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# Issue on "Small" and Indisputable Cases in Russian Courts

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**Abstract:** Nowadays the growth of courts' caseload is usual for most jurisdictions. However, post-socialist countries have extremely high rates of caseload. Authors prove that main reason of such caseload is more ineffectiveness of legal system and court organization as well as unjustified access to justice. This article focuses on the indisputable and small cases in Russian courts. The court system is overloaded as a result of necessity to engage in non-targeted activities. Thus, the judicial system is largely idle to the detriment of its primary purpose.

**Keywords:** caseload of the court, caseload of the judge, court, indisputable cases, "small" cases

#### 1 Introduction

The high load on courts and judges is rightly considered as one of the most important problems in contemporary Russian judicial system.<sup>1</sup> According to Judicial Department statistics, approximately 30 million cases are initiated in the first instance courts per year and that figure is constantly growing.<sup>2</sup> The Magistrates are the busiest, with over 264 cases per month. They are followed by the

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<sup>1</sup> See "Justice and equality before the law (2019): how to achieve the rule of law in Russia". 2019. "Proceedings for discussion at the All-Russian Civil Forum on November 30, 2019", 9; Bocharov et al. 2019, T. Yu. 2019, 45; Sorokopud 2019, 186–204; Sherstyuk 2016, 10–30; Smagina 2018, 51–59.
2 (Judiciary statistics n.d).

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judges of commercial courts in the Russian Federation regions with 106.4 cases and applications per month (figures for 2018).3

The Institute of Legal Research of the National Research University Higher School of Economics made these calculations based on data from 2018, which demonstrated that the working time shortage of commercial court judges required to fully review all the cases received is 6.6 million working hours. This means that judges should deal with cases up to 2.3 times faster than it is deemed necessary. In general courts, the shortage of working time and human resources are 94.2 million hours and 3.4 times, respectively.

It should be noted that the problem of the increase in the load on courts and judges is typical for most countries, but it is especially acute for law and order systems in transition.<sup>4</sup>

According to the statistics of the European Commission for the effectiveness of justice (CEPEJ), between 2010 and 2016, the vast majority of countries in Eastern Europe experienced a significant increase in the load on the judicial systems (for example, in Armenia 3.9 times - from 42.7 to 165.3 thousand cases, in Estonia 3.8 times - from 90.2 to 342.8 thousand cases, in Azerbaijan 3.4 times - from 136.7 to 460.4 thousand cases). Moreover, the increase in load is usually associated with an increase in the number of non-criminal cases. On the contrary, in Western Europe the number of court cases remains at the same level or even decreases, which, apparently, is the result of a number of timely measures to contain the load on the courts (Table 1).

Compared with most developed European countries, in Eastern Europe citizens and organizations tend to seek judicial protection more often. So, in comparison with Russia, among the developed countries of Western Europe a higher indicator is only in Austria – 20.1 thousand cases,<sup>5</sup> and a comparable level is observed in Finland (7.3 thousand cases per 100 thousand population).

<sup>3</sup> Russian judicial system consists of courts of general jurisdiction and commercial courts. Hierarchy of the courts of general jurisdiction is the following: Supreme Court of the Russian Federation, cassation courts of general jurisdiction, appeal courts of general jurisdiction, supreme courts of the entities of the Russian Federation, district courts (also there are military courts). Hierarchy of the commercial courts is the following: Supreme Court of the Russian Federation, federal district commercial courts, appeal commercial courts, and commercial courts of the entities of the Russian Federation (also there is a specialized Intellectual Property Rights Court).

<sup>4</sup> The main institutional characteristics of the judicial systems, the level of workload and the quality of the functioning of the judiciary can be estimated with a certain level of error using the statistical data of the European commission for the effectiveness of justice (Dynamic database of European judicial systems 2016). https://www.coe.int/en/web/cepej/dynamic-database-ofeuropean-judicial-systems) and the World Bank (Doing business. http://www.doingbusiness.org/). 5 It should be borne in mind that order-based proceedings in Austria do not imply verification of the validity of requirements, which ensures high judicial system performance without a real increase in the volume of judicial work.

Table 1: The dynamics of the load on the judicial system of the member states of the Council of Europe in 2010-2016.

Country	Amount of cases in 2010	Amount of cases in 2016	Dynamics of caseload, 2010–2016 (in %)
Armenia	42 675	165 341	287.4
Estonia	90 219	342 807	280.0
Azerbaijan	136 671	460 448	236.9
Moldova	68 072	143 296	62.7
Slovakia	647 643	995 128	53.7
Georgia	86 968	130 640	50.2
Hungary	952 418	1 265110	32.8
Norway	67 720	81500	203
Russia	21 722 356	25 986 033	19.6
Poland	10 432 065	11 700 016	12.2
Finland	451108	503 075	11.5
Lithuania	315 779	350 660	11.0
Montenegro	85 539	94 226	10.2
Serbia	1336 140	1 452 030	8.7
Bulgaria	513 102	505 169	-1.5
France	3 355 747	3 253 649	-3.0
Sweden	288 975	275 722	-4.6
Romania	1 922 568	1827311	-5.0
Malta	24 703	23 444	-5.1
Austria	3 661 198	3 337 518	-8.8
Italy	5 776 658	5 102 805	-11.7
Bosnia and Herzegovina	1 299 757	1 146 828	-11.8
Denmark	2 737 552	2 374 609	-13.3
Netherlands	1 893 790	1515214	-20.0
Croatia	1 487 429	1 129 345	-24.1
Slovenia	1 061355	781 228	-26.4
Spain	3 791 002	2756317	-27.3
Cyprus	148107	102 231	-31.0
Czech republic	1 686 628	1 122 411	-33.5
Switzerland	612 854	380 963	-37.8
Latvia	154 996	92 284	-40.5
Macedonia	423 267	134 279	-68.3
Ukraine	5 350 378	1 682 824	-68.5

With the growth of the "inflow" of cases, the load on the judges increases simultaneously.

The most unfavorable situation is in Azerbaijan (an increase of 4.2 times to 1.3 thousand cases per judge per year), Estonia (3.7 times up to two thousand cases per judge per year), and Armenia (3.6 times up to 934 cases per judge per year).

The growth of the load on courts in most law and order systems is based on general socio-economic processes such as dynamization and globalization of the world economy, widespread complication of civil traffic. However, what is the reason for the extremely high values of the load indicators precisely in post-socialist countries? Various hypotheses may be put forward.

So, in law and order systems undergoing transition e.g. countries of Eastern Europe, China, India and other similar countries, an important factor is the involvement of segments of the population previously included in traditional archaic social institutions, as well as an increase in the demand for formal institutions against the background of a low level of social trust. Hypotheses on the correlations of the number of cases with the level of legal literacy, the imperfection of substantive legal institutions that provokes conflicts, the peculiarities of a legal culture (lack of discipline in fulfilling obligations), the presence or absence of alternative methods for resolving disputes, and unjustified access to justice can also be put forward.

The authors of this article, using the example of Russia, substantiate the thesis that one of the main reasons explaining this problem is rather the inefficiency of the legal system and the judiciary. It also includes the unjustified availability of justice, which encourages participants in the process and state bodies to send cases to court even in cases when, basing on the practice of the majority developed law and order systems, it is not justified. For instance, such is the case of the so-called small and indisputable cases.

The problem of the high load on courts in Russia has a specific refraction: the bulk of the load on courts is small and, as a rule, at the same time indisputable cases, i.e. cases of insignificant amounts or cases in which the debtor does not dispute either the debt itself or its size. In such situations, the court only confirms the rights of the applicant, creating formal conditions for the enforcement of obligations. In other words, most of the work of the courts is the performance of unusual functions for them, which are bureaucratic in essence. In fact, the courts, instead of, jurisdictional activities involving the resolution of disputes by an independent body under a special procedure, are engaged in mechanical activities, or "paperwork" necessary to start the recovery process. Moreover, in many cases, such use of the judicial system costs the state more than the amount of the claim itself, which is especially absurd when it comes to monetary sanctions in favor of the state., Thus, the judicial system is overloaded as a result of the need to engage in inappropriate activities, i.e. for the most part, running idle to the detriment of its primary purpose.

