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In accordance with article 11 of the Constitution of the RF state power is exercised by: the President, the Federal Assembly (the parliament, consisting of two chambers – the Council of Federation and the State Duma), the Government and the courts.

The President of the RF [President Rossiyskoy Federatsii] is elected by the people (citizens entitled to vote) in general direct elections (as of 2012 for a term of 6 years, before, for a term of 4 years). Furthermore the presidential office can only be held for two terms in a row. More details about the position and the role of the President in the system of state authority will be provided further below. Here we will only mention that the President of the RF issues decrees (in general, acts of normative character) and orders (usually of individual character).

The Federal Assembly (parliament) [Federalnoye Sobraniye] consists of two chambers.

The Council of Federation [Sovet Federatsii] (the "upper" chamber of the Federal Assembly) is made up by the representatives of the subjects of the Russian Federation. Therefore this chamber is destined to display the *federative character* of Russia. From each federal entity of the RF (below, "region´s) two representatives are delegated: 1 – from the legislative, 1 – from the executive (the representative of the legislative is elected by the regional parliament; the representative of the executive is designated by the Chief Executive and occasionally by the high functionary). If the representative is assigned by the executive, his/her candidature has to be approved by the legislative body of the relevant federal entities. There are no terms of office as representatives, because their tenure in the Council of Federation either depends on the terms of office of the body of legislative or executive power. Alternatively, they can be recalled (i.e. divested of power prior to the end of their term) by the bodies mentioned above.

The State Duma [Gosudarstvennaya Duma] ("lower" chamber of the Federal Assembly) consists of 450 deputies that are elected in general

direct elections by *proportional* representation (with a threshold of 7%). Starting with the elections of 2011, the *term of office* of the State Duma will be 5 years (before, 4 years).

At the time there are 4 parties represented in the Duma – “Yedinaya Rossiya“ [“United Russia”] (more than 2/3 of the seats. Party leader is V. Putin), “Spravedlivaya Rossiya“ [“Just Russia”] (party leader is S. Mironov, Chairman of the Council of Federation), Communist Party of the RF (party leader is G. Zyuganov) and Liberal Democratic Party (party leader is V. Zhirinovskiy. The ideology of the party corresponds neither with the concept of “liberal“ nor with the notion of “democratic“).

The parliament enacts two kinds of laws: federal constitutional laws and federal laws. The Constitution of the RF itself provides a list of federal constitutional laws [federalnye konstitutsionniye zakony] (FKZ). In order to enact those laws a qualified majority in both chambers of the Federal Assembly is required. For the adoption of federal laws [federalnye zakony] (FZ) a simple majority of votes is sufficient. Moreover, the Council of Federation does not enact, but only approve (or not approve) federal laws. Apart from laws regarding certain matters, for example the budget, taxes and fees, war and peace, financial, currency, credit and customs regulations, or emission of money (article 106 of the Constitution of the RF), the Council of Federation has the right not to consider the law, enacted by the State Duma, at all. In that case the law is considered as approved “tacitly“. If, however, the Council of Federation considered the law and disapproved of it, it is returned to the State Duma, where a conciliation committee may be set up.

Every law is presented to the President of the RF for signature. The president is obliged to sign FCL, but does not have to sign FL, i.e. can reject them. The State Duma and the Council of Federation have the right to override the President's veto by means of a qualified majority (2/3 in every chamber). But this is rarely the case (it happened only 1 time). At the present time a tendency towards a decrease in the number of rejected laws becomes apparent. For demonstration we present the following table[1]:

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1 The table has been taken from: Shablinskiy I. Vyklyuchennyy mekhanizm: sderzhki i protivovesy v rossiyskoy konstitutsionnoy praktike // Sravnitelnoye konstitutsionnoye obozreniye. 2010. no. 2.P.111..

Convocation of the State Duma	Total number of federal laws (FL), enacted by the State Duma	Total number of rejected FL	Number of FL, rejected by the Council of Federation	Number of FL, rejected by the President of the RF	Number of FL, rejected by the Council of Federation and the President of the RF
1996-1999	1045	442	141	180	113
2000-2003	781	102	61	31	10
2004-2007	1087	37	27	7	3
2008	332	2	1	1	0
2009	394	8	7	1	0

The Government of the RF [Pravitelstvo Rossiyskoy Federatsii] is the highest body of executive power. It comprises:

The Government is formed and controlled exclusively by the President (for details see further down). It governs the system of *federal bodies of executive power*, which will be discussed in greater detail in section 2 “Administrative and judiciary systems (organizational structures)“. A characteristic feature of the Russian Government is its huge and extensive apparatus whose head, according to the FCL “On the Government of the Russian Federation“[2] (1997), is the Federal Minister or even the Vice-Chairman of the Government (Deputy Prime Minister) which underlines the relevance of the governmental apparatus. The structure of the judiciary system and the configuration of the courts are elaborated in the section “administrative and judiciary systems (organizational structures)“. Here we will only indicate, that the Constitution of the RF mentions three particular legal agencies.

2 Collection of the legislation of the RF, 22.12.1997, no. 51, article 5712. This Law just as other laws mentioned in the text have repeatedly been subject to numerous modifications and amendments. Here and in the following analysis the source refers only to the first official publication.

The Constitutional Court of the RF [Konstitutsionnyy Sud Rossiyskoy Federatsii] does not have subordinate courts. The existence of constitutional courts (in republics) and charter courts (in regions [oblast], territories [kray] and autonomous areas [autonomous okrug]) in some regions does not mean, that they are procedurally but rather administratively tied to the Constitutional Court of the RF. The primary objectives of the Constitutional Court are the *examination of constitutionality* of laws being implemented, of presidential decrees, orders of the Government, normative acts of regional authorities as well as to explain the Constitution, and adjudicate upon the competencies of different authorities.

The Supreme Court of the RF [Verkhovnyy Sud Rossiyskoy Federatsii] is head of the subsystem of courts of general competence, to whose jurisdiction civil, criminal and administrative cases are assigned.

The Supreme Arbitration Court of the RF [Vysshiy Arbitrazhnyy Sud Rossiyskoy Federatsii] is in charge of the subsystem of courts of arbitration, whose jurisdiction extends to civil and administrative cases in the sphere of business and other economic activities.

The Constitution and/or the Russian legislation also mention **state authorities** that are not directly assigned to the branches of the government.

The Public Prosecution of the RF [Prokuratura Rossiyskoy Federatsii] is a unified and centralized system of bodies whose head is the *Prosecutor General of the RF* (article 129 of the Constitution of the RF). More details about Public Prosecution of the RF in section 2.

The Auditing Chamber of the RF [Schotnaya Palata Rossiyskoy Federatsii] is in compliance with article 101 of the Constitution of the RF constituted by the chambers of the Federal Assembly "for the monitoring of the administration of the federal budget". Thereby the Constitution of the RF shows that the Chamber is a body of parliamentary control. All the more so, as it is said in other articles (102 and 103), that the State Duma appoints the Chairman of the Auditing Chamber and half of the body of its auditors to and releases them from office, as does the Council of Federation the Deputy Chairman and also half of the body of its auditors. Nonetheless, in the Federal Law "On the Auditing Chamber of the Russian Federation"[3] (1995)

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3 Collection of the legislation of the RF, 16.01.1995, no. 3, article 167.

the Auditing Chamber is extensively described: it is called a body of state *financial control*, and its tasks are:

- organization and exercise of control over timely execution of income and expenditure items of the federal budget and federal extra-budgetary funds in terms of volume, structure and purpose;
- determination of the effectiveness and the expedience of disbursement of state funds and use of federal property;
- evaluation of the validity of income and expenditure items of draft federal budgets and federal extra-budgetary funds;
- financial examination of draft federal laws, as well as of normative-legal acts of federal bodies of state power envisaging expenditures which are covered by the federal budget or which influence the formation and execution of the federal budget and federal extra-budget funds;
- analysis of the revealed discrepancies in the established indicators of the federal budget and federal extra-budgetary funds and the preparation of proposals directed to their elimination and to the improvement of the budgetary process as a whole;
- control over the legality and accurate timing of operations with resources of the federal budget and federal extra-budgetary funds in the Central Bank of the Russian Federation, banks authorized by it and in other financial and credit institutions of the Russian Federation;
- regular presentation of information on the progress of execution of the federal budget and of results of controlling measures being held to the Federation Council and the State Duma;
- though the Auditing Chamber is as a result of these rules a body of parliamentary control, a law passed in the 2000s nevertheless invested the President of the RF with the authority to present to the chambers the candidacy of chairmen and all of the auditors of the Auditing Chamber who are elected by the chambers for 6 years. Thereby this body lost its independence from administrative power and its anti-corruption potential.

Commissioner on Human Rights in the RF [Upolnomochennyj po pravam cheloveka Rossiyskoy Federatsii] (unofficially Ombudsman) is a State office, established as the FKZ “On the Commissioner on Human Rights in the Russian Federation“[4] (1997) states, “in order to assure the guarantee of *state protection of rights and freedom of citizens*, obser-

4 Collection of the legislation of the RF, 03.03.1997, no. 9, article 1011.

vance and respect of them by state bodies, bodies of local self-governmental and functionaries“. The appointment to this office (for 5 years) is conducted by the State Duma (article 103 of the Constitution of the RF).

Ombudsmen in general examine complaints of citizens, foreigners and stateless persons in regard to decisions or acts (omission to act) of state authorities, bodies of local self-government, functionaries and government officials, if earlier on the complainant appealed against these decisions or acts (omission of acts) by judicial or administrative settlements, but did not agree with the decision made concerning his/her complaint. However his/her chances are small. Mostly he/she carries out inspections of the complaints and can, along with the certification of the facts presented in the complaint, admit an application for protection of violated rights and freedoms to court; turn to qualified state authorities with a motion to undertake disciplinary or administrative proceedings or a criminal case in regard to the guilty functionary; file a motion with the court or the Public Prosecution Office to examine the decision coming into legal effect, a court sentence, determination or decision of a court or an order of a judge and so on.

The Central Bank of the RF [Tsentralyy Bank Rossiyskoy Federatsii] is a body that accomplishes the *emission of money, the protection and guarantee of the stability of the rouble* (article 75 of the Constitution of the RF). The Federal Law “On the Central Bank of the Russian Federation (Bank of Russia)“[5] (2002) stipulates other functions, too, including:

- adopting rules to effect settlements in the Russian Federation;
- setting rules for the realization of banking operations;
- servicing the budget account on all levels of the budgetary system of the Russian Federation;
- efficiently managing the international reserves of the Bank of Russia;
- supervising the activities of credit institutions and banking groups;
- foreign exchange regulation and foreign exchange control;
- other matters.

The Central Election Commission of the RF (TsIK RF) [Tsentralnaya izbiratelnaya komissiya Rossiyskoy Federatsii] is a body which organizes the preparation and conduct of elections and referenda in the Russian

5 Collection of the legislation of the RF, 10.07.2002, no. 28, article 2709.

Federation and is also in charge of the system of subordinate election commissions. The TsIK RF counts the votes of electors and publicly notifies the election results. It can find them to be invalidated or invalid. The Constitution of the RF does not mention this body.

The Federal Law "On the basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum"[6] (2002) informs about the composition and the competencies of the TsIK RF. The TsIK RF is put together for 4 years on basis of a quota regulation. It consists of 15 members, 5 of which are appointed by the President of the RF, 5 by the State Duma and 5 by the Council of Federation.

Apart from bodies that were given public authority, we need to mention one more body – the ***State Council*** [Gosudarstvennyy sovet], which is the *advisory* body under the President of the RF. The State Council (Gossovet) is governed by the President of the RF and consists of the regional leaders (higher functionary). This body is neither specified by the Constitution of the RF nor by the legislation. It was founded by the decree of the President of the RF[7] in the year 2000 (by means of the same decree the Provision regarding the State Council was approved too) as a minor political compensation to the heads of the federal subjects of the RF, who lost the legal possibility to directly exert influence on the federal legislative process in connection with changes in the manner of formation of the Council of Federation[8]. Simultaneously, the State Council allows the President of the RF to get a feeling for the spirit of the regional elites.

Special judicial status of the President of the RF

Despite the proclamation of the principle of the division of power, of political and ideological pluralism and the existence of constitutional justice, in reality these and other institutions, destined to guarantee the legal and democratic character of the state, stay formal in many respects. In this short report it is not possible to analyze all the reasons for these cir-

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6 Collection of the legislation of the RF, 17.06.2002, no. 24, article 2253.

7 Collection of the legislation of the RF, 04.09.2000, no. 36, article 3633.

8 From 1995 up until June of 2000 higher functionaries (heads) of federal subjects and representatives of regional bodies of legislative power entered this chamber of the parliament in terms of an office.

cumstances. We can only briefly point out the *essential institutional factors that impede the development of the principle of the division of power and political competition*.

The Russian Federation is a state with a semi-presidential (combined) system of government. To this group of countries in Europe belong for example France, Portugal, Slovenia, Bulgaria, Croatia and Poland (a similar model was framed for the first time in the Weimar Constitution of Germany in 1919).

A majority of countries belonging to the CIS chose this system. Political analysts and journalists often call the Russian system “super-presidential“, however this is not true. Jurist don't recognize this system, because institutionally neither the existence of a rather weak president (e.g. in Poland9) nor the existence of a strong one (as in Russia or in France) means, that the system of the government itself changes. All of these forms are modifications of a combined system.

A different matter (and therein lies the distinctiveness of Russia) is the constitutional status of the President of the RF which is constituted in such a way that the head of the state appears to *practically defy the control* of other public-governmental institutions and, as a consequence, of the society. On what grounds is this possible? In compliance with part 2 article 80 the President of the RF guarantees the *concerted functioning and cooperation of the bodies of state power*. Some researchers thereunder understand the function of a political arbitration that is without doubt natural for the head of the state. But then, first of all, it is necessary to understand in which cases the President has to resort to such an arbitration. The Constitution of the RF only mentions that the President can use conciliation procedures to dissolve controversies between federal bodies of state power and bodies of state power of the federal subjects, as well as between bodies of state power of federal subjects.

Thereby the President is not granted the right to dissolve political conflicts, when their opponents are merely federal bodies of power. Here lies an obvious constitutional deficiency which in practice leads to a rather broad conception of this function of the head of the state (anyway, the

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9 Therefore it is sometimes mistakenly counted for a part of parliamentary republics.

Constitutional Court of the RF interprets the given function rather comprehensively). Secondly, given that such a function exists, it suggests neutrality of the President regarding party affiliations. However there is no such neutrality, as far as part 3 article 80 of the Constitution of the RF stipulates that on the one hand the President of the RF *dictates the fundamental directions of domestic and foreign policy*. This provision itself is already contradictory to the notion of division of power. But the Constitutional Court of the RF states further that these political directions are not only *indispensable* for the Government of the RF[10] but also for other bodies of state power[11].

