# Peace Justice in Russia:
# THE ESTIMATION OF INDEPENDENCE AND EFFICIENCY

The English version of the report of the Regional public organization «The Nizhniy Novgorod society of human rights» (Nizhniy Novgorod region), prepared in cooperation with the Kazan Human Rights Center (Tatarstan Republic) and with the Regional public organization «Christians against tortures and children's slavery» (Rostov region).

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This report is the result of the work by the project «The Program of Public Activity on Increasing of Independence and Efficiency of Peace Justice», which had been done from the 1st of April 2003 till the 10th of January 2004.

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The compositors of the report express great gratitude to the Ministry of the International Development of the Great Britain (DFID), due to financial support of which the project had been carried out; to the British Council, which had rendered methodological and organizational support of the project; to judicial bodies and bodies of judicial community of the Nizhniy Novgorod and Rostov regions and Republic of Tatarstan; to the representative bodies of the Nizhniy Novgorod region and Republic of Tatarstan; to the officials of executive bodies of these subjects of Russian Federation, which had provided the maintenance Judges of the Peace activity.

We express a special gratitude to citizens, J.P., officials and lawyers of the Nizhniy Novgorod and Rostov regions and Republic of Tatarstan, for the civic position showed by their participation in the project. We are also grateful to volunteers who disinterestedly helped the members of the project in questioning and inspection of sites of judges of the peace.

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## Annotation

The report presented to your attention is a result of work by the project «The Program of Public Activity on Increasing of Independence and Efficiency of Peace Justice», which had been done from the 1st of April 2003 till the 10th of January 2004.

The project was carried out by the regional public organization «Nizhniy Novgorod society of human rights» (Nizhniy Novgorod region) in cooperation with the Kazan Human Rights Center (Republic of Tatarstan) and the Regional public organization «Christians against tortures and children's slavery» (Rostov region), enjoing financial support of the Ministry of the International Development of the Great Britain (DFID) and methodological and organizational support of the British Council.

The focal point of the researches by the project is the realization of the right of the great masses of society to access the justice which is carried out by the means of recently created in Russia institute of the peace justice (the letters of Article 14 of the International Pact on Civil and Political Rights and the Article 6 of the European Convention of Human Rights).

In this report the members of the project estimate independence and efficiency of the institute of peace justice, as the basic guarantee of the realization of the right of the great masses of society to access the justice.

The report contains the results of researching and analytical work on the overall estimation of independence and efficiency of the peace justice for present (Chapter 1 and 2). Special attention in the report was paid to the analysis of the problems, which appears to become a drag on the further development and improvement of this new institute of justice (Chapter 3), and to the drawing up the recommendations for resolutions of these problems.

According to the results of the researches, one of the main directions for improvement of peace justice is the alteration of a legislative base and decision-making practice on the questions connected with independence and efficiency of peace justice.

The list of public actions, carried out by the officials of the project in Nizhniy Novgorod and Rostov region and in the Republic of Tatarstan with an aim to attract attention of the publicity and authorities to the problems of

peace justice, is also attached to the report, and the efficiency of these actions is also estimated.

## Introduction

The right to access the justice is one of the major civil rights. Realization of the right to justice is closely connected to the realization of all the other rights and freedoms of a person.

The right to access justice is stated in all the main international acts on human rights, ratified by Russian Federation. The Constitution of Russian Federation contains basic guarantees of the right to access justice.

From 2000-2001 the new element of judicial system - the peace justice – has been creating everywhere in Russia. According to the norms of the federal law «On the Judges of the Peace in Russian Federation», J.P. are to resolve a significant number of lawsuits touching upon rights, freedoms and legitimate interests of citizens. That's why it is extremely important to provide guarantees of conformity of the peace justice to the international and constitutional standards of the right to access justice.

The right to access justice is many-sided and also demands an establishment of numerous guarantees. However most important of them are the independence and the efficiency of judicial bodies. Main principles of independence of judicial bodies authorized by the General Assembly of the United Nations in the resolution № 40/146 of December, 13, 1985, and the Recommendations of the Committee of Ministers of the Council of Europe № R (94) 12 «On the independence, efficiency and the role of a judge» of October, 13, 1994, confirm, that for maintenance of independence and efficiency of judicial authority the state should provide judicial bodies necessary financial and material resources, and also the personnel for carrying out necessary administrative and technical work. These documents also demand an establishment of such procedure of selection and assignment of judges, which would provide an acquisition of the judicial corps with persons having high moral qualities and a qualification necessary for effective justice.

According to the Law «On the Judges of the Peace in Russian Federation», the order of J.P. assignment, as well as financial, material-technical and organizational (formation of the administrative staff of a judge of the peace) maintenance of the peace justice, are referred to the jurisdiction of the subjects of Russian Federation. Before the introduction of the law all staff, financial, material, technical and organizational maintenance of justice bodies were in the jurisdiction of federal bodies. That's why regional authorities have no sufficient experience in resolving of such questions and met significant difficulties in the creation of the system of the peace justice. Moreover, the

reference of the assignment of judges of the peace and also financial, material-technical and organizational maintenance of the peace justice under the jurisdiction of regional authorities contains a potential threat of dependence of J.P. from officials of regional and municipal bodies.

In this situation intense activity of non-governmental human rights organizations interested in the real access of population to justice, can help in the development of the independent and effective peace justice.

Taking into consideration all above mentioned, the members of the project took an assistance in the realization of the right to access justice by population with the framework of the system of peace justice, recently created in Russia, as the main aim of the project. The following research tasks were marked out to achieve this aim:

- Studying of the normative base and the routine of personnel, financial, material, technical and organizational maintenance of peace justice in three regions of Russian Federation in the context of providing independence and efficiency of the peace justice and maintenance of guarantees of conformity of the peace justice to the international and constitutional standards of the right to access justice;
- Determination of lacks and positive sides in the personnel, financial, material, technical and organizational maintenance of the peace justice in three regions of Russian Federation and the elaboration of recommendations for further improvements;
- Involving of the judicial community, the representatives of legislative and executive powers of chosen subjects of Russian Federation and the representatives of a civil society in the public discussion of a problem of efficiency and independence of the peace justice and in evaluation of recommendations for its further improvement;
- Lobbying of necessary alterations in legal acts in legislative and executive bodies of chosen subjects of Federation;
- The increasing of informational knowledge of population of chosen regions in the sphere of the guarantees of the right to access a fair and independent court and attraction of public attention to the problem of efficiency and independence of the peace justice;
- Development of regional public organizations' achievement of tasks of system of justice in Russia improvement cooperation.

Methodology and criteria for researches used in the work for achievement of the aim and tasks of the project could be found in the Appendix 2 of the report.

# Chapter 1
# Procedures and practice of selection and assignment of Judges of the Peace and their influence on independence and efficiency of the peace justice system.

## 1.1. Basic international standards in the selection and assignment of judges.

***I. Sources of the international standards of independence of judges with a reference to a selection of judges, financial and material-technical and administrative maintenance of judicial system.***

All sources of the international standards for independence of judges can be divided into two basic categories: international treaties ratified by Russian Federation, which establish obligatory standards, and recommendatory acts.

In the first category we can name The International Pact on Civil and Political Rights accepted in December 16, 1966 (further IPCPR), the European Convention on Protection of Human Rights and the Basic Freedoms, accepted in November 4, 1950 (further ECPHR). Russian Federation ratified IPCRP and ECPHR and, so, took international obligations in provision of realization of rights and freedoms secured by these treaties.

Besides, standards of judge's independence developed by the European Court of Human Rights (ECHR) also have obligatory status for Russia as with the ratification of ECPHR Russia has recognized obligatory jurisdiction of the Court. In the decisions under Article 6 of ECPHR, for example, in cases of Delcort, Ringsen, Pirsak, Campbell and Fall, various aspects of realization of the right on fair proceeding, including a problems of court independence, etc., are thoroughly developed.

International structures adopted a significant amount of documents with recommendatory character. Among them the basic are:

a) Recommendations on the questions of independence of judges accepted by the United Nations' bodies and the Council of Europe:

The main principles of judicial bodies independence adopted by General Assembly of the United Nations by the resolution № 40/146 of December, 13, 1985.

The recommendation of the Committee of Ministers of the Council of Europe № R (94) 12 «On the independence, efficiency and the role of a judge» of October 13, 1994.

Recommendations of the Committee of Ministers of the Council of Europe № R (95) 12 «On the organization of the criminal justice»

b) Reports and conclusions of international bodies, including the Committee on Human Rights of the United Nations, the Special reporter of the United Nations on the questions of independence of judges, can be also viewed as the sources of international standards of independence of judges and lawyers.

c) Documents of international non-governmental organizations (conferences, meetings), which represent the concepts accepted by an international community and principles of independence and of the responsibility of judges:

The European Charter on the Law on the Status of Judges, accepted at the meeting of chairmen of the Supreme Courts of member-states of the Council of Europe at July 10, 1998;

The Universal Charter of judges accepted by the International Association of Judges at November 1999;

The Charter of Judges of Europe, accepted by the European Association of Judges at March 20 1993.

***II. Basic international principles regarding to the independence and the efficiency of judicial system.***

Point 1 of an Article 14 of IPCPR states: «Everyone has the right during any criminal charge, brought against him, or during the definition of his rights and duties in any civil procedure on fair and public trial of the case by the competent, independent and impartial court created on the basis of the law». P.1 of an Article 6 ECHR states: «Everyone has the right at definition of his civil rights and duties or at the trials under any criminal charge, brought against him, on fair public trial of the case in reasonable term with the independent and impartial court created on the basis of the law».

Russian Federation, having ratified the Pact and the Convention, has undertaken a duty to provide the right on fair proceeding, to all persons under its jurisdiction. Russian Federation is obliged to take legislative and all other measures necessary for realization of this right.

One of the major elements of the right on fair proceeding, according to the Point 1 of the Article 6 of the ECHR and P.1 of the Article 14 of the IPCPR is the independence of court, which resolves a case and the efficiency of judicial bodies, allowing to act quickly and qualitatively.

At the definition of, whether the judicial body is independent, the Court considers the following factors: the procedure of assignment of judges; the durability in this quality; an existence of the guarantees interfering the

pressure upon them, and also, whether the court has external attributes of independence.

The selection of judges and their assignment have a crucial value for the efficiency of the judicial system as professional qualities of the judge determine the speed and the quality of the decisions taking under the case.

***III. The procedure of the selection and assignment of judges:***

*1. Requirements to candidates:*

Existing international acts specify the basic qualities, which candidates should have.

Persons selected on justiceship, should have high moral qualities and abilities, and also the appropriate qualification in the field of law.

All decisions concerning the career of a judge should be accepted according to objective criteria, selection and career of a judge should depend on his advantages: qualifications, honesty, abilities and efficiency.

Documents of international non-governmental organizations (for example, the International Association of Judges, the European Association of Judges) interpret the above-stated standards as follows:

The norms of the Law, regulating the selection of judges by independent body or board, as a basis of a choice of candidates take their ability freely and impartially estimate legal questions which will be left to them and to apply the law on them, not infringing the dignity of the person[1].

The law names circumstances when the previous activity of the candidate or activity of his close relatives can, basing on objective doubts, affect his impartiality and independence - such circumstances can be an obstacle for his assignment on the post[2].

The selection of judges should be based on the objective criteria targeted to the appropriate professional level of a judge. Any extraneous influence, political influence in particular, should not play any role in the assignment of judges[3].

Examining the questions of realization of the specified standards in practice, the Council of the European Judges at the Committee of Ministers of the Council of Europe (CMCE) has noted the following:

Any «objective criteria», aimed to provide the selection on the post of judge to be «on the basis of merits, with taking into account the qualification, moral qualities, professionalism and efficiency», are stated in generalized formulations. Nevertheless, it is important what real contents will this criteria have in each the state and how they will be used. The CMCE recommended,

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[1] Point 2.1 of the European Charter on the law on the status of judges.
[2] Point 3.2 of the European Charter on the law on the status of judges.
[3] Point 4 of the European Charter of judges.

that the bodies which bear the responsibility for assignment and career of judges on a post in the member-state of the Council of Europe, should develop recommendations on this questions, should develop, publish and enforce objective criteria, with an aim to provide the selection and career of judges to be, «based on merits with taking into account of qualification, moral qualities, professionalism and efficiency». After it will be done, bodies and authorities carrying the responsibility for any assignment or career promotion should act in appropriate way and then it will be possible to analyze the quality of the accepted criteria and their practical results[4].

*2. Requirements to the body, which is carrying out the selection and the assignment:*

International acts establish the following requirements to the body accepting the decisions on selection and assignment of judges:

The body accepting the decisions of selection and career of a judge should be independent from government and administration. To provide this independence, rules should establish, in particular, that members of this body should be selected by judicial community and should establish the procedure of assignment by themselves[5].

Documents of international non-governmental organizations interpret these standards as follows:

Selection of judges should be carried out by an independent body, which represents judicial community[6]. Concerning any decision connected with selection, assignment, promotion or ending of stay in a post of a judge the Law provides intervention of the body independent from executive and legislative powers, in which not less than a half of participating in a session are judges elected by the judges in the order, guaranteeing the widest representation of judges[7]. The decision on assignment of the chosen candidate on a post of a judge and on his direction to the concrete court must be accepted by an independent body or under its offer or recommendation, or from its consent, or on the basis of its conclusion[8].

*3. Requirements to the procedure of selection and assignment*

International documents establish the following requirements to the procedure of selection and assignment of judges:

Any method of selection of judges should be guaranteed from the assignment of judges by illegal motives. At the selection of judges there should not be any discrimination concerning the person by the reasons of race, color of skin, sex, religion, political and other belief, national or a social origin, property, class or other position; however the requirement that the candidate

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[4] Point 25 of the Conclusion № 1 ( 2001 ) of the Advisory Council of the European judges for the Committee of Ministers of the Council of Europe «On the standards of independence of judicial bodies and irremovability of judges », Strasbourg, November 23, 2001.

[5] Point 2/c of a principle 1 of the recommendation of the Committee of Ministers of the Council of Europe № R (94) 12 «On the independence, efficiency and role of the judge».

[6] Point 4 of the European Charter of judges.

[7] Point 1.3 of the European Charter On the law on the status of judges.

[8] Point 3.1 of the European Charter On the law on the status of judges.

must be the citizen of the appropriate state, should not be considered as discrimination[9].

If the constitutional norms or legal traditions allow executive power to appoint judges, then the guarantees to provide a transparency and independence of procedure of judge's assignment should be established[10].

Examining the questions of realization of the specified standards in practice, CMCE has noted the following:

The various methods used nowadays in selection of judges, have both advantages and disadvantages: it is possible to say, that from one hand elections provide more direct democratic legality, but, on the other hand, it involves the candidate in campaign, in a politics and creates temptation to get arrangements of other persons or to share the arrangement with others. Co-option of the part of existing judicial workers can give technically qualified candidates, but is connected to a risk of conservatism or corporatism (or the cloning) - and, from the positions of some constitutional approaches, can look completely antidemocratic. Also it is possible to say that an assignment of judges by executive and legislative bodies will strengthen their authority, but, on the other hand, it contents a risk of dependence of judges from these authorities. There is one method more - it is an assignment of judges by independent body[11].