The excessive workload of courts causes, or significantly aggravates most of the Russian judicial system's problems. Therefore, if a reasonable threshold for a judge's workload is exceeded, it makes no sense to discuss the quality of justice.

With a high workload, even the most well-meaning and professional judge is simply deprived of the opportunity to get acquainted with the facts of the case or consider the evidence and the parties' arguments. The judge is required to use template approaches, both during the trial and in the preparation of the judgement. Thus, in most cases, decisions are made without the necessary research into the circumstances of the case, court decisions are made «according to a template» (usually by a judge assistant), which leads to violations of procedural rules and terms. This makes the judge more vulnerable to career development and disciplinary action. Ultimately, all these factors undermine the independence of judges and the judiciary as a whole. Moreover, excessive workloads with relatively low judges' salaries (compared to 'non-state' lawyers) reduce the attractiveness of the profession and prevent the attraction of highly qualified staff to the judicial system.

# 2 Calculation Methodology

Calculations are based on the official statistics of the Supreme Court Justice Department, <sup>6</sup> as well as own data collected by the Institute of Legal Research of the National Research University "Higher School of Economics" (ILR NRU HSE). A database has been created within the data of Commercial Case File <sup>7</sup> and database "Casebook" 8that includes meta-data on cases in commercial courts. The Analysis of cases within the jurisdiction of district courts has been carried out on the basis of the state-automated system called "Justice". The Analysis of cases within the jurisdiction of magistrate judges has been carried out on the basis of web-resource "Judicial and regulatory acts of the Russian Federation". <sup>10</sup> The period of trend analysis is from 2015 until midway through 2019.

In this paper, "small cases" stand for cases where the amount contested is less than \$819.25. The contested amount and legal costs are transferred in US dollars in accordance with the official currency rate on 11 January, 2020.

**<sup>6</sup>** Judiciary statistics, n.d.

<sup>7</sup> The Commercial Case File (n.d). Accessed January 22, 2020. http://kad.arbitr.ru/.

<sup>8</sup> Casebook Database n.d. Accessed January 22, 2020. https://casebook.ru.

<sup>9</sup> Internet portal State Automated System of the Russian Federation "Justice", n.d. Accessed January 22, 2020. https://sudrf.ru/.

<sup>10</sup> Internet (n.d) portal "Judicial and regulatory acts of the Russian Federation", n.d. https:// sudact.ru.

Indisputable cases include two case categories. Firstly, there are legally indisputable cases (so-called, *jurisdictio voluntaria*, <sup>11</sup>) i.e. cases where disputes cannot exist because of the basic legal relationships' essence (debt collection on promissory note, issuance of writs of execution for compulsory enforcement of arbitration award, confession and execution of foreign courts' decisions and foreign arbitration awards, establishment of legal facts, etc.).

However, more than half of caseloads in commercial courts are formed by the de facto indisputable cases. This stands for cases where the chance of claim is almost absolute. Actually, there are no issues on law and disputes regarding the amount in dispute that is proved both by the statistics of claims and by the absence of defendants' procedural actions. Courts only confirm claimant rights and create formal conditions for compulsory enforcement in such cases.

Various approaches in regard to indisputable character of claims that can be decided by writ proceedings are developed in the judicial practice:<sup>12</sup> claims, proved by credible written evidence and claims, recognized by the debtor. A claim is considered as "actionem" if there is no information regarding the disagreement with a claim or evidence in case material.

Taking into account research goals (the assessment of part of indisputable cases in general caseload, not only in writ proceedings) indisputable cases have been established on the basis of aggregate of characteristics, proving the absence of issue on law.

Issues on law can be indicated by the following characteristics:

- He statement of defense including peremptory plea;
- The defendant's answer during a trial;
- An appeal against the court's decision including arguments against plaintiff claims.

Also, the absence of issue on law can be indicated by a judicial warrant (the necessary condition of writ proceedings is no dispute on law (article 229.4, Commercial Procedure Code of the Russian Federation)).

<sup>11</sup> Angrisano, Argunov, and Argunov (2014). Voluntary (indisputable) jurisdiction in Russia and abroad (Eastern and Western Europe, Latin America, China). Edited by V.V. Argunov. Moscow: Statue; (Argunov 2013). "Special proceedings in the Civil Procedure Law of Russia and France".

<sup>12</sup> Paragraphs three and four of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 27.12.2016 N 62 "On some issues of application by the courts of the provisions of the Civil Procedural Code of the Russian Federation and the Commercial Procedural Code of the Russian Federation on the order proceedings".

Indirect indicators of indisputable case are:

- A voluntary settlement between parties (it is the evidence of consensus despite the fact that negotiations have been stimulated by a lawsuit);
- The withdrawal from proceedings (particularly when plaintiff have understood claims insufficiency);
- Non-attendance of a defendant at hearing (if hearing is a part of a trial. It indicates assessment of a case by a defendant as minor or hopeless).

One hundred cases have been randomly selected in each category (in accordance with the official statistics) for the analysis of its disputable/indisputable character. All cases have been investigated as to whether case materials contain the abovementioned characteristics of indisputability.

# 3 Empirical Data on "Small" and Indisputable Cases

#### 3.1 "Small Cases"

According to ILR NRU HSE calculations, "small cases" form approximately half of all caseload in commercial courts, only a quarter of which are prominent. The growth of caseload is provided by "small cases" while those of prominent cases and non-property cases do not change significantly over time. Such cases are usually indisputable and mostly initiated by state agencies.

In 2018, 888.8 thousand cases (41.9%) were disputes with the amount in controversy less than \$819.25 (including 21.2% cases with the amount in controversy less than \$32.77\$). Only 541.5 thousand cases (25.5%) concerned an amount over \$3,277. Between 2015 and 2018, a number of cases with the amount contested of less than \$819.25 had increased 1.8 times from 485 thousand to 888.8 thousand cases, while a number of prominent cases and cases with non-property claims had increased by 8.2 and 2.4 percent, respectively.

Specifically, a major part of "small cases" is initiated by state agencies. They file lawsuits with an amount in dispute of less than \$32.77, 38.2 times more likely than private plaintiffs (48.5% of all cases) and 1.9 times more likely in respect of claims with the amount in dispute of between \$32.77 to \$163.85 (11.6% of all cases). Cases concerning the collection of regulatory charges and sanctions by the Pension Fund of the Russian Federation prevail in the grand total of all "small cases" in commercial courts (500.1 thousand cases; 56.4%). Thus, state bodies use the court system for the adjudication of "small cases". These cases are a significant source of groundless commercial courts' caseload.

The situation is more complicated in general jurisdiction courts. Almost two thirds of civil and administrative cases are "small". There were 13.9 million such civil and administrative cases in courts of general jurisdiction in 2018 (64.1% of all cases).

As for commercial courts, state agencies are 1.3 times more likely to initiate "small cases" than individuals and private entities. This loads courts with "nonlegal" tasks.

The major part of "small cases" in courts of general jurisdiction pertains to:

- The collection of charges for housing and public utility services 5.7 million civil and administrative cases in courts of general jurisdiction in 2018 (41.1% of all cases);
- The collection of taxes and fees 3.4 million cases (24.5%); credit contract recovery – 3.1 million cases (22.5%);
- The recovery of unpaid wages 231.8 thousand cases (1.7%).

Moreover, the growth of caseload in general jurisdiction courts is connected with the increase of "small cases", while the proportion of prominent cases and nonproperty claims remains almost the same. Between 2016 and 2018, a number of cases with an amount in dispute of less than \$819.25 had increased more than 1.5 times from 9 million to 13.9 million cases, but a number of cases with the amount in dispute of more than 819.25\$ had increased by 23.4%. The most substantial increase of "small cases" concerned the collection of charges for housing and public utility services and credit contract recovery.