On the other hand, the party bias of the President (even under the condition of formal impartiality) is evident insofar as the Russian constitutional model *brings the Government under total control of only one President of the RF* (whereas in semi-presidential systems of republics the ministries are usually subject to the control of two institutions – the president and the parliament or its lower chamber). In what lies the danger of a mere presidential control over the Government? The danger lies in the fact that the parliament does not have any influence on the governmental policy and this devaluates the very parliamentary elections in many respects. We will set forth the essential constitutional levers to guarantee the total controllability of the Government of the RF by the President of the RF:

1) The Government does not resign in before a newly elected State Duma, but in front of the newly elected President (article 116).

2) Although the Constitution of the RF requires the consent of the State Duma for the appointment of the Chairman of the Government, this condition is declaratory, because in case of a threefold refusal to extend their consent the President is obliged to dismiss the Duma (article 111). And what is even more interesting, simultaneously with the dismissal the President appoints the chairman of the Government (but this time without any consent of the Duma). Consequently, there is no need any more for a consent to the candidacy of the Chairman of the Government from the side of the State Duma that has been

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10 cf. Adjudication of the Constitutional Court of the RF, 11 December 1998, no. 28-P.

11 cf. Adjudication of the Constitutional Court of the RF, 29 November 2006, no. 9-P.

newly elected after the dismissal, since, as mentioned above, the formation of the cabinet is not tied to parliamentary elections.

3) The Deputy Chairman of the Government and the federal ministers are appointed to and released from the office by the President, but on the proposal of the Chairman of the Government (article 112). If however the President does not want to appoint or dismiss one or any other member of the Government, the Chairman of the Government (prime minister) has nothing to counter with, apart from his notice of resignation. Under the condition of the exclusion of deputies from the process of government-formation this does not lead to anything.

4) The Gosduma that does not approve of the Government which has been formed without its participation, can express a no-confidence to it. But this practice also appears to be formal because after that the President is not obliged to force the Government to resign, but has only the right to do so. Yet she/he also has the right to dissolve the State Duma. And it is more likely for her/him to do the latter, considering that the Government was formed by her/him alone (at the same time the Constitution is somewhat keen to save the political face of the deputies since it stipulates that the vote of no-confidence has to be expressed repeatedly, in other words one time the deputies can propose the vote of no-confidence with impunity for themselves). There is a good reason the Government resigned not once in Russian history because of a vote of no-confidence against it. Besides, the Duma has not once been dissolved either.

5) The President has the right to force the Government to *resign without any obvious reason* (anyway, part 2 article 117 outlines exactly that in practice). This alone makes the cabinet entirely dependent from the head of the State and completely independent from the State Duma.

6) The President has the right to *abrogate acts* (orders and instructions) of the Government, not only in the event of them contradicting the Constitution and laws, *but also in case of them conflicting with the President's own decrees* (article 115). Therefore, even if the Government tries to deviate from the policy, the President has stated, the latter has the juridical levers to put a stop to such attempts.

7) The President (formally on the proposal of the prime minister) *determines the structure of the federal bodies of executive power*, i.e. a listing of the ministries and other bodies of executive power.

8) The President, who is not the head of the executive power is nonetheless *directly in charge of* several bodies of executive power, e.g. the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Defence, the Ministry of Justice, the Federal Migration Service and so on (altogether 20 bodies).

Therefore, the formation of the Government of the RF lies beyond the sphere of party influence. As a result, the parties don't develop, because even in case of a parliamentary election victory they are excluded from the formation of the Government that is to say from the implementation of certain policies and from the accountability for their outcome. This is in particular the reason that, although such control-institutions as *parliamentary inquiries and deputies' inquiries, parliamentary investigations, yearly reports of the Government to the State Duma* are formally determined in the Constitution and in the legislation, they by no means have an effect on the executive power (furthermore the character of the statutory consolidation of these institutions itself diminishes their effectiveness even more).

The described features of the constitutional status of the President of the RF (although not only them) cause an *imbalance in the system of checks and balances*, and in many respects explain the weakness of other bodies of public authority as well as the lack of a system of political competition.

The Russian Federalism

Nowadays Russia consists of 83 federal subjects that officially have different names, but practically equal legal status:

- Republics: 21
- territories [kray]: 9
- regions [oblast]: 46
- autonomous areas [autonomous okrug]: 4
- autonomous region [autonomous oblast]: 1
- cities of federal importance: Moscow and St. Petersburg

Since 2003 the overall number of regions began to decrease (initially there were 89, now we count 83) due to the process of merging (enlargements) some of them. This process is beneficial, because one manifestation of the Soviet legacy is that several regions are territorially situated (like enclaves) within other regions (sometimes this system is also called “matroshka“-doll). As a consequence, the principle of legal equality of the regions in their relation with the Russian Federation was violated.

In the Russian model of federalism the differentiation of powers (of subjects of administration and authority) between the Federation and its subjects (regions) is conventional with regard to: 1) subjects of exclusive authority of the Russian Federation, 2) subjects of conjoint authority, 3) subjects of authority of the federal subjects. However, only the subjects of exclusive authority of the RF and the subjects of conjoint authority are listed in the Constitution (article 71 and 72). Regarding the *subjects of authority of the regions* it is stated (article 73) that beyond the first two kinds of jurisdiction the subjects "possess full state power", i.e. a *leftover* principle is applied. But as far as the subjects of conjoint authority are rather vaguely specified, the subjects of the specific regional authority are rather difficult to define. This illustrates the Federal Law, constitutive for the federal relations "On the general principles regarding the organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation"[12] (1999), where some matters that have to be subjects of regional authority only, are related to subjects of conjoint jurisdiction.

Hereupon possibilities for hardly confined centralization arise. These possibilities grow even more due to a rather hazy worded constitutional fragment (article 77), stipulating that if the bodies of executive power of the subjects of the RF take actions in terms of subjects of conjoint authority within the limits of exclusive federal jurisdiction and competencies, they together with federal bodies of executive power "make up a *single system of executive power* in the Russian Federation". This means that as a matter the regional executive bodies are subordinate to the federal ones. But, as we noticed before, as far as the regional jurisdiction is actually not that extensive, the differentiation of power between the centre and the regions is very inaccurately performed by the Constitution and the Federation determines its authority in terms of conjoint jurisdiction practically itself so that such a "vertical of power" (a single system of executive power) neutralizes the federal relations in many respects.

A tendency to centralization emerged very distinctly after the year 2004 when amendments were introduced to the federal legislation, practically subjecting not only bodies of executive power but also of legislative

12 Collection of the legislation of the RF, 18.10.1999, no. 42, article 5005.

power of the federal subjects to the President of the RF, as far as now the choice regarding the candidacy of the leader of the regions and both their resignation and even the dismissal of regional legislative bodies depends on the President of the RF. Besides, the practical subordination of the heads of the regions to the President of the RF became an additional factor that strengthens the submission of the federal Parliament to his/her control. Because now at least half of the members of the Council of Federation, representing the executive power of the subjects of the RF, are indirectly dependent on the President of the RF, who plays a pivotal role in the career of the regional leaders.

Position of the civil society and the system of public control over public authority

Civil society plays a substantially minor role in the life of Russia than in countries, characterized by a traditional democracy. Firstly, this is connected with a lack of deep roots of civil society in national history and public consciousness. As far back as the times of absolutism the state in Russia is traditionally perceive as a demiurge, vested with paternalistic functions. Secondly, the weakness of civil society is preordained by a traditionally low level of political culture of a substantial part of citizens, who see themselves more as nationals than as citizens. Thirdly, although the constitutional regulation of the foundations of civil society fully corresponds with European-wide standards, in practice mainly “ritual“ forms of civil participation in the execution of public functions predominate. Fourthly, it is necessary to mention the weak structuredness of civil society: the formation process of stable, authoritative, powerful and from the state objectively independent structures happens rather slowly and is to a great extent predetermined both by insignificant know-how of civil activity and by a strong opposition on the part of bureaucracy that sees danger in any activity, being beyond its control. Fifthly, the weakness of civil society is to a considerable degree preordained by the artificiality of the most influential structures of society. For example, the Civil Chamber of the RF as well as the political party “Spravedlivaya Rossiya“ are not the results of the initiative of citizens but the work of political strategists, close to power.

At the same time the Russian legislative basis for the functioning of civil society can momentarily be characterized as sufficiently developed. On the federal level there are laws on practically all basic parts of civil society: on *trade unions, on political parties, on religious organizations, on non-profit organizations, on charity funds, on mass media* and so on.

There are also legislative acts, stipulating the participation of citizens in activities of election committees, in the dispensation of justice (especially jury court), in the control over the conditions of detention of convicts in places of imprisonment and also over the police activities. Structures, protecting the law play a special role. Hereto both social organizations, founded for example within the framework of the so called "Helsinki Declaration" and state institutions, established by normative-legal acts are relating: Commissioner on Human Rights in the RF, Presidential Council for Civil Society and Human Rights, comparable commissioners and commissions in several federal subjects.

All of those are to a greater or lesser degree institutions of civil society but nevertheless participate in civil control. Thereby, taking into account the development of internet-technologies, such unconventional forms of civil control as addressing citizens and their organizations in popular blogs or video blogs, joint actions of internet users in support of some social initiative or, on the contrary, the organization of torrents of complaints together with protests or information enquiries are of increasingly high relevance. This kind of civil control, like mass media polls, got a new impulse due to the Federal law "On the guarantee of access to information on activities of state bodies and bodies of local self-government"[13] (2009) and the Federal law "On the guarantee of access to information on the activities of courts in the Russian Federation"[14] (2008) that facilitated the citizens' access to information about the activities of state bodies.

Trade Unions: Albeit all trade unions are built and work on the ground of one normative-legal acts – the Federal law "On professional unions, their rights and guarantees of action"[15] (1996) their actual influence on processes, taking place on a macroeconomic and microeconomic level strongly diverges. Thus the Federal law "On the Russian trilateral commission on the regulation of social-labor relations"[16] (1999) stipulates that *every* Russian-wide association of trade unions assigns one member to

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13 Collection of the legislation of the RF, 16.02.2009, no. 7, article 776.

14 Collection of the legislation of the RF, 29.12.2008, no. 52 (part 1), article 6217.

15 Collection of the legislation of the RF, 15.01.1996, no. 3, article 148.

16 Collection of the legislation of the RF, 03.05.1999, no. 18, article 2218.

the body of the commission. However, this number can be increased "proportionally to the *amount* of *trade union members*, united by them". Due to such an exception the Federation of independent trade unions of Russia [Federatsiya nezavisimykh profsoyuzov Rossii] (FNPR) which is close to the Government of the RF and became the legal successor of the Soviet trade unions, i.e. trade unions controlled by the authority, always has the highest representation within the body of the trilateral commission. It is symptomatic that the Government clears the majority of normative acts, e.g. regarding labor protection, particularly with the FNPR and not with other trade union associations that are less numerous but therefore more independent in terms of the advocacy of laborers' interest.

In the opinion of specialists the Labor Code of the RF [Trudovoy kodeks Rossiyskoy Federatsii](TK RF) actually strengthens the monopoly of FNPR regarding the realization of mechanisms of social partnership in as far as it endows only those trade union associations with the right to conduct collective negotiations with employers that comprise more than half of the laborers of the enterprise. Privileging "his/her" trade union committee (profkom), the director of the enterprise easily attains the enrolment of a majority of laborers, loyal to him/her in this trade union. Hereafter, but with that profkom she/he enters into a collective contract that does not represent the interest of the laborers. Furthermore, article 37 of the TK RF that formally assigns a right to all trade unions to participate in collective negotiations on the level of enterprises, does not contain a mechanism to exercise this right and, as a result, is of no practical avail. Finally, the employer can use of the services of so called "autonomous trade unions", in other words trade unions that are generally founded by the employers themselves and that exist in only one enterprise.

Political parties: The legislation on political parties that, first and foremost, is presented by the Federal law "On political parties"[17] (2001), develops constantly. Among the main trends we can point out the following.

Firstly, a sharp rise of the demands for the numerical strength of political parties demands attention: during the years of 1990 to 2000 the minimal

17 Collection of the legislation of the RF, 16.07.2001, no. 29, article 2950.

threshold value was 5 thousand party members; from 2001 to 2005 10 thousand; from 2006 to 2010 50 thousand. However, a gradual reduction of the limit for numerical strength of the party is linked with the name of the President of the RF D. A. Medvedev: in compliance with the modifications, introduced to the Law on parties, as of 1 January 2010 the permissible minimal amount is reduced to 45 thousand members of a political party and will be lowered to 40 thousand from 1 January 2012 off. Thereby the permissible number of party members in the regional offices that are obliged to be effective in the majority of the federal subjects also proportionally decreased.

Secondly, the rules on sponsorship of political parties by commercial and non-commercial organizations were tightened.

Thirdly, since 2009 the practice of forming alliances between political parties and other public associations, wishing to propose parties their candidates for entering on the party list is unlawful. This, however, is only possible on the municipal level, where also earlier on the possibility existed to nominate candidates not only from political parties but also from other public associations. Altogether this measure is regarded by experts as an instrument to guarantee the subsequent transition to the formation of bodies of local self-government solely according to party lists.

Fourthly, on the initiative of the President of the RF D. A. Medvedev a series of federal laws were passed that slightly expand the possibilities of parties, which are not represented in the State Duma and in legislative bodies of the subjects of the RF. In particular, political parties that are not represented in the State Duma are entitled to participate not less than once a year in a plenary meeting of the lower chamber of the parliament. A comparable rule regards the regional level of power. It is understood that this novelty does not change the position of parties.

Fifthly, although the required minimal percentage of electors' votes that is necessary for entering the State Duma, was not lowered either after the rise from 5% to 7%. Already at the elections of 2011, however, a political party that achieves from 5% to 6% of electors' votes can hold one mandate of a deputy and a party that achieved not less than 6% can hold two mandates of deputies.

Sixthly, in the last couple of years attention was drawn to the blatant distortion in the information coverage of the activities of parliamentary parties in the national mass media. In connection with that legislative

measures were taken regarding the equalization of informational potentials of parliamentary parties and control over the adherence to the principle of equal access of parties to radio and television18 was inflicted on the Central Election Commission of the RF.

Naturally, already in the first half of the 2000s the innovations, listed above led to a repeated reduction in the numbers of political parties. At the same time all efforts to register new political parties consistently came upon bureaucratic obstacles. As a result the multi-party system that exists today in Russia is characterized by an almost monopolistic dominance of the party “Yedinaya Rossiya“. By means of offices, belonging to it in every country, the party fulfils functions of civil control. It's another matter that this is a slightly strange system of control, because the party sort of controls its own members, who hold governmental offices. Thereby it sustains its popularity at the expense of criticism regarding shortcomings and incorrect practices.

Religious organizations: In Russia the freedom of conscience was initially declared in the tsarist Manifest from 17 October 1905 and specified in the following manner in article 66 of the Code of Laws of the Russian Empire: “All nationals of the Russian State, not belonging to the ascendant Church but are (a) native-born and (b) naturalized, as well as (c) foreigners, standing in Russian State service or temporarily sojourning in Russia, every single one universally enjoys the right to freely exercise their faith and celebrate religious services according to their rituals.“

The Constitution of the RF in force forms the basis of the legal regulation of attitudes that are connected with the activities of religious communities and stipulates that, firstly, no religion can establish itself as a national or mandatory religion and that, secondly, all religious associations are separate from the state and equal before the dominant religion in Russia and no creed is recognized as preferential. Canonic establishments and rules are not the source of the law and have no bearing on the activity of state bodies, of their functionaries, on the system of state and municipal constitutions which are of secular nature. It follows thereof that there are no official churches.

