and computer science—and its research is situated within the framework of the sociology of law and empirical-legal studies, focusing on subjects such as the practice of judicial decision making, the legal profession, and police studies. Every dimension

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of its work stems from rich empirical data. The IRL research projects combine advanced statistical modeling using multi-million data sets of court decisions with surveys of judges as well as the analysis of police statistics—with field diaries from observing the daily work of a rural police department. While producing scholarship of international standards, the institute's team is also committed to advancing public debate on legal matters and contributing to the reform of legal institutions in the Russian Federation.¹ To realize this goal IRL scholars write, post on the IRL's rich Web site, and forward to stakeholders policy memos and analytical reports. They also contribute regularly to the media, including a weekly op ed column in the newspaper *Vedomosti*. In short, the work of the institute has a strong policy orientation and influence on police and court reforms.²

Many of the institute's scholars have studied in the West and engage in scholarly discussions with colleagues there. From time to time they publish pieces in English,³ but the bulk of their work, scholarly as well as policy oriented, appears only in Russian, whether in journals or in volumes of essays resulting from conferences.⁴ This issue of *Russian Politics and Law* offers the English-speaking reader notable examples of this work—four articles dealing with criminal justice, especially the problem of accusatorial bias and how different actors function in this context; one on migration, crime and criminal justice; and one on the work of arbitrazh courts in disputes between business and the state.

The first of the articles on criminal justice, by Kirill Titaev and Maria Shkliaruk, focuses on the key figure in the making of criminal cases in Russia, the investigator. The authors conducted major empirical research, including a survey of investigators working in the Ministry of Internal Affairs (MVD) and many interviews, and succeed in explaining how investigators decide to open cases, how rarely such cases fail to end up in court (the near absence of filtering once a case has started), and why. The article goes on to provide a social portrait of these legal officials (predominantly female and not necessarily young) and a characterization of their work. They turn out to function as

bureaucrats rather than detectives and have their main contacts with procurators and court staff rather than (other) police officials.

In the second article, Ella Paneyakh moves our attention to the situation of judges, and how they cope with the strong systemic demand that they avoid acquittals and deliver almost exclusively convictions in cases that are not resolved through reconciliation, a manifestation of “accusatorial bias” that pervades Russian criminal justice. After explaining the roots of this bias, including the relationship of judges and procurators, the author shows how judges use the discretion that they have to produce nuanced outcomes. In cases involving crimes of lesser gravity, they push the sides toward reconciliation, which leads to the stopping of the case “for nonrehabilitative reasons” and means that the accused will not have a criminal record. In cases of serious crimes judges use the option of “suspended sentences” as a way of softening the punishments for convicts who do not necessarily deserve to serve time.

Starting from a detailed study of the work of one regional court, Mikhail Pozdniakov examines the handling of complaints about dispositions in criminal trials in reviews by a higher court, mainly through the mechanism of cassation appeals as practiced until 2013. Analysis of statistical data reveals that acquittals are much more likely to be overturned than convictions, and the author uses legal and sociological analysis to explain why this was so. In short, the article explores one of the key sources of the accusatorial bias—the policy of verdict reversals by higher courts and their aversion by lower court judges.

How defense counsel (advocates) cope with asymmetry in the criminal process (including accusatorial bias) and find ways to help their clients is the subject of the essay by Ekaterina Khodzhaeva and Yulia Shesternina Rabovski. Their extensive interviews with advocates in different parts of Russia revealed that successful counsel held informal discussions about cases with their investigators as early as possible and sometimes reached agreements about charges or sentences. A common approach was to exchange a promise not to complain about a

procedural irregularity for a commitment by the investigator to request a suspended sentence. Opportunities for discussions between advocates and investigators increased during the past decade, as Russian-style plea bargaining became the norm and came to be used in nearly two-thirds of criminal cases.⁵

The article by Aryna Dzmitryieva examines in detail the role of migrants in crime and criminal justice within the Russian Federation as of 2009. The author distinguishes among internal migrants and foreigners (including from other countries of the Commonwealth of Independent States), and among people with and without permanent registrations, and compares their situations with that of permanent residents of particular regions. She finds that immigrants from abroad commit less crime than their Russian counterparts and mainly less serious offenses, including especially the faking of documents. In contrast, internal migrants are more likely than residents of a region to commit serious crimes, both violent and property offenses. Moreover, a greater share of foreigners charged with crimes face conviction because fewer cases are stopped after reconciliation with the victim. Migrants from abroad are more likely than Russian residents to receive custodial sentences, but for shorter periods of time. The author provides possible explanations of these patterns.