## 3.2 Indisputable Cases

The transfer to courts of functions of the hearing of indisputable cases has been historically predetermined by their social importance, neutrality, as well as special opportunities for judicial determination of facts.<sup>13</sup> Such categories are not internally judicial, and they can be transferred to other agencies, such as notarial institutions, administrative authorities, etc.

The issue of judicial hearings of indisputable cases has been actualized because of the fast growth of caseloads in the most countries. In the last 10 years,

<sup>13</sup> See Angrisano, Argunov, and Argunov (2014). Voluntary (indisputable) jurisdiction in Russia and abroad (Eastern and Western Europe, Latin America, China). Edited by V.V. Argunov. Moscow: Statue.; (Argunov 2013). Special proceedings in the Civil Procedure Law of Russia and France», 10-23,

there has been a tendency of indisputable cases transferred from courts to notarial institutions, civil registry offices, quasi-judicial agencies, registration bodies or other administrative authorities (e.g., in Hungary, Finland, Sweden, Brazil, Venezuela, etc.). Also, the procedures of hearing of indisputable cases are simplified (e.g., in Germany, Hungary) or such cases are proceeded by court officials who are not professional judges (e.g., in Slovenia). Similar reforms are discussed in Spain, Italy, Argentina, etc.<sup>14</sup>

Besides high courts' caseload, an additional point for transfer of indisputable cases to other institutions is the development of digital technologies (in the field of registration of acts, property, persons and entities, civil status, electronic contracts, online-payments, etc.). The technologies increase the activities' transparency. Also, they help to track the legal status of property and its transactions. Therefore, the credibility of corresponding registers and databases is higher, resulting in the credibility and sufficiency of decisions of administrative agencies, notarial institutions and registrars being higher too. On the other hand, courts become irrelevant in regard to an instance where juridical facts are most reliably determined on the basis of a specific procedure. Conversely, courts nowadays usually consult with registers and databases formed by administrative agencies. This means unreasonableness of courts' functions of rights and legal status verification if there is no dispute.

Actually, indisputable cases in Russian courts' caseload structure are mostly "pseudo disputes", burdening courts with formal compulsory recovery procedure.

In accordance with ILR NRU HSE calculations, about one million cases (54.2% of cases in commercial courts of entities of the Russian Federation) are indisputable. Seven out of 10 of the most prominent case categories have a considerable part of indisputable cases (more than 50% of cases in each category). For example, there are no disputes in:

- 94% of cases over the collection of regulatory charges and sanctions by the Pension Fund of the Russian Federation;
- 70% of cases over defaults under energy supply contracts;
- 69% of cases over the collection of regulatory charges and sanctions by the Federal Tax Service.

<sup>14</sup> Angrisano, Argunov, and Argunov (2014). Voluntary (indisputable) jurisdiction in Russia and abroad (Eastern and Western Europe, Latin America, China). Edited by V.V. Argunov. Moscow: Statue.; (Argunov 2013). "Special proceedings in the Civil Procedure Law of Russia and France». 10-23. (See also Khalatov 2017). (Khalatov 2017). "Reduction of the courts competence to solve the undisputed cases as a factor of the load reduction. "Arbitration and civil proceedings, no. 12: 40-42.; Tsembelev 2014. "Actual preconditions, bases and theses of the judicial order manufacture reorganization." Executive law, no. 2: 36-38.

There are two main initiators of indisputable cases in commercial courts: state agencies (in regard to the collection of regulatory charges and sanctions) and parties to a contract (in regard to payment default).

The greatest proportion of indisputable cases is connected with the following categories:

- Collection of regulatory charges and sanctions by the Pension Fund of the Russian Federation – 435.4 thousand cases (22.8% of all cases in commercial courts);
- Debt recovery under energy supply contracts 202.8 thousand cases (10.6%);
- Debt recovery under supply contracts 122.5 thousand cases (6.4%);
- Debt recovery under tenancy contracts 71.8 thousand cases (3.8%);
- Debt recovery under paid services contracts 96 thousand cases (5%).

The increase of caseload in commercial courts of Russian Federation entities is mostly concerned with the high share of indisputable cases (they are usually "small" at the same time), initiated by state agencies, specifically, by the Pension Fund of the Russian Federation.

The same situation is in courts of general jurisdiction. The main initiators are state agencies, residential and utilities service and credit organizations. Indisputable cases, initiated by these entities, mostly increase caseload.

According to 2018 data, indisputable non-criminal cases form 71.7% of the caseload in courts of general jurisdiction. There are 16.4 million civil and administrative cases (75.5% of such cases in general jurisdiction courts). It is also possible to consider about 4.2 million administrative offence cases (59.7% of such cases in general jurisdiction courts) as disputable.

Four out of six of the most prominent civil and administrative cases categories are characterized by a significant part of indisputable cases (more than 50%). For instance, there are no disputes in:

- 98.5% of cases over debt recovery for housing and utility services;
- 98.1% of cases over the collection of taxes and fees;
- 96.7% of cases over credit recovery.

Administrative offence cases (the most prominent case categories in 2018 heard by general jurisdiction courts) are almost completely characterized by the absence of the defendant's proceeding actions. The possible explanation for this is low penalty rates.

The greatest amount of indisputable cases in general jurisdiction courts is connected with the following cases:

Debt recovery for housing and utility services – 6.6 million cases (30.4% of civil and administrative cases in general jurisdiction courts);

- Credit recovery 5.5 million cases (25.3% of civil and administrative cases in general jurisdiction courts);
- The collection of taxes and fees 3.8 million cases (17.5% of civil and administrative cases in general jurisdiction courts);
- Administrative sanctions for the failure to pay an administrative penalty 1.7 million cases (24.5% of administrative offence cases);
- Administrative sanctions for traffic violation 930.2 thousand cases (13.2% of administrative offence cases);
- Administrative sanctions for being drunk and disorderly 285.1 thousand cases (5.5% of administrative offence cases).

It should be noted that such use of the judicial system is usually more expensive for the state than the amount being claimed. In 90% of cases, judicial hearing concerning the collection of regulatory charges and sanctions results in the financial loss for the government, because administration of claims is more expensive than the amount in dispute. In 2018, the Federal Tax Service, the Pension Fund of the Russian Federation and Social Insurance Fund of the Russian Federation initiated debt recovery in commercial courts to the amount of less than \$81.92 (the approximate cost of one claim administration for the state budget by commercial courts, Federal Tax Service/Pension Fund of the Russian Federation/Social Insurance Fund of the Russian Federation, Federal Bailiff's Service) in 498.1 thousand cases (91.8% of all claims in the courts by above mentioned organizations. <sup>15</sup>)

The actual fulfilment of courts' requirements is possible only in 15.4% of cases (if a defendant is a legal entity) or in 23.1% of cases (if a defendant is a natural person).16 Taking this into account, courts "run empty", hearing cases over regulatory charges and sanctions (such cases are a quarter of caseload in commercial courts and 15% of caseload in general jurisdiction courts).

# 4 Main Reasons of Courts' Overload by "Small" and Indisputable Cases

The main reason for the large number of "small" and indisputable cases in Russian courts is the combination of conditions providing incentives for plaintiffs to start a

<sup>15</sup> Calculations of the ILR NRU HSE.

<sup>16</sup> Departmental Statistical Report (2018a). Form 011\_1812 "Key Indicators of Performance of Court Bailiffs Executing Officers of the Federal Bailiff Service of Russia", Section 4 "Information on the movement of enforcement proceedings on penalties for certain categories of debtors and claimants", n.d.

dispute for minor reasons, or without the prospect of any real debt recovery, and for defendants to avoid the voluntary fulfillment of obligations even if the case is indisputable.

Such conditions include the extremely low cost of justice in Russia, the inefficiency of enforcement proceedings, the absence in some cases of legal alternatives to the judicial procedure, and the lack of convenient or effective alternative procedures for the protection of interests (debt collection).