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18 Federal law “On the guarantees of the equality of parliamentary parties at the coverage of their activities by national, publicly accessible television and radio channels“ (2009) // Collection of the legislation of the RF, 18.05.2009, no. 20, art. 2392.

In practice, however, one can observe an obvious preference for the Russian Orthodox Church that is exerted by authorities. Like the authors of one of the first comments on the Constitution of the RF notice, “under the condition of separating religious communities from the state one must consider the practice of organizing religious services in state institutions and in enterprises (for example the sanctification of buildings, output products, workplaces and suchlike), the location of icons or other objects of religious imagery in them, religious blessing of persons fulfilling state functions, the financing of an activities of religious associations at the expense of state means and so forth a serious violation of this constitutional principle“[19].

Article 28 of the Constitution of the RF guarantees everybody the freedom of conscience and the freedom of religion. The scope of these freedoms includes the right to profess individually or together with others any religion or any religion at all, to freely choose, possess and disseminate religious and other views and act according to these. This almost literally complies with paragraph 1 article 9 of the European Convention on Human Rights and Fundamental Freedoms. One must, however, point out that the comprehension of “everybody“, contained in article 28 of the Constitution of the RF is highly idiosyncratically interpreted in the Federal law in force “On the freedom of conscience and religious communities“[20] (paragraph 1 article 6, paragraph 1 article 8 and others). Only in the case of their permanent residence the Law in force (1997) permits foreigners and stateless persons to be founders and participants of religious associations.

Apart from the Federal law "On the freedoms of conscience and religious communities" that plays a vital role in the forming of structures of the system of legislation on religious communities, a significant number of legislative regulations, directly or indirectly regulating the given sphere of public relations apply on the federal level.

Firstly, laws on the bases of state and municipal services contain regulations, banning a tax and the inclusion of information on religious

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19 The Constitution of the Russian Federation. Comments / Under the general editorship of B. N. Topornin, Yu. M. Baturin, R. G. Orekhov. - M., 1994. p110.

20 Collection of the legislation of the RF, 29.09.1997, no. 39, article 4465.

denomination of employees in personal affairs, the use of professional powers of state employees for the advocacy of their attitude towards religion, the participation of a state employee as such in religious ceremonies.

Secondly, there are regulations in the legislation that regulate the abidance by and the manner of enforcement of rights of the faithful, e.g. at the military service, in places of confinement, in hospitals and so on.

Thirdly, the range of legislative regulations establishes the way of carrying out different kinds of activities of religious organizations (as educational, charitable activities and so on).

Fourthly, there is a substantial quantity of legislative regulations that govern the financial and property legal relations of religious organizations and provide tax and other privileges.

Fifthly, finally regulations are framed that regard the criminal and administrative responsibility for the violation of the legislation on religious communities.

The Federal law "On the freedom of conscience and religious communities" identifies two organizational forms of religious associations: the religious group and the religious organization.

The religious group: differs insofar as it carries out its activity *without official registration and acquisition of legal capacities of a legal person* and its members provide the quarters and the necessary property for the use of the group. Religious groups have the right to celebrate religious services, other religious rites and ceremonies as well as practice the teaching of religion and religious education of their followers. Inasmuch as the law specifies neither the minimal nor the maximal numerical strength of a religious group, one can reckon that in the given case it allows the formation and functioning of religious associations outside of the formalities of state legitimization, which is not only of permissive but also of notifying nature.

If citizens, having formed a religious group intend to further transform it into a religious organization they are obligated to give notice of its founding and of the beginning of activities to bodies of local self-government. The given notification is indispensable for the start of the counting of a period of 15 years time, which was established as one of

the main conditions for the formation of a religious organization, not being included into the structure of a centralized religious organization of the same confession.

It shall be understood, that the provision for an indispensable 15-year period, which caused severe criticism of the Law, may not be regarded as an unlawful restriction of the freedom of conscience, most notably because according to the Law's meaning this requirement applies to local religious organizations only; which at the registration or re-registration are not subject to an affirmation of its confessional affiliation to any centralized religious organization, registered in Russia. Furthermore, relating to previously founded or officially registered religious organizations the Constitutional Court of the RF decided that the legislator may not deprive them of the possibility to use the rights, already granted to them, only on the grounds of lacking a confirmation of a 15-year existence, insofar as this would be a contradiction to the principle of equality and an intolerable restriction of the freedom of religion as well as the freedom of the establishment and activities of official associations.

In regard to **religious organizations**, the *procedure of their official registration is rather complex*. In particular, the procedure implies the organization’s presentation of information on the foundations of its beliefs and on the corresponding practices, which includes information on the history of the origins of the religion and of the given association, on forms and methods of its activity, on the attitude towards family and marriage, on the relation to education, on the characteristics of the relation to the health of a given religion's followers, on the restrictions of the organization’s members and ministers concerning their civil rights and duties. However, the formal existence of discrepancies between the provisions of a given religion and the Russian legislation are no reason for a refusal of the registration of a given religious community. Otherwise it would have been necessary to deny, for example, all Christian organizations the registration for the only reason that the dogma regarding the origin of all power from God contradicts article 3 of the Constitution of the RF, in accordance with which the source of power are the people.

The Law provided the possibility to send foundation documents of religious organizations to an official theological expert evaluation. This is even more important in instances when an attempt is being made to found, in the best case, a commercial organization and, in the worst case, a

terrorist organization. Corresponding expert councils are created and work both subordinate to the Ministry of Justice of the RF and in many regions.

Although religious organizations don't directly take part in the exercise of civil control, they practically influence processes that are under way in society by means of their integration in the educational process in secondary schools and by means of an almost country-wide participation in all sorts of political actions.

Non-profit organizations (NPO): The main indicators for the development of non-profit non-governmental organizations point to a continuing incongruity on the level of the organizations' development with a standard that is characteristic of modern developed states of the world. Thus only 0.89% of the state's economically active population work in NPO. This is 2 to 10 times less than in the leading states of the world[21]. In return the underdevelopment of the sector of non-profit organizations automatically confines the performance of the programs, implemented by the state, particularly in the social sphere and hinders the increase in effectiveness of state administration altogether. Especially on the regional and municipal level the *underdevelopment of mechanisms for social control* and the insufficient involvement of society in the process of elaboration and expertise of social programs, implemented by the state are within the range of key factors that framed the conditions for an exacerbation of these problems.

The legislative basis of the non-profit organizations' functioning, above all in terms of the Federal law "On non-profit organizations"[22] outlasted already **three periods**.

The first period is characterized by the establishment of rather advantageous conditions for the foundation and work both of Russian NPO – in shape of non-profit partnerships, autonomous non-profit organizations, funds, public organizations and so on – and of departments, branch offices and representative offices of foreign and international NPO. This

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21 cf. Russian-wide survey of NPO, conducted by the Research Centre for Civil Society and the Non-profit Sector of the State University – Higher School of Economy (2009).

22 Collection of the legislation of the RF, 15.01.1996, no. 3, article 145.

allowed numerous international and foreign charity funds and other non-governmental organizations to settle in Russia without any problems whatsoever. Fiscal and monitoring conditions for their work were quite liberal. This made it possible to slightly alleviate the social consequences of radical economic reforms of the 90ies in regard to those spheres, which were least of all prepared for the transition to market relations: culture, basic research, education, international relations, social support of the disabled, combat against social orphanhood and so on.

The second period was characterized by a tightening of fiscal, registration and monitoring regulations that concerned all NPO but, in the first instance, foreign, international and those NPO, which profited of financial support from abroad. The most decisive step in the modification of the legal order in the given sphere became (2006) the introduction of amendments to the Law, which reduced the possibilities of foreign organizations and of citizens to engage in non-profit activities in Russia. In particular, the compulsory registration (formally this procedure is called notification) of departments and representative offices of foreign non-profit organizations was introduced; the obligation of all NPO "to inform a federal body of state registration on the amount of funds and other assets that the public association received from international and foreign organizations, foreign citizens and stateless persons, on the purpose of their expenditure or utilization and on their actual expenditure or utilization in form and time that are determined by the Government of the Russian Federation". The failure to provide these informations is already in itself a legitimate reason to resort to court, aiming at the termination of the non-profit organization's activities.

The third stage of the development of the legislation on NPO is connected with the fact that on the initiative of the Presidential Council for Civil Society and Human Rights (for details see below) legislative amendments were implemented that somewhat liberalized the regulations on the registration of NPO, and those NPO that were not financially tied to foreign grants, were liberated from the very complex accounting system.

A special category of NPO, namely *socially oriented non-profit organizations* were brought into the development of this tendency by law. In compliance with legislative amendments bodies of state power and bodies of local self-government can provide support to socially oriented non-profit organizations if they engage in the following sorts of activities:

1) social support and protection of citizens;

2) training of citizens for surmounting the aftermaths of natural, environmental, technogenic or other disasters and for the prevention of accidents;

3) rendering assistance to people which have been injured in the course of natural disasters, environmental, technogenic or other disasters, of social, national or religious conflicts, to refugees and forced migrants;

4) environmental protection and protection of animals;

5) protection and preservation of objects (including buildings, constructions) according to the stipulated requirements and of territories that have historical, cult, cultural or conservation value as well as burial grounds;

6) rendering legal assistance to citizens and non-profit organizations on voluntary or preferential basis, legal education of citizens and activities regarding legal protection and the protection of rights and liberties of Man and Citizen;

7) prevention of socially dangerous behavioral patterns of citizens;

8) charitable activities as well as activities within the realm of contributing charity and voluntary work;

9) activities in the sphere of education, education, science, culture, art, public health, preventative health measures and public healthcare, promotion of a healthy lifestyle, improvement of the state of moral and psychological health of citizens, physical education and sports and the furtherance of the above noted activities as well as the furtherance of a spiritual self-development.

Moreover, socially oriented NPO are recorded in special registers that allow to easily identify them as legitimate beneficiaries of state support.

Charity funds: This organizational and legal form of non-profit organizations is specified by the Federal law “On charity activities and charity organizations“[23] (1995). However, the impact of this normative legal act is extremely small in as far as the favorable conditions for charity, provided by it are in no way sustained by the regulations of fiscal and budgetary legislation.

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23 Collection of the legislation of the RF, 14.08.1995, no. 33, article 3340.

At the same time it would be an exaggeration to suggest that the Tax Code of the RF [Nalogovyj Kodeks Rossiyskoy Federatsii] (NK RF) does not at all provide the possibility for the exemption of charitable donations from taxation. Particularly article 219 of the NK RF grants so called social tax benefits on income tax payment of natural persons. During the evaluation of the extent of the tax basis, the taxpayer has the right to obtain social tax deductions "in the amount of income, remitted by the taxpayer for charitable purposes like monetary support of organizations that are engaged in science, culture, education, healthcare and social security and are partially or entirely funded by means of the corresponding budgets, as well as of organizations, engaged in physical education and sports, educational and pre-school establishments in need of citizens' physical education and support of sports teams, and in the amount of donations, remitted (paid) by the taxpayer to religious organizations for their engagement in religious activities – in the extent of actually made expenditures, but not more than 25% of the total income, derived in a tax assessment period".

The tax legislation comprises some other regulations, which in principle ought to stimulate charity. Thus, the voluntary transfer of goods (execution of work, provision of services) as part of charity activities is not subject to taxation (with the exception of excisable goods). In return, purpose-oriented receipts for the support of NPO, including assets and goods, which were obtained at the execution of charity activities are not subject to taxation.

However, according to the general recognition of experts, all of these tax benefits are clearly insufficient for the stimulation of the development of charity in Russia.

Mass media: One of the most important institutions of civil society in Russia are mass media. Their activities are regulated by the Law of the RF "On mass media"[24] (1991), which is regarded as one of the most liberal ones in the world. Nevertheless, within the last 15 years this Law was subject to quite a few amendments, some of which had a devastating impact on the degree of freedom of press in the country. Thus mitigation of provisions, prohibiting editorial offices and journalists to receive compensation for the publication of advertising material under the cloak of editorial, analytical

24 "Rossiyskaya gazeta", no. 32, 08.02.1992.

and other sorts of material led to the heyday of so called “journalism on order“ and affected the infiltration of corruption into the media-sphere.

Another example is the subsequent extension of a list of reasons in the Law for terminating broadcasting and publishing activities of mass media while expanding of the range of subjects, endowed with the right to initiate a similar procedure. Although broadcasting and publishing activities of mass media can be put on hold or stopped by adjudication only, the reason for this can however be, as practical experience shows, even the quoting of extremist statements in an article that objectively aims at the combat against extremism. Moreover, broadcasting and publishing activities of mass media can only be terminated after at least two official warnings that were issued within 12 months. But if it is a matter of using mass media for the execution of extremist activities, only one warning, and in exceptional cases none, is sufficient to resort to court. This would probably be justifiable if there was not an extremely broad understanding of extremism in the Russian legislation and law enforcement of the 2000s: it is not only conceptualized as terrorist activities but also as the defamation of persons, holding a state office, albeit it appears to be extremely difficult to prove that the journalists' discovery of misuse is not defamation (cf. below).

