



CHEMONICS INTERNATIONAL INC.



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**JUDICIAL EXCHANGE PROGRAMS  
BETWEEN THE RUSSIAN AND U.S. JUDICIARIES  
JUDICIAL ETHICS ROUNDTABLE ACTIVITY REPORT**

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March 15-17, 2001

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Moscow, Russia

Submitted by:  
Chemonics International, Inc.  
Committee on International Judicial Relations  
Administrative Office of the U.S. Courts

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## Judicial Ethics Roundtable Activity Report

### **A. Introduction**

The Committee on International Judicial Relations, the Administrative Office of the U.S. Courts and Chemonics International organized a workshop in Moscow on judicial selection, ethics and discipline for members of the Supreme Qualifying Collegium of Judges of the Russian Federation from March 15-17, 2001. Judge Michael Mihm, U.S. District Court for the Central District of Illinois, Judge Diane Wood, U.S. Court of Appeals for the Seventh Circuit, Judge Marovich, U.S. District Court for the Northern District of Illinois, consulted with Patrick Murphy of USAID/Moscow to identify subject areas of interest to the Collegia and arrange meetings with additional members of the Russian judiciary. The three American judges assumed lead roles in the delivery of the program sessions. Judge Betty Barteau, former Chief of Party for the Russian-American Judicial Partnership program, assisted Justice Kuznetsov in moderating the Roundtable and facilitated the small working groups.

The Russian presenters for the Roundtable included: Justice Valentin Kuznetsov, Chairman of the Supreme Qualifying Collegium; Judge Galina Fedorenko, Deputy Chair of the Yaroslavl Oblast Court; Judge Oleg Markov, Deputy Chairman of the Komi Republic Supreme Court; Judge Victor Terekhin, Chair of the Penza Oblast Court; Judge Tatyana Kukhlova, Irkutsk Oblast Court; Valery Rudnev, Editor-in-Chief of *Russian Justice*; and Lev Khaldeev, Professor of Criminal Law at the Academy of Justice.

Throughout the Roundtable, each American judge made a presentation on a specific topic and a Russian presenter followed with a session on a related subject. Lively discussions utilizing comparative analysis occurred after each presentation.

### **B. The Program**

Justice Valentin Kuznetsov opened the session by giving an overview of the current issues before the newly constituted Qualifying Collegia. He stated that the reversal rate for cases in the past year had been 24%, and this statistic indicated the burden on the Collegia for selection of proper judges. He stressed that there must be transparency in the selection process and appropriate training after the selection. New Russian judges are currently appointed to a three-year term. However, if the judge is reappointed after that time, it is a lifetime appointment, making it essential that proper training be given during the first three years. Further, Justice Kuznetsov stated that there were additional issues to be considered by the Collegia, including improvement of the skills of judges; development of judges as a whole; compensation to judges; honorable titles for judges; objective criteria to determine the competence of judges in order to preclude partiality; creation of a method to lower the rank of or remove a judge if required standards are not met; increasing the number of judges and basing the increase on the population; creation of assistant judge or reserve judge positions; establishing criteria for the termination of judges because of age or health reasons; and setting term limitations for chief judges.

Judge Michael Mihm addressed the workshop on the topics of “Culture of Accountability in the U.S. Judiciary” and “How Do Judges Identify and Avoid Conflicts of Interest in Their Financial Relationships.” Judge Mihm emphasized that there was no group in the U.S. that was comparable to the Collegia, but the things within the human spirit which make people act corruptly are the same, regardless of the country or area in which a person lives. Judge Mihm stressed the importance of the American practice of providing a resource (Code of Conduct Committee) to which judges can present contemplated future conduct (e.g., joining the Board of Directors of a hospital) and receive an advisory opinion before the judge engages in the contemplated conduct. These advisory opinions are collected and, minus the name of the judge who requested the opinion, are provided to all American federal judges in a compendium which is updated every year. Additional discussion was held on the importance of the judiciary’s feeling of accountability, and steps that may foster that feeling. Further, interest was high in determining when a conflict of interest was present in litigation. Discussion covered issues such as owning one share of stock in a litigating company. Salary as a factor in corruption was discussed, and the group indicated agreement with the theory that an inadequate salary may cause a judge to become dependent on the ‘good wishes’ of others. Election versus appointment of judges was a topic of interest, with both the U.S. federal judges and the Russian judges agreeing that elections may encourage a popular decision rather than a right decision.

Judge Galina Fedorenko made a presentation entitled “Principles of Selection Judges in the Subjects of the Russian Federation.” This was followed by Judge Diane Wood’s presentation concerning “Selection of Judges in the United States.” Both judges set forth criteria they felt was essential for a prospective judge to have: experience in the law, impartiality, judicial temperament, decisiveness, communications skills, administrative skills and an honest reputation. The following discussion proved that both the U.S. and Russia are seeking the same skills in judges. However, Collegia members do not believe they do not have the tools necessary to determine the quality of a candidate before selection, and instead, they use a trial and error method of selection. Since 1977, 342 judges have been removed from the bench by the Collegia, and 42% of those have been for gross error such as forged papers or violation of time standards.

Judge George Marovich made presentations on the Code of Conduct for U.S. Judges and on “Operation Greylord: Investigation, Prosecuting and Punishing Judicial Corruption in Cook County, Illinois.” It was agreed that the U.S. Code with its commentaries gives more direction to disciplinary groups than does the Russian Code, and the publication of disciplinary action statements for the use of all judges gives assistance to sitting judges when faced with questionable issues.