Such conditions should include, as a minimum, the following:

- Extremely low cost of justice in Russia;
- Inefficiency of enforcement proceedings;
- The lack of convenient and effective alternative procedures for protection of interests (debt collection);
- A legal obligation to address the courts for the protection of rights or the fulfillment of public functions (application of liability measures, property recovery, etc.).

These factors motivate parties to consider dispute resolution in courts instead of preliminary responsible assessment of risks at the stage of transactions and finding the ways of alternative dispute resolution.

# 4.1 Low Cost of Justice

Current rules and conditions that determine the cost of justice for plaintiffs and defendants in Russia form a kind of "funnel" that massively draws small and indisputable cases into the orbit of the courts, since the costs of the judicial procedure are minimal for all parties in dispute.

Russia, as a whole, is characterized by a significantly lower level of legal expenses in comparison with the developed countries of Europe.<sup>17</sup> At the same time, unlike most legal systems, in Russia in many cases (especially in "small" and indisputable cases), the costs of both the plaintiff and the defendant who lost the

<sup>17</sup> Ten European countries with the highest values of GDP per capita at purchasing power parity in 2016 and available information on the cost of justice were selected for the calculations - Ireland, Netherlands, Sweden, Denmark, Austria, Germany, Belgium, Finland, Great Britain, and Malta. Court fees in Russia were compared with the average level of duties for the listed countries according to the requirements.

<sup>(</sup>See Russian Tax Code n.d). Part 1. Art. 333.21, n.d. The Civil Case Fees Act (n.d). Art. 58 (Wet griffierechten burgerlijke zaken). Netherlands, n.d. Law on Court Fees (n.d) (Gerichtsgebührengesetz). Austria. Pair. 32. Art. 1, n.d. (Duties in civil and family courts n.d). United Kingdom, n.d. Manual for filing collection requests (n.d). United Kingdom, n.d.

case are limited to paying the state duty. It is worth mentioning that if in Russia the state duty is paid only "at the entrance" to the process (instance), then in many legal systems (in particular, in the USA, Great Britain) the duty is paid separately for almost every procedural action (for example, filing a request, presentation of evidence, etc.), so the total amount of legal costs is very significant and can be hardly assessed.

If we consider only state duties, then consideration of cases with plaintiff's claims in the amount of \$1,000 is cheaper in Russia by almost five times, and less than \$6,000 is more than two times cheaper. The cost of considering cases with claims of \$6,000 – \$40,000, and more than \$80,000 in Russia is, on average, 1.5 times cheaper. 18

In addition, in Russian courts, the costs of paying for the services of a legal representative are usually not fully reimbursed by the losing party. In commercial courts in 2018, on average, participants in disputes claimed \$1,684.38 for compensation; courts adjudged an average of \$756.99. Thus, on average, commercial courts adjudge amounts less than half the stated claims. The situation in the court of general jurisdiction is worse. On average, the parties to the disputes claimed \$735.69 for compensation, and the courts adjudged on average \$288.38, i.e., about 60% less. 19 At the same time, courts reduce the amount of compensation on their own initiative and they often do it without taking into account the reputation of law firms and their participation in ratings. Also, in general, the courts negatively refer to the so-called "contingency fees", involving the payment of representative services depending on the outcome of the case.

The low cost of justice motivates the *plaintiffs* to use the judicial procedure for the multitude of minor reasons without attempts to settle claims in a pre-trial form, which discourages them from a responsible risk assessment at the stage of selecting counterparties and concluding contracts, and also makes any pre-trial and alternative dispute resolution procedures unattractive. The low cost of justice and low efficiency of enforcement proceedings motivates the defendant, even with the actual absence of a dispute, to refuse voluntary discharge of reasonable claims and to try to avoid recoveries at all, or to use the judicial procedure as a way to defer the payment of a debt. Cheap justice allows the consideration of an unfulfilled obligation as an alternative to the institution of short-term or medium-term lending, since the costs of losing a case are significantly lower than the benefits of disposing of the disputed amount before the trial is completed.

<sup>18</sup> Calculations of the HSE Institute of Legal Research based on data on the amount of court fees in the mentioned countries.

<sup>19</sup> Calculations were made on the basis of the Survey of the cost of court representation services (n.d) (Moscow and Moscow Region), n.d.

Thus, the high load on the courts in Russia with "small" and indisputable cases is primarily the result of the lack of sufficient economic incentives for the debtors to fulfill their obligations on a voluntary basis. In this situation, the plaintiffs use the judicial procedure as the most effective one in comparison with the alternatives, even if it is not able to ensure the full satisfaction of their interests.

Accordingly, the measures taken should aim primarily at increasing the level of costs of legal proceedings for the debtor. In any case, without increasing the cost of the judicial procedure, neither the problem of the high load, nor the problem of normalizing the practice of case turnover in terms of fulfillment of their obligations by the debtors can be solved. At the same time, the main leverage for changing the system of economic incentives for small claims should be precisely state duties, but not other components of the cost of justice.

#### 4.2 Inefficiency of Enforcement Proceedings

The inefficiency of enforcement proceedings is the second basic factor of a court overload in "small" and undisputed cases. On average, bailiffs recover only 7.9 percent of the amount to be recovered under writs of execution issued by commercial courts and general jurisdiction courts.<sup>20</sup>

The extremely low indicators of the Federal Service of Court Bailiffs of Russia on forced recovery reduce the property risks of a defendant. This fact demotivates a defendant from solving the debt out of court and forces the courts to do senseless work on paper execution of hopeless debt recovery.

Therefore, the solution of the high court load implies mandatory normalization of enforcement proceedings.

# 4.3 Lack of Convenient and Effective Alternative Procedures for **Protection of Interests (Debt Collection)**

The reason for frequent suits with small and indisputable cases is the lack of convenient and effective alternative procedures for protecting interests (debt collection), which would allow one to achieve the desired result with less monetary, time, and other costs. Alternative dispute resolution is not in demand because

<sup>20</sup> Departmental Statistical Report (2018b). Form 011\_1812 "Key Indicators of Performance of Court Bailiffs Executing Officers of the Federal Bailiff Service of Russia", Section 2 "Cash flow of enforcement documents held by bailiffs during the review period", n.d.

its cost is high compared to judicial proceedings with ambiguous advantages and often with obvious drawbacks.

For instance, the mediation result is unpredictable and cannot be directly enforced.<sup>21</sup> However, the cost of mediation exceeds not only the state fee, especially in "small" cases and non-property disputes, but also the standard cost of legal representation in court (\$819.25). The arbitration tribunal is expensive, the result is not always predictable, and the issuance of a writ of execution for the enforcement of an arbitration tribunal award requires recourse to the arbitration court.<sup>22</sup> An administrative appeal is usually unsuccessful and, therefore, is perceived by applicants as a senseless loss of time.

Alternative procedures are ineffective for a plaintiff in "small" and indisputable cases, where the court costs of which are low. In addition, these procedures are not available to public agencies that generate the workload majority in "small" and indisputable cases.

The situation is aggravated because the intangible benefits of alternative procedures in Russia, primarily reputational benefits when the company is not involved in litigation, are not significant for the market.

An important conclusion is that alternative dispute resolution procedures will not be required as long as state justice is still a low-cost procedure. For all attempts to improve it, the balance of benefits and costs to the parties will not be in favour of alternative procedures.

## 4.4 Lack of Alternative Dispute Resolution

One of the main reasons for bringing indisputable cases before the courts is the legal obligation to apply to the court for the protection of rights or the performance of public functions, such as application of liability measures, property recovery, etc.

Among such cases, the leading ones are debt collection cases mainly on mandatory payments and sanctions, payments for housing and utilities services, insurance, lease, loan, and wage arrears, etc. Regardless of the existence of a dispute in a wide list of cases, tax collection from citizens and organizations is

<sup>21</sup> Except in the case of notarization of the mediation agreement reached by the parties as a result of the mediation procedure. See Part 5 of Article 12 of the Federal Law of 27.07.2010 N 193-FZ "On alternative dispute resolution procedure with the participation of the mediator (mediation procedure)".