In the last decade a repeated increase of penalties occurred that were inflicted on mass media for the violation of laws on advertising and for disturbing the course of the coverage of canvasses (a repeated disturbance can entail a discontinuation of broadcasting and publishing activities of mass media until the end of the elections). In conceding penalties to the amount of several million roubles as compensation for emotional damages and defamation the judicial practice too made a contribution to the intimidation of independent mass media and journalists. At the same time the *reaction to critical responses of the press on part of authorities and public opinion stays fairly weak*. At his time the President of the RF B. N. Yeltsin imposed an obligation on bodies of executive power and their functionaries to promptly react to criticism on the part of mass media and send answers regarding actions taken to editors in due time, but this regulation was adapted from case to case and finally repealed at all[25].Usually publications, giving account of functionaries' misuse turn to

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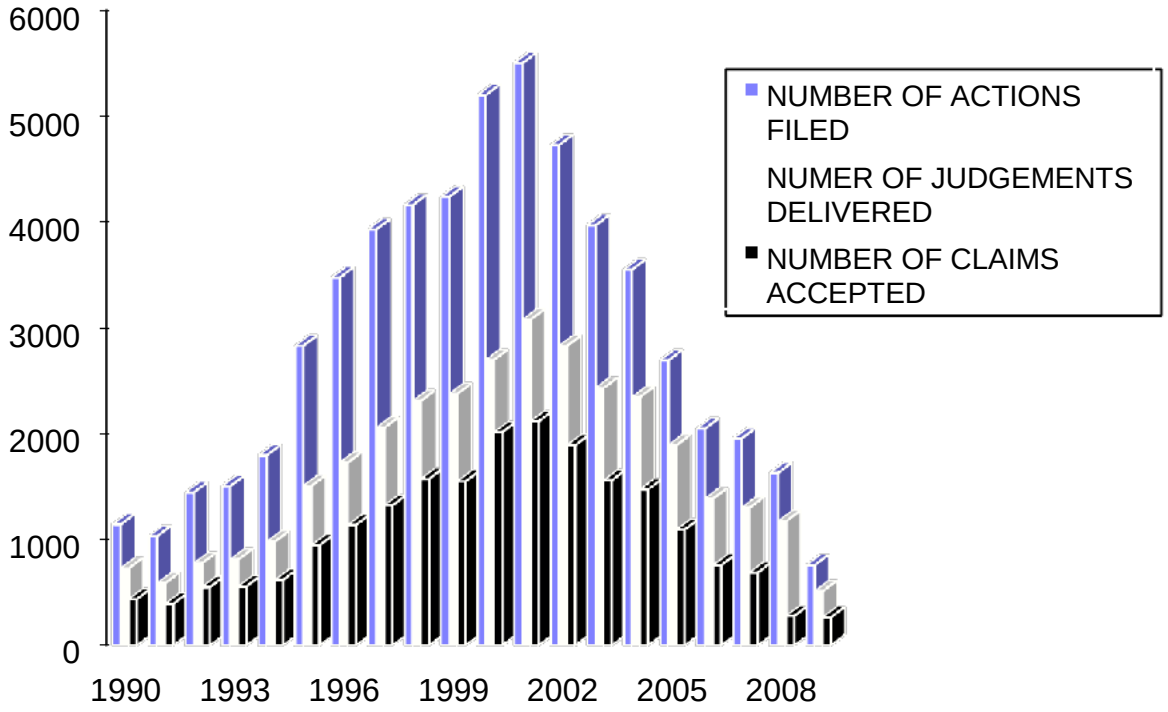
25 See: Decree of the President of the RF from 06.06.1996 "On actions regarding the strengthening of discipline in the system of state services". Entered into force as from 2005.

criminal cases on defamation or, at best, to defamation suits. It is not surprising that under such circumstances many editors decline to publish materials of journalistic investigations and simply critical articles. This is directly indicated by judicial statistics. If from 1990 up until 2001 the amount of defamation suits against editorial departments of mass media gradually increased, it just as successively decreased in the following years until in 2009 it was accounted for less than in the 1990ies (see the following figure).



Legal actions against editorial departments of mass media on protection of honor, dignity and professional reputation (according to data from the Supreme Court of the RF)

At the same time one must mention the positive change concerning the freedom of mass media. Thus, in 2005 the Plenum of the Supreme Court of the RF adopted an extremely important resolution, in which it oriented subordinate courts of general jurisdiction towards the legal position of the European Court of Human Rights regarding cases that pertain defamation[26].

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26 The resolution of the Plenum of the Supreme Court of the RF from 24.02.2005 no. 3 "On the judicial practice regarding cases on the protection of honour and dignity of citizens, as well as professional reputation of citizens and legal persons".

In 2010 the same Court clarified many difficult questions concerning the application of the Law of the RF "On mass media"[27]. Many experts, among these OSCE Representative on Freedom of the Media Dunja Mijatovic appraised this document as an important step on the path of strengthening the guarantees of independence of press and informational pluralism in Russia.

Civic Chamber or the RF [Obshchestvennaya palata Rossiyskoy Federatsii] (OP RF). It is difficult to precisely define the legal nature of this institution inasmuch as, on the one hand, it can be regarded as part of the structure of civil society because it consists of members of the public, and, on the other hand, the OP RF is framed by political bureaucracy and kept under strict control of the administration of the President of the RF. Apparently, it is neither a state organ, nor an association of public organizations although it has features of one and the other. This manifests itself most distinctly in the procedure of its formation. One third of the staff (42 people) is designated by the President of the RF. The other third is elected by the first third out of a number of candidates, nominated by Russian-wide public associations. Finally, the last third is elected by the first two thirds out of a number of candidates from interregional and regional public associations. This is why a definition of the Civic Chamber of the RF as a state-public body would be most adequate. This symbiosis is conceded by the Federal law “On public associations“[28], although the constitutionality of forms of such nature is highly doubtable.

OP RF, formed in 2005 was destined to somehow *compensate the, in society's judgment, loss of the representative character of the State Duma*. The formation of OP RF is actually an indicator for the fundamental defect of the political system that proves to not have the ability to adequately elicit, represent and protect the interests of different groups and strata of society. Not incidentally, the Federal law “On the Civic

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27 The resolution of the Plenum of the Supreme Court of the RF from 15.06.2010 no. 16 "On the practice of application of the Law of the Russian Federation”, "On mass media" by the courts".

28 Collection of the legislation of the RF, 22.05.1995, no. 21, article 1930.

Chamber of the Russian Federation“[29] stipulates that this body “*guarantees the interaction of citizens of the Russian Federation, of public associations with federal bodies of state power, with bodies of state power of the subjects of the Russian Federation and with bodies of local self-government* for the purpose of the recognition of needs and interests of citizens of the Russian Federation, the protection of rights and freedoms of citizens of the Russian Federation and of rights of public associations in the engagement in governmental policies in order to exercise public control over the activities of federal bodies of executive power, of bodies of executive powers of the subjects of the Russian Federation and of bodies of local self-government as well as in order to facilitate the realization of governmental policies with regard to ensuring human rights in places of forced imprisonment“.

The Civic Chamber conducts various civil forums and hearings on socially important problems, gives opinions on violations of legislation by different bodies of authorities as well as on violations of freedom of speech in mass media, delivers expert opinions on draft laws of normative legal acts, assigns its members to participate in the work of parliament committees and commissions, collegia of Ministries, administrative bodies and so on.

In many federal subjects similar state-public structures were built that usually work in cooperation with the Civic Chamber of the RF.

At first the relation of society to the given institution just like to the compound nature of its construction, destined to replace the usual representative body of power with the political competitor inherent to it, was in a state of vigilance. In the course of time; however; the OP RF turned out to be a rather influential but also, of course, insufficiently effective mechanism that ensures official civil control in some conflict situations with the most far-reaching consequences.

Public supervising committees [Obshchestvennye nablyudatelnye komissii] (ONK). The institution of public supervising committees can be regarded, in a sense, as the product of the Civic Chamber of the RF in as far this is where the idea, inspired by numerous speeches of expert communities about the need for a radical prison reform was translated

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29 Collection of the legislation of the RF, 11.04.2005, no. 15, article 1277.

into a draft law, which in 2008 became the Federal Law “On public control of ensuring human rights in places of forced imprisonment and on assistance to persons, staying in places of forced imprisonment“[30]. In compliance with this Law, an ONK is constituted in every region, which is formed by the Council of the Civic Chamber of the RF out of a number of candidates, nominated by different public associations that due to their statutory objectives enjoy protection of rights and freedoms of Man and Citizen.

As a consequence of their supervising duties members of the ONK have the right to inspect places of forced imprisonment without special permission, including cells, cells for special punishment, inpatient units, exercise yards, libraries, refectories, solitary confinement cells for disciplinary and punitive purposes, isolations cells and so on. There they can talk with detainees face to face, take and consider their suggestions, requests and complaints, enquire the administration for necessary information and documents, address different functionaries, including bodies of public prosecution, in matters of securing human rights in places of forced imprisonment.

Presidential Council for Civil Society and Human Rights [Sovet pri Prezidente RF po sodeystviyu razvitiyu institutov grazhdanskogo obshchestva i pravam cheloveka]. This institution is a special extension of the Commission on Human Rights under the President of the RF and was formed already in 1993 “with the objective to strengthen the guarantees of civil and political rights“[31]. The first chairman of this Commission was the famous human rights activist S. A. Kovalev. The legal status of the Council in its present form was constituted in 2004[32]. It allows to fully classify the Council to instruments of civil control although, just as the Civic Chamber, the Council has features resembling and distinct from both state bodies and public associations. On the one hand, the Council was established by a decree of the head of the state, in which its personnel composition is determined. On the other hand, all Council members work on voluntary basis.

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30 Collection of the legislation of the RF, 16.06.2008, no. 24, article 2789.

31 Decree of the President of the RF from 26.09.1993 "On the Commission on Human Rights under the President of the Russian Federation".

32 The provisions on the Presidential Council for Civil Society and Human Rights, endorsed by the decree of the President of the RF from 6.11.2004 no. 1417.

To the Council's competencies belong: systematic provision of information to the President of the RF on the state of affairs in the realm of abidance by the rights and freedoms of Man and Citizen, preparation for the proposition regarding the improvement of guarantees of those rights and freedoms, organization of expertise on different draft laws and other normative legal acts, preparation of the proposition concerning the establishment of civil society institutions, enhancement of the cooperation between public and state institutions, development of technologies to record public initiatives when making state policies in the field of securing and protecting rights and freedoms of Man and Citizen, assistance to the coordination of activities of public human rights associations and their cooperation with authorities, assistance to the development of mechanisms of public control and so on.

Actively participating in the fight for solving problems that affect the rights of individuals and collectives, the Council has a positive impact in some instances. However, the personification of the problems in the sphere of protection of human rights often leads to an unjustifiable duplication of the functions of the Commissioner on Human Rights in the RF. All of this reduces the effectiveness of the Council as a unique structure and a “collective advisor“ of the President of the RF on questions of state policies regarding the development of civil society and the securing of rights and freedoms of Man and Citizen.

Administrative system and legal system (organizational structures)

The content of this chapter gives an overview over two different branches of power, namely the executive and the judiciary. Therefore this chapter is divided in two parts.

1) The system of executive power, 2)Federal bodies of executive power

In 2004 a new system of federal bodies of executive power (further referred to as FBEP) was brought in as a part of the administrative reform in terms of the Decree of the President of the RF on 9 March of 2004 "On the system and structure of federal bodies of executive power". Instead of seven three types of FBEP were announced:

- Federal Ministry
- Federal Service
- Federal Agency

The question at issue, however, was not only the reduction of the amount of FBEP-types but also the determination of each body´s specific authority. Yet, in relation to every type of FBEP the presidential decree grants exceptions (therefore we will further refer to the situation as "in general") that allow bodies of one or another kind to carry out actions, forbidden for a given FBEP but authorized for a particular other body "by decrees of the President of the Russian Federation or by order of the Government of the Russian Federation". These exceptions, without doubt, reduce the general effectiveness of the reform realized.

The Federal Ministry is a body of executive power that performs functions regarding the elaboration of state policies and normative-legal regulations but, in general, does not have the right to fulfill controlling and supervising functions or functions concerning the administration of state possessions. At the same time the Ministry is endowed with the right to coordinate and control the activities of Federal Services and Federal Agencies that are under its supervision.

Federal Service is a body of executive power that performs *controlling and supervising functions* in a specified sphere of action as well as special functions in the field of defense, national security, defense and protection of national borders, combat against crime, public safety. In other words, bodies are assigned to Federal Services whose main task is control and supervision or police functions and secret service functions.

Unlike the Ministry the Federal Service does, in general, not have the right to implement normative-legal regulations. It passes only *individual* (basically, administrative) legal acts.

The Federal Agency is a body of executive power that performs functions *regarding the rendering of state services, the administration of state possessions and law enforcement functions*, excluding controlling and supervising functions. Exactly like the Federal Services, the Agency does, in general, not have the right to implement legal regulations with normative character. It implements merely *individual* (i.e. basically, administrative) legal acts. Although the Services and the Agencies are formally independent bodies the majority of them is nevertheless under actual command of ministries suited. There is only a tiny group of Federal Services and Agencies that are directly governed by the President of the RF (on 11 November 2010 it amounted to 7) or by the Government of the RF (on 11 November 2010 it accounted for 11). In addition, in 2008 the Federal Ministers acquired the right to give leaders of

subordinate Federal Services and Federal Agencies orders, subject to compulsory implementation, as well as to suspend the writ of Services and Agencies (their leaders) or to annul these writs, if no other manner of their annulment is determined by a federal law.

The total number of FBEP constantly fluctuates (amalgamation, division and abolition of FBEP takes place). In particular, the composition of FBEP radically changes after the formation of a new Government (either after its resignation or after the inauguration of a new President of the RF) since, in compliance with the Constitution of the RF, the President approves the structure of FBEP. On 12 May 2008, i.e. within 5 days after the inauguration of the President of the RF D. A. Medvedev, was the last time such a structure (composition) of bodies of executive power was approved.

However, this decree was repeatedly amended and supplemented as well. As of the time of the writing of this review 17 Federal Ministries, 35 Federal Services and 24 Federal Agencies are operative.

Regional bodies of executive power

In article 73 of the Constitution of the RF it is said that outside the limits of exclusive authority of the Russian Federation and its powers on issues under conjoint jurisdiction the subjects of the RF possess *full state power*, and article 77 stipulates that the government bodies of the subjects are established by them independently but according to the principles of the constitutional system and to general organizational principles for representative and executive bodies. In practice the extent of this independence is quite limited, largely due to a notion of "general principles" that is rather broadly interpreted by federal legislation and sustained by the Constitutional Court of the RF. Nowadays general principles of organization of bodies of executive power of the subjects of the RF (in Russian legislation they are called “executive bodies of state power”; we will further use the abbreviation EBSP) are stipulated by the Federal law "On general principles of organizations of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation"[33] (1999). The system of EBSP, regulated by this Law (further Law on general principles) is composed as follows:

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33 Collection of the legislation of the RF, 18.10.1999, no. 42, article 5005.

The chief executive body of state power of a given federal subject (article 17) heads the system of EBSP. In reality, however, the "chief executive officer of a subject of the Russian Federation" or "the leader of a chief executive body of state power of a subject of the Russian Federation" is not only the leader of executive power but also of a federal subject in general. Why is here made use of the conjunction "or"? Because the status of both is equivalent (the second status in the Law is put in parentheses). And because in some regions the legal position of the leader of the federal subject (president, governor and the like[34]) is similar to the status of the federal President (head of State), in others the leader of the federal subject is directly in charge of the local government, i.e. the chief body of executive power of a federal subject. Yet, in both cases the leader of the federal subject, unlike the President of the RF, represents the very executive power, which is implied in chapter III of the Law on general principles. But beyond the dependence of the leader's status his/her relations to the body of legislative power do not permit to place the model of regional power, dictated by federal legislation, among any known form of government. In this model there are elements of presidential, semi-presidential and parliamentary forms of government. This heavily confuses the whole system of public authority, which along with a transition (since 2004) to an actual subordination of the regions' leaders to the President of the RF limits the possibilities for civil control over regional public authorities to a great extent.