Judge Victor Terekhin spoke on Judicial Discipline in the Russian Federation. He emphasized the need for immunity for judges in Russia, quoting former Prosecutor General Skuratov that “everything is possible in this country, any blackmail, any prosecution.” He presented statistics showing the number of requests for criminal prosecutions of judges and the number approved by the Collegia. The number requested had declined, indicating that without immunity and approval of prosecution by the Collegia, inappropriate prosecutions would result.

Judge Tatyana Kukhlova spoke on the “Examination of Judicial Alleged Misconduct and Preparation of Materials for Plenary Meetings of the Supreme Judicial Qualifying Collegium,”

followed by Judge Wood speaking on “How U.S. Courts Address Claims of Judicial Misconduct.” Judge Kukhlova, with commentary by Judge Oleg Markov, indicated that 50% of the 250 judges disciplined were on the bench for less than 5 years. He stated the belief that some discipline was necessitated because new judges are sometimes susceptible to “black robe fever.” Also, he opined that perhaps they were being chosen from an improper background, one which makes it difficult for the new judge to adapt, such as a militia background. Additionally, many are not aware that there must be a change in lifestyle once they have ascended to the bench. The need for discipline standards was discussed with questions regarding U.S. procedures.

Mr. Valery Rudnev presenting on “Mass Media and the Judiciary” acknowledged the tense situation between the media and the judiciary, saying that the journalists were against power and that their job is to attack power and look for bad things. He suggested that the judiciary release information to the media regarding its activities, and that the judiciary should not be afraid of the media. He suggested a media/courts meeting where guidelines could be established concerning this relationship. This session was followed by a discussion concerning the transparency of the activities of the Judicial Qualifying Collegia.

Professor Lev Khaldeev made a presentation on “Issues of Morals and Ethics in the Activity of the Judicial Qualifying Collegia.” He stated that the Qualifying Collegia was the conscience of the Russian judiciary and that there was a need for the Collegia to establish specific grounds for the dismissal of a judge and report meeting deadlines.

Perhaps the most active discussion was during and following the presentation by Dmitry Kozak, Chair of the Working Group on Judicial Reform established by President Putin. He stated that a list of recommendations for reforms was sent to the President last week. Among those were:

- The composition of all levels of the Judicial Qualifying Collegia will be changed so that up to one-third of the body will be members of the legal public, and one member will be a member of the Presidential staff. This change is expected to increase transparency and trust in the judicial branch, however, judges will remain the largest group with Collegia membership.
- Criminal procedures shall be made to comply with the Russian Constitution. For example, writs shall be issued by the courts instead of the Prosecutor, and shall be issued in the court where the parties reside. In addition, a panel of a higher level Court must decide on arrest, search, etc.
- The status of judges will be examined in regard to retirement age, requiring district judges retire at age 65 and others at age 70. The terms of chief judges will also be limited.
- The living standard of judges will be increased, with salaries being raised dramatically, and a long-range program to develop the system will be drafted.
- A plan will be devised for better operation of the courts, and consideration will be given to providing assistant judges in courts that are overloaded.

- Clear rules will be established to define the rights of Chief Judges and Deputy Chiefs for work hours, duties, etc.
- In general, the principle of adversariness will be implemented: the role of the procurators will be changed, so they participate in civil cases as representatives; and State public law will be changed, so the State becomes an ordinary party.

Further, Mr. Kozak discussed the needs for specialized courts and magistrates and the need for more efficient enforcement of judgments. Currently only 17% of court decisions are executed, making 83% senseless, regardless of how just the decision. He also stated that 3,000 more judges were needed for the criminal justice system to function properly.

In addition to the workshop speakers, there were two breakout sessions where the judges worked in groups on problem-solving activities. Judge Betty Barteau was the facilitator for these groups, and each group had an American judge as a resource and commentator. After reaching a resolution to the problems presented, each group leader gave an oral report to the entire seminar.

It was evident from the discussions that the topics selected for the workshop were timely and well received by the members of the Supreme Qualifying Collegia. Discussion was brisk for each topic, and the participation in the small groups was complete. Hypothetical ethical problems using the Russian Code of Honor were presented to the breakout groups for discussion. The Russians openly discussed these issues, and they often asked for the opinions of the American judge in their group. The report made to the entire group showed that there was a clear grasp of the issues and the application of their Code.

### **C. Lessons Learned**

As noted in prior events with the Russian judiciary, the Supreme Qualifying Collegium was extremely interested in hearing presentations, not only from their own representatives, but also from the American judges. Each presentation was followed by lively discussion consisting of Russian and American views on comparative situations. From these discussion groups, several issues became apparent for future work with the Collegia:

- The Collegia is anxious to establish standards and rules to be utilized during the selection process for judges.
- The Collegia is interested in broadening their ability to discipline, using alternative methods to the existing discipline of dismissing a judge from his post.
- The area of media/judicial relations is ripe for productive work. Both sides understand the need for a productive relationship, but they do not have a way to work toward resolving their issues.
- The Working Group established by President Putin has made dramatic recommendations that will change the way the judicial system in Russia operates. If the recommendations are

implemented, then the system will be increasingly more efficient and new areas of training for the Collegia will be necessary.