<sup>22</sup> In 2018, for example, commercial courts considered only 1770 cases of the issuance of a writ of execution for the enforcement of arbitration tribunal decisions, which is not comparable to the total number of cases judged by arbitration courts of the Russian Federation entities over the same period (1,907,000 cases).

carried out in court (Articles 45, 46, 47 of the Tax Code of the Russian Federation). Divorce may also be effected only in court in the presence of minor children (even in the absence of a dispute) or in the absence of the consent of one of the spouses to the dissolution of the marriage (article 21 of the Family Code). Labour disputes are also resolved in the absence of a commission for labour disputes (article 391 of the Labour Code). Administrative liability is brought to court for a considerable number of offences (Article 23.1 of the Code of Administrative Offences). In particular, it is difficult to find the judicial procedure of imposing a penalty in the form of a fine for non-payment of an administrative fine justified in the absence of stated objections on the part of the person held administratively liable. The judicial procedure for making relevant decisions cannot be recognized as justified in a significant list of cases, since the courts only provide legal registration of decisions and technical launch of enforcement.

Among the main reasons for the legal non-alternativeness of the court procedure is the unreasonably broad interpretation of Part 3 of Article 35 of the Constitution of the Russian Federation about the inadmissibility of deprivation of property otherwise than by a court decision. This norm is often interpreted as preventing the procedure of compulsory recovery otherwise than by a court decision.

The next factor is the obligation of the government agency to apply to the court for the purpose of property recovery or bringing a person to liability regardless of the price of the claim and the economic feasibility of such action for the state.

Sometimes, the system of reporting and evaluation of the public authorities' activity (the so-called "stick system"), motivating to claim insignificant damages, has a similar effect.

It concerns the practice of control and supervisory bodies reporting on the number of cases on administrative violations and the amount of administrative fines imposed, the practice of ensuring the performance of traffic police on the number of offenses, the claims of the Federal Tax Service to recover tax payments at the expiration of the three-year period for the accumulation of debt (for citizens), or the expiration of the term for the undisputed collection of arrears from organizations, etc.

# 5 Methods of Problem Resolution

As international experience confirms, non-judicial procedures are a great alternative which eases the problem of excessive caseload, including the issue of "small" and indisputable cases. It also motivates parties to a responsible conduct.

Well-reasoned approaches to the problem of high caseload are usually based on the principle of rational aggregation of resources. According to this principle, litigation is only applied to difficult legal disputes with significant amount of claims. As for small and indisputable cases the principle of procedural economy shall be applied: cases shall be settled in non-judicial procedure or in simplified procedure where procedural guarantees are limited.

In most European countries, indisputable monetary claims (irrespective of the amount) do not have influence on courts' caseload by the reason of a very simple or automatic procedure of enforcement document reception if a debtor has the opportunity to cancel it. Simple judicial or non-judicial procedures are applied in respect to "small" cases. The level of procedural guarantees is dependent on case significance or its significance to parties, or its claim amount.

As litigation is a long and expensive process, parties are motivated to have responsible conduct, including risk estimation, contractor selection, voluntary performance, and active use of prejudicial and non-judicial procedure. There is also an obligatory application of these actions in some cases.

In Europe, harmonized procedures of indisputable recovery in civil and commercial cases are applied, as well as the procedure of European order for payment procedure.<sup>23</sup> The logic of writ proceedings is implemented most consistently in European countries. In fact, this is the procedure for issuing an executive document on monetary claims only at the request of the creditor without providing written evidence and without any verification of the soundness of the claim.<sup>24</sup> To protect the rights of the debtor, emphasis is placed on the procedure for notifying them of the order issued and providing them with the opportunity to cancel the order. Also, it should be indicated that there is a trend toward the rejection of restrictions on the amount of the claim, which can be exacted in the order. <sup>25</sup> The procedure is highly standardized and essentially technical, and it does not actually burden judges with additional work. The participation of a lawyer in the order issuing procedure in most countries is not mandatory.<sup>26</sup>

For example, according to § 688, 690 of the German Code of Civil Procedure, the requirements for the payment of a certain amount in euros (without limiting the

<sup>23</sup> See Regulation (EC) No. 1896/2006 Of the European parliament and of the council creating a European order for payment procedure. National writ proceedings procedures are used in *Austria*, England, Hungary, Germany, Spain, Italy, Latvia, the Netherlands, Slovenia, Finland, France, Croatia, Czech Republic, Scotland, Estonia etc. See "'Order for Payment' Procedures." European e-Justice Portal. https://e-justice.europa.eu/content\_order\_for\_payment\_procedures-41-en.do.

<sup>24</sup> In some countries (e.g. England) the requirement to provide written evidence remains.

<sup>25</sup> In a number of countries, such restrictions remain (including Austria, Belgium, Portugal, Spain, Hungary, the Czech Republic (if the application is submitted online), and while in Hungary it is allowed to submit requests for the issuance of an order, having previously divided the amount of debt into parts.

<sup>26</sup> However, there are exceptions here. The participation of a lawyer is mandatory in Austria for claims from 5,000 euros, in England for claims from 5,000 pounds, in Spain in case of objections from the defendant and for claims from 2,000 euros.

amount) can be considered in the form of writ proceedings, and it doesn't require the substantiation of the claim. A court order is issued without checking the grounds of the claim, usually in an automated mode. In the event of the defendant's objection, the dispute is transferred to the competent court and examined during action proceedings (§ 696, 697).

In accordance with Art. 2, four of Regulation (EC) No 1896/2006, the European orders for payment procedure are applied to the claims for the collection of a certain amount of money from civil and commercial disputes of an interstate nature, if the payment deadline has arrived at the time of application. At the same time, when preparing the Regulation, the provision on the "indisputability" of the claim has been removed from Article 4, since this issue should be resolved during the process. In addition, the possibility of considering a monetary claim in accordance with European order for payment procedure is not limited to any maximum possible amount. The validity of the claim under the European procedure can be checked to a limited extent (Articles 8, 11 of the Regulation).

In fact, this order of writ proceedings routinizes the consideration of most of the requirements that arise in practice, releasing courts from a significant part of the judicial work.

In Russia, there are limits on the type and amount of claims in respect of which a court order may be issued. They are mainly undisputed monetary claims of up to 6.5 thousand euros.<sup>27</sup> This requires the submission of documents confirming the validity of the requirement. The court, accordingly, must assess the validity of such claims, which requires the study of circumstances of the case. Even considering restrictions on the type and size of the claim, 421 thousand (22.4%) commercial disputes and 19.7 million (82.6%) disputes with the participation of citizens are resolved in writ proceedings. <sup>28</sup> In the European procedure, about three quarters of commercial disputes and the vast majority of disputes involving citizens should be considered by order, taking into account the structure of the load on Russian courts. And Russian courts are predominantly overloaded with such cases. The expansion of the scope of writ proceedings and the refusal to verify the validity of requirements can significantly optimize the working conditions of courts.

However, there is a tendency of exclusion of undisputable cases from courts' competence in most legal systems. In Hungary, Slovenia, Finland, Sweden, Brazil, Venezuela, etc., such cases, including special proceedings cases, are transferred to notarial institutions, civil registry offices, registration bodies or other administrative authorities. In some circumstances non-judicial bodies or public officials, who are not judges, settle writ proceedings cases. For example, in England request

<sup>27</sup> At the exchange rate of the Central Bank on July 7, 2020.