The complexity of the regional system of EBSP lies further in the fact that, firstly, territorial subdivisions of many federal bodies of executive power are located in the regions. Moreover, these bodies sometimes double (at least, regarding the name) the EBSP. For example, the Chuvash Republic has a Department of Justice for the Chuvash Republic (territorial body of the Ministry of Justice of the RF) while at the same time the Ministry of Justice of the Chuvash Republic is operative. Secondly, many EBSP are practically subordinates to both the regional government as well as the head of a given federal subject and to the corresponding federal bodies of executive power. This is established by the constitutional formulation of a "single system of executive power" (article 77) that was mentioned in

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34 The exact titles of leaders of federal subjects differ from region to region, like president, governor, head of the federal subject and others. While writing this report legislative amendments were adopted, abolishing the title "president" that the leaders of republics as parts of the Russian Federation carried.

chapter 1.3. of the report at hand. Although such a "single system" is designed for either the exercise of federal powers, delegated to them, on issues under exclusive authority of the Federation or the exercise of federal powers on issues under conjoint jurisdiction only, it is of great difficulty to understand, where the actual powers of the federal subjects lie.

Executive bodies of local self-administration

The Federal law "On general principles of local self-government organization in the Russian Federation"[35] (2003) established the following types of municipal bodies:

- representative body of a municipal entity;
- head of a municipal entity (chief officer of a given municipality);
- local administration (executive-administrative body of a municipal entity);
- control body of a municipal entity (control-Auditing Chamber, audit commission and the like);
- other bodies and elective officers of local self-government, provided by the charter of a municipal entity (for example, the election commission of a municipal entity);
- depending on territorial organization municipal entities (municipalities) can have a different status, with which they are provided with by the law of the particular federal subject:
- rural settlements, i.e. populated rural areas that comprise not less than 1000 inhabitants or a number of populated areas in close proximity, whose population does not exceed 1000 inhabitants (for a territory with dense population – 3000 inhabitants);
- intra-city area of a city of federal importance (Moscow or Saint Petersburg), i.e. a district in that city;
- urban settlement, i.e. a common city within its territory;
- urban area includes the city within its territory as such and populated rural areas nearby that do not have their own municipal bodies[36];
- municipal district comprises a number of urban and rural settlements, including the territory between them with the exception of urban areas.

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35 Collection of the legislation of the RF, 06.10.2003, no. 40, article 3822.

36 This sort of municipal entity serves the purpose that along with city dwellers inhabitants of sparsely populated settlements and villages have the possibility to draw social benefits.

As stipulated by article 3 of the Federal Law "On general principles of the local self-government organization in the Russian Federation", article 4 of the Federal Law "On basic guarantees of suffrage and the right of the citizens of the Russian Federation to participate in a referendum"[37] (2002) and article 12 of the Federal Law "On the legal status of foreign citizens in the Russian Federation"[38] (2002) *foreign citizens,* who permanently or predominantly reside on the territory of a municipal entity have the right to take part in elections of municipal bodies and functionaries.

Legal status of the head of a municipal entity differs in relation to what organizational model of local public authority was chosen.

Model 1

The head of a municipal entity is chosen by the inhabitants in the course of *municipal elections*. In this case two alternatives are possible:

- the head becomes chairman of the representative body of a municipal entity but does not have the right to head local administration:
- the head is in charge of local administration but does not have the right to join the representative body.

Model 2

The municipal representative body elects one of its members as the head of a municipal entity. In this case he/she becomes chairman of the given representative body but may not govern local administration. The head of local administration is a person, who is appointed to the office as *head of local administration under a contract,* concluded subsequent to competitive selection (so called *city manager*). Recently this model spreads out further since it permits to legally bar the population from direct elections of the city's leader and, as a consequence, detaches the leader from his/her responsibility to the inhabitants. The local representative body itself is, as a rule, controlled by regional authorities.

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37 Collection of the legislation of the RF, 17.06.2002, no. 24, article 2253.

38 Collection of the legislation of the RF, 29.07.2002, no. 30, article 3032.

Model 3

If the *representative body of a municipal district* consists of the heads of those settlements that make up the given district and of deputies of the settlements' representative bodies, the *head of the municipal district* is, ex officio, chairman of the representative body of a given district and may not be in charge of the local administration. Here the city manager plays the main role as well.

Model 4

The head of a municipal entity, having the status of a *rural settlement or intra-city municipal entity* of a city of federal importance can be the chairman of a corresponding representative body and head the local administration.

Bodies, exercising supervision over legality and criminal prosecution

We will deal with these ("judicial") bodies that are liable for the implementation of public sanctions regarding delinquents separately. Naturally, in this regard of utmost importance is the ***Public Prosecution of the RF***, which is a single centralized system of bodies, headed by the *General Public Prosecutor of the RF* (article 129 of the Constitution of the RF). Details on the Public Prosecution of the RF are presented in chapter 2. The General Public Prosecutor is appointed to and released from office by the Council of the Federation on the proposal of the President of the RF. All other public prosecutors are appointed to and released from office by the General Prosecutor. In compliance with the Federal law "On the Public Prosecution of the Russian Federation"[39] the terms of reference of the Public Prosecution include the following three main functions:

- supervision of the adherence to laws by police structures, secret services, the penal system and supervision of bodies of executive power, regional legislative bodies, bodies of local self-government, regulatory bodies and leaders of profit and non-profit organizations;
- criminal prosecution;

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39 Collection of the legislation of the RF, 20.11.1995, no. 47, article 4472.

- coordination of law enforcement authorities' actions regarding the combat against crime.

A distinctive feature of the Public Prosecution of the RF is that it does not refer to any branch of power. It is further mentioned in the Constitution of the RF in the chapter on the judiciary. Therefore, the nature of this system is disputed until now. It's another matter that *actually* the General Prosecutor is subordinate to the President of the RF since the submission of his/her candidacy for a new period and of his/her dismissal from office depend on the latter himself.

The Investigation Committee at the Public Prosecution of the RF [Sledstvennyy komitet pri Prokurature Rossiyskoy Federatsii] (SKP) and the Investigation Committee of the RF [Sledstvennyy komitet Rossiyskoy Federatsii].

Until mid-2007 the Public Prosecution inquired into very many, usually, intricate criminal cases and could entrust different police bodies with the investigation at the same time.

However, in June of 2007 the Investigation Committee was formally created as a part of the Public Prosecution and received the investigative functions of the latter. The emphasis is on "formally" because really this structure presents itself as independent from the General Prosecutor if for no other reason than, first of all, the President of the RF introduces the candidacy for the appointment to office of the Investigation Committee's chairman to the Council of the Federation (just as the candidacy of the very General Prosecutor of the RF), although the chairman of the SKP is, ex officio, only Deputy of the General Prosecutor.

Nonetheless, the submission of the candidacy for chairman of the Investigation Committee of the Public Prosecution is not provided for by the Constitution of the RF. And, secondly, the Provisions on the Investigation Committee are also enacted by the President of the RF.

That the SKP was actually situated outside of the Public Prosecution and that this position was temporary, showed the Federal law "On the Investigation Committee of the Russian Federation"[40] (2010) that finally

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40 "Rossiyskaya gazeta", no. 296, 30.12.2010.

took this body out of the system of the Public Prosecution and put it under direct leadership of the President of the RF. As a consequence, it is now called Investigation Committee of the RF (SK RF). At the same time, the legal nature of the SK RF is rather incomprehensible since it is not classified as a body of executive power, and in the Law it is called "federal state body that exerts authority in the realm of criminal court proceedings according to the legislation of the Russian Federation".

The Investigation Committee of the RF governs a centralized system of investigative bodies and institutions. Some Russian journalists call the SK RF the equivalent of the American FBI, however, this does not bear comparison because the Investigation Committee lacks (for now) operational-investigative functions. What the reason for its formation was, anyway, is difficult to determine since up to now specialists argue if it was advisable to concentrate the function of investigation of criminal cases in one body.

Police: Influenced by a range of much-publicized crimes, committed by officers of the militia the President of the RF suggested to carry out a reform of the *militia* and introduced the bill "On the *police*" to the State Duma in autumn 2010. In February of 2011 this Federal law was enacted and is gradually implemented since 1 March. Nonetheless, the Law does not make provisions for a real reform although the *renaming* of these structures is also an important issue. For "militia" emerged because, in accordance with Lenin's doctrine, the socialist state had to disappear and functions of the professional army had therefore to be fulfilled by "the people in arms". Life forced the Bolsheviks to give up upon this part of a general utopia but traces of utopian ideas survived in the naming of some structures.

The Law also foresees a more legal character of police interactions with citizens (for example, the obligation to read the rights while arresting a suspect in the manner of the "Miranda Rights"; carrying a badge that allows to identify a police officer). But there are not many guarantees that, firstly, all of these innovations will be realized unconditionally and, secondly, that they allow to put an end the police arbitrariness. In the very structure of the police no pivotal changes are intended either. Notably, whereas the formation of a municipal militia (police), which is not part of the Ministry of the Interior of the RF [Ministerstvo Vnutrennikh Del] (MVD) and which supports itself by means of inhabitants in the system of local self-government, was put forward for a long time (at the end of the 90ies even an experiment to that effect was conducted), this idea has nonetheless not gained official recognition so far. The police is still a *highly centralized system* that is part of the MVD and divided in two large parts –

the criminal investigation department (suppression and investigation of felonies) and the public security department (maintenance of order).

The Federal Migration Service [Federalnaya migratsionaya sluzhba] (FMS). Although it is independent, this body is under control (subject to the jurisdiction) of the MVD. The FMS is entrusted, in particular, with such functions as:

- Russian citizenship proceedings, processing and issuance of basic documents that attest to the identity of a citizen of the RF;
- registration of Russian citizens as to their place of residence and habitation within the borders of the Russian Federation, exercise of control over the abidance by the registration rules on the part of citizens and functionaries and de-registration of citizens;
- processing and issuance of documents for the entry to the Russian Federation to foreign citizens and stateless persons and of documents for residence and temporary sojourn in the Russian Federation;
- exercise of control over the abidance by the rules on residence and temporary sojourn in the Russian Federation on the part of foreign citizens and stateless persons;
- migration registration of foreign citizens and stateless persons in the Russian Federation;
- elaboration and taking measures in cooperation with other state bodies regarding the prevention and suppression of illegal migration;
- exercise of control and supervision in the sphere of outward labor migration, attracting of foreign workers to the Russian Federation and the provision of employment for Russian citizens abroad.

The FMS has territorial bodies all over the country.

The Federal Service for control over drug trafficking [Federalnya sluzhba po kontrolyu za oborotom narkotikov] (FSKN). This body was founded in the beginning of the 2000s. Its main tasks are in particular:

- exercise of control over trafficking in narcotic and psychotropic substances and taking countermeasures against their illegal circulation;
- discovery, prevention, suppression, detection and preliminary investigations of corresponding crimes as well as carrying out the proceedings of cases on administrative infractions;
- creation and management of a single database on issues concerning drug trafficking, and counteractions against illegal circulation of drugs.

The FSKN has territorial bodies all over the country. These bodies work in collaboration with law enforcement bodies of Internal Affairs (police).

Other bodies, particularly, the Federal Security Service [Federalnaya sluzhba bezopasnocti], the Federal Protection Service [Federalnaya sluzhba okhrany], the Bailiff Service [Sluzhba sudebnykh pristavov] and the Federal Penitentiary Service [Federalnaya sluzhba ispolneniya nakazaniy] have special police functions (functions of state enforcement).

Legal System

The Russian legal system consists of three subsystems: 1) constitutional justice, 2) courts of general jurisdiction, 3) courts of arbitration.

Constitutional justice

The Constitutional Court of the RF [Konstitutsionnyy Sud Rossiyskoy Federatsii] (KS RF) represents constitutional justice on the federal level. It consists of 19 judges who are appointed by the Council of the Federation on the proposal of the President. Here the main role of the President was demonstrated by the fact that amendments were introduced to the legislation in 2009 according to which the President proposes a candidate for the appointment to the office as chairman of KS RF and of deputy-chairman. They are appointed for a period of 6 years, after which the President can propose their candidacy again. Unsurprisingly, the administration of the Constitutional Court turns out to be completely dependent on the President.

If one was to describe the functions of the KS RF in more detail than they were pointed out in chapter 1, we shall find that this Court:

- on request of the President of the RF, the Council of Federation, the State Duma, one fifth of the members of the Council of Federation or of deputies of the State Duma, the Government of the RF, the Supreme Court of the RF, the High Arbitration Court as well as of bodies of legislative and executive power of the federal subjects rules on matters of constitutionality of:

  1) federal laws, normative acts of the President of the RF, the Council of Federation, the State Duma, the Government of the RF;

  2) constitutions (charters), laws and other normative acts of the federal subjects that were issued on the matter of jurisdiction of the Russian Federation and conjoint jurisdiction;

3) contracts between federal and regional bodies of state power and contracts between bodies of state power of federal subjects;

4) the Russian Federation's contracts that did not come into force;

- resolves disputes over competencies between:

1) federal bodies of state power;

2) bodies of state power of the RF and bodies of state power of the federal subjects;

3) high state bodies of the federal subjects;

- verifies the constitutionality of a law applied or to be applied on a specific matter on appeals regarding the violation of citizens' constitutional rights and freedoms and on request of courts;
- gives interpretations of the Constitution of the RF on requests of the President, the Council of Federation, the State Duma, the Government of the RF, bodies of legislative power of the federal subjects;
- on request of the Council of Federation renders expert opinions on the maintenance of an established order of a Presidential charge of high treason or another felony charge (a step in the procedure of the removal of the President from office).

The ruling of the KS RF is final and unappealable. A normative act that the Court did not find conform to the Constitution of the RF as well as its provisions lose their legal validity.

In 23 subjects of the RF the creation of very own **constitutional (charter) courts** is intended. However, in only 18 subjects they are actually founded. Their competencies are about the same as the competencies of KS RF but, as a matter of course, commensurate to the given subject of the RF. Against rulings of regional constitutional (charter) courts can not be appealed at the Constitutional Court of the RF.

Courts of general jurisdiction

This subsystem consists of federal courts and courts of the subjects of the RF. The following courts belong to the **federal** courts of general jurisdiction:

- The Supreme Courts of the RF.

- The Supreme Courts of republics, territorial courts, regional courts, circuit courts (autonomous areas) and municipal courts (cities of federal importance).
- The District Courts.

To the courts of general jurisdiction of the **federal subjects** only justices of the peace appertain to.

As a court of first instance the **Supreme Court of the RF** investigates civil cases:

- on impingement of non-normative legal acts of the President of the RF, of non-normative legal acts of the chambers of the Federal Assembly and of non-normative legal acts of the Government of the RF;
- on impingement of normative legal acts of the President of the RF, normative legal acts of the Government of the RF and normative legal acts of other federal bodies of state power that affect the rights, freedoms and legal interests of citizens and organizations;
- on impingement of decrees on the suspension or termination of judges' powers or on the termination of their resignation from office;
- on the suspension of activities or dissolution of political parties, national and international public associations and on the dissolution of centralized religious organizations that possess local religious organizations on two or more territories of federal subjects;
- on the appeal against rulings (avoidance from decision making) of the Central Election Commission of the RF, excluding rulings that left in the power of judgment of subordinate election committees and committees of referenda;
- on resolving disputes between federal bodies of state power and bodies of state power of federal subjects, between bodies of state power of federal subjects, submitted for consideration to the Supreme Court of the RF by the President of the RF;
- on the dissolution of the TsIK RF.