Possible to be afraid of, that an existing variety of approaches can result in continuation of unacceptable political influence on judge's assignment. CMCE has noted an opinion of the expert Mr. Oberto, that informal procedures of assignment and open political influence on assignment of judges in some states, can not be accepted as models for other states, which have only recently stepped on the way of democracy, where it is necessary to provide independence of judicial authority by introduction of bodies of judge's assignment completely independent from political influence[12].

### 1.2. Federal legislation on the selection and assignment of judges of the peace.

The main legal acts of the federal legislation, regulating an order of selection and assignment of J.P. are:

- The Constitution of Russian Federation;
- The Federal constitutional law of December 31, 1996 № 1-FCL "On the judicial system of Russian Federation" (with the changes from December 15, 2001);

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[9] Point 10 of the Main Principles of independence of judicial bodies of the United Nations.

[10] Point 2/c of a principle 1 of the recommendation of the Committee of Ministers of the Council of Europe № R (94) 12 «On the independence, efficiency and role of the judge».

[11] Point 33 of the Conclusion № 1 (2001) of the Advisory Council of the European judges for the Committee of Ministers of the Council of Europe «On the standards of independence of judicial bodies and irremovability judges», Strasbourg, November 23, 2001.

[12] Point 34 of the Conclusion № 1 (2001) of the Advisory Council of the European judges for the Committee of Ministers of the Council of Europe «On the standards of independence of judicial bodies and несменяемости judges», Strasbourg, November 23, 2001.

· The Law of Russian Federation of June 26, 1992 № 3132-I "On the status of judges in Russian Federation" (with the changes from April 14, December 24, 1993, June 21, 1995, July 17, 1999, June 20, 2000, December 15, 2001);

· The Federal law from December 17, 1998 № 188-FL "On judges of the peace in Russian Federation".

Besides it is necessary to note, that a rather essential role in regulation of these questions has the Supreme Qualifying Collegium of Judges of Russian Federation, which, being the body of judicial community, is not an authority, nevertheless, is allocated with powers to adjust some questions, concerning to the procedure of selection and assignment of J.P..

Investment of judges of the peace with powers has two stages: the selection of candidates on a post and the assignment of selected candidates on a post.

Selection of candidates on a post of judge of the peace is carried out on a competitive basis. Any citizen of Russian Federation who has reached 25 years, who has the high juridical education, the experience of work by profession not less than five years, not having the diseases interfering an assignment for a post of a judge, not made acts discrediting him[13], has the right to pass an examination on a post of a judge. To do this, he must address the appropriate examination board with the application for a qualification examination.

The examination on a post of a judge is accepted by the examination board under the appropriate qualifying board of judges, which approves the personal structure of the examination board.

After passing the examination the citizen, satisfied to the requirements to the applicant on a post of the judge, has the right to address the appropriate qualifying board of judges with an application for his recommendation on a vacant post of a judge.

By the results of examination of all applications of citizens, the checking of reliability of all submitted documents and data and results of examination, the qualifying board of judges makes a decision on the recommendation of one of the applicants for a post of a judge.

The decision of qualifying board of judges on the recommendation of the citizen on a post of a judge is directed to the chairman of the appropriate court, which, in case of agreement with the specified decision, adopts, in accordance with the procedure prescribed by law, a representation of an assignment of the recommended person for a post of a judge.

In a case of disagreement with the specified decision, the chairman of court returns it for repeating of consideration to the same qualifying board of judges. If the repeated consideration of the qualifying board of judges confirms the selected person with two thirds of voices of members of board[14], the

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[13] The requirement for judges of the peace, Article 5 FL "On the judges of the peace in Russian Federation".

[14] According to point 1 of an Article 23 FL "On the bodies of judicial community in Russian Federation", such decision is will be accepted, if more than half of members of qualifying board of judges, which were taking part in session (the qualifying board of judges is competent to make the decision with more than a half of its members) have voted for it.

chairman of court is obliged to make the representation about the assignment of the recommended person for a post of a judge[15].

The federal law "On judges of the peace in Russian Federation" gives an opportunity to the legislators of subjects of Russian Federation to choose the order of judges of the peace assignment / election on a post by themselves. So, judges of the peace could be:

· Appointed (elected) to a post by the decision of legislative (representative) body of the subject of Russian Federation,

· Selected on a post by population of the appropriate judicial site in an order established by the law of the subject of Russian Federation.

**1.3. Regional normative acts on the selection and assignment of Judges of the Peace.**

***I. The main normative acts of the regional legislation on the selection and assignment of Judges of the Peace.***

The main normative acts of the regional legislation, regulating the order of selection and assignment of Judges of the Peace in the Republic of Tatarstan, Nizhniy Novgorod and Rostov regions are:

· The Law of Tatarstan Republic of November 17, 1999 № 2440 "On the judges of the peace of Tatarstan Republic" (with the changes from February 28, 2001, December 26, 2002);

· The Law of Nizhniy Novgorod region of November 5, 1999 № 72-L "On the judges of the peace in Nizhniy Novgorod region" (with the changes from September 4, 2000, April 16, October, 8, 2001, May 20, 2003);

· The Law of Nizhniy Novgorod region of August 4, 2000 № 118-L "On the order of coordination and assignment of the staff of judicial bodies by the Legislative Assembly in Nizhniy Novgorod region" (with changes from June 21, September 5, 2001);

· The Law of Rostov region of 26.04.99 № 31-LS "On the judges of the peace in Rostov region" with the changes from 04.11.2000, 24.08.2001, 16.06.2003.

***II. The procedure of selection and assignment of judges***

In all three regions judges of the peace are appointed (or elected) on posts by legislative (representative) bodies of the subjects of Russian Federation.

The procedures of candidates representation in the legislative (representative) bodies of the subject for the assignment / election are considerably different. The simplest is in the Republic of Tatarstan. The representation of the Chairman of the Supreme Court of the Republic of Tatarstan is based on the conclusion of qualifying board of judges of Tatarstan Republic. More complicated procedure can be found in Rostov region. Point 1 of the Article 6 of the regional law establishes elections of J.P. *only using the open voting* in the Legislative Assembly of Rostov region, basing on the presentation of the Chairman of the Rostov regional court, in coordination with the Chief of Administration (Governor) of Rostov region and in view of offers of

[15] Point 9 of an Article 5 FL "On the status of judges in Russian Federation".

representative municipal bodies of the appropriate municipal formations. The most complex procedure seems to be found in the Nizhniy Novgorod region: the proposals of the Chairman of the Nizhniy Novgorod region court is transferred to the Governor of the region, who brings his own proposals based on the recommendations of qualifying board of judges of Nizhniy Novgorod region and approved by the appropriate municipal representative body. Besides, only in Nizhniy Novgorod region the law establishes a detailed order of candidates for assignment on posts of judges of the peace examining in the Legislative Assembly of the region.

**1.4. Practice of selection and assignment of judges of the peace**

During the monitoring research, which has been carried out in three regions, 149 of J.P. were questioned, including in Nizhniy Novgorod region - 79, in Tatarstan Republic - 42, in Rostov region - 28.

Results of the research are interesting regarding to the previous place of work of judges of the peace before their assignment on this post. So, in all three regions from the 149 of questioned judges the majority - 47 (31,5 %) worked as lawyers in different organizations of various organizational-legal forms (fig. 1.4.2 of the Appendix 5). The second place (22,8 %) is occupied by the judges which worked in the bodies of the Ministry of Internal Affairs, further: 20,1% - in the judicial system, 19,6 % - in legal advice (advocates) and 4,7 % - in the Office of Public Prosecutor. Thus, only the fifth part of all judges of the peace was familiar with the work of a judge directly, for the others the specificity of this work was unknown or known "by hearsay". Approximately one fifth of judges of the peace (former advocates) have an operational experience in direct protection of human rights. More than a half of judges of the peace are former legal advisers and workers of the repressive apparatus of the state (employees of militia, tax police and the Office of Public Prosecutor). The former protected interests of companies (organizations) and their heads, instead of the interests of a simple worker, and the latter, as a tradition, put interests of the state above interests and rights of the person, and it is difficult to expect from them a correct observance of the right on fair proceeding. Probably, this fact was determining to that, for example, 43,5 % of all interrogated participants of process in Tatarstan consider, that the level of professionalism J.P. is lower than a level of professionalism of judges in courts of the general jurisdiction.

In the opinion of officials, the previous place of work and the experience of work of the judge of the peace in many aspects affect the independence and efficiency of the peace justice in a whole. According to the results of questioning officials (90,9 % from 33 person in five regions) named as a preferable place of the previous work a judicial system (as an assistant of a judge or as a secretary of a judge). The second place - 45,5 % was given to the work in the legal advise (advocatura), the last fifth place (12,1 %) gets a work in the structures of the Ministry of Internal Affairs (fig. 1.4.3).

Questioning of judges of the peace showed a presence of a wide scatter in the experience of work: from 5 till 35 years (fig. 1.4.1). But as it was

mentioned above, big experience of work in militia or as a legal adviser hardly promotes the increasing of the level of the sense of justice of the future judge from the point of view of a priority of universal values.

Concerning the influence of competition on qualitative selection of candidates on a post of a judge of the peace, in opinion of 42,4 % of the interrogated officials, it does not influence at all as carried out, as a rule, just formally.

82 % of judges of the peace have estimated the requirements to the candidate on a post of judge of the peace on examination as high and only high-qualified lawyer can pass such an examination.

On a question what body plays the most significant role at assignment of judges of the peace on a post, the majority of judges and lawyers (68,2 %) preferred the Qualifying Collegiums of Judges. Nearly equal quantity (8-9 %) have specified a role of representative bodies of subjects of federation and of municipal level, and also judicial department (fig. 1.4.7).

In the opinion of 46 % of J.P. and the lawyers, the modern procedure of assignment of judges of the peace on posts, guarantees their independence. However 30 % of respondents, do not agree with this opinion - they gave a negative answer (fig. 1.4.4.). Some judges motivated the negative answer as follows: the assignment on a post of judge of the peace in fact depends on local authorities, besides the financing of a peace justice is carried out from the regional budget, and this can be viewed as a direct dependence of the judge of the peace from the local authorities.

Similar results were received from citizens, lawyers and officials during the questioning on their opinion on a question of J.P.'s dependence from the bodies of the government. So, from all 367 respondents, 36,8 % noted an absence of any dependence, and hardly less - 31,9 % - its presence (fig. 1.4.5). If to examine the answers of lawyers and officials - the most informed categories of citizens, the majority of them (36,5 % of lawyers and 51,5 % of officials) noted the presence of dependence of judges of the peace from the local authorities. On the other hand, citizens who have an experience of a direct dialogue with judges of the peace in the majority (42 % against 29 %) consider, that the judge of the peace does not depend on anybody's will. It is a positive factor, but in order to explain it we should not believe it to be a real picture of independence of a peace justice, but also that citizens, having disabused in validity of the decisions of the general jurisdiction courts, assigned a big hope in this plan on the judges of the peace. And as the experience of practical activity of the peace justice in Russia is still too small, it is possible to assume, that the institute of judges of the peace, in the mind of population, had not discredit itself yet.

As it was specified earlier, the Law of Nizhniy Novgorod region on judges of the peace provides a procedure of the coordination of candidates on a post of J.P. with representative municipal bodies. From our point of view, the given norm contradicts to the federal legislation and makes judges dependent from these bodies. The majority of interrogated officials of Nizhniy Novgorod region concerning to the activity of the peace justice (58,8 % against 5,9 % - fig.

1.4.6) adheres the same opinion. Apparently, for this reason, the majority of officials believes, that this norm should be excluded from the Law of Nizhniy Novgorod region[16].

On a question if the salary of J.P. adequate to his qualification and to volume of carried work, 77 % from 149 of judges of the peace have answered negatively (fig. 1.4.8).

If to examine the procedure of vacancy occupation of posts of peace court from the point of view of the assignment by a representative body of the subject of Russian Federation or the election by population, a position of respondents in this question could be characterized as ambiguous. The majority of judges of the peace (65,8 %), lawyers (51,9 %), officials (63,6 %), expressed against the elections by population (the reasons are: weak selective activity; low level of legal culture of citizens; direct dependence from local authorities in the regard of the material maintenance of the elective campaign). Oppositely, 45,4 % of citizens (against 26,6 %) have supported procedure of election by population, motivating it with, that the judges will concern more responsibly to the functions assigned to them, and at the population will have at least some opportunity of public control over activity of judges of the peace. As a whole, the opinion, that a judge of the peace should be appointed instead of being selected (42,8 % against 32,5 %; fig. 1.4.9) has prevailed.

## 1.5. Conclusions

As a result of the analysis of the federal and regional legislation, international norms and legal practice regarding the selection and assignment of judges of the peace we can make following conclusion.

*1. Requirements to candidates*

International norms demand, that during the selection of candidates for a post of judge two basic criteria must be taken into consideration: preparation and qualification; moral qualities and abilities.

Thus the selection of candidates should be based on *objective* criteria stated in laws.

We believe, that norms of the legislation of Russian Federation, regulating the requirements to candidates on judge of the peace post regarding their professional training and qualification, not always lead to a choice of independent and effectively working judges of the peace. On the one hand, they are excessive (the experience of work on a legal specialty not less than 5 years), and, on the other hand, do not reflect the requirements to such professional qualities as ability *freely and impartially* estimate legal problems and to apply the law for their resolving.

On the contrast, as a practice and results of the researches carried out testifies that, it is enough to work on any state post demanding the juridical education, and you can be a judge. Only the fifth part of all judges of the peace before their assignment was closely familiar to the work of a judge. In opinion of officials, the previous place of work and the experience of work of a judge of

[16] 53 % of officials - for the exception, 35 % - against.

the peace in many aspects influence their independence and efficiency of the peace justice in a whole. By the results of questioning, the majority of officials (90,9 %) named the judicial system as a preferable place of the previous work of the candidate.

Since the 2001 from the Law of Russian Federation "On the status of judges in Russian Federation" the requirement that the judge can be the citizen of Russian Federation, who did not make acts discrediting him was excluded. Oppositely, this norm was kept in the Federal Law "On judges of the peace in Russian Federation". So, in our opinion, an absurd situation, when the requirements for the candidate in judges of the peace are higher, than the requirements for the candidate to a federal (moral qualities and abilities) was created.

Besides the law has not given a definition what is "a discrediting act", therefore it is possible to assume, that in different regions of Russian Federation it will be different interpretation of a term "a discrediting act", that in its turn is infringement of P.1 of the Article 19 of the Constitution of Russian Federation (all are equal before the law and court).