<sup>28</sup> Data for 2019.

for writ issue are considered by administrative court personnel. In Sweden indisputable cases are heard by administrative agency on debts («Kronofogdemyndigheten»).<sup>29</sup> In Portugal request for writ issue is filed in district court and afterwards is sent in National Payment Orders Office (Balcão Nacional de Injunções) in electronic form.<sup>30</sup>

The most interesting institute is Canadian administrative tribunals that are specific state quasi-judicial bodies, considering several categories of cases. De juro they are included in the executive branch of power, but not the judicial one. Nevertheless, it is still at issue. Some authors prove its' mixed status as "hybrid" of legislative, administrative, and judicial power. The crucial feature of administrative tribunals is the procedure of making their decisions valid. They are enforced by the decisions of first instance courts and can be appealed only during the formal procedural activity. It differs from the traditional procedure of pretrial appeal. Special legal acts regulate dispute resolution in administrative tribunals, considering characteristics of the concrete subject areas such as collection of evidence, interview of witnesses, adjudication. The procedure is usually less formal than in the courts. As practice shows, most economic disputes are held by administrative tribunals in Canada. The tribunals' experience is one of the most successful all over the world. Other sufficient advantage over the courts is cheapness of dispute resolution in administrative tribunals. Nowadays they look like self-regulatory organizations with delegated authorities of considering cases.

In some countries, such as Austria, England, Hungary, Germany, Greece, Ireland, Spain, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, USA, Poland, France, Estonia, simplified procedures are applied to settle disputes with low amount of claims. It allows using resources of the judicial system accordingly to the significance of a case. Although these procedures are not always formally settled as the special ones, specific rules are usually established. Among such rules are:

Hearing of cases by special courts or quasi-judicial bodies. For example, small claim courts function in some states of USA 32 and Canada. 33 These courts are courts of "limited jurisdiction". They are typically represented by state courts

**<sup>29</sup>** Official site of *Kronofogdemyndigheten*. https://www.kronofogden.se/english.html.

**<sup>30</sup>** European e-Justice Portal - Monetary claims. https://e-justice.europa.eu/content\_order\_for\_ payment\_procedures-41-pt-en.do?member=1.

<sup>31</sup> Richard (2007). Administrative Tribunals in Canada. An Overview. Bangkok. http://www.aihja. org/images/users/ARCHIVES/docutheque-docs/EReportCanada2.pdf.

<sup>32</sup> See, for example: Official site of the New York City Small Claims Court. https://www.nycourts. gov/courts/nyc/smallclaims/welcome.shtml.

<sup>33</sup> See, for example: Official site of the Provincial Court of British Columbia. https://www. provincialcourt.bc.ca/; Official site of the Provincial Court of Alberta. https://albertacourts.ca/pc/ home.

of lower tier that consider limited number of civil cases.<sup>34</sup> The significant feature of these courts is the procedure of hearing of cases, that is conducted by non-professional judges, who have not enough length of service and legal education. Moreover, judges usually work not only in the small claim courts. Sometimes they combine judicial profession with work in municipal agencies. For example, a local magistrate is often a chairman in small claim court. In Brazil small cases are heard by justices of the peace without legal education.

- Total or partial restriction of opportunities of resolution of small disputes appeal. It allows decreasing higher courts' caseload. In some countries such decisions can be appealed only on the grounds provided for in the law or due to substantial violation of procedural rules. For example, it concerns with claims up to 2 700 Euro in Austria, 35 2 000 Euro in Luxembourg, 36 1 750 Euro in the Netherlands, <sup>37</sup> 3 000 Euro in Spain, <sup>38</sup> 10 000 Czech korunas in the Czech Republic.<sup>39</sup>
- Participation of representatives in the hearing of small cases is typically not necessary. It is true for England, Hungary, Germany, Greece, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, France, the Czech Republic, and Estonia.
- A gradual change from oral to written proceedings of small cases (Latvia, Lithuania). But there are both written and oral proceedings in most countries such as Austria, England, Hungary, Germany, Greece, Ireland, Spain, Italy, Luxembourg, the Netherlands, Poland, France, the Czech Republic, and Estonia. Nevertheless, judge usually has the right to assess written evidence without court hearing.

<sup>34</sup> Also, courts of "limited jurisdiction" are police courts, mayor's courts, city courts, probate courts, juvenile courts, claims courts, courts of common pleas, family courts, small claims courts, tax courts, water courts (they function in West states such as Colorado and Montana), and specialized courts on employees.

<sup>35 &</sup>quot;Small claims - Austria". European e-Justice Portal. https://e-justice.europa.eu/content\_ small\_claims-42-at-en.do?member=1.

<sup>36 &</sup>quot;Small claims - Luxembourg". European e-Justice Portal. https://e-justice.europa.eu/content\_ small\_claims-42-lu-en.do?member=1.

<sup>37 &</sup>quot;Small claims - Netherlands". European e-Justice Portal. https://e-justice.europa.eu/content\_ small\_claims-42-nl-en.do?member=1.

**<sup>38</sup>** "Small claims - Spain". European e-Justice Portal. https://e-justice.europa.eu/content\_small\_ claims-42-es-en.do?member=1.

<sup>39 &</sup>quot;Small claims - Czech Republic". European e-Justice Portal. https://e-justice.europa.eu/ content\_small\_claims-42-cz-en.do?member=1.

The absence of response to the court's request, concerning claim, can be a reason for the adverse decision.<sup>40</sup>

Next prospective direction, which can provide a significant reduction in the flow of incoming cases, including small and indisputable ones, is the introduction of technological solutions into social practice.

We are talking not only about technologies that make it possible to automate the activity of courts and participants in the process when considering cases, but also about a wider range of technologies that exclude the very occurrence of a dispute, or that allow resolving disputes at the pre-trial stage.

According to the experts, the expansion of real access to justice can be achieved by reforming the technologies of legal education of citizens, promoting the practice of "avoidance" (prevention) and de-escalation of disputes at an early stage, and streamlining judicial procedures. 41 International studies show that in a significant number of cases the restoration of violated rights is hindered by the lack of individuals' knowledge of their rights and available procedures. For example, according to the World Justice Project, less than a third of people are able to understand the legal nature of disputes arising. Problem situations are usually perceived either as something inevitable (institutionally determined) or as a result of bad luck.42

Available technological solutions that exclude the very occurrence of conflict situations ensure the automatic exercise of civil rights or allow resolving a dispute and achieving the desired result at an early stage turn the situation on a different plane, deactivating the problem of accessibility of justice. It should also be noted that the convenience, efficiency, and low cost of online technologies for out-ofcourt settlement of disputes makes them more attractive in comparison with state justice. As a result, courts concentrate on considering complex disputes with significant amount of claim, while the level of load on judges does not exceed reasonable limits.

Technologies also have significant potential to reduce the number of small and indisputable cases due to the possibilities of formalizing social practices. The basis of many technologies is the use of the most common, effective and legal schemes for the interaction of turnover participants. This in many cases precludes the very

<sup>40</sup> See. point 6.1.1 of Practice guide for the application of the European Small Claims Procedure under Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.

<sup>41</sup> Susskind (2019). Online Courts and the Future of Justice. Oxford University Press. 368.

<sup>42 &</sup>quot;Global Insights on Access to Justice 2019." World Justice Project. https://worldjusticeproject. org/our-work/research-and-data/global-insights-access-justice-2019.

possibility of deviant behavior. So, for example, the need to upload information on procurement participants from accounting databases to the electronic bidding system during public procurement excludes the very possibility of participation in procurement of organizations that do not comply with the procurement conditions.

Currently, the list of technologies to reduce the number of lawsuits and the overall volume of judicial work is immense. We will only point out some proven technologies.

Online dispute resolution systems allow parties to rationalize their claims and send them to an opposite party. In many cases it allows to settle disputes out of court. For example, the Cybersettle online dispute settlement project is based on the following principle: the parties blindly exchange positions (claims and counteroffers) and, if they intersect, the algorithm automatically approves the agreement. 43 Another example is the Solution explorer service used by the Civil Resolution Tribunal in British Columbia, Canada. This system, originally designed to organize the online hearing of cases at the Tribunal, analyzes the applicant's responses to standard questions and determines the category of the dispute. The parties are also provided with free legal information and templates of required documents. At the same time, the parties can use the online negotiation platform CRT to coordinate positions at the pre-trial stage. The result of the application of the considered software product is a significant reduction in the workload on the judges of the tribunal. About 94% of the disputes, submitted to the tribunal, are resolved by the parties independently.44

In European countries, private online systems for pre-trial dispute resolution operate successfully. They are used primarily for consumer contracts concluded in electronic form in the case of the sale of goods and services in online stores. <sup>45</sup> The platforms are a type of alternative mediation, as disputes are handled by private mediation organizations. Unlike classical mediation, this form has important advantages such as convenience, due to the possibility of online dispute settlement, and low cost. The minimum costs and terms of dispute resolution motivate consumers to use these systems more actively.