As a court of first instance the Supreme Court of the RF examines *criminal* cases in relation to a member of the Council of Federation, a deputy of the State Duma, a judge of the federal court upon their pre-trial motion.

In addition, the Supreme Court considers cases as a court of cassation, court with supervisory authority and in view of new or newly discovered facts. As from 1 January 2012 the Supreme Court will further become a

court of appeal for civil cases, and from 1 January 2013 forward a *court of appeal for criminal cases* (in the light of these intentions towards the beginning of 2012 a **Board of Appeals** will be established). The enactment by the Federal constitutional law (FKZ) “On courts of general jurisdiction in the Russian Federation“ was scheduled for 7 February 2011. In compliance with this Law it will be part of the Supreme Court of the RF. This is a rather progressive although quite late change.

With the enactment of the said constitutional Law provisions are made for the following *structure* of the Supreme Court:

1) the Plenum of the Supreme Court of the RF;

2) the Presidium of the Supreme Court of the RF;

3) the Board of Appeals of the Supreme Court of the RF;

4) the judicial board for administrative cases of the Supreme Court of the RF;

5) the judicial board for civil cases of the Supreme Court of the RF;

6) the judicial board for criminal cases of the Supreme Court of the RF;

7) the military board of the Supreme Court of the RF.

The Supreme Courts of republics, territorial courts, regional courts, circuit courts (autonomous areas) and municipal courts (cities of federal importance). Unofficially these courts can be called medium-level courts. They are courts, whose competences coincide with the territory of the corresponding federal subject. Besides, it is stipulated by means of the new FKZ on the courts of general jurisdiction that for the purposes of easy accessibility to public justice a *permanent bench*, situated outside the permanent seat of a medium-level court, can be constituted by a federal law. Courts on this level are superior judicial instances in relation to district courts and examine cases as a first instance, as courts of appeal and cassation and in view of new or newly discovered facts. Just as in the Supreme Court of the RF the court of appellation was just now provided in the FKZ on courts of general jurisdiction. As courts of first instance, medium-level courts, according to the Civil Procedural Code[41]

41 Collection of the legislation of the RF, 18.11.2002, no. 46, article 4532.

[Grazhdanskiy protsessualnyy kodeks Rossiyskoy Federatsii] (GPK RF) (2002), are mandated to examine in civil cases:

- connected with state secrets;
- on impingement of normative legal acts of bodies of state power of the federal subjects affecting rights, freedoms and legal interests of citizens and organizations;
- on suspension of activities or dissolution of regional departments or other structural subdivisions of political parties, interregional and regional public associations; on the dissolution of local religious organizations, etc;
- on suspension or termination of mass media activities that primarily broadcast and publish on the territory of one federal subject of the RF respectively;
- on the appeal against rulings (avoidance from decision making) of the election committees (apart from TsIK RF), excluding rulings that left in the power of judgment of subordinate election committees and committees of referenda;
- on dissolution of election committees (apart from TsIK RF).

As for criminal cases the Criminal Procedure Code of the RF [Ugolovno-protsessualnyy kodeks] (UPK RF)[42] (2001) consigns a series of crimes, that we cannot reproduce here due to its vast extensiveness, to the competences of courts of this level as courts of first instance. To the cognizance of these courts also belong criminal cases, whose case papers contain information that frames a state secret. A lower branch of federal courts of general jurisdiction are **district courts**. On first instance all civil, criminal and administrative cases, except for cases that are examined by justices of the peace, military courts and superior courts of general jurisdiction fall within their ambit.

In the system of federal courts of general jurisdiction the subsystem of **military courts** comes forth that exercise judicial power in the armed forces of the RF, other troops, military units and bodies, in which military service is provided by federal law. Subject to military courts' jurisdiction are:

- civil and administrative cases on the defense of violated and (or) impugned rights, freedoms and legally protected interests of military servicemen and citizens, undergoing military training by acts (omission to

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42 Collection of the legislation of the RF, 24.12.2001, no. 52 (part I), article 4921.

act) of military administration bodies, military officers and their decisions;
- cases on all crimes, committed by military servicemen and citizens, undergoing military service, and cases on crimes, committed by citizens (foreign citizens) while performing active duty and undergoing military trainings;
- cases on administrative breaches of law, committed by military servicemen and citizens, undergoing military trainings.

Justices of the peace. In accordance to the Federal Law "On justices of the peace in the Russian Federation"[43] (1998) justices of the peace can either be elected by the citizens or be appointed to office for 5 years (with the right to a new appointment) by regional legislative bodies. Nonetheless, all regions reinforced the second alternative of the establishment of justices of the peace. Justices of the peace are *only procedurally*, and not administratively tied to federal courts. The range of cases, examined by the justices of the peace is rather small. It covers:

- criminal cases on certain significant criminal offences (for which the maximum penalty does not exceed 3 years of imprisonment);
- cases on issuing a bench warrant;
- cases on the annulment of a marriage if the spouses don't dispute over their children;
- cases on the division of jointly acquired property between spouses if the amount in dispute doesn't exceed 50 thousand roubles (circa 1,2 thousand Euros);
- other cases, unfolding out of family law relations, apart from cases on contestation of paternity (maternity), on filiation, on deprivation of parental rights, on limitation of parental rights, on child adoption and other cases regarding disputes over children and cases on recognition of a marriage as invalid;
- cases on property disputes, excluding cases on inheritance of property and cases, arising out of relations regarding the acquirement and use of intellectual property if the amount in dispute doesn't exceed 50 thousand roubles;
- cases on establishing an order for property use;
- various cases on administrative breaches of law (for example, on temporary withdrawal of driver's licenses).

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43 Collection of the legislation of the RF, 21.12.1998, no. 51, article 6270.

For the determination of territorial cognizance of justices of the peace the whole territory of regions is split in judicial districts, which are created on the basis of the calculation of population figures, allotting from 15 to 23 thousand people in one district. One judicial district is dispensed with one justice of the peace. Now (as on 10 February 2011) there are 7.441 judicial districts in Russia in total.

Courts of Arbitration

Unlike courts of general jurisdiction the system of courts of arbitration was established already after the collapse of the Soviet Union and therefore did not carry the burden of old stereotypes along, what enabled it to admit more progressive principles to it. These are, first of all, a much broader application of the district principle of court dislocation and a clear separation of courts of appellation.

The system of courts of arbitration is composed in the following manner: Head of the given system is the **High Arbitration Court of the RF**. It is a superior judicial instance in relation to federal arbitration courts of districts, arbitration appeal courts and arbitration courts of federal subjects; it exercises judicial supervisory control over the activities of courts of arbitration as well as examines various cases as court of first instance, some in the exercise of supervisory powers and in view of newly discovered facts.

Federal courts of arbitration of the areas (numbering 10 in total) consider cases as courts of cassation as well as in view of newly discovered facts. In addition, they are superior judicial instances to arbitration appeal courts and courts of arbitration of the federal subjects.

Arbitration appellation courts (20 altogether) examine cases as appellation courts as well as in regard to newly discovered facts.

Courts of arbitration of federal subjects (1 in every region, i.e.83) deal with cases as first instance courts as well as with newly discovered facts.

Problems of independence of judges

In addition to invariable sociocultural factors that impede the establishment of judicial independence, there are also institutional factors. They can be divided into two conditional groups: “intrinsic“ (levers of impact on judges lying within the structure of the judicial system itself) and “extrin-

sic“ (levers of impact on judges on part of political bureaucracy). This classification, however, is made here for reasons of a convenient depiction because in reality all levers of impact are closely connected and interwoven with one another.

“Intrinsic“ factors

An essential factor, impeding judicial independence is the very judicature, which entails **administrative subordination within the judicial system** (judicial “vertical“). It is not a matter of a generic procedural but of an administrative hierarchy that is inconsistent with the basic principle of justice, namely that judges are independent and only subordinate to the law. This hierarchy is embodied in comprehensive administrative (explicit and implicit) powers of the chairmen of courts. Particularly from them the following activities depend to a large extent: appointment or refusal of an appointment of a person to office as judge; actual provision of social guarantees, provided by law to judges of a given court; career advancement of judges (including the promotion to higher qualification categories); dismissal from the office as judge or imposition of disciplinary penalties. The chairmen of courts also distribute cases among judges of a given court and grant permits regarding the absence of judges at meetings and so on.

In return, the chairmen of courts depend on the chairmen of superior courts. In particular, the chairman and deputy chairman of the respective court (apart from chairmen of supreme courts) are appointed to office by the President of the RF on the proposal of the chairman of the Supreme or the High Arbitration court of the RF respectively. It is understood that, if it's a question of appointing a chairman of a “low level“ court to office, the chairmen of supreme courts can receive the corresponding information mainly from leaders of “medium level“ courts.

Generally, one must underscore the disproportionally essential role of the chairmen of Supreme and High Arbitration courts of the RF when it comes to the formation of the judiciary. Apart from powers, pointed out before, they actively take part in the process of appointing *their deputies*, too: they endorse the candidacy of deputies for their subsequent proposal by the President of the RF to the Council of the Federation.

Further, the judges of Supreme and High Arbitration courts of the RF themselves are appointed by the Council of the Federation upon the President's proposal “which is introduced in due consideration of, accordingly, the opinion of the Chairman of the Supreme Court of the

Russian Federation and the Chairman of the High Arbitration Court of the Russian Federation“ (article 6 of the Law of the RF “On the status of judges in the Russian Federation“[44].

A decisive role in the process of the appointment to the judge's office and of the dismissal of judges from their office plays the **Qualification Collegia of Judges**, namely the Qualification Collegia of Judges of the subjects of the RF [kvalifikatsionnye kollegii sudey subyektov RF] (KKS) and the High Qualification Collegium of Judges of the RF [Vysshaya kvalifikatsionnaya kollegiya sudey RF] (VKKS). Formally these collegia are independent bodies of a community of judges. In fact, however, they are closely connected to the leaders of the corresponding courts. Nonetheless, the Federal law “On bodies of the community of judges in the Russian Federation“[45] (2002) stipulates that the compound of qualification collegia, apart from judges, also includes *representatives of the public*. But, firstly, they are appointed by state bodies, namely by the Council of Federation and the President of the RF, and, secondly, they constitute the minority in these collegia (e.g., in the VKKS 18 out of 29 members are judges).

“Extrinsic” factors

Personnel: As already mentioned, the court's chairmen possess enormous (official and unofficial) possibilities to exert influence on judges. The chairmen themselves are not only dependent from the chairmen of superior courts and, ultimately, from the chairman of the Supreme Court or the High Arbitration Court of the RF but also from the President of the RF. Because it is him, who nominates the chairmen of courts (apart from supreme courts), at which he appoints them for a term of 6 years *with the right to repeated appointment*. But even if these chairmen would not be directly dependent from the President (and from his administration respectively), this dependence would indirectly exist anyway through the chairmen of supreme courts. For due to their appointment to these offices the latter are mainly under obligation of the President of the RF. It

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44 Supreme Court of the RF 30.07.1992, no. 30, article 1792. Until 2 December 1993 (date of adoption of the Constitution of the RF in force), officially laws were not called federal laws but laws of the RF. The provision, discussed in the report, was introduced to the Law in the 2000s.

45 Collection of the legislation of the RF, 18.03.2002, no. 11, article 1022.

is him, who proposes candidates to the Council of Federation for the appointment to office as chairmen of the Constitutional, Supreme and High Arbitration Courts of the RF.

The President also recommends candidates for the office as deputy chairmen of the said courts to the Council of the Federation. Besides, the very Constitution of the RF (article 83) does not mention this authority of the President of the RF but only refers to his proposal of candidates for their appointment to the office of judges of all three courts to the Council of the Federation.

Nonetheless, article 6 of the Law “On the status of judges in the Russian Federation“ demands that the President of the RF recommends a candidacy of a supreme courts' leader “given a favorable conclusion of the High Qualification Collegium of Judges of the RF“. But together with other “intrinsic“ and “extrinsic“ factors this requirement is only nominal, i.e. does not play any role as an actual “filter“.

Neither the Council of Federation that appoints judges of supreme courts to office serves as a filter. Although in the days of the President B. Yeltsin the Council of Federation declined his candidates in the Constitutional Court several times, this was not once the case in the Supreme or the High Arbitration Courts. Today one must not even talk about the possibility or even a hint of any opposition on part of the members of the Council of the Federation.

Finance: The Constitution of the RF (article 124) lays the financing of the judicial power down as follows: “The financing of courts is exclusively provided by the federal budget and *must guarantee the possibility to fully and independently execute jurisdiction* in relation to federal laws“. However, in the 1990s this provision did not help to finance the judiciary to a necessary extent. The leadership of the Supreme Court of the RF (accordingly, the leadership of a larger judicial system, namely of the courts of general jurisdiction) believe that if the financial security was taken from the Ministry of Justice and handed over to the judiciary itself, things would improve. Finally (in 1998) this suggestion was realized: a detached body, the *Judicial Department under the Supreme Court of the RF* [Sudebnyy departament pri Verkhom sude RF] was created that is liable for the financial and organizational security of courts of general jurisdiction (and in constitutional and arbitration justice these functions are provided by the Constitutional and the High Arbitration Court of the RF respectively). However, this did not entail an actual improvement of the

financial situation of the judicial system (only after 2000 an improvement set in but merely because the total revenue of the federal budget began to rise sharply in connection with an increase in world market prices for energy sources). Neither did the Federal law “On the financing of courts of the Russian Federation“[46] (1999) exert strong influence on the level of financial security in as far as it is phrased rather vaguely.

Under these circumstances, when neither legal nor organizational innovations show any significant impact, a lot is dependent from the President of the RF. Certainly, his/her hand are tied if the state has not enough financial resources. But as soon as they revive, the President has the capability to become “sponsor“ of the judiciary. And that's what he became.

On the one hand, the planning of the federal budget begins with the budget message of the President of the RF, where the latter determines the basic ratio, binding for the Government that is already preparing a specific budget. On the other hand, having begun in 1997, the President since 2000 regularly issues decrees on increases in official salaries and in salaries of leaders of supreme courts (especially of Constitutional Courts). Therefore, as far as the judiciary is concerned, it is the President, who appears to be the primary “source of prosperity“.

Workday utilities: The matter at hand is that medical, transport, everyday and other services of supreme court judges and their staff are rendered by the force and means of the *Department of Presidential Affairs* [Upravleniya delami Prezidenta RF]. Behind a matter-of-fact formulation the Provisions on the Department of Presidential Affairs, enacted by a Presidential Decree on 17 September 2008[47] conceal substantial benefits, whose possession in today's life in Russia, permeated by Soviet notions of “status value“, is highly valued. We shall note that a similar paternalistic character of interrelations with courts can also shape other levels of power.

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46 Collection of the legislation of the RF, 15.02.1999, no. 7, article 877.