With the study by Aryna Dzmitryieva, Kirill Titaev, and Iryna Chetverikova the focus moves away from criminal justice and the courts of general jurisdiction to the operations of the arbitrazh (or commercial) courts. These courts deal *inter alia* with the bulk of disputes between business and the state, and the question at hand is how balanced these courts have proved to be in handling such cases. This largely quantitative study argues that there is a slight bias in favor of business in civil suits, and a similar progovernment bias in administrative cases. The latter involves especially routine cases typically related to the collection of penalties connected to tax disputes. The larger conclusion is that it would be wrong to suppose that there is a general bias in favor of government and against business.

Notes

1. See, for example, “Concept for Comprehensive Organizational and Managerial Reform of the Law Enforcement Agencies in the Russian Federation,” *Statutes and Decisions*, vol. 48, no. 5 (September–October 2013), pp. 5–91.

2. The institute’s Web (www.enforce.spb.ru) site includes citations to, if not the actual texts of, virtually all the publications of its scholars, including appearances in the media and analytical memos, as well as scholarly works. The institute published a collection of newspaper articles from its *Vedomosti* column “Extra Jus”: *Po tu storonu prava: Zakonodатели, sudy i politsiia v Rossii* [Beyond the Law: Legislators, Judges and Police in Russia], ed. Vadim Volkov and Maksim Trudoliubov (Moscow: Alpina, 2014).

3. See Vadim Volkov, “Legal and Extra-Legal Sentencing Disparities: Evidence from Russia’s Criminal Courts,” *Journal of Empirical-Legal Studies*, forthcoming, preprint available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2629436; Vadim Volkov and Arina Dmitriyeva, “Recruitment Patterns, Gender, and Professional Subcultures of the Judiciary in Russia,” *International Journal of the Legal Profession*, vol. 22, no. 2 (2015), pp. 166–92; Ella Paneyakh, “Faking Performance Together: Systems of Performance Evaluation in Russian Enforcement Agencies and Production of Bias and Privilege,” *Post-Soviet Affairs*, vol. 30, nos. 2–3 (2014), pp. 115–36.

4. Recent books and edited volumes include: Arina Dmitriyeva (Arina Dmitriyeva), Mikhail Pozdniakov, Kirill Titaev, and Vadim Volkov, *Rossiiskie sud’i: sotsiologicheskoe issledovanie professii* [Russian Judiciary: A Sociological Study of the Profession] (Moscow: Norma, 2015); *Obvinenie i opravdanie v postsovetsoi ugovnoi iustitsii: sbornik statei* [Accusation and Acquittal in Post-Soviet Criminal Justice: A Collection of Articles], ed. V.V. Volkov (Moscow: Norma, 2015); *Kak sud’i prinimaiut resheniia: empiricheskie issledovaniia prava* [How Judges Make Decisions: Empirical Legal Research], ed. V.V. Volkov (Moscow: Statut, 2012); and *Pravo i pravoprimenenie v Rossii: mezhdistiplinarnye issledovaniia* [Law and Its Application in Russia: Interdisciplinary Research], ed. V.V. Volkov (Moscow: Statut, 2011).

5. Before agreeing to waive the right to a trial on the evidence (the essence of special procedure), accused persons must consult an advocate, who in turn must sign the agreement. To facilitate this process some investigative offices hire lawyers for this purpose (known as “advokaty po naznacheniiu” or “appointed advocates”). The Khozhdaeva and Rabovskii interviews included some of these persons. For analysis of plea bargaining in Russia, or what is known officially as “special procedure of court examination” (*osobyi poriadok sudebnogo rassmotreniia*), see Peter H. Solomon, Jr., “Plea Bargaining Russian Style,” *Demokratizatsiya*, vol. 20, no. 3 (Summer 2012), pp. 282–99, and K.D. Titaev and M.L. Pozdniakov, “Poriadok osobyi, prigovor obychnyi: praktika primeneniia osobogo poriadka Sudebnogo razbiratel’sstva (gl. 40 UPK RF) v rossiiskikh sudakh” [Special Procedure, Usual Punishment: Practice in the Use of Special Procedure of Court Examination], *Analiticheskaiia zapiska Instituta problem pravoprimeneniia* [An Analytical Memorandum of the Institute for the Rule of Law], St. Petersburg, March 2012.