This kind of customization of mediation procedures in the form of making them available online and cheaper can become one of the most promising areas for popularizing alternative procedures for resolving small disputes in Russia.

**<sup>43</sup>** Official site of the Cybersettle project. http://www.cybersettle.com/.

<sup>44</sup> See "Strata Solution Explorer." Civil Resolution Tribunal, April 9, 2019. https:// civilresolutionbc.ca/how-the-crt-works/getting-started/strata-solution-explorer/.

<sup>45</sup> See Directive 2013/11/EU of the European Parliament and of the Council on Alternative Dispute Resolution for Consumer Disputes and Regulation 524/2013 of the European Parliament and of the Council on Online Dispute Resolution for Consumer Disputes.

Systems that ensure the prevention of disputes at the stage of concluding and executing contracts. Legal companies have started to use information products that provide automatic analysis of numerous and/or multi-page contracts, agreements and other documents for problematic issues, non-compliance with the regulatory framework or internal standards of the organization. Examples of such software products are LawGeex and Kira Systems. 46 The LawGeex platform is based on neural network technology, that has been "trained" on thousands of legal contracts marked by experienced lawyers.<sup>47</sup>

The use of smart contracts, another name is programmatically executed transactions, can help reduce the number of disputes under standard contracts, which execution can be tracked easily. In a smart contract, parties can foresee sanctions for the breach of obligations, so the need to go to court to award damages disappears. Such contracts are executed automatically based on a predetermined algorithm, having the properties of autonomy, self-sufficiency, and decentralization. 48 Compliance or violation of a smart contract does not depend on the will of the parties, since they cannot manage the "running" contract code, which makes the process of executing the contract more transparent, and protects against unauthorized interference with the code.

A smart contract, for example, may stipulate that A receives payment from B upon the occurrence of certain conditions, e.g. the supply of goods or the provision of services. The difference between a smart contract and a traditional contract is the fulfillment of obligations by using an autonomous code. According to Roger Brownsword, Tweddle v. Atkinson, 1861, the parties would not have had to go to court if their contract had the form of a smart contract. A and B undertook to pay the sum of money to C if he marries D (C – son of A; D – daughter of B). C married D, but B died, and he did not have time to transfer the amount of money to C. The court considered that the agreement between the parties was null and void. If the contract had been concluded in the form of a smart contract, then the algorithm would have established that upon the marriage of C and D, the agreed amount was automatically credited to the account of C, thus ensuring the execution of the contract.49

<sup>46 &</sup>quot;Machine Learning Contract Search, Review and Analysis Software." Machine Learning Contract Search, Review and Analysis Software | Kira Systems. https://kirasystems.com/.

<sup>47</sup> Official site of the LawGeex project. https://www.lawgeex.com/.

<sup>48</sup> Swon (2017). The Scheme of New Economics, 63–66. Moscow: Olymp-Biznes.

<sup>49</sup> Brownsword (2019). "Regulatory Fitness: Fintech, Funny Money, and Smart Contracts." European Business Organization Law Review 20, no. 1: 7-8.

Despite the advantages of using smart contracts, such as automatic execution that does not require the participation of parties, it is worth considering circumstances that may hinder the use of a smart contract:

- A fear that the "oracle", or a trusted third party providing information and located outside the blockchain, will transmit information about the occurrence of a specific event;
- Unwillingness of the parties to use cryptocurrency instead of fiat money;
- "Bugs" in the code of the smart contract;
- Inability to provide for counter execution, e.g., the delivery of certain goods and the provision of services;
- The impossibility of using valuation constructions traditional for contract law - "good faith" or "reasonableness";
- Difficulties with termination of the contract or the suspension of its execution (in this case, an advantage of a smart contract – predictability – is lost);

The development of technology will lead to a wider use of smart contracts not limited to standard contracts.<sup>50</sup> In addition, a smart contract can be used as an addition to a standard contract. For example, within the Apple iTunes ecosystem, smart contracts are used in cases where a consumer purchases a music subscription and, therefore order execution and payment processing are automated. However, without the signing of traditional contracts, such a transaction would not have taken place, because license agreements are necessary.

Automated negotiation and assisted negotiation systems are other examples of contemporary technologies that are useful for lawyers' activity. These systems are usually applied in the out-of-court dispute resolution. It looks like a new form of mediation and conciliation that requires sufficiently less costs and time for parties because of the innovative methods.<sup>51</sup> For example, SAMA is the system, using automated and assisted negotiation.<sup>52</sup> Process of reaching an agreement includes sharing problem, making settlement offers and counter-offers, reaching a satisfactory agreement.<sup>53</sup> This procedure can be conducted with the participance of a conciliator.

<sup>50</sup> Stobbe (2018), Contracts (Part 3): Opportunities & Limits of Smart Contracts, Calgary: Newstex. https://proxylibrary.hse.ru:2078/docview/2252850193/F4741EF0965C4F95PQ/5? accountid=45451.

<sup>51</sup> Jennings, Faratin, and Lomuscio (2001). "Automated Negotiation: Prospects, Methods and Challenges". Group Decision and Negotiation 10, 199-215, doi: https://doi.org/10.1023/ A:1008746126376.

<sup>52</sup> Sama. "Make Space for Resolution." Sama. https://www.sama.live/.

<sup>53</sup> How SAMA Works. "Make Space for Resolution." Sama. https://www.sama.live/how\_sama\_ works.php.

*Chargeback* is the procedure of a protest of a transaction by issuing bank. In such case amount of payment is directly debited and transferred back to a payer. Burden of proof of transaction validity is placed on a payment recipient. Chargeback is usually used in systems of banking card accounting.

According to ECC Report on chargeback in the EU/EEA "Chargeback is the technical term used by international card schemes to name the refunding process for a transaction carried out by card following the violation of a rule. This process takes place between two members of the card scheme, the issuer of the card and the acquirer (the merchant's bank). The final customers of these two schemes members, the cardholder for the issuer and the merchant for the acquirer, do not have any direct relationship in the chargeback process". 54 Chargebacks are applied when goods or services are not delivered or are not in conformity with the contract. Both European Union law and national law regulate the problem.<sup>55</sup>

Finally, technologies applied in courts have the potential to reduce the incoming flow of cases and, the courts' workload. First, among them are automated procedures for considering a number of categories of cases. Also, complete automation is sometimes used, so that judges may actually not take part in the procedure.

For example, in the United States (in San Bernardino Superior Court), there is a system that provides electronic processing of court orders. In China, pilot projects are being implemented to create Internet courts, in which decisions on a case are made not by a judge, but by artificial intelligence.<sup>56</sup>

The full automation of writ proceedings has been carried out in Germany and Hungary. In Germany, a senior judicial officer (Rechtspfleger) is formally

<sup>54</sup> ECC Report on chargeback in the EU/EEA. 2020. Dublin. https://ec.europa.eu/info/sites/info/ files/chargeback\_report\_revised.pdf. 5-6.

<sup>55</sup> Ibid., 8-9.