47 Collection of the legislation of the RF, 22.09.2008, no. 38, article 4277.

The economic system

General conditions of the legal regulation of economic transactions

The legal regulation regarding economic transactions in Russia is brought to bear by a large number of normative-legal acts that, taken altogether, have a quite complex and heterogeneous structure. There never was a code establishing act in this system either. Thus far the legal regulation of the economic sphere proves to be a disordered range of acts, passed by different state bodies outside of any system.

In this regard, the judicial practice does not feature a unity of approaches towards the interrelations of codified acts and other federal laws either. In some cases, for example, the Constitutional Court of the RF points out that there are no advantages of a code of laws compared to other laws[48], while in other cases it admits the advantage of a codified act in the realm of proceedings[49].

It is also necessary to allude to the existence of disputes between the Russian Federation and its subjects regarding the powers over the regulation of certain matters within the system of legal regulation of economic transactions. These disputes basically regard the legal order of areas of economic growth, movement of particular kinds of goods (ethyl alcohol), state price regulations, transport service for particular categories of service recipients, administration of state property a.s.o.

It is a common practice to systematize normative-legal acts in terms of their legal force that presupposes the establishment of a certain hierarchy of legal acts, implying the subordination of one subject-matter to the other and the possibility of a judicial recognition of acts as not-corresponding to acts of a higher level. This practice basically concerns laws that are often adjudicated contradictory to the Constitution of the RF, and subordinate acts (decrees of the President, orders of the Government of the RF and departmental normative-legal acts), found contradictory to the require-ments of laws. On the basis of this principle we continue the description.

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48 See: Court Ruling of the Constitutional Court of the RF 5 November 1999 no. 182-O.

49 See: Decree of the Constitutional Court of the RF on 29 June 2004 no. 13-P.

The role of the Constitution of the Russian Federation

The main source of legal regulation of the economic sphere is the Constitution of the Russian Federation. For economic transactions vital importance bear regulations of article 8 and 9, determining the *equality of ownership forms* (article 9 mentions landed property). One shall also pay attention to article 34 that declares the rights of everyone to a *free use of his/her abilities and property for entrepreneurial activities* and prohibits economic activities, aimed at *monopolization and unfair competition*.

The Constitution also lays down general principles that are particularly important for entrepreneurial activities. To those notably refer the regulation of article 35 of the Constitution of the RF, establishing that no one may be deprived of the his/her property otherwise than *by a court ruling*, and the regulation of article 57, demanding that everybody pays the *legally established* taxes and dues. In theory, these and a number of other similar provisions provide the possibility to directly invoke them and not those laws that conflict with them, when considering disputes.

There are more assertive constitutional principles too that possess a more apparent regulatory potential. Regulations that regulate the distribution of powers of the Russian Federation and of their subjects, including the distribution of powers in the sphere of the regulation entrepreneurial activities (article 71 and 72) shall be attributed to them in the realm of business law. Pursuant to these articles in their unity with other regulations we can draw the conclusion that the legal foundations of economic transactions are related to the Russian Federation's powers and that this regulation shall be the only one in the whole country. However, there are **two exceptions** to that principle.

The first one can be labeled as rather favorable. Here the question at hand is that the territory of the RF is divided in **special economic zones** [SEZ], established according to the Federal law “On special economic zones in the Russian federation“[50] (2005). A special economic zone is an entity established by the Government of the RF on a part of Russian territory, where special conditions for performing entrepreneurial activities are provided. On the territory of the Russian Federa tion the following types of special economic zones can be established:

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50 Collection of the legislation of the RF, 25.07.2005, no. 30 (part II), article 3127.

1) industrial-production SEZ;

2) technologic-developmental SEZ;

3) tourism and recreation SEZ;

4) harbor SEZ.

The second exception from the principle of legal unity of economic field are **restricted administrative-territorial entities [zakrytye administrativno-territorialnye obrazovaniya] (ZATO)**. The Law of the RF “On restricted administrative-territorial entities“[51] (1992) stipulates that to these entities belong bodies of local self-government with territorial entities within those industrial enterprises for development, production, storage and utilization of weapons of mass destruction, for processing radioactive and other materials are situated as well as military and other objects, for which special regulations for safe operating and for keeping state secrets are established, including special living conditions for citizens. Article 3 of the said law specifies the particular conditions of safe operating of enterprises and (or) objects of ZATO. These conditions contain the following regulations:

- establishment of controlled and (or) barred areas along the border OF and (or) within ZATO;
- restrictions on entry and (or) permanent residence of citizens in the territory of ZATO;
- restrictions on flights of air-crafts over the territory of ZATO;
- restrictions on the right to perform economic and entrepreneurial activities, to possess, use and dispose of natural resources and fixed assets, deriving from restrictions on entry and (or) permanent residence;
- restrictions on the establishment and activities of organizations, whose founders are foreign citizens, stateless persons, foreign non-commercial non-governmental organizations, departments of foreign non-commercial non-governmental organizations and organizations with foreign investments on ZATO territory.

The importance of constitutional foundations of economic transactions lies in the fact that they, firstly, “program“ the legal regulation of entre-

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51 "Rossiyskaya gazeta“, no. 190, 26.08.1992.

preneurial activities while extending the legal regime of entrepreneurship on them and laying down the free flow of capital and financial services (article 8 of the Constitution of the RF). The state provides securities for the field of selling goods, labor and services, while some general rules and principles are further established. The passed laws can be contested on matters of compliance of their precepts with the Constitution of the RF and really, there are quite many decisions on the recognition of one or another law as contradictory to the Constitution.

Secondly, constitutional regulations make up the foundation for a uniform legal regulation of entrepreneurship. This manifests itself in the fact that in accordance to article 71 of the Constitution of the RF the establishment of legal bases of a single market, the financial, currency and credit regulation and the emission of money are considered competences of the Russian Federation. Therefore any act of a federal subject, passed on these matters, will not be regarded as conform to the Constitution.

The role of federal legislation

Constitutional regulations, fundamentally regulating the economic sphere and the sphere of entrepreneurship, develop in federal laws. In this regard the **Civil Code of the RF [Grazhdanskiy kodeks RF] (GK RF)** is vitally important. At the present time four of its parts are passed as independent laws although articles in all parts of the GK are continuously numbered (i.e. their numbering does not start over again in every part).

The first part of the Civil Code of the RF[52] (1994) secures basic principles of the regulation of economic relations: the freedom of contract, inviolability of property, the possibility of unimpeded exercise of federal subjects of their (article 1). In article 2 of the Civil Code RF criteria of entrepreneurial activities are laid down. The Code establishes regulations that prove to be most important ones for the control of entrepreneurial activities and which concern the organizational-legal forms of their execution, the legal regime of stocks, the content of the right of ownership, the right of economic management and the right to operative administration, the supply of goods, credit and settlement relations.

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52 Collection of the legislation of the RF, 05.12.1994, no. 32, article 3301.

GK RF announces the regulation of entrepreneurial activities by civil legislation. For the purpose of discussion the total amount of its regulations in relation to entrepreneurship can be divided in two groups and some sub-groups:

a) regulations of a general purpose, invoked amongst other things for entrepreneurial relations, for example on bonds, on limitation of action, on the right of ownership and so on;

b) regulations of a particular purpose, addressed to entrepreneurs. The range of these comprises:

- regulations on the matter and regime of entrepreneurial activities (article 2 is on the matter of entrepreneurial activities, article 5 on customary business practices, article 10 on the inadmissibility of exercising civil rights for the purpose of restricting competition and on the abuse of a dominating position on the market, article 49 on the licensing of entrepreneurial activities, article 51 on state registration and others);
- regulations on particular objects and rights on these objects (articles 128 and 129 are on types of objects of civil rights and their tradability; article 132 on the comprehension of an enterprise as an object of legal relations; article 217 on privatization);
- regulations on the status of entrepreneurs and enterprises, on constituent documents (chapter 4);
- regulations on forms of asserting rights on entrepreneurial activities (public contracts, binding upon conclusion, treaty of accession, organizing and holding a tender);
- regulations on entrepreneurs' liability.

The legal nature of relations, connected with the realization of entrepreneurial activities is quite complex. It goes without saying that a part of these legal relations develops on the basis of principles of freedom and equality. But these principles do not extend their influence on a greater array of legal relations that are related to the registration and licensing of entrepreneurial activities, accounting and assessment of property, state accountancy and accounting control, pricing and financing of business operations. It is these issues that reflect the nature of economic activities.

One must mention that at the moment a development framework for civil legislation in the Russian Federation is elaborated that is created by virtue of the Decree of the President of the RF of 18 June 2008 “On the

elaboration of the Civil Code of the Russian Federation“. The basic idea, referring to forms of realization of entrepreneurial activities, is the establishment of an exhaustive catalogue of commercial and non-commercial legal persons, who do not permit the creation of forms not mentioned in the GK RF. This idea can hardly be regarded as correct or substantiated, but judging by tendencies of legal regulation, it will most likely be realized.

It remains to be added that the second part of the GK RF (1996) is dedicated to particular sorts of obligations; the third part (2001) to the regulation of relations in the field of heirship and international private law; and finally, the fourth part (2006) to rights on intellectual property and means of individualization.

Another important regulating device of economic behavior is the **Tax Code of the RF [Nalogovyj Kodeks RF] (NK RF)**, operating in two parts.

The first part of the NK RF53 was enacted in 1998. Regarding the issue of the application of particular regulations of the first part of the Tax Code of the RF, several resolutions of the Plenum of the Supreme Court of the RF and the High Arbitration Court of the RF were passed.

From the very beginning both the text of the NK RF itself and the application practice of this Code caused a considerable number of objections and criticism. During the first phase of its being in force they resulted in the following implications:

- a number of provisions of the NK RF come into conflict with the Civil and Customs Code as well as with the Civil Procedure Code of the RF;
- NK RF can not be regarded as a directly applicable law. The necessity for an adoption of various fiscal directives is recognized in it. Not only the federation legislator and representative bodies of local self-government but also bodies of executive power like the Tax Service [Nalogovaya sluzhba] and other administrative bodies have the right to issue these directives;
- the extension of tax payers' rights is insufficient: NK RF is permeated with presumptions of culpability of tax payers;

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53 Collection of the legislation of the RF, 03.08.1998, no. 31 article 3824.

- NK RF does not lessen but, on the contrary, increase the tax burden on the economy;
- NK RF suggests a redistribution of tax burdens on branches of the economy.

The adoption of the second NK RF part[54] (2000) took place by stages that included the introduction of modifications and amendments to a normative-legal act not yet in force – circumstances, which can be regarded as an evidence of the poor elaboration of the draft law. Thus, up to the present time doubts are expressed in theory, which regard the "legitimacy" of the given law not only from the viewpoint of the violation of article 5 of the NK RF, regulating the procedure of introducing modifications and amendments into the Code, but also from the perspective of setting the beginning of the TC RF's validity in the given wording. It is a fact that the changed law should have become operative before the second part's coming into force, since when two equal laws come into force simultaneously, the one first passed has to be applied.

The simultaneous entry into force does not allow to answer the question precisely, which act began to operate before and which one after. Both legislator and law executors assume that the second part came into effect earlier than its modifications. Otherwise modifications would not have been introduced into the NK RF.

From the viewpoint of legal methods the modified law should have introduced amendments into the second part of the NK RF, not having come to force yet; and become operative until 1 January 2001, then its provisions would have been implemented in the NK RF without any violations of general principles of logic regarding the enactment of a normative-legal act and the subsequent introduction of modifications to it. But this did not happen.

The tax system, generally speaking, consists of federal, regional and local taxes and fees.

To the federal taxes and fees belong:

1) value-added tax;

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54 Collection of the legislation of the RF, 07.08.2000, no. 32, article 3340.

2) excise taxes;

3) individual income taxes;

4) taxes of profits of organizations;

5) mineral extraction tax;

6) water tax;

7) fees for the use of objects of fauna and for the use of aquatic and biologic resources;

8) state duty.

To regional taxes belong:

1) tax on property of organizations;

2) tax on gambling business;

3) transport tax.

To local taxes belong:

1) tax on property of organizations;

2) tax on gambling business;

3) transport tax.

Amongst **other federal laws**, regulating *particular relations* in the economic sphere we first and foremost must mention laws that regulate the starting positions of market economy. To those belong such laws as, for example: “On the maintenance of competition“, “On the stock market“, “On accounting“ and others. A large group of laws is dedicated to *the legal status of economic entities*. Here it is essential to mention such laws as “On joint-stock companies“, “On limited liability companies“, “On the Central Bank of the Russian Federation (Bank of Russia)“, “On banks and banking operations“ and a number of other pieces of legislation. Particular laws also deal with the issue of the regulation of types of *economic activities* in different fields: the delivery of manufactured produce and goods, investing, privatization, the conveyance of goods and others.

We need to explicitly mention the Federal law “On foundations of state regulation of commercial activities in the Russian Federation“[55] (2009), which stipulates that apart from the law itself the legal regulation of relations *in the field of commercial activities* is carried into effect by the Civil Code of the RF, the Law of the RF “On protection of users' rights“[56] (1992), other laws and other normative legal acts of the RF passed in relation to them, laws and other normative legal acts of the subjects of the RF. Relations, connected with the organization of retail markets, organizations and operations regarding the sale of goods in retail markets, are regulated by the Federal law “On retail markets and on the introduction of modifications into the Labor Code of the Russian Federation“[57] (2006). Bodies of local self-government have the right to issue municipal legal acts regarding the arrangement of conditions for the provision of municipal entities' inhabitants with trade services in cases and to the extent that are specified by law, by decrees of the President of the RF, orders of the Government of the RF and laws of the subjects of the RF.

The state regulation of commercial activities is achieved by means of:

1) establishment of requirements to their organization and realization;

2) anti-monopoly regulations;

3) information support;

4) state control (supervision) and municipal control.

The application of not stipulated methods regarding the state regulation of commercial activities is not allowed apart from instances, determined by federal laws. The said Law imposed restrictions on the expansion of trade networks. They expand on trade organizations that carry out retail trade with food products by means of the organization of trade networks, if their share exceeds 25% of all food products, liquidated in money terms within the previous accounting period and within the borders of a federal subject, an urban area or a municipal district. The restriction is framed by the fact

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55 Collection of the legislation of the RF, 04.01.2010, no. 1, article 2.

56 Collection of the legislation of the RF, 15.01.1996, no. 3, article 140.

57 Collection of the legislation of the RF, 01.01.2007, no. 1 (part 1), article 34.

that within a corresponding administrative-territorial entity, it is illicit for business units to acquire or rent additional space of retail facilities for the conduct of trade activities for any reasons including the start-up of retail facilities and taking part in tenders, held for the purpose of their acquisition.

The role of substatutory regulation

One source of entrepreneurial law are **decrees of the President of the Russian Federation**. They make up a rather extensive array of normative acts, regulating economic relations. In compliance with article 90 of the Constitution of the RF Presidential decrees may not run counter to the Constitution and the federal laws. In the case of such a incompatibility the regulation of the Constitution or the federal law respectively are effective. Decrees, as means of a regulation of economic relations, are usually applied in the absence of statutory decisions of certain issues and in case of necessary effective developments of statutory provisions. This type of normative-legal acts is basically used for the regulation of relations, connected with the use of state property in economic transactions and with the carrying out of procedures concerning the privatization of state-owned property.

Orders of the Government of the Russian Federation, issued in relation to Government competences, are also sources of entrepreneurial law. Acts of the Government of the RF are issued for purposes of the definition, development and enforcement of federal laws.

The sources of economic transactions include **acts of Ministries and departments (bodies of executive power)** as well as acts of **the Central Bank of the RF**. Acts of bodies, operating directly in the economic sphere are of paramount importance among these acts. The most significant ones are acts of *the Ministry of Finance of the RF, the Ministry of Economic Development of the RF and the Central Bank of Russia*. The majority of these acts is included in the implementation and foundation of orders of the Government of the RF.

The legal regime of departmental normative acts is established by the Rules on the preparation of normative acts of federal bodies of executive power and on their official registration.

These rules have been approved by the Order of the Government of the RF on 13 August 1997. In coherence with this normative act federal bodies of executive power can issue orders, decrees, directives, instructions, regulations. It is interdicted to enact normative legal acts in

form of letters or telegrams. From the total of departmental normative acts those acts stand out that are subject to state registration. Among those acts are:

- acts concerning rights, freedoms and duties of Man and Citizen;
- acts constituting the legal status of organizations;
- acts characterized as intermediate between departments irrespective of their effective period, thereunder acts containing information that frames a state secret or confidential information.

With regard to normative legal acts of the Central Bank of the RF the latter itself issued Regulations on the procedure regarding the preparation and coming into force of normative acts of the Bank of Russia[58] (1997). From this moment on the Bank can only issue directions, regulations and instructions. However, since the Rules of Regulations mentioned before do not have reverse effect, all requirements comprised in them are only enforced in relation to acts that were passed after the date of their adoption. Normative acts that were passed before that keep their legal force.

The role of judicial practice and corporative rule-making

The legal system in Russia rather accurately separates the sphere of law-making and of law enforcement. Court rulings on particular cases in the Russian Federation do not serve as precedents, meaning a general binding force of the rulings when considering comparable cases in the future.

However, together with the emergence of arbitration courts in the beginning of the 1990s the question on the place and role of judicial practice within the system of legal regulation of economic activities had to be responded to from a new angle. It was determined by the necessity to specify legal regulations in the course of their application as well as to fill legal gaps.

The fact that there are many problems in the law enforcement practice is demonstrated vividly by various examples. First and foremost it is a matter of omissions in the legal regulation that can be filled in the course of one sort of law enforcement activity, namely the arbitration practice. Here the absence of legal regulations of relations, where information ap-

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58 Published in the magazine “Ekonomika i zhisn'“, no. 42, 1997.

pears as a commodity, meaning an information product or service, serves a most striking example. Another problem courts have to face, is the conflict of legislation regulations. Thus, when courts adopted the legislation on bankruptcy, a discrepancy between a couple of regulations of the GK RF and the FZ “On insolvency (bankruptcy) of enterprises“ became apparent. The conflict lies in the incongruity of the priority of payments to creditors that are stipulated in subsection 1 of article 64 of the GK RF and in subsection 1 of article 30 in the said Law. The High Arbitration Court of the RF does not give any clarification on this matter. Nonetheless, article 3 of the GK RF specifies that regulations of civil law, embedded in other laws have to correspond to the Code. At the same time, if complying with the rule, constituted in science and practice as Lex specialis derogat legi generali (the special law overrides the general law regarding matters that provisions are made for by a special law), the adoption of the given provision of the GK RF in the situation described is rather controversial. However, the practice adopts the course that is suggested by article 3 of the GK RF.

Returning to the question on the systematization of acts that determine the regulation of economic transactions, we note that the judicial practice regarding business disputes consists in three constitutive forms. Firstly, the current practice of arbitration courts in particular cases. Secondly, rulings of the High Arbitration Court of the RF that are adopted by it as a court of first instance and as a court of cassation or supervision. Thirdly, principal rulings and clarifications of the High Arbitration Court of the RF that are binding for arbitration courts of the Russian Federation and for the parties in an arbitration process respectively. Unlike precedents, as a legal source rulings of the High Arbitration Court of the RF do not constitute new law provisions but only comprise specific long-standing regulations on the adoption of law provisions with regards to comparable cases.

It became a tradition in Russia to contend that the resolutions and clarifications of the Plenum of the High Arbitration Court are not legal sources. This is reasoned with the inability to acknowledge the rule-making function of a given court. The acts of the High Arbitration Court do indeed not have normative character but this does not mean that they are also excluded from being sources of law. On the contrary, we have good reason to regard them as such. Hence, going by the actual value of the indicated acts for arbitration courts and all economic entities, the judicial practice in shape of acts of the High Arbitration Court of the RF is an essential element of legal regulation and therefore also a recognized source of law.

But we have to keep in mind that some positions of high judicial bodies have a significant influence. Thus, in the informational letter of the Presidium of the High Arbitration Court of the RF from 22 December 2005 it was made note of the fact that the arbitration court refuses the recognition and execution of a ruling of the international commercial arbitration, in case it finds that the effect of the execution of such a ruling conflicts the public policy of the Russian Federation. However, the meaning of “the content of public policy“ is not defined.

Provisions of corporative law that are elaborated by regulatory bodies of an economic entity and make up a significant amount of normative-legal regulations of economic transactions can be considered as control mechanisms of economic behavior, too. Here sources of corporative law can be corporative conventions, corporative business habits, corporative precedents and finally corporative normative acts.

Corporative normative acts are one of the fundamental sources of corporative law that regulate the financial sector, the sector of administration, labor and social security services as well as other important matters of economic activities and relations within corporations. For example, the bonus scheme, the reimbursement of expenses, the determination of competences of structural subdivisions and rules on property accounting are regulated by means of those acts. Governing bodies of enterprises or groups of equity holders, executive bodies of enterprises and heads of enterprises can participate in the establishment and formation of corporative rules. The Regulation is commonly referred to as the most widespread form of these acts. Examples for corporative normative acts are the Regulation on the distribution (utilization) of profits, the Regulation on the Board of directors, the Regulation on confidential information, the Regulation on staff, the Regulation on rules for the elaboration and adoption of corporative normative acts and other norms.

The legal nature of normative acts of corporations is repeatedly examined in the judicial practice that approves their normative force in relation to those legal relations, which are determined in the legislation in force. In this case corporative normative-legal acts expand to members and partners of a given legal entity. The expansion of these acts onto other partners of economic transactions (for example, onto customers of commercial organizations) is enabled by means of the conclusion of a contract, in which it is stated that services are rendered to a given customer in compliance with the rules, established in the organization.

The Protection of proprietary rights

With protection of proprietary rights normative-legal regulations are meant that, firstly, furnish a guarantee against arbitrary alienation of private property by the state, secondly, establish a system of restoration of violated rights, including making amends for damage done and, thirdly, that protective measures are taken against the unauthorized encroachment upon property on the part of other citizens or legal persons. In juristic terms in Russia rights of property, above all, of the most vulnerable property like private property, are protected primarily by the **Constitution of the RF** itself. Thus, article 8 of the Constitution of the RF, placed in the chapter on the fundamental constitutional system of Russia, i.e. relating to fundamental principles of Russian statehood, states: “In the Russian Federation private, state-owned, municipal and other forms of property are recognized and protected equally“. This principle is predominantly affirmed and specified by article 35 in the chapter on “fundamental rights and freedoms of Man and Citizen“. It's worth to entirely cite the article's text:

“1. The right of private property is protected by law.

2. Everyone has the right to have property, possess, use and dispose of it both individually and jointly with other people.

3. No one may be deprived of their property otherwise than by a court decision. Forced confiscation of property for state needs can only be carried out on conditions of preliminary and complete compensation.

4. The right of inheritance is guaranteed.“

In this manner, forced alienation of property (thereunder committing a crime, when confiscating property) is accepted but it is framed by procedural and pecuniary conditions. In a sense the basic conditions for the possibility of forced alienation of real property are comprised in chapter 2 article 36 of the Constitution of the RF, stipulating that “the possession, utilization and disposal of land and other natural resources is exercised by their owners freely, if it does not inflict damage on the environment and does not violate the rights and lawful interests of other people".

More details on the conditions of the limitation and forced suspension of property rights can be found in the first part of the **Civil Code of the RF** (chapter 15). As a general principle article 235 of the GK RF states that

the forced confiscation of property from an owner is not accepted apart from instances, specifically denoted by the law. These instances are:

1) writ of execution by commitments;

2) the alienation of the property, which by force of law may not belong to the given person;

3) the alienation of the immovables in connection with the seizure of the land plot;

4) the redemption of mismanaged cultural values and domestic animals;

5) the requisition (applied in cases of natural disasters, accidents, epidemics, epizootic diseases and under other circumstances of extreme nature but with redemptions of the property's value to the owner);

6) the confiscation, i.e. the uncompensated seizure of the an owner's property on a court ruling (applied in form of sanctions for committing a crime or another violation of law);

7) the alienation of property in the following cases:

- disparity of property that was allot to joint tenants in nature (compensations are paid);
- absence or inattainability of a consent between an owner of a land plot and an owner of immovables within this land plot;
- redemption of a land plot for state or municipal needs on court ruling;
- utilization of land plot along with a violation of the law, i.e. with a crude violation of rules regarding the rational use of land, as well as the use of the land in breach with its intended purpose or if such a use leads to a substantial fall of fertility of farm land or to a significant deterioration of the environmental situation;
- suspension of property rights on mismanaged living quarters;
- if the production, dissemination or other use as well as import, conveyance or storage of tangible mediums, in which the fruit of intellectual activity or the medium of individualization are embodied, lead to a violation of exclusive rights to such intellectual property or such a medium (without compensation);
- if equipment, other devices or materials are mainly used or destined for the violation of exclusive rights to intellectual property and media of individualization (it is destroyed at the expense of the infringer, if their transformation to revenue of the Russian Federation is not pro-

vided by law). In this manner, civil law establishes a comprehensive compendium concerning confiscation of property, where in the majority of cases the property owner concerned is found to be at fault.

The property right is also protected by *criminal and administrative legislation*. In the **Criminal Code of the RF**[59] [Ugolovnyy Kodeks RF] (1996) in Section VIII “Crimes in the sphere of economy“ is a separate chapter 21 that is called “Crime against property“. In addition, there are articles in other chapters of this Section, also referring to the protection of property rights. For example, article 170 “Registration of illegal land deals“, article 177 “Deliberate evasion of the repayment of debts“, article 202 “Abuse of authority by private notaries and auditors“ and others.

The Criminal Code comprises regulations, focusing on the protection of property rights in case of the forfeiture of an estate. For instance, article 104.3 states that in seeking to resolve the matter on forfeiture of property, first and foremost the question on the reparation of *damage, inflicted on the lawful possessor*, shall be solved.

The Code of Administrative Offences of the RF[60] [Kodeks RF ob administrativnykh pravonarusheniyakh] (2001) contains a number of regulations, addressing the protection of property, most notably in chapter 7 that is called “Administrative offences in the area of property protection“. However, the articles contained in it mainly imply the illegal encroachment upon public property. Property rights are protected indirectly by some regulations of chapter 14 “Administrative offences in the area of entrepreneurial activities“ and chapter 15 “Administrative offences in the area of finance, taxes and fees, insurance, stock market“. And still, despite a rather widely ramified normative foundation in the sphere of protection and security of property rights, one may not say that matters stand well. This is acknowledged even on the highest political level, including the President of the country. Two main spheres can laid emphasis on, where there are problems regarding the protection of property rights. These are: 1) the seizure of immovables for state or municipal needs and 2) hostile takeovers of property. The main problem when seizing immovables for state or municipal needs, lies in the discrepancy between the amount of compen-

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59 Collection of the legislation of the RF, 17.06.1996, no. 25, article 2954.

60 Collection of the legislation of the RF, 07.01.2002, no. 1 (part1), article 1.

sation for the seized property or the amount of buyout of this property and the actual value. The legislation (Land Code of the RF[61] [Zemelnyy Kodeks RF] (2001)) stipulates that the seizure, including the seizure by means of buyout, of land plots for state or municipal needs is carried out *in exceptional cases*, connected to:

1) the fulfillment of international obligations of the Russian Federation;

2) the placement of the following objects of state or municipal importance on these plots (in the absence of other alternatives of a possible placement of these objects):

- objects of federal energy systems and objects of energy systems of regional importance;
- objects of the use of nuclear energy;
- objects of defense and safety;
- objects of federal transport, of lines of communication, informatics and telecommunication as well as objects of transport, lines of communication, informatics and telecommunication of regional importance;
- objects, guaranteeing space activity;
- objects, guaranteeing the status and protection of State borders of the Russian Federation;
- supply lines of federal and regional importance, guaranteeing the activity of natural monopoly entities;
- objects of energy-, gas-, heating- and water-supply of municipal importance;
- roads of federal, regional or inter-municipal, local importance;

3) other circumstances in cases, determined by federal laws, and relating to the seizure plus the buyout of land plots from lands that belong to the subjects of the RF or to municipal property in instances, determined by the laws of the subjects (article 49).

According to article 279 of the GK RF the owner of a land plot has to be notified in written form not later than one year before the forthcoming seizure by that body; who made the decision on the infringement. Also, before the expiry of one year from the date of the owner's receipt of this notification; the buyout of the land plot is only allowed on the owner's consent.

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61 Collection of the legislation of the RF, 29.10.2001, no. 44, article 4147.

In article 281 of the GK RF, although in most general terms, the manner of determining the redemption price of a land plot, seized for state or municipal needs is laid down. In particular, the payment for the land plot, being seized for state or for municipal needs (redemption price), the term and the other conditions of the redemption are defined by an agreement with the owner of the land plot. When defining the redemption price, the market price of the land plot and of the immovables situated on it, as well as all losses, inflicted upon the owner by the seizure of the land plot, including the losses that he/she bears in connection with the advanced termination of his/her obligations to third persons plus the missed profit, have to be incorporated into it. By an agreement with the owner, in substitution of the land plot, seized for state of for municipal needs, she/he may be allotted another land plot with the offsetting of its cost against the redemption price.

However, in practice local and regional authorities (and it's exactly on this level, where decisions on seizure are made most of the times) often lower the cost of the compensation or redemption of the seized immovables. It goes without saying, citizens can go to court. But for a fair ruling it is necessary that the court does not depend on the influence of authorities. And this is just not possible.

A far more serious menace of property lies in hostile takeovers. Most of the times profit-making enterprises and (or) block of shares are the objectives of such takeovers, i.e. takeovers most actively take place in the business sphere. However, there are cases of hostile takeovers of citizens' dwelling houses and land plots as well, if they, as a rule, are situated in a prestigious area. The "technology" of hostile takeovers is a such that they are always tied to corruption, since the legalization of usurped property is not possible without the participation of functionaries of police, tax, registration, control and judicial bodies. Both problems mentioned can not so much be solved by the improvement of the legislation, as by the establishment of a genuinely independent judicial power.