*2. Requirements to procedure of selection and assignment*

In opinion of 46 % of judges of the peace and lawyers, the procedure of selection established now and assignments of judges of the peace on a post, guarantees their independence. However 30 % of respondents disagree with this opinion, motivating their answers, that the assignment on a post of a judge of the peace really depends on local authorities, besides financing of the activity of judges of the peace is carried out from the regional budget, and it is a direct dependence of the judge of the peace from local authorities.

In accordance with the legislation, the selection of candidates on posts of judges of the peace should be carried out on a competitive basis. On practice, by the words of 63,6 % of the interrogated officials, this norm is not always functioning. Moreover, 42,4 % of the same respondents have stated a position, that competition does not influence the selection of candidates at all, as carried out, as a rule, just formally.

It is necessary to note, that until recently in practice the procedure of the selection of judges of the peace was totally closed for the publicity. Now, due to recent changes in the legislation[17], this procedure became more transparent.

If to examine the procedure of court vacancies occupation from the point of view of assignment by a representative body of the subject of Russian Federation or by the elections by population, a position of respondents on this question is ambiguous. But the opinion, that a J.P. should be appointed instead of being selected (42,8 % against 32,5 %) had prevailed[18].

*3. Requirements to the body, which is carrying out selection and assignment*

The majority of judges and advocates (68,2 %) specified, that the greatest role in assignment of judges of the peace on a post belongs to the Qualifying

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[17] The FL from 15.12.2001 № 169-FL «On the amendments and additions to the Law of Russian Federation "On the status of judges in Russian Federation".

[18] According to questioning of citizens, judges of the peace, advocates and officials of three regions.

Collegiums of Judges. Nearly equal quantity (8-9 %) of respondents specified a role of representative bodies of subjects of federation and municipal, and also to judicial department.

It is necessary to note that a level of independence of the Qualifying Collegiums of Judges as the body accepting decisions concerning selection and further promotion of a judge, seems to be rather high. However, an absence of the precise legislative procedures guaranteeing the widest representation of judges during the election of their representatives in the Collegiums; the procedures protecting the members of the Collegiums from prosecution for a position at the acceptance of decisions; the minority of representatives of the publicity, practically have no influence on decision acceptance, breaks this idyll.

# Chapter 2
# Financial, material-technical, informational and administrative maintenance of the peace justice and its influence on the independence, efficiency and availability of the peace justice

## 2.1. Main international standards in the field of financing, material-technical, informational and administrative maintenance of justice

### *I. Material-technical and administrative maintenance of judges*

#### 1. The general requirements

*International acts regulating general requirements to resource maintenance of judicial system are the same, as the establishing of requirements for selection and assignment of judges. They are listed in section 1.1 of this report.*

Every member-state is obliged to give the appropriate means allowing to judicial bodies properly carry out their functions[19].

An adequate support personnel and equipment, in particular office engineering and resources necessary for processing of information, so that a judge could work effectively and without inadequate delays, should be provided to courts[20].

Documents of international non-governmental organizations interpret these standards as follows:

The state is obliged to provide judges with the means for appropriate performance to carry out their tasks, and in particular for reasonable terms of legal proceedings[21].

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[19] Point 7 of the Main Principles of independence of judicial bodies of the United Nations.

[20] Point 1/d of a principle 3 of the recommendations of the Committee of Ministers of the Council of Europe № R (94) 12 «On the independence, efficiency and role of the judge».

[21] Point 1.6 of the European Charter On the law on the status of judges.

All other bodies of the state are obliged to give to judicial bodies all resources, necessary for realization of their functions, including adequate amount of administrative personnel and rooms[22].

It is necessary to support a balance between rationalization of judicial system, dictated by the limitation of financial opportunities of the state, and maintenance of the fundamental right for justice. Providing an access to justice, irrespective of economic reasons, should remain as a main task[23].

Examining the questions of realization of the specified standards in practice, CMCE noted the following:

The CMCE agreed that financing of courts is closely connected to a question of independence of judges as it defines those conditions in which courts carry out their work[24].

There is an obvious connection between financing and management of courts and principles of the European Convention of Human Rights: access to justice and the right for fair proceeding can not be properly guaranteed if the case can not be considered by the court in a reasonable term, as the given court does not have appropriate means and resources to carry out it's tasks effectively[25].

According to all general principles and standards of the Council of Europe in the field of financing and management of courts, the states bear the responsibility for allocation of necessary financial assets, which would correspond to needs of various judicial systems[26].

**2. Administrative personnel.**

With the purpose of optimal usage of human resources, judges and prosecutors should be exempted from the duties, which can be charged to other employee, for example, to administrative personnel, thus, their work will be more useful[27].

**3. Material-technical support**

Questions of material and administrative maintenance of judicial system are directly connected with independence and efficiency of judicial power. Bad working conditions of judges, absence of support personnel essentially slow down the process of legal proceeding. The appropriate procedures connected with material-technical and administrative maintenance of judicial system, can prevent wrongful influence on judges and courts as a whole.

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[22] Point 7 of the European Charter of judges.

[23] Point 3 of the Common Positions and managing principles. Materials of a multilateral meeting «The departure of justice and management of courts», it was organized by the Council of Europe, June 28-30, Bordeaux, France.

[24] Point 2 the Conclusion № 2 (2001) of the CMCE «On the financing and management of courts for maintenance of efficiency of judicial bodies and performance of Article 6 of the European Convention on human rights», Strasbourg, November 23, 2001.

[25] Point 3 of the same Conclusion.

[26] Point 4 of the same the Conclusion.

[27] Point 2 of the Recommendation of the Committee of Ministers of the Council of Europe № R (95) 12 «On the organization of criminal justice».

The concept of adequate resources by all means should consider achievements of technical progress, which can significantly improve the quality of the services offered by judicial power to the publicity[28].

**4. Security**

It is necessary to undertake appropriate measures for judge's security, in particular, to provide buildings of court with security services[29].

**5. The procedure of material-technical and administrative maintenance of judges**

International documents establish the following general requirements to the procedure of material-technical support of judicial system:

Regular inventory of court property, estimation of needs and long-term planning should be a basis for acceptance of decisions on investments in new constructions and on their geographical arrangement, about improvement of old buildings and their maintenance in the necessary order[30].

Documents of international non-governmental organizations interpret these standards as follows:

Judges by the representatives and by their professional organizations take part in acceptance of decisions connected with the management of courts with the definition of their means, and also with their distribution at a national and local level[31].

Organizational maintenance of justice should be carried out by a body representing judicial community and should be independent from other branches of power[32].

Judicial bodies should participate in the acceptance of decisions on the questions of maintenance[33].

Management of judicial system, including the management of all human and technical resources, demands an appropriate possession of management methods. For this reason it is necessary, that the judge would take necessary training for learning of these methods, not depending on the capacity of management duties, which are assigned to him[34].

Examining questions of realization of the specified standards in practice, the CMCE has noted the following:

The CMCE has agreed that though financing of courts is a part of the state budget represented to parliament by Minister of Finance, such financing should not depend on political changes. And though the level of financing of courts, which can be afforded by a certain country, concerns a category of

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[28] Point 1 of the Common Positions and managing principles. Materials of a multilateral meeting «The departure of justice and management of courts», it was organized by the Council of Europe, June 28-30, Bordeaux, France.

[29] Point 2/e of a principle 3 of the recommendations of the Committee of Ministers of the Council of Europe № R (94) 12 «On the independence, efficiency and role of the judge».

[30] Point of the Recommendation of the Committee of Ministers of the Council of Europe № R (95) 12 «On the organization of criminal justice».

[31] Point 1.8 of the European Charter On the law on the status of judges.

[32] Point 6 of the European Charter of judges.

[33] Point 7 of the European Charter of judges.

[34] Point 2 of the Common Positions and managing principles. Materials of a multilateral meeting «The departure of justice and management of courts», it was organized by the Council of Europe, June 28-30, Bordeaux, France.

political decisions, it is necessary, that in the system based on the division of powers, such position must be provided that neither executive, nor a legislative powers have an opportunity to put any pressure upon judicial bodies by consideration of their budget. Decisions on assignment to courts should be accepted in strict conformity with a principle of independence of judicial system[35].

One of potential problems is that the judicial power, which is not always considered as a special branch of the government, has special needs to carry out its tasks and to remain thus independent. Unfortunately, economic aspects can also affect the questions of serious structural changes of judicial power and its efficiency. And though any country can not ignore its total financial potential during the acceptance of decisions on a level of those services, which can be paid by this country, nevertheless, the judicial power and courts are such a major body of the state, which has the full bases for reception of necessary financial assets[36].

Though the CMCE cannot ignore the distinction between the countries in a level of economic development, the appropriate financing of judicial bodies demands the greater participation of courts during the development of budgets. CMCE agreed with the importance of those procedures of acceptance by parliaments of the budget of courts should include procedures, allowing taking into account the opinion of courts themselves[37].

***II. Conclusions and recommendations of the Monitoring Committee of the Council of Europe on the judicial reform in Russian Federation***

Having noted the increase of budgetary financing of judicial system the Committee, nevertheless, specified, that «courts, which should be the main mechanism of the protection of human rights, frequently suffer from the lack of necessary personnel and material resources, and the population does not trust judicial system»[38].

The committee has analyzed the changes brought in norms, regulating the status of judges, has noted, that these reforms did not affect the salvation of the main problem of the Russian justice - the dependence of judges from executive power and the influence of chiefs of courts[39].

The committee is interested in the creation of the system of peace justice. In opinion of the Committee, peace justice could essentially increase

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[35] Point 5 of the Conclusion № 2 (2001) of the CMCE «On the financing and management of courts for maintenance of efficiency of judicial bodies and performance of article 6 of the European Convention on human rights», Strasbourg, November 23, 2001.

[36] Point 9 of the same Conclusion.

[37] Point 10 of the same the Conclusion.

[38] Point 35 of the Observance of obligations of Russian Federation. The report of the Committee on observance of obligations by the member-states of the Council of Europe. Doc. 9396, March 26, 2002.

[39] Point 41 of the Observance of obligations of Russian Federation. The report of the Committee on observance of obligations by the member-states of the Council of Europe. Doc. 9396, March 26, 2002.

the efficiency of the Russian judicial system, if adequate guarantees of fair and objective justice will be provided[40].

## 2.2. Norms of the federal legislation regulating financing, material-technical, informational and administrative maintenance of the peace justice.

***I. Main normative acts of the federal legislation regulating financing, material-technical, informational and administrative maintenance of the peace justice.***

The main normative acts of the federal legislation, which regulate the order of financing, material-technical, informational and administrative maintenance of the peace justice, except for specified in section 1.2 of this report, is the Federal law of the 10th of February, 1999 № 30-FL "On the financing of courts of Russian Federation".

Besides we can name a rather essential role of the Federal law of August 15, 1996 № 115-FL "On the budgetary classification of Russian Federation" and laws accepted on its basis establishing the volume of annual budgets in Russian Federation.

***II. Procedures of financing, material-technical, informational and administrative maintenance of the peace justice.***

In the Constitution of Russian Federation[41] the principle on the financing of courts *only* from the federal budget is proclaimed. But already in Federal Constitutional Law "On the judicial system of Russian Federation"[42] the legislator has departed this principle and has stated the financing of the constitutional courts of subjects of Russian Federation from the budget of the appropriate subject of Russian Federation.

Further FL "On the judges of the peace in Russian Federation"[43] established, that workers of the apparatus of a judge of the peace are state servants of the appropriate subject of Russian Federation, and material-technical support of the activity of judges of the peace is carried out by the bodies of judicial power or executive power of the appropriate subject of Russian Federation in the order established by the law of the appropriate subject of Russian Federation.

An attempt of some subjects of Russian Federation to reconsider these positions through the Constitutional Court of Russian Federation has resulted to that the Constitutional Court of Russian Federation, excesses its competence, confirmed a principle of financing of charges on a payment of workers the local court apparatus, other material-technical and social maintenance of judges of the peace from the budgets of the subjects of Russian Federation[44].

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[40] Point 36 of the Observance of obligations of Russian Federation. The report of the Committee on observance of obligations by the member-states of the Council of Europe. Doc. 9396, March 26, 2002.
[41] Article 124
[42] Article 27
[43] Articles 9 and 10
[44] Definition of the Constitutional Court of Russian Federation from October 4, 2001 № 182 "On inquiries of the Government of Murmansk region and Legislative assembly of the Chelyabinsk region On the check of constitutionality

FL "On the financing of courts of Russian Federation" also limited guarantees of financing of judges of the peace only by the sums from the federal budget[45].

Besides, established that the financing of judges of the peace is carried out on the basis of standards authorized by the federal law[46], the legislator, nevertheless, has not accepted them till now.

**2.3. Regional normative acts concerning financing, material-technical, informational and administrative maintenance of the peace justice.**

***I. The main normative acts of the regional legislation concerning financing, material-technical, informational and administrative maintenance of the peace justice.***

The main normative acts of the regional legislation, which regulate the order of selection and assignment of judges of the peace in the Republic of Tatarstan, Nizhniy Novgorod and Rostov regions, are the same as specified in section 1.3 of the report.

Besides an essential role in regulation of these questions belongs to the laws establishing the volume of annual budgets of the specified subjects of Russian Federation.

Taking into account, that in the specified laws questions of financing, material-technical, informational and administrative maintenance of the peace justice are presented only in the general order, it is necessary to note a significant role of lower level ("under law normative acts") acts which also regulate these problems.

***II. Procedures of financing, material-technical, informational and administrative maintenance of the peace justice.***

In all three regions various procedures of material-technical and administrative maintenance of the peace justice are established.

In the Republic of Tatarstan by the Decision of the Cabinet of Ministers of the Republic of January, 10, 2001 an office for the maintenance of activity of judges of the peace inside the Management of the Judicial department under the Supreme Court of Russian Federation in the Republic of Tatarstan was created. Now it carries out material-technical support of the peace justice.

In Rostov region the financing of charges on additional guarantees of material maintenance and social protection, stipulated for judges of the peace in laws of Rostov region, is carried out from the regional budget through the Management of Judicial department under the Supreme Court of Russia in Rostov region. Financing of charges on the salaries of workers of the apparatus of judges of the peace and social payments are carried out from the regional budget through the body of Administration of Rostov region on the maintenance of the activity of judges of the peace. Material-technical support of the activity of judges of the peace is carried out by Administration of Rostov

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of the Point 2 of the Article 9 and Point 3 of the Article 10 of the Federal law "On the judges of the peace in Russian Federation" // GARANT ELR.

[45] Article 3.

[46] Article 33 FCL "On the judicial system of Russian Federation".

region through the body of Administration of Rostov region on the maintenance of activity of judges of the peace. Financing of the charges necessary for material-technical support of the activity of judges of the peace, including the salary of workers of the apparatus of judges of the peace, is a separate point of the regional budget (Article 13).

In Nizhniy Novgorod region the material support of judges of the peace activity is provided by regional administration.

As to allocation of rooms for judges of the peace, in all three regions this duty is assigned to municipal institutions.

The law of Rostov region "On the judges of the peace in Rostov region" defines an apparatus of judge of the peace. The structure and the list of staff of the apparatus of judge of the peace are established by the body of Administration of Rostov region on the maintenance of activity of judges of the peace in agreement with the Management of Judicial department. Workers of the apparatus are civil servants of Rostov region (single judge of the peace has one assistant of the judge and one secretary). If several judges of the peace are placed in a single building, one of assistants of the judge acts as the materially responsible person).

The same Law defines an order of judges of the peace and their apparatus accommodation. A judge of the peace with his apparatus is placed in a building appropriate for his activity in accessible for the population of a judicial site place. A compensation of all expenses connected to accommodation of the local court is maid due to the means stipulated on material support of courts activity.

Since the adoption of the Regional law № 167-ZS "On the amendments in the Regional law "On the judges of the peace in Rostov region" of 24th of August 2001 the general management of judges of the peace of the appropriate sites work is assigned to the chairmen of regional courts.

The law of Nizhniy Novgorod region "On the judges of the peace in Nizhniy Novgorod region" defines that the officials of the judge of the peace apparatus and the support personnel submit to the judge of the peace. An assignment on a post of an official of the apparatus and employment as an attendant, clearing the post and dismissal from work are carried out by the decision of the judge of the peace.

An apparatus of a judge of the peace consists of the secretary of court and the secretary of judicial session. Besides, in submission the judge has attendants from cleaners and the watchman which regular number is defined in the normative for workers quantity and actual arrangement of judicial sites[47].

The same Law establishes, that a judge of the peace and his apparatus must be placed in convenient for realization of justice and accessible to the population of a judicial site a place, building and room, which are situated on the territory of the appropriate administrative-territorial formation. The room of the judge of the peace and his apparatus should be provided with security

[47] The decision of the Legislative Assembly of Nizhniy Novgorod region from January 18, 2001 № 16 "On the coordination of structure of the apparatus of the judge of the peace and the attendants of a judicial site of Nizhniy Novgorod region".

service, must correspond to sanitary-engineering norms, norms of fire safety, other requirements, allowing to provide realization of justice, must have a hall for judicial session, cabinets for the judge, offices, archive, participants of judicial session, a room for convoy service.

**2.4. Practice of budgetary procedures on federal and regional levels.**

Advisory Council of the European judges in the Conclusions № 2 (2001) for the Committee of Ministers of the Council of Europe «On the financing and management of courts for maintenance the efficiency of judicial bodies and performance of the Article 6 of the European Convention on human rights» recognized an importance of procedures of court budget acceptance by parliaments to include the procedure, allowing to take into account the opinion of courts[48].

Nowadays some laws of subjects of Russian Federation on judges of the peace contain similar procedure. Examples are Rostov and Nizhniy Novgorod regions. So, the Administration of Rostov region develops the project of the regional budget regarding financing charges on material support of activity of local courts, and also the salaries of workers of judges of the peace apparatuses in interaction with the chairman of the Rostov regional court, the head of department of Judicial department under the Supreme Court of Russian Federation in Rostov region and the Council of judges of the region. If there are disagreements, the Administration of Rostov region applies to the project of the regional budget offers of specified bodies with conclusions of Administration. Representatives of Regional court and the head of the department of Judicial Department under the Supreme Court of Russian Federation in the Rostov region have the right to participate in discussion of the regional budget project in the Legislative Assembly of Rostov region.

In the law on the judges of the peace of Nizhniy Novgorod region this norm is also established. But the circle of subjects with which the Administration must consult before the Management of Judicial department under the Supreme Court of Russian Federation in Nizhniy Novgorod region is narrowed in it.

In practice these procedures are inefficient. The best prove - the material condition of local courts. In many respects such position determined by that the judicial power still does not admit equal to others two branches of power. This conclusion proves to be true also by the results of questioning of officials: 54,5 % against 18,2 % expressed an opinion that the judicial power has unequal position in comparison with representative and executive powers (fig. 5.7).

**2.5. Location of judges of the peace sites**

Essential lack of the Russian justice is a remoteness of judicial establishments from the population. It would seem that the introduction of the peace justice should resolve this problem, as, according to the law, a judge of

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[48] Point 10 of the Conclusion № 2 (2001) of the CMCE «On the financing and management of courts for maintenance of efficiency of judicial bodies and performance of article 6 of the European Convention on human rights», Strasbourg, November 23, 2001.

the peace should settle in the borders of the territory of its judicial site. But the practice of accommodation of several sites in one building (68,9 %); accommodation of sites in buildings of regional courts[49] (22 %), testifies that the given problem is not solved yet (fig. 2.5.2). Only 9,6 % of judges of the peace have separate rooms in the borders of their territory (fig. 2.5.2).

Conclusion of the remoteness of the judges sites from the population also can be proved by the results of questioning among 136 person-participants of litigations at judge of the peace: 34 % (46 person) answered that judicial sites are located inconveniently to them (fig. 2.5.1). The distance from a residence to a site is, according to the questioning, from 1,5 up to 100 kms, routes of public transport not always pass near to a site, frequently to reach a judge, it is necessary to make several changes or to go by foot. Population size changes from 13500 up to 40000 people per 1 site.

Some sites of judges of the peace have no external identification elements. So, in the Kanavinskiy district of. Nizhniy Novgorod the students of the faculty of law of the Nizhniy Novgorod state university - the volunteers of the Nizhniy Novgorod Human Rights Organization - found the judge of the peace only from the third attempt. In the Diveevskiy district of Nizhniy Novgorod region the judge of the peace, as well as the regional court, situated in a building of the pilgrim center of a monastery. Any recognition symbols on an external facade of the building are not present. As a whole, the appearances of buildings in which sites of judges of the peace are located in most cases do not inspire any respect to the judicial power (for example, in Nizhniy Novgorod region, in opinion of observers, from 52 sites 35 (67 %) are located in such buildings).

There is no any site with ramps, so the opportunity of access to the judge for invalids is limited.

There is no official car parking near the sites of judges of the peace.

In conclusion of this unit, it is necessary to note, that the majority of officials (66,7 %; see fig. 2.5.3) believe, that the location of a site influences on availability and efficiency of a judge of the peace. Besides, such factors as a size of population of a site, a level of the criminal activity on nearby territory, are also determined an estimation of availability and efficiency of the judge of the peace (fig. 2.5.4; 2.5.5). Today the criminal condition as a factor for correct delimitation of a judicial site is not taken into account. Opinion of the officials (69,7 %; fig. 2.5.6) believes this factor also should be considered.

## 2.6. Practice of material-technical support of the peace justice

Practically all surveyed during the realization of the project sites do not correspond to the legal requirements. This conclusion is coordinated with a position of officials. So, by the opinion of 48.5 % (against 15,2 %) of interrogated officials, the material equipment of sites of judges of the peace does not correspond with their representation about the court (fig. 2.6.2). It is

[49] The direct infringement of the FL "On the judges of the peace".

necessary to note that 84,8 % from them consider that the level of material equipment influences the availability and efficiency of the court (fig. 2.6.1).

An overwhelming majority of sites of judges of the peace are located in unadapted for realization of justice buildings: in former buildings of kindergartens, shops, ground floors of apartment houses, in hostels, etc. Infringement of the requirements is a fact that several judges of the peace sites are located in one building with such organizations and services as a regional department of militia, a department of security service, legal advice, a notary's office, tax inspection, etc.

Many rooms of judicial sites of judges of the peace to a greater or lesser extent demand repair.

Complaints to an emergency condition of electroposting are not rare in judicial sites. The results are the short circuits and an absence of the electric power. On many sites the heating system is very old, so it is very cold in rooms in winter.

A confirmation of these conclusions made by the officials of the project by results of inspection of sites of judges of the peace, can also be seen in the certificate of citizens and advocates. Only 26,5 % of them believe the appearance of buildings of sites of judges of the peace to be good, 61 % - as satisfactory and 8 % - as bad. 38,2 % of the same respondents consider, that buildings of judicial sites only partly correspond to their functions, and 10,4 % - do not correspond to their functions at all (fig. 2.6.3).

The area occupied by many sites is very small. For example, 10 sites of judges of the peace of the Privolzhskiy district of Kazan city are located on the area of 500 sq.m. (instead of 2000 prescribed as a norm). As it was marked earlier, a number of judges of the peace are settled in buildings of regional courts. So, in the Sormovskiy district of N. Novgorod the site of the judge of the peace room has an area of 10 sq. meters in a building of regional court. As the judge of the peace says, when it is more than two participants in a case, they have to stand, as there is no place for more than two chairs.

37,8 % of citizens and advocates believe that there are not enough places for visitors on judicial sites; 46,5 % from them admitted that the amount of tables and chairs available on the sites is not sufficient (fig. 2.6.4). Many advocates noted an absence of a place for acquaintance with the case materials on the sites.

All judges of the peace, except for located in the buildings of federal courts, have their own separate cabinet, practically all workers of the apparatus of a judge of the peace have their detached rooms. And there is a complex situation with the other rooms, presence of which is necessary (see Article 9 of the Law of Nizhniy Novgorod region "On the judges of the peace in Nizhniy Novgorod region"; Point 1.12 of the Article 1 of Norms of loading of judges, judicial executors and workers of the apparatus of regional (city) courts of 27.06.96). In three regions only 56 % of the surveyed sites have halls for judicial sessions (fig. 2.6.5). And there are practically no rooms for prosecutor, advocate, for prisoners and an escort, for archive, for storage of material evidences, rooms for psychological relaxation.

There are no office equipment, transport, forms, writing materials, marks and post envelopes. The literal text of one announcement, which was found by the participants of the project on one of sites of the judge of the peace in Rostov region, says: *"All citizens coming to the judge must bring: 25 stamps of different nominal (for the sum of 20 rubles), 5 envelopes, 10 sheets of a paper"*[50].

The data of the questioning of judges of the peace shows that only 61 % of judges are provided with a computer (fig. 2.6.6).

On the majority of sites visitors have no opportunity to use a toilet. No one of the surveyed sites has a wardrobe for visitors, public phone or a buffet.

An obligation to give rooms to judges of the peace lays on the municipal bodies in all three regions.

Practice shows, that not in all municipal formations the chief of administration respects a judicial power and tries to take all measures for the realization of the constitutional right of a person on consideration of his case in that court and by that judge, to whose jurisdiction it is referred to by the law[51]. So, in the central district of Nizhniy Novgorod and, it is possible to say, in the whole Privolzhskiy federal district, - judges of the peace are not present till now[52]. A principal cause of such situation is that the law of the subject does not executed by the administration of the city in a part of the obligation to grant the rooms for judicial sites of judges of the peace. But the most important thing is that nobody from officials carry any responsibility for this situation.

## 2.7. Quality of informational supplement of judges of the peace.

The situation with an information supplement of judges is also not a good one. For the maintenance of the activity efficiency all judges should have a full code of Russian legislation, regularly updated electronic legal-reference systems (LRS), regularly receive periodicals, professional press, generalizations of judiciary practice, daily newspapers, etc.

Actually only 31% of all interrogated judges have all necessary legal literature, 25% also subscribe official publications in periodicals (fig. 2.7.1). Only 42,2 % of the judges having computers are provided with the LRS (in Nizhniy Novgorod region this parameter is 25 % - fig. 2.7.2). It is important to point out that the majority of judges of the peace LRS established on computers have no possibility for regular updating - and this factor should be considered as extremely necessary for work. So, for example, in Rostov region 11 judges said, that they have to purchase and update LRS by their own means.

We also think necessary to note, that a judge of the peace do not receive editions of the Russian Academy of Justice specially written for judges applications on how the international norms in the field of human rights and

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[50] From the Analytical information by results of research in Rostov region.
[51] Point 1 of Article 47 of the Constitution of Russian Federation.
[52] In the territory of Nizhniy Novgorod region 5 sites of judges of the peace should be formed.

freedom should be used. Any judge of the peace does not subscribe the Russian edition of the Bulletin of the European Court on Human Rights[53].

## 2.8. Training of judges of the peace

Because of the legislative ineffectiveness in the regulation of organizational and personnel questions and an absence of adequate financing, it is also possible to point a problem of legislation norms realization regarding the special actions aimed on improvement of professional skill of judges of the peace.

Only 45 % from the interrogated judges of the peace of three regions (fig. 2.8.1) could attend the seminars for studying of a new legislation, organized by regional (republican in Tatarstan) courts. Analyzing three regions separately it is necessary to mark that in all of them different quantity of the judges improved their qualification using this form of training. The best position belongs to the Republic of Tatarstan - 71,4 %; the worst position - to Nizhniy Novgorod region - 32,9 % (fig. 2.8.2). Some of judges wish to have such seminars more often.

The problem of shortage of qualified personnel for the peace justice is revealed. Especially this problem is vital for the villages. For example, in the Spasskiy district of Nizhniy Novgorod region there is no any judge of the peace till now. The reason - an extremely poor level of candidates applying for this post, as the examination showed.

Long-term tasks of the reforming of justice could be solved, if the investments of intellectual and material resources would be made not only in the creation of an infrastructure of judicial system, but also in the system of the Russian justice professional training.

## 2.9. Maintenance of judges of the peace with administrative personnel and technicians

Results of questioning of judges showed that practically all of them are completely provided with all necessary personnel according to the laws of the subjects of Russian Federation (2 persons: an assistant of a judge and a secretary, or two secretaries). But 42,3 % of judges specified, that they carry out not only judicial functions, but also such functions as personnel management, administrative, etc. (fig. 2.9.1). The majority of judges (68,5 %) believe their apparatus to be insufficient (fig. 2.9.2), they think it would be necessary to create such additional posts, as a post of an assistant of a judge of the peace[54], post of manager (32,9 %), of courier (26,2 %), of archivarius (11,4 %), etc. Besides, there are necessities to increase the number of judges of the peace in regions or of changing of the borders of judicial sites for more uniform redistribution of the loading of each judge of the peace, and also the necessity of legislative introduction of a post of a chief judge of the peace.

For the whole operating time, only 31,5 % of employees of apparatuses of judges of the peace improved their professional skills level (this parameter is

[53] From the Analytical information by results of research in Rostov region.
[54] In those regions where it is not present.

lower in Rostov region - 14,3 %; fig. 2.9.3). The fact, that this parameter below the similar between judges of the peace (45 %), testifies, that for the training of apparatuses of judges of the peace even less attention is given, than to the training of judges.

The fact, that the salary of an apparatus official (especially in Nizhniy Novgorod region) is extremely low, is also a very important circumstance. In the opinion of an overwhelming majority of judges of the peace of Nizhniy Novgorod region and of Tatarstan (95,9 %; fig. 2.9.4), the level of salaries does not correspond to official duties and qualification of apparatus (the majority of employees of apparatuses have high or medium juridical education). Moreover, analyzing the legislation of the subjects of Russian Federation on judges of the peace, members of the project made a conclusion, that the officials of judges of the peace apparatus of different subjects are placed on completely different state posts and, accordingly, have seriously various salaries (the smallest salaries appeared to be in Nizhniy Novgorod region). Such situation, from our point of view, is completely inadmissible, because the officials of apparatuses provide an activity of judges of the peace, official salary of which is established by the federal law.

The presence of technicians is not stipulated by the list of staff. As the attendants only cleaners and watchmen in non-working time are available (and that is not for all sites). Extremely low payment of the attendants (450 rubles per month) effects on a high turnover of staff or on it total absence.

## 2.10. Security of judges of the peace.

Unfortunately, we have to point, that the questions of judges of the peace security are not regulated by the law. In particular, there is a problem of the judicial sites guarding. The service of judicial bailiffs, which carries out the guarding of courts of general jurisdiction, is a federal structure. In the subjects of Russian Federation the similar service is not created. And as a consequence - a full absence of the security in working hours in overwhelming majority of judicial sites.

In Nizhniy Novgorod on the sites located outside of buildings of regional courts, there is no guard in afternoon at all. In Tatarstan there are only 8 judicial bailiffs on 85 sites. And in Rostov region only one judicial site is provided with the security service. In general, 19 % of the surveyed sites do not have any security; 58,3 % of sites have a security in a time off by a watchmen; 18,3 % have lattices on windows; 17 % are protected with the bailiff in the afternoon (for sites located in the buildings of federal courts); 14,4 % have an alarm signal system (fig. 2.10.1).

## 2.11. Conclusions

The results of the analysis of federal and regional legislation, international norms and law-executive practice regarding to financial, material-technical, informational and administrative maintenance of the peace justice are the base for the following conclusions.

*1. The general requirements*

The norm of the Constitution on the financing of courts strictly from the federal budget and in the volume providing an opportunity of full and independent realization of justice according to the federal law, on practice gave its place to a rearrangement of part of expenses (in particular, material support of activity of judges of the peace) on budgets of the subjects of Russian Federation.

Federal legislator has not been worried about an establishment of the minimal standards of such maintenance, that on practice created an unequal maintenance in various regions and the right of all citizens of Russian Federation on an equal level of judicial protection here is broken and can really complicate an access of citizens to the justice.

The data of supervision of sites of judges of the peace testify that financial assets from the regions do not allow the provision of an effective activity of judges of the peace. Problems of financial maintenance are caused, first of all, by the non-preparedness of the subjects of Russia, especial of the dotational subjects, to take all charges on the material support of judges of the peace. As peace justice received a part of federal powers in the field of justice, it must be also provided with an equal financing.

*2. Administrative personnel*

An absence of the minimal standards on a quantity and quality of employees of apparatus of a judge of the peace established at a federal level, also does not promote an equal, minimally necessary level of access of citizens to justice and corresponding to the right on fair proceeding in a reasonable term.

Results of researches revealed a shortage of officials in the apparatuses of judges, the consequence is, that judges of the peace are to carry out non-judicial functions.

For all operating time of apparatuses of judges of the peace, only about a third of employees improved their professional level.

In different subject of Russian Federation officials of the peace justice, in a conformity with the list of staff, occupy completely different state posts and, so, have various salaries (the smallest salaries are in Nizhniy Novgorod region). Such situation, from our point of view, is completely inadmissible.

The presence of technicians is not stipulated by the staff list at all. As the attendants with scanty salary there are only cleaners and watchmen (even this is true not for all sites).

*3. Material-technical and informational maintenance*

Taking into account, that the material-technical support of an activity of judges of the peace depends on poor budgets of the subjects of Russian Federation, it is possible to assume, that «the achievements of technical progress which can significantly improve the quality of services offered by judicial power to a public» will become a reality for the majority of subjects of Russian Federation not so soon.

A confirmation of this conclusion can be seen in a fact, that practically all surveyed during the realization of the project local judicial sites do not

correspond to the law requirements. Overwhelming majority of them is located in unadapted for the realization of justice buildings.

There are not enough places for visitors on judicial sites; there are not enough tables and chairs. Many advocates noted an absence of places for acquaintance with the case materials on the sites. In general, in three regions only 56 % of the surveyed sites have halls for judicial sessions. There are no office equipment, transport, forms, writing materials, marks and post envelopes. In three regions only 61 % of judges have computers on workplaces. Only 42,2 % of judges who have computers are provided with legal-reference systems (in Nizhniy Novgorod region this parameter is 25 %). The majority of judges of the peace having LRS installed on their computers do not have a regular update for these programs. Such update is extremely necessary for an effective work. About one third of interrogated judges get the necessary legal literature by personal means, and a quarter - also by personal means - subscribe to official publications.

*4. Security*

Unfortunately, on the moment, the question of security of building judges of the peace is legislatively resolved. The result is a full absence of guards in working hours in the overwhelming majority of sites of judges of the peace.

Taking into account, that in the rooms of courts a significant amount of important documents is placed, and also the judicial process is carrying out, which is not always calm because of high emotional voltage of participants, the question on local sites security should be necessarily regulated. Infringements of a civil order and a pressure on a judge and/or participants of the process should be completely excluded.

*5. Improvement of qualification*

In three regions less than a half of all judges have increased their qualification on the specialized seminars provided by courts of general jurisdiction.

The problem of shortage of qualified personnel for peace justice is revealed (especially in villages).

Without measures of legal regulating of organizational and personnel-management questions in the peace justice and an adequate financing, another serious problem in the realization of the norms of law on the special activities aimed for judges qualification improvement can grow.

## Chapter 3. General estimation of independence and efficiency of the peace justice: the main problems.

In this chapter the results of a comparative analyses of conformity of an actual status of the peace justice in Russia and those, prescribed by the international standards and recommendations of international bodies and organizations, on the questions of independence and efficiency of courts, and also those problems which came out during the research. Besides, at the end of the unit the list of public activities for attraction of state and municipal authorities and also the publicity attention to the problem of the peace justice is given.

One of the major elements of the right on fair proceeding, according to Point 1 of the Article 6 of ECHR and Point 1 of the Article 14 IPCPR is the independence of a court, considering the case and the efficiency of judicial bodies, allowing to consider all task in a quick and qualitatively manner.

1. At definition of whether the judicial body is independent, the European Court on Human Rights accepts … also, whether the body has external attributes of independence[55].

*According to 51,5 % of interrogated officials, 36,5 % of advocates, 29 % of citizens, judges of the peace dependent on bodies of the government; according to 58,8 % of officials judges of the peace depend on the institutions of local government[56].*

2. Also it is possible to say, that an assignment of judges by executive and legislative bodies will strengthen their authority, but, on the same time, it is connected to a risk of dependence of judges from these authorities. Another method is an assignment of judges by an independent body.

*By the opinion of 37 % of advocates and 28 % of judges of the peace the established procedure of judges of the peace assignment does not provide their independence. By the opinion of 42,4 % of interrogated officials, competition does not influence qualitative on the selection of candidates, as carried out, as a rule, just formally.*

3. Norms of the Law regulating the selection of judges by an independent body or a collegium, on a basis for a choice of candidates one should take into account their ability freely and impartially resolve legal questions on a base of the law, not restraining self-respect of the person[57].

*Neither in the national legislation, nor in practice during the selection of judges of the peace nor the Qualification Collegium of Judges, nor the deputies of representative body of the subject of Federation, use this given criteria as estimation. Interesting fact, that choosing the factors determining the dependence of judges of the peace, the majority of interrogated officials (60,6 %) specified the personal qualities of the judge of the peace (fig. 3.5).*

4. The law establishes circumstances at which the previous activity of a candidate or activity of his close relatives can, basing on the lawful objective doubts, produced by such activity, concerning impartiality and independence of the given candidate - this can be an obstacle for his assignment as a judge[58].

*The national legislation does not provide such circumstances, which can form a basis for refusal of the candidate for a post of a judge of the peace. Practice shows, that more than a half of judges of the peace are former legal advisers (31,5 %) and former officials of repressive apparatus of state (27,5 % - employees of militia, tax police and Office of Public Prosecutor). First of them, usually, protected interests of their enterprise and their chiefs, instead of the interests of an ordinary citizen, and others, as a tradition, put the interests of*

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[55] Campbell and Fell vs. United Kingdom, June 28, 1984, point 78.

[56] Point 33 of the Conclusion № 1 (2001) of the CMCE «On the standards of independence of judicial bodies and irremovability of judges», Strasbourg, November 23, 2001.

[57] Point 2.1 of the European Charter On the law on the status of judges.

[58] Point 3.2 of the European Charter On the law on the status of judges.

*the state above the interests and rights of a person, and it is problematic to expect an observance of the right on fair proceedings from them.*

*By the opinion of officials, the former place of work and the experience of work of a judge of the peace in many respects determines the level of his independence and efficiency as a judge of the peace.*

5. Various methods used for the selection of judges, have both advantages and lacks: it is possible to assert, that the elections provide more direct democratic legality, but, from the other side, they involve candidates in political campaign, in politics and create a temptation to get arrangements of other persons or to share the arrangement with others[59].

*The majority of citizens who have taken part in the questioning (45,4 % against 26,6 %), consider, that a judge of the peace should be elected by population. A position of judges, advocates and officials on this question can be described as an opposite one: a judge should be appointed.*

6. Questions of material-technical and administrative maintenance of judicial system also directly influence on the independence and efficiency of the judicial power.

Every member-state is obliged to give the appropriate means allowing judicial bodies to carry out the functions properly[60].

The CMCE recognizes, that financing of courts is closely connected to a question of independence of judges as it determines the conditions, in which the courts carry out their work[61].

*The data submitted in sections 2.6 and 2.7 of the report is the powerful certificate of that Russia does not allocate adequate means for maintenance of activity of the peace justice. As a confirmation of this statement one reason can be named only: the literal text of the announcement which was found by the officials of the project from Rostov-upon-Don on one of local judicial sites: «All citizens coming to the judge must bring: 25 stamps of different nominal (on the sum of 20 rubles), 5 envelopes, 10 sheets of a paper».*

7. The maintenance of the appropriate financing of judicial bodies demands more significant participation of courts in the formation of budgets. The CMCE recognized an importance of the inclusion of courts to the procedures of budget adoption by parliaments, allowing to take into account the opinion of courts[62].

*At a level of the subjects of Russian Federation the procedure of budget acceptance by the representative bodies not always (not in all subjects) provides the account of judges of the peace opinion.*

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[59] Point 33 the Conclusion № 1 (2001) of the CMCE «On the standards of independence of judicial bodies and irremovability of judges», Strasbourg, November 23, 2001.

[60] Point 7 of the Main Principles of independence of judicial bodies of the United Nations.

[61] Point 2 of the Conclusion № 2 (2001) of the CMCE «On the financing and management of courts for maintenance of efficiency of judicial bodies and performance of article 6 of the European Convention on human rights», Strasbourg, November 23, 2001.

[62] Point 10 of the same Conclusion.

8. With the purpose of an optimal use of human resources judges should be released from the duties, which can be charged with other employees, for example, with administrative personnel[63].

An adequate support personnel and equipment, in particular office equipment and resources necessary for the processing of information, so that the judge could work effectively, without inadequate delays, should be provided to peace justice sites[64].

*52 % of interrogated judges of the peace from Nizhniy Novgorod region, 35,7 % from Tatarstan and 25 % of judges from Rostov region informed, that they carry out non-judicial functions. 68,5 % judges as a general statistics for three regions believe the regular structure of their apparatus to be insufficient. Only 61 % of judges as a general statistics for three regions are provided with computers. Only several judicial sites provided with photocopiers for copying documents for participants of process.*

9. The concept of adequate resources must always take into consideration recent achievements of technical progress, which can significantly improve the quality of services offered by judicial power to a public[65].

*Only 11 of judges of the peace from 149 interrogated specified that they have e-mail on a working place and only 3 of judges of the peace have an opportunity of internet connection. Less than a half of judges (42,2 %), having computers are provided with legal-reference systems, but only several of them can update them regularly.*

10. It is necessary to undertake appropriate measures of security maintenance of local courts, in particular, to provide a presence of guards in the buildings of courts[66].

*Today the question of an obligatory presence of guards in the buildings of courts legislatively is not regulated. As a consequence - full absence of guard in working hours in an overwhelming majority of local judicial sites.*

11. Organizational maintenance of justice should be carried out by a body representing the judicial community, independent from the others branches of power and their bodies[67].

*The Federal Law "On the judges of the peace in Russian Federation" does not contain any concept of organizational maintenance of the activity of judges of the peace (it assumes only the payment of salaries, social guarantees and material-technical maintenance). In this connection there are a lot of problems on the places, which are not solved legislatively. The question of duties for the organizational maintenance of the judges of the peace activity differently solved in different subjects of Russian Federation. So, in Rostov and Nizhniy*

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[63] Point 2 of the Recommendation of the Committee of Ministers of the Council of Europe № R (95) 12 «On the organization of criminal justice».

[64] Point 1/d of the principle 3 of the recommendations of the Committee of Ministers of the Council of Europe № R (94) 12 «On the independence, efficiency and role of the judge».

[65] Point 1 of the Common Positions and managing principles. Materials of a multilateral meeting «The departure of justice and management of courts», it was organized by the Council of Europe, June 28-30, Bordeaux, France.

[66] Point 2/e of the principle 3 of the recommendations of the Committee of Ministers of the Council of Europe № R (94) 12 «On the independence, efficiency and a role of the judge».

[67] Point 6 of the European Charter of judges.

*Novgorod regions organizational maintenance of the activity of judges of the peace was completely undertaken by the executive authorities of these subjects of Russian Federation.*

***Main problems of the peace justice***

Institute of the peace justice began its practice in Russia in 2000.

Though the existence of the institute of judges of the peace has taken a short period, it is already possible to draw some conclusions.

The task of the subjects of Russian Federation, as judges of the peace, according to the Article 4 of the Federal Constitutional Law "On the judicial system of Russian Federation", concern to judges of the subjects of Russian Federation, at the first stage was to adopt laws on judges of the peace and to organize an infrastructure of the peace justice (particularly, sites of judges of the peace).

Till the September 1, 2003 the appropriate Laws were accepted in all subjects of Russia, except for the Chechen Republic. But Russian authorities failed to provide an activity of the peace justice in the whole territory of Russia. Following the norms of the Federal Law «On the total number of judges of the peace and quantity of judicial sites in the subjects of Russian Federation» the creation of 6544 local judicial sites was planed. Till the September 1, 2003 5544 (84,7 % - fig. 3.1) of them were created.

The analysis of categories of cases, considered by judges of the peace, for the first half-year term in the 2003, shows, that the greatest number belong to civilian cases (50,9 %); 44,3 % - to administrative; 4,8 % - to criminal (fig. 3.2). The refusal in the reception of applications by judges of the peace for the same period of time was 1 % (fig. 3.3) of the total amount of cases, considered by Russian judges of the peace. On the fig. 3.4 the data on loading of judges of the peace is shown.

With a view of more systematic analyses of problems of the attending peace justice in Russia, it will be useful, to our mind, to divide such problem to problems caused by the federal legislator, the regional legislator and by the legal practice.

***1. Problems caused by the federal legislator***

1.1. The analysis of the federal legislation regulating activity of judges of the peace testifies that during the development and introduction of this institute, from our point of view, there was no integral conception with an understanding of the aims and tasks of the new structure. The Constitution of Russian Federation states that the justice is carried out only by court, therefore the term «judge of the peace» seems to be incorrect. As in the Concept of the judicial reform authorized by the decision of a Supreme Soviet of the RSFSR of October 24, 1991, as a link of judicial system the local court, instead of the judge of the peace is named. It is necessary to notice, that the term «judge of the peace» in absence of the term «local court» is used in the legislation in various meanings. In one case it is a physical person having the certain status, in the other - a part of judicial system. Only this fact caused a several problems

connected to ambiguity of interpretation of some legal norms, concerning to a regulation of the activity of courts of the general jurisdiction, in relation to a judge of the peace.

1.2. Serious problem of the beginning of the institute of judges of the peace is the fact, that many questions of organizational maintenance of their activity are not regulated. It is one of the key aspects as it directly connected to the decision of personnel questions. As the Federal Law "On the judges of the peace in Russian Federation" does not contain any concept of organizational maintenance of the activity of a judge of the peace (it assumes only salary, social guarantees and it's material-technical maintenance), there were plenty of questions on the places, which legislatively were not solved.

The question of carrying of duties of the organizational maintenance of the activity of judges of the peace in different subjects was solved differently. So, in several subjects of Russian Federation organizational maintenance of the activity of judges of the peace was completely undertaken by enforcement authorities of the subjects (the Rostov, Nizhniy Novgorod regions).

1.3. In spite of the fact that legislatively the institute of judges of the peace is entered in Russia as a court of the subject of Russian Federation, at the same time the status of the judge of the peace precisely has not been determined till now. Judges of the peace carry legal proceedings in accordance to the federal legislation, financing of judges of the peace is made from the federal budget, he appropriates the class grades, the same as a federal judge has, but they are not referred by any normative document to federal judges of the general jurisdiction. Only in the Republic of Tatarstan a post of the judge of the peace was attributed as a state post of a category "A" of Tatarstan Republic. According to the Point 1 of the Article 1 of the Federal Law "On the foundations of a state service in Russian Federation" the post of a judge concerns to the state post of "A" category. But according to Point 2 of the Article 19 of the Federal Law "On the system of state service in Russian Federation" of May, 27, 2003 № 58-ФЗ norm of Point 1 of the Article 1 of the mentioned above Federal Law are recognized as lost their force. So, the question on the status of judges of the peace becomes even more complex.

1.4. Till now the federal legislation did not resolved a question on the replacement of judges of the peace for the period of their vacations, illness and in other cases. Practice shows, that in various regions the question of such replacement is solved differently. So, for example, in Nizhniy Novgorod region the question on case-transferring to another judge a chairmen of a regional court and his assistances must resolve. In Rostov region legislator has shown an initiative and adopted a separate norm into the Law of Rostov region "On the judges of the peace in Rostov region", establishing an order of absent judge of the peace replacement. In case of the absence of the judge of the peace the chairman of the appropriate regional court transfers his cases to the other judge of the peace of the nearest judicial site, and at the absence of judges of the peace in the area accepts such cases for proceedings in the regional court. In our opinion, this norm contradicts the constitutional principle of differentiation of subjects of conducting between Russian Federation and its

subjects, since this norm mention an order of the organization and the activity of federal judicial bodies and procedural questions of legal proceedings, which are in exclusive conducting of Russian Federation.

1.5. Questions of security of judges of the peace are also not regulated yet. The service of judicial bailiffs, which carries out the protection of courts of the general jurisdiction, is a federal structure, and authorities of the subjects of Russian Federation cannot charge them with a duty of the order maintenance on local judicial sites. In the subjects of Russian Federation the service similar to bailiffs is not created yet. Actuality of this question proves the fact, that the cases of illegal penetration into the court buildings and rooms of judicial sites of judges of the peace of Rostov area, accompanying with the plunder of the property, lately have become rather frequent[68].

1.6. Also remains unregulated a question of the payment of a state tax on the cases considered by the judge of the peace, both in a regular and in the appeal orders. In the Law "On the State Tax" of the 9th of December 1991 the size of a State Tax on the cases considered in courts of the general jurisdiction is regulated. But there are no norms concerning judges of the peace. It is a gap in the legislation and inconsistency between procedural and tax legislations.

***2. Problems caused by the regional legislator***

2.1. In Nizhniy Novgorod and Rostov regions according to their laws on judges of the peace a procedure of approval (recommendation) of candidates for the post of a judge of the peace with representative bodies of municipal level is established. From our point of view, this procedure makes judges dependent from these bodies. Officials believe it should be excluded from the laws of the subjects.

2.2. According to Point 2 of the Article 9 of the Law of Nizhniy Novgorod region "On the judges of the peace in Nizhniy Novgorod region", «an assignment on a post of an official of judges apparatus and employment of attendants of judge of the peace, dismissal from work are in the competence of judge of the peace". This norm, in our opinion, contradicts to the legislation since the employment of state servants, which the secretary of court and the secretary of a judicial session are, should carry an authorized executive body authority of region. Besides, as the Recommendations of the Committee of Ministers of the Council of Europe stated, judges should be released from any non-judicial duties, which can be charged by other employees[69].

2.3. In accordance with the Article 9 of the Law «On the judges of the peace in Russian Federation» it is established, that the officials of judges of the peace apparatus are state servants of the appropriate subject of Russian Federation. The structure and the list of staff of the apparatus are accepted in the order stipulated by a law of the subject of Russian Federation. In the federal legislation there is no any other general norm for this category of state employees. It caused a situation, when subjects of the federation regulate all

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[68] According to Management of judicial department of Rostov region.

[69] Point 2 of the Recommendation of the Committee of Ministers of the Council of Europe № R (95) 12 «On the organization of criminal justice».

questions of personnel and financial maintenance of the judge of the peace apparatus independently. The data received during the realization of the project from different regions, shows that secretaries of courts and secretaries of judicial sessions having an identical volume of work and functions, belong to different categories and, accordingly, have different compensations for their work.

Such situation, in our opinion, can be viewed as discrimination and breaks international standards, in particular, contradict to the norms of the International Pact on the economic, social and cultural rights (Article 7 of the Pact «the right on fair and equal compensation for work of equal value»). We think, the sanction for this question demands amendments in legislation, both on federal and on regional levels.

***3. Problems caused by the legal practice***

3.1. The main idea of the peace justice reconstruction was, that it will be at first, an accessible justice, secondly, a simplified justice, thirdly, a reconciliatory justice. From these three aspects today it is really possible to speak only about the increase of the availability. Decrease of loading in federal courts has, certainly, a positively effect for the availability of judicial protection of human rights and freedoms.

But in a sense of physical availability, such lack as remoteness of judicial sites from population, remained inherent for the peace justice.

3.2. Within three years (first judges were appointed in December 14, 2000), there are no judges of the peace on the central parts of the territory of Nizhniy Novgorod - Nizhegorodskiy district. A principal reason for that is the default by administration of the city of the Law of region, regarding the part granting rooms for 5 peace justice sites.

3.3. In all three regions, which were covered by the geography of the research, there is a problem of material-technical support. The majority of buildings of peace justice sites are not adapted for their functions, rooms are small, not all judges have halls for judicial sessions. There are few office equipments, transport, forms, writing materials, etc. This proves, that the financial assets from the regions do not allow providing of an effective activity of judges of the peace. Problems of financial maintenance are caused, first of all, by the unpreparness of the subjects of Russia, especial of dotational to take up all charges on the material support of judges of the peace activity. In conditions of deficiency of means, the decision of this problem cannot be realized without the legislative statement of minimal standards of maintenance on a federal level and a subsequent account of them during acceptance of the budget regarding the financing of the institute of judges of the peace.

3.4. The problem of shortage of qualified personnel for peace justice and, first of all, in the countryside is revealed. In an absence of adequate financing, it is already possible to speak also about a problem of realization of the legislation regarding the improvement of professional skill of appointed judges of the peace.

3.5. Formation of sites of judges of the peace, proceeding only from a size of population, resulted in a non-equal loading of judges of the peace. For example, loading of judges of the peace in, so-called sleeping areas, is much lower than of judges on the territory of with markets, entertainment establishments. Also there is a significant disproportion in judicial loading between city areas and rural. During the creation of sites it is necessary to proceed not only from the size of population, but also from the character of a territory and establishments on it. This view is supported by judges of the peace and by officials. Moreover, it is already introduced into practice. So, the regional law of Rostov region of June, 16, 2003 № 10-LS «On the amendments to the Regional law «On the establishment of posts of judges of the peace and formation of judicial sites in Rostov region» liquidated some judicial sites with a small loading (seven sites were disbanded), and the same quantity of sites was added in Rostov-upon-Don city.

3.6. It is necessary to note, that an overload of judges of the peace is caused not only by a huge volume of work, but also by the big amount of duties, not connected to judicial functions.

3.7. Many questions arise during the compensation from the means of budget of the subject of Russian Federation of costs of legal proceedings carried out by judges of the peace. According to the legislation of Russian Federation (The Civil-Procedural Code of Russian Federation and the Code of Russian Federation on the administrative transgressions) the compensation of costs for a call of witnesses, translators, assignment of experts, attraction of experts and for other actions payments, if they are made under the initiative of a judge of the peace. Earlier, such compensations were carried by the means of the federal budget. Following the Decision of the Government of Russian Federation from 04.03.03 № 140 «On the Order and the sizes of the reimbursement of some participants of legal proceeding on the cases connected to administrative transgressions and on the payments for their work» the compensation should be formed from the budget of subjects of Russian Federation. Under the data available to us, at least, in Nizhniy Novgorod region, during the formation of the budget-2004 project means for the charges connected to the realization of the mentioned above decision, were not incorporated.

In the conclusion, to finish a statement of the main problems of the peace justice in Russia, it would be desirable to notice, that its future in many respects depends on political will of high officials. If their will be positive, financial problems of the peace justice will be resolved immediately and necessary institutional changes will be performed. But meanwhile, unfortunately, almost all results received from the researches, testify to the opposite. Probably, it is favorable for executive and representative power to continue control of the power judicial.

***4. Public activity***

With a view of attraction of the public and authorities attention to problems of peace justice in each of three regions round tables and press conferences were carried out.

With a view of studying an operational experience of judges of the peace of Saint Petersburg, which are the only courts in Russian Federation, which are allocated by the regional Law with the status of a legal person, the project chief in cooperation with representatives of legislative and executive authorities of Nizhniy Novgorod region went to Saint Petersburg. Simultaneously, within the framework of the same trip, officials of the project got acquainted with the work of judges of the peace of Leningrad Region.

After the trip to Saint Petersburg the final meeting combined with a survey of judicial sites in Nizhniy Novgorod was carried out. In this final meeting the chief of the project, deputies of the Legislative Assembly, representatives of judicial community, of the Management of Judicial department in Nizhniy Novgorod region took part. By the results of this meeting, the decision of the Legislative Assembly of the region from 16.10.03 № 699-III «On the material-technical maintenance of judicial sites of judges of the peace in Nizhniy Novgorod region" was accepted. For the performance of the decision, during the adoption of the budget-2004, the Committee of the Legislative Assembly on the questions of the state power recommended to the Legislative Assembly of the region to increase the financing for the unit "Judicial power" of the budget of the region in the volume necessary for completing of formation of judicial sites of judges of the peace in Nizhniy Novgorod region. The Legislative Assembly has satisfied the recommendation of the Committee.

At the session of the Coordination Council on the human rights at the Plenipotentiary Representative of the President of Russian Federation in the Privolzhskiy Federal District where the plenipotentiary representative of the President of Russian Federation in the PFD Mr. S.V.Kirienko, the Representative on the human rights in Russian Federation Mr. O.O.Mironov and the chairman of the Commission on the Human Rights under the President of Russian Federation Ms. E.A.Panfilova were presented, a question on the inclusion of the question on the situation with the peace justice in the PFD in the agenda of the Council and the discussion of the recommendations developed under the project was planned.

In the Legislative Assembly of Nizhniy Novgorod region the round table on a theme «The peace justice in Russian Federation: the realities and problems» was carried out. On this round table there were the representatives of the judicial community of Nizhniy Novgorod and Rostov regions, of the Legislative Assembly and the government of Nizhniy Novgorod region, the Plenipotentiary Representative of the President of Russian Federation in ПФО, the Central Administrative Collegium of justice in Nizhniy Novgorod region and representatives of Mass Media. Also the representatives of the partner organizations from the Republic of Tatarstan and Rostov-upon-Don took part in

the work of the round table. This activity was illuminated by the local TV channels and in press.

Realization of all mentioned above activities pushed local authorities of Nizhniy Novgorod to accelerate the adoption of the decision on introduction of peace justice in the central district of the city - Nizhegorodskiy district. In December the rooms for 3 judicial sites were allocated.

Before the end of the project in each of three regions press conferences for journalists were planned with the purpose of public presentation of received results in a form of this report.

The report will be distributed as at a national level, among interested officials of representative, executive and judicial powers of Russian Federation and on the level of the subjects of Russian Federation, together with on international level, among the intergovernmental and non-governmental international organizations interested in the questions of justice and tracing the Russian judicial reform, directed to the creation of an effective and fair justice.

## Recommendations on the improvement of the peace justice system in Russia

In this section you can find the recommendations on the improvement of the institute of the peace justice, generally aimed on the reaching of independence of judges of the peace for strengthening of their efficiency. The given recommendations are based on the results of monitoring researches, received within the framework of the project «The program of public activity on the increase of independence and efficiency of peace justice», and, first of all, put a problem of the resolving of those problems, which constitute obstacles on the way of the further development and perfection of the peace justice.

The recommendations mentioned below are classified depending on a level of their potential action (federal or regional), on subjects, proxy to make the decision on the realization of the recommendations (representative and executive institutions, municipal authorities, bodies of the judicial community), and from a level of concrete definition (on the concrete amendments for the laws or just general recommendations).

**1. Federal level**

***1.1. For the State Duma of Russian Federation***

***1.1.1. Amendments of laws***

a) With a view of reduction of the legislation of Russian Federation to a conformity with the constitutional norm that justice in Russian Federation is carried out only by court,

- to state Point 4 of the Article 4 of the Federal Constitutional Law «On the judicial system of Russian Federation» in the following edition: «C*ourts of the subjects of Russian Federation are: the constitutional courts of the subjects of Russian Federation, the local courts on behalf of the judges of the peace, which are equal to the judges of the general jurisdiction of Russian Federation*»;

- to change the name of the Article 28 on the following: «***Article 28. Local court***». To amend the specified article with a novel about the chief judge of the peace with an establishment in the Federal Law «On the judges of the peace in Russian Federation» and in others federal laws and laws of the subjects of Russian Federation of his functions and powers;

b) With an aim of legal regulation of questions of the organizational maintenance of judges of the peace, and also creation of a constructive-legal basis for the reduction of laws of the subjects of Federation on the order of judge assignment in accordance with the Constitution of Russian Federation and the federal legislation:

- to state the Point 3 of an Article 10 of the Federal Law "On the judges of the peace in Russian Federation" in the following edition: *"The material-technical maintenance of the activity of judges of the peace carries out an executive authority of the subject of Russian Federation in the order established by the law of the appropriate subject of Russian Federation";*
- to amend the Federal Law "On the judges of the peace in Russian Federation" with a new article (10.1), in the following edition: *"An opportunity of transferring of powers on the maintenance of judges of the peace activity by the subject of Russian Federation. The powers of an executive authority on organizational maintenance of activity of judges of the peace can be transferred to them under the agreement with the Judicial Department under the Supreme Court of Russian Federation to the Management of the Judicial Department in the subject of Russian Federation"*[70]*;*

c) To eliminate a gap in the Federal Law «On the judges of the peace in Russian Federation» regarding the definition of the order of replacement of temporarily absent judge and about the order of case-transferring to another judge. To amend the specified Law with an additional norm of the following content:

*«Article 8.1. The replacement of temporarily absent judge of the peace*

*1. In a case of temporarily absence of a judge of the peace an execution of his duties must be assigned to a judge of the peace of the nearest judicial site of the given administratively-territorial formation or on a judge of the peace in resignation, by the decision of the chief of a higher court.*

*Duties of a temporarily absent judge of the peace by the decision of the chief of the Supreme court of republic, Chief of regional court, Chief of court of city of federal value, Chief of court of autonomous region, if necessary, can be*

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[70] Some subjects of the legislative initiative share another approach regarding the organizational activity of judges of the peace. In a new edition of the Federal law "On the judges of the peace in Russian Federation" to state directly functions of organizational maintenance of the activity of judges of the peace behind Judicial department under the SC RF. However, the federal legislator refers judges of the peace to courts of subjects of federation, therefore such offer, in our opinion, do not answer the constitutional principles of the federal structure of Russia regarding the differentiation of conducting and powers between bodies of the government of Russian Federation and bodies of government of its subjects, and also independence of the realization by governments in subjects of Russian Federation (Article 10; Part 2 of the Article 11 of the Constitutions of Russian Federation). Therefore, success of the further development of the institute of judges of the peace depends on the balance of interests of the center and regions.

*assigned on a judge of the peace with a nearest judicial site of the nearest adjoining administratively-territorial formation.*

*2. Under the decision of the Chief of the Supreme court of republic, Chief of regional court, Chief of court of city of federal value, court of autonomous region the legal proceeding, which is included in the competence of a judge of the peace, can be given to the regional (city) court of appropriate administratively-territorial formation.*

*3. The putting of duties of temporarily absent judge of the peace on a judge of the peace with resignation, the positive conclusion of the Qualifying Collegium of judges of the subject of Russian Federation is needed»;*

d) With an aim to approve the status of a judge of the peace as the person replacing the state post, to adopt appropriate amendments in the Federal Law «On the judges of the peace in Russian Federation»[71];

e) With an aim to establish of the uniform approach in all subjects of Russian Federation to a question of payment for the officials of judges of the peace apparatuses, as they are state servants providing an execution of judges powers, to amend an Article 9 «The Apparatus of the judge of the peace» of the Federal Law «On the judges of the peace of Russian Federation» with a Point 3 with the establishing of the minimal limit of the official salary;

f) To regulate the payment of the State Tax on the cases considered by a judge of the peace, to amend the Law "On the State Tax", with establishing of a size of the State Tax for concrete cases;

g) To provide security to judges of the peace to amend the Federal Law «On the judicial bailiffs» with a tasks of judges of the peace security for bailiffs;

h) To eliminate of a gap in the legislation and to maintain in the full volume of the human right on fair proceeding (in its final stage - the stage of execution of the decision of court) to make changes in the Federal Law «On the executive procedure» - to add the list of acts compulsory for execution by acts of judges of the peace;

i) To increase the trust of citizens to judicial bodies, support the legislative initiative of some deputies of the State Duma of Russian Federation on the modification of the Federal Law «On the judges of the peace in Russian Federation» regarding the election of judges of the peace by the population of the appropriate judicial site in the order established by the law of the subject of Russian Federation;

j) To increase the efficiency of the activity of representatives of the publicity in the Qualifying Collegiums of judges, change the Federal Law «On the bodies of the judicial community»:

- to change the procedure of an assignment of representatives of the publicity in the Qualifying Collegiums of judges, (as they must be real

[71] According to the point 1 of the Article 1 FL "On the bases of state service in Russian Federation" the post of the judge concerns to the state post of a category "A". But according to the point 2 of the Article 19 FL "On the system of state service in Russian Federation" from May 27, 2003 № 58-FL the positions of point 1 of the Article FL "On the bases of state service in Russian Federation" are recognized as lost their force, therefore a question on the status of judges of the peace, became even more problematic.

representatives of the publicity, instead of assigned by the legislature and executive institutions;

- the quantitative ratio of members of Qualifying Collegiums of judges from among judges and from the publicity should be equal;
- to append the special opinion of the member of the Qualifying Collegiums of judges to the decision, instead of to the report of the session.

#### *1.1.2. General recommendations on the legislation improvement*

a) With a view of adequate financing of peace justice to regulate legislatively at a federal level the minimal standards of norms of maintenance of judges of the peace with putting it on a duty of executive authorities of the subjects of Russian Federation and their account at formation of the project of the budget regarding financing of judges of the peace;

b) With a view of expansion of the simplified legal proceedings, reconciliatory procedures (including the termination of criminal cases), regenerative justice at a federal level more precisely and in details to state all procedural points connected to the realization of the specified aims by judges of the peace. For this purpose it is possible to provide such simplifications, as, for example, the decrease of number of instances for check of judgments; manufacturing only of the resolution part of a verdict, when it will not be appealed; the simplification of the protocol of the judicial session, to write only what the sides want to be written (except for the description of remedial actions); an establishment of a liability of the sides and participants of proceeding for deliberate failure of judicial sessions;

c) With a view to reduce of an overload of judges of the peace to provide an increase of judges of the peace number in the subjects of Russian Federation by the federal legislation . Besides with a view of the decision of a problem of economy of personnel, material and financial resources, it is meaningful to raise and discuss a question of an opportunity of two posts of judges of the peace on one judicial site establishment. In this case it would be possible to reduce a number of officials of the apparatus of judges of the peace per judge and, accordingly, to reduce charges on them. Simultaneously it would remove several problems connected to the temporary absence of a judge of the peace and of terms of case consideration;

d) With a view of a uniform and equal loading of judges of the peace to establish by the federal legislation criteria for definition of number of judges of the peace.

## 2. At the level of subjects of Russian Federation

### *2.1. For the representative bodies of the subjects of Russian Federation:*

#### *2.1.1. Amendments of concrete Laws*

a) With a view to except the dependence of judges of the peace from institutions of local authorities, the Legislative Assembly of Nizhniy Novgorod[72]

[72] The Legislative Assembly of Nizhniy Novgorod region already partly realized the recommendations produced by the project. In the bill accepted in the first reading "On the order of assignment by the Legislative Assembly of judges of the

and Rostov regions should amend laws, accordingly, the Article 6 of the Law "On the judges of the peace in Nizhniy Novgorod region" regarding an exception of the words *"and by the coordination with representative bodies of municipal authorities of cities and districts of the region";* and the Article 6 of the Laws «On the judges of the peace in Rostov region» regarding an exception of the words *«and in accordance with offers of representative bodies of municipal authorities of the appropriate municipal formations»*[73]*;*

b) With a view to elimination contradictions to the federal legislation in a regard of officials employment for the apparatus of a judge of the peace by not-authorized person (judge of the peace), the Legislative Assembly of Nizhniy Novgorod region should change Point 2 of the Article 9 of the Law "On the judges of the peace in Nizhniy Novgorod region" to the following edition: *«An assignment for a post of official of apparatus of a judge of the peace, being state servants, clearing of the post and dismissal from the post is carried out by the authorized body of the Government of Nizhniy Novgorod region in coordination with the judge of the peace";*

c) With a view of elimination of discrimination conditions of non-equal payment of judge of the peace apparatus officials, the Legislative Assembly of Nizhniy Novgorod region should make changes in the Law of Nizhniy Novgorod region «On the state posts in Nizhniy Novgorod region» in the regard to reference of the officials of the judge of the peace apparatus to a group of higher posts;

d) With a view of elimination of discrepancy of the Rules (Ustav) of Nizhniy Novgorod region with the federal legislation in a regard of an absence in the Rules of a norm, providing a representative body of the region with powers of judges of the peace assignment, the Legislative Assembly should amend Point 7 of the Article 28 of the Rules.

***2.1.2. General recommendations***

a) With an aim canceling of the additional work of judges of the peace, which is not connected to the functions of justice, to increase the number of officials in the apparatus of the judge of the peace. Besides, taking into account that in the majority of cases several judges of the peace are settled in a single building, it is possible to organize a single office from the secretaries of courts of different judges. The question on the organization of the facilities and the account of technical values fixed for these judicial sites should be solved similarly;

b) With a view to increase the legal culture of judges of the peace and their independence, considering a candidate for the assignment on the post of a judge of the peace, the previous place of work, should be taken into account.

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peace in Nizhniy Novgorod region" (№ 754-III from 27.11.03) from Article 5 it was excludes the necessity of concordance of candidates with municipal bodies.

[73] For the benefit of that the concordance should be excluded, speaks the fact, that earlier the Rules On the order of assignment for a post of judge of the peace of Saint Petersburg also provided the decision of a municipal representative body appropriate municipal formation. However the public prosecutor of Saint Petersburg performed the protest on the illegality of the given norm, and the protest was satisfied.

With other things being equal to the candidate with an experience of work in the judicial system or in advocacy is preferable;

c) With a view of uniform load of judges of the peace, borders of sites of judges of the peace with the account of not only a population size, but also its criminal level and the data on actual load of the judge of the peace should be corrected.

***2.2. For the executive bodies of the subjects of Russian Federation***

a) In July, 2001 in the Privolzhkiy federal district the meeting of representatives of executive bodies of the subjects of this federal district, on a topic: «Realization of laws on judges of the peace: realities and problems». Participants of meeting noted *«insufficient completeness and efficiency of accepted by bodies of governments of the subjects of Russian Federations, included in the federal district, measures on the maintenance of activity of judges of the peace»* and have decided to pay attention of heads of the executive bodies of subjects on «the *necessity of appropriate and regular financing...*». In two years after the decision, the realities and the problems of the peace justice have remained to be the same. So, we, once again, would like to remind to executive bodies of the subjects of Russian Federation of the necessity to follow their own decisions.

***2.3. For representative and executive bodies of the subjects of Russian Federation***

a) With a view of effective functioning of judges of the peace in Russia the organization and realization of the complex system of activities for preparation and improvement of professional skill of the staff, necessary for peace justice. For realization of this task an association of efforts of the state, society and business is strongly prescribed.

***2.4. For institutions of municipal formations***

a) With a view of realization of the right of citizens on the consideration of their cases by judge of the peace (i.e. the judge, to whose jurisdiction the case is referred by the law) and the execution of the legislation of the subjects of Russian Federation, to take all measures on allocation of adequate rooms for judicial sites as a primary task.

b) To the chiefs of municipal institutions (chiefs of administrations) all measures of responsibility established by the law, to the municipal employees, who has shown a negligence regarding an execution of laws of the subject, which consequence became a mass infringement of human rights, should be applied.

***2.5. To qualifying collegiums of judges of different levels***

a) To put into practice the recommendations of the Advisory Council of the European judges for the Committee of Ministers of the Council of Europe «On the standards of independence of judicial bodies and irremovability of judges», namely: *« … the bodies, which in a member-state*[74] *bear the responsibility for realization of an assignment and the career of judges, and give the*

[74] The Council of Europe.

*recommendation in this connection, should develop, publish and put into practice objective criteria, with the purpose to provide that selection and career of judges, «which would be based on merits in view of qualification, moral qualities, professionalism and efficiency». After it will be done, the given bodies or the authorities, should operate in appropriate way and then, at last, it will be begins possible to analyze the contents of accepted criteria and their practical effect*[75]*.*

b) With a view to increase the level of independence of judges of the peace, during recommendations to candidates for a post of a judge of the peace, to analyze *their ability freely and impartially resolve legal questions which will be left to them and to apply the law on them, not restraining self-respect of a person*[76]*.*

*Appendices*

## 1. The list of reductions

1. IPCPR - the International Pact on Civil and Political rights
2. UN - the United Nations Organization
3. ECHR - the European Convention on human rights
4. ECHR - the European Court on human rights
5. PACE - the Parliamentary Assembly of the Council of Europe
6. ACEJ - the Advisory Council of the European judges under the Committee of Ministers of the Council of Europe
7. RF - Russian Federation
8. FCL - the Federal Constitutional Law
9. FL - the Federal Law
10. CPC RF - the Civil Procedural Code of Russian Federation
11. SD - the State Duma of Russian Federation
12. SC of RF - the Supreme Court of Russian Federation
13. QCJ - Qualifying Collegium of Judges
14. SQCJ of RF - the Supreme Qualifying Collegium of Judges of Russian Federation
15. The MIA - the Ministry of Internal Affairs
16. PRP RF in PFD - the Plenipotentiary Representative of the President of Russian Federation in Privolzhkiy federal district
17. RLA - the Regional Legislative Assembly
18. MASS-MEDIA - mass media
19. NGO - the non-governmental organizations
20. NNSHR - the regional public organization «The Nizhniy Novgorod society for human rights»
21. NNO - the Nizhniy Novgorod region

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[75] From the point 25 of the Conclusion № 1 (2001) the Advisory Council of the European judges for the Committee of Ministers of the Council of Europe «On the standards of independence of judicial bodies and irremovability of judges », Strasbourg, November 23, 2001.

[76] Point 2.1 of the European Charter On the law on the status of judges.

22. PT - Tatarstan Republic
23. RO - the Rostov region
24. LJ - the judge of the peace
25. LRS - the legal-reference system

## 2. Methodology and criteria of researches

Results of realization of the project «The Program of public activity for increase of independence and efficiency of peace justice», submitted in the given report, are received in the period from April, 1 till December, 31, 2003.

The fact, that an estimation of activity of the new institute - the peace justice - from the point of its independence an efficiency, is similar to an estimation of the activity of courts of the general jurisdiction, was considered first of all in the regard of the research of criteria choice. The special criteria concerning only the peace justice, do not exist. Some features took place only during the development of a research tools package. In particular at an establishment of criteria for choice of the subject for realization of questioning and interviewing, which are determined by specificity of peace justice as justice local, not general.

For achievement of the main aim of monitoring the following methodology was used. Basic standards, both at international, and at national level, establishing guarantees of realization of the right on fair proceeding are analysed. One of the major elements of the right on fair proceeding, according to the Point 1 of the Article 6 of the ECHR and Point 1 of the Article 14 of the IPCPR is the independence of the court considering a case, and the efficiency of judicial bodies, which means the considering of the questions quickly and qualitatively.

Observance of international standards was considered by the officials of the project to be the criteria of an estimation of the efficiency of institute of peace justice, as a measure of maintenance of the right on fair court, at national level. For realization of such estimation the analysis of the international documents of recommendatory character devoted to the questions of independence of judges and efficiency of judicial bodies was also carried out.

Within the framework of the project we examine those procedures and mechanisms of providing of access to justice, which are in conducting of regional authorities. Such choice is determined, first of all, by features of national legislation. According to the Federal law "On the judges of the peace in Russian Federation", the order of assignment of judges of the peace on a post, no less than material support of peace justice, are referred to the competence of subjects of Russian Federation. Secondly, it is caused by the opportunities of the organizations involved in the project. All of them have experience of interaction and cooperation with regional legislative and administrative bodies. Hence, there is an opportunity of constructive interaction both during research of functioning of peace justice, and during its improvement.

Both the legal basis of the institute of peace justice, and the practice of selection and assignment of judges of the peace, their financial, material-technical, informational and administrative maintenance, and their influence on independence, efficiency and availability of peace justice were studied and analyzed. For an estimation of independence and efficiency of the new system of justice the results of interrogations of officials (experts), questionings of judges of the peace, citizens - participants of litigations under the peace justice, advocates (facultative) and the survey of sites of judges of the peace were also carried out.

*The following package of research tools was chosen:*
*Sources of the information:*

1. Documents:

*Official:*

- - *Obligatory:* national (federal and regional) legal acts; international treaties ratified by Russia; decisions of the European court of human rights;
- - *Non-obligatory, but imposing certain obligations:* local normative acts of the state bodies of a federal, regional and local levels (decrees, orders, decisions, positions, instructions, programs, etc.); not ratified international treaties; international documents of recommendatory character (charters, resolutions, decisions, recommendations, reports, etc.);
- - *Of information character:* data and statistics from official structures.

*Informal:*

- Materials of researches of experts;
- Reports of non-governmental organizations;
- Materials of public receptions of regional human rights organizations.

2. Publications in Mass Media.
3. Experts (questioning of judges of the peace, advocates, officials).
4. Citizens: citizens, possessing an experience of reference to the judge of the peace (interviewing); monitors (supervision of sites of judges of the peace).

*Used toolkit:*

- Collection of questions for officials;
- Questionnaire for judges of the peace;
- Questionnaire for citizens, possessing experience of reference to the judge of the peace;
- Card of supervision of sites of judges of the peace;
- Questionnaire for advocates (facultative).

*Criteria of choice:*
*- Officials:*

Officials involved in the organization and maintenance of activity of peace justice (from representative, executive and municipal authorities, from judicial

bodies: judicial department, bodies of judicial community). In total it were questioned 33 officials, from them: 17 - from Nizhniy Novgorod region, 6 - from the Republic of Tatarstan, 5 - from Saint Petersburg, 5 - from Leningrad region.

- *Judges of the peace*:

For the realization of questioning of judges of the peace were involved: judges of the peace from Nizhniy Novgorod and Rostov regions and Tatarstan Republic (total 149 judges interrogated, including in Nizhniy Novgorod region - 79 judges; in Rostov - 28; in Tatarstan - 42). The questionnaire consists of the questions, divided into 4 blocks: general questions; the assignment of judges of the peace for a post; professional work; the apparatus of judge of the peace.

The questionnaire included the block of questions connected to the working conditions, financial, material-technical and organizational maintenance.

- *Citizens*:

As respondents in each of three regions citizens, which had an experience of reference to the judge of the peace, were chosen. 282 persons were interrogated, including in Nizhniy Novgorod region - 97; in Rostov - 100; in Tatarstan - 85. The questionnaire for citizens contained the list of questions with an aim to reflect real conditions of peace justice regarding its independence, efficiency and availability.

- *Sites of judges of the peace:*

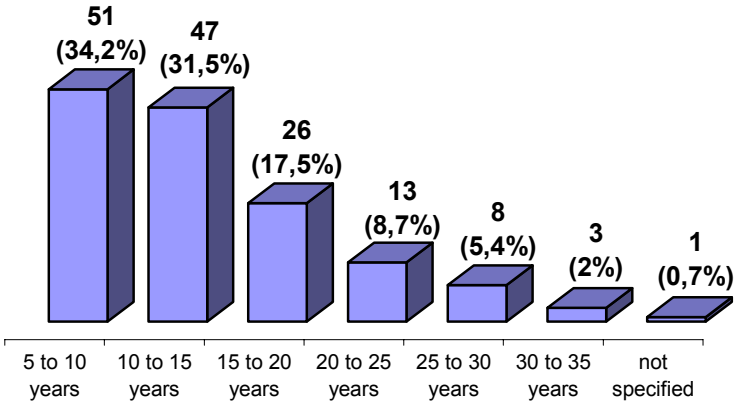
The sites of judges of the peace located outside of buildings of regional courts, separately or together with other sites were exposed to supervision. 147 sites were directly surveyed in three regions, including in Nizhniy Novgorod region - 52, in Tatarstan - 85, in Rostov - 60.

- *Advocates:*

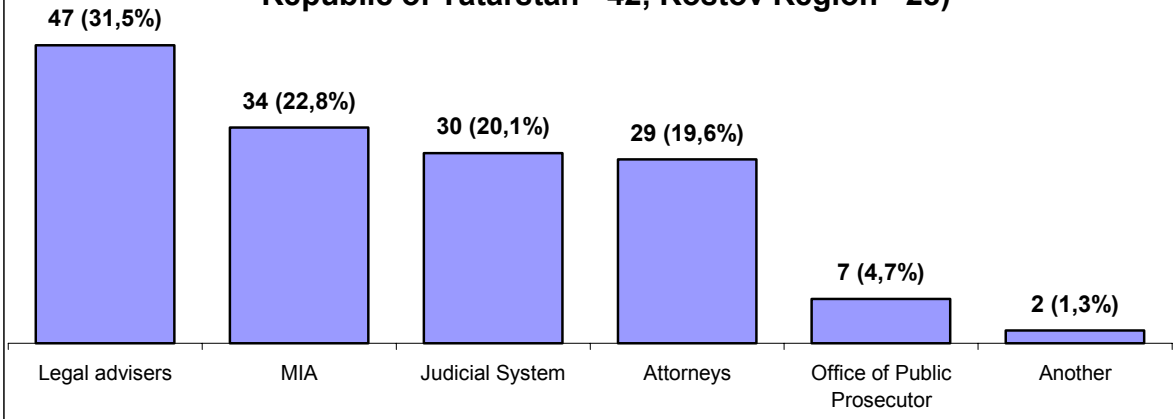
The questioning of advocates was carried out facultative (over the researches planned within the framework of the project) in two regions: in Nizhniy Novgorod region and in Tatarstan Republic. Only the advocates who had an operational experience on the cases considered by judges of the peace were questioned. Totally there were interrogated 52 lawyers, including in Nizhniy Novgorod region - 46, in Tatarstan - 6. The questionnaire for lawyers contained the list of the questions with an aim to reflect real conditions of peace justice regarding its independence, efficiency and availability.

Appendices

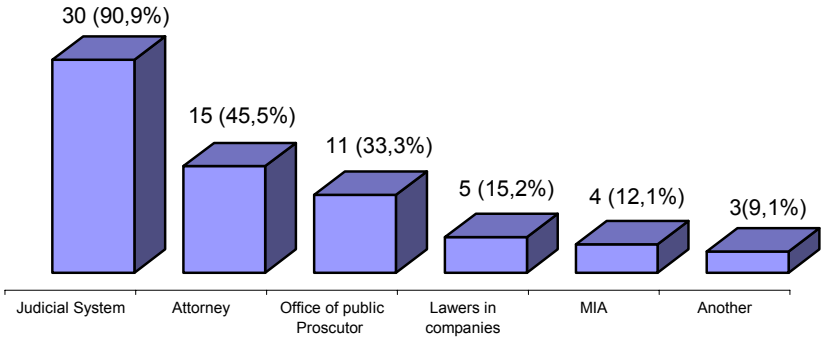
**1.4.1. Professional judicial work record of the Judges of the Peace (according to the questionaire of 149 J.P.: Nizhny Novgorod region - 79, the Republic of Tatarstan - 42, Rostov Region - 28)**



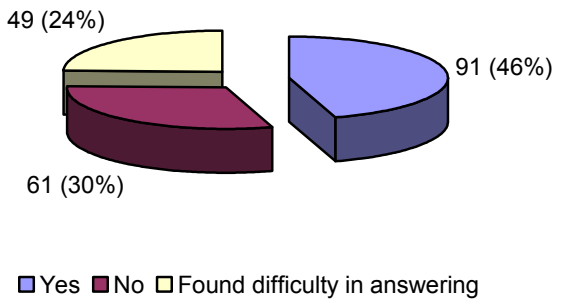

**1.4.2. Previous place of work of Judges of the Peace (according to the questionaire of 149 J.P.: Nizhny Novgorod region - 79, the Republic of Tatarstan - 42, Rostov Region - 28)**



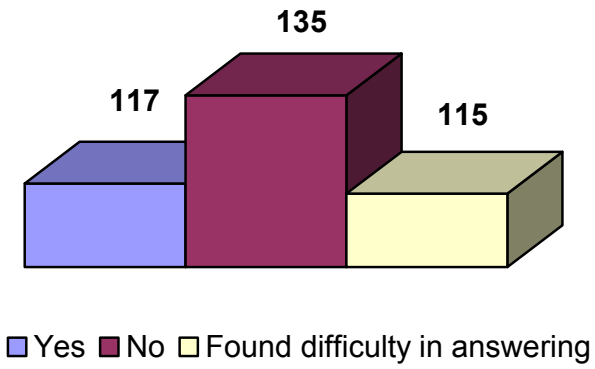

**1.4.3. Preferable place of work of J.P. (according to the questionaire of officials)**



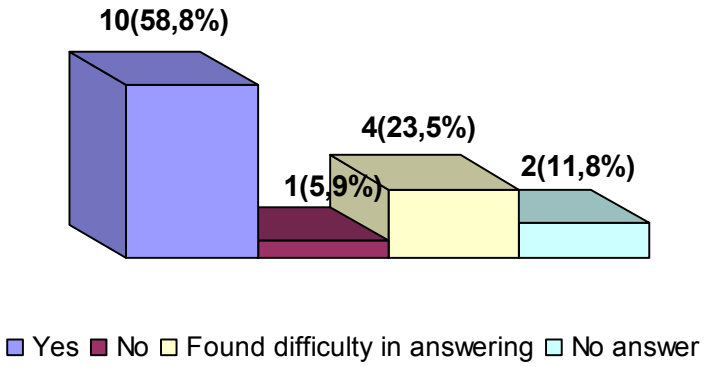
**1.4.4. Whether the existing procedure of J.P. appointment provides their independence (according to the questionaire of 183 judges and barristers)**



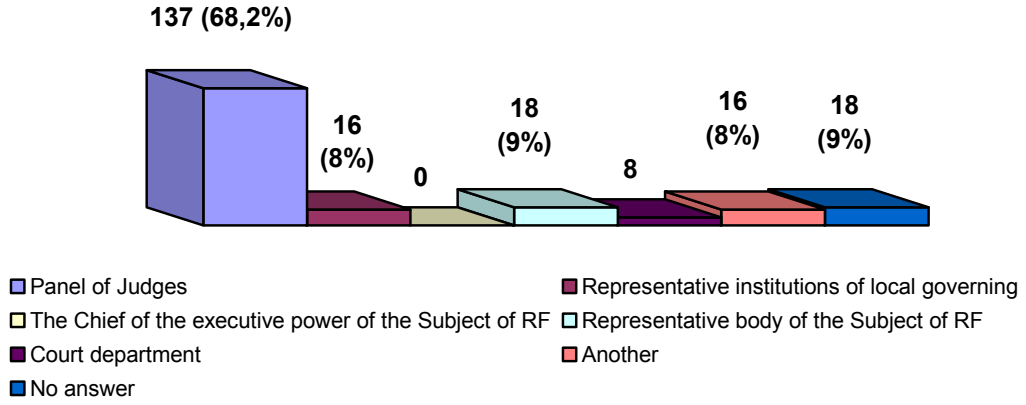

**1.4.5. Whether Judges of the Peace depend on public authorities (according to the questionaire of 367 persons including citizens, officials, attorneys)**



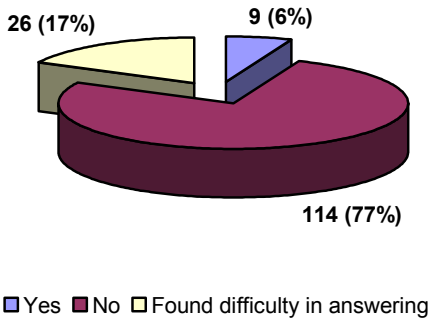

**1.4.6. Whether Judges of the Peace depend on institutions of local governing (according to the questionare of 17 officials of Nizhny Novgorod region)**



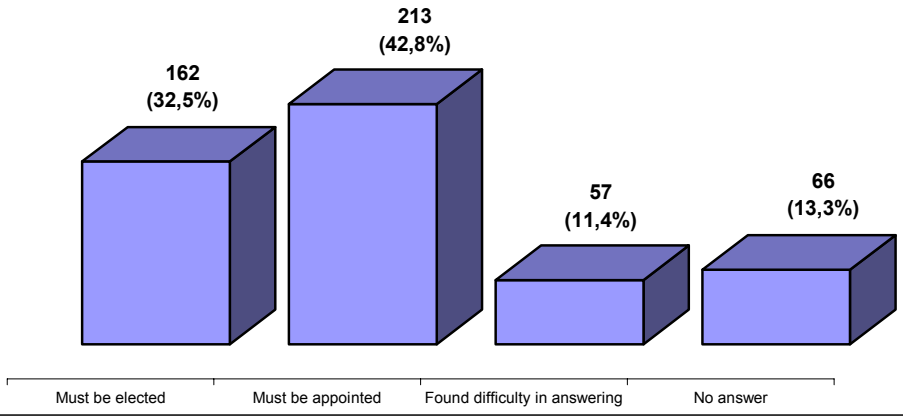
**1.4.7. Which structure plays the lead in J.P.'s appointment (according to the questionaire of 201 judges and barristers)**