<sup>56</sup> See, in particular, "In Brave New World of China's Digital Courts, Judges Are AI and Verdicts Come via Chat App." The Japan Times. https://www.japantimes.co.jp/news/2019/12/07/asiapacific/crime-legal-asia-pacific/ai-judges-verdicts-via-chat-app-brave-new-world-chinas-digitalcourts/. "AI Judges and Verdicts via Chat App: the Brave New World of China's Digital Courts." Daily Mail Online. Associated Newspapers, December 6, 2019. https://www.dailymail.co.uk/ news/article-7763591/AI-judges-verdicts-chat-app-brave-new-world-Chinas-digital-courts.html. "China First Internet Court Handles over 10,000 Cases." China first Internet court handles over 10, 000 cases - Chinadaily.com.cn. Accessed July 23, 2020. https://www.chinadaily.com.cn/a/ 201808/18/WS5b77c8f4a310add14f386801.html. Ruehl, Giesela. "China's Innovative Internet Courts and Their Use of Blockchain Backed Evidence." Conflict of Laws, May 28, 2019. https:// conflictoflaws.net/2019/chinas-innovative-internet-courts-and-their-use-of-blockchain-backedevidence/. Viva Dadwal. "What We Can Learn from Asia's Courts of the Future." World Economic Forum. Accessed July 23, 2020. https://www.weforum.org/agenda/2018/11/what-we-can-learnfrom-asia-s-courts-of-the-future/.

responsible for writ proceedings, which can intervene in the system if necessary. However, in practice, their main task is to control the correct operation of automated systems (especially if there are difficulties in automated data processing). But the main flow of applications for the issuance of an order is processed without human intervention.

In Hungary, writ proceedings are carried out by notaries. In practice, writ proceedings are carried out in the form of automated data processing by a single online IT system of the Hungarian National Notarial Chamber. Applicants fill out the relevant online forms independently.

Soon services for automation and "robotization" of considering cases under writ proceedings based on the use of artificial intelligence technologies will also be introduced in the Russian commercial courts.<sup>57</sup> Unlike the systems existing in Germany and Hungary, this system allows automated verification of the existence of a basis for the stated claims.

Among electronic services of the justice system, allowing reducing the volume of judicial work <sup>58</sup> it is necessary to mention systems of *online filling out of appli*cations (complaints, claims, etc.).<sup>59</sup> The use of such services allows achieving several goals at once. Firstly, this significantly increases the accessibility of justice, since it allows people without specialized (legal) education, and without the help of professional representatives and consultants, to comprehend their own claims, to assess the cost and expediency of going to court, to receive clear and concise instructions for restoring violated rights.

Secondly, it structures lawsuits, which is the basis for further automation of legal proceedings. So, in a great number of legal disputes of a certain category, the most common situations can be identified, for each of them a model (track) of the optimal settlement can be developed.

This makes possible the use of artificial intelligence technologies to assess the likelihood of satisfying claims depending on the category of the dispute and other

<sup>57</sup> See "Commercial courts become more technological" Pravo.ru, February 19, 2020. https:// pravo.ru/news/218621/?desc search=.

<sup>58</sup> These include, among other things, services for filing a statement of claim in court in electronic form, systems for online access to court decisions, systems for the electronic exchange of documents (evidence) between the parties to the dispute, systems for remote participation in a court hearing (including using a wide spectrum of communication means), procedures for asynchronous participation in online consideration of a case, procedures for automated control of the provision of necessary documents and the performance of procedural actions, systems based on the use of artificial intelligence technologies in the consideration of cases and making decisions, systems that automate the functions of the court apparatus (distribution of materials, notifications, reminders), service for familiarization with case materials online.

<sup>59</sup> Used in courts of Great Britain, Germany, Canada, Australia, Hungary, China, Singapore etc.

characteristics of the case. In other words, structuring the litigation process "at the entrance" can ensure that the least substantiated disputes are cut off. Moreover, the receipt of information in a predetermined format, as well as the exclusion of unnecessary documents, reduces the actual burden on the authorities.

A similar effect is ensured by the use of software products in the preparation of claims to the courts, which evaluates the strategies of judicial protection, as well as the prospects for judicial resolution of the dispute. Examples of such software solutions are the Premonition project 60 and the Caselook service. 61

## 6 Conclusions

The high workload of courts and judges in Russia is primarily a problem of a huge number of "small" and indisputable cases, which form the largest part of the judicial system load. The courts' caseload is mainly increasing as a result of the growing number of such cases.

The main initiator of these cases is the state authorities, which are obligated to submit the relevant demands to the courts in accordance with the legal requirements and standards of reporting. However, such usage of the judicial system is more expensive for the state than the amount of the claim itself. This becomes irrational when it comes to monetary penalties in favour of the state.

The main reason for the high number of "small" and indisputable cases in Russian courts is the combination of conditions providing incentives for plaintiffs to start a dispute for minor reasons, or without the prospect of real debt recovery, and for defendants to avoid voluntary fulfillment of the obligations, even if the case is indisputable. Such conditions include the extremely low cost of justice in Russia, inefficiency of enforcement proceedings, in some cases the absence of legal alternatives to the judicial procedure, and the lack of convenient and effective alternative procedures for the protection of interests (debt collection).

Therefore, the significant part of the courts' activity is the performance of clerical functions that are not typical for the courts. Instead of judicial activities that require dispute resolution by independent authorities according to special procedure, the courts are engaged in mechanical routine, such as paperwork on the preparation of debt collection procedures, or compensation for deficiencies in the executive authorities work (local administration).

The court system is actually overloaded as a result of necessity to engage in non-targeted activities, which, in 60-65% of cases for general jurisdiction and

**<sup>60</sup>** Official site of the Premonition project. https://premonition.ai/.

**<sup>61</sup>** Official site of the Caselook project. https://caselook.ru/.

commercial courts, do not lead to debt recovery. 62 In other words, the Russian judicial system is largely idle to the detriment of its primary purpose.

The hypothesis, explaining the high load on the courts of the post-socialist countries by the inefficiency of the legal system and the judiciary, and the unjustified availability of justice, is true for Russia. This practice stimulates the participants in the judicial process and state bodies to send cases to court even when it is not justified, according to the practice of developed law and order systems.

To solve the problem of small and indisputable cases in Russia and other countries with similar problems, it is appropriate to take corresponding steps:

- Introduce the European model of a court order, which does not involve checking the validity of the claim and the submission of written evidence, with the subsequent automation of the order production. At the same time, it is necessary to abolish or significantly increase the upper size of indisputable claims that can be considered in writ proceedings;
- Introduce technologies for automated writ proceedings;
- Expand the scope of application of the simplified procedure, as well as consider the introduction of a procedure according to which disputes, as a general rule, should be considered in a simplified procedure, regardless of the amount of the claim, and the transition to lawsuit proceedings occurs only if the case is objectively complex or if there is a request for consideration of the
- Significantly increase the cost of justice;
- Improve the efficiency of enforcement proceedings (primarily in terms of tracing the debtor's property);
- Introduce promising digital technologies into the practice of pre-trial settlement of disputes and the work of courts;
- Continue to implement the elements of mandatory out-of-court procedures to protect the interests of the parties and create convenient, effective, and inexpensive alternative dispute resolution procedures. First of all, it is necessary to introduce corresponding online platforms;
- Narrow down the list of cases to which the mandatory judicial procedure is applied;
- Expand the scope of application of the mandatory extrajudicial dispute resolution procedure;

<sup>62</sup> Departmental Statistical Report (2018c). Form 011\_1812 "Key Indicators of Performance of Court Bailiffs Executing Officers of the Federal Bailiff Service of Russia", Section 1 "Movement of Enforcement Documents", n.d.

Limit the list of cases in which state bodies can or are obliged to apply to the courts, including raising the threshold of accumulated debt in cases concerning collection of compulsory payments and sanctions, after which it becomes possible for state bodies to go to court as well as the period for writing off tax arrears without legal proceedings.

The main condition for the social acceptability of the listed transformations is the creation of effective mechanisms to satisfy the interests of both applicants and their procedural opponents in categories of cases that will be "out" of the courts.

As a result of the implementation of these measures, the burden on the courts will be significantly reduced. They will be able to concentrate on considering complex disputes with significant amount of claim. At the same time, despite the increase in the cost of justice, its accessibility will not decrease, since citizens and organizations will be able to defend their interests more effectively, at lower costs and in a shorter time. At the same time, the normalization of the work of the courts in general will help to improve the quality of justice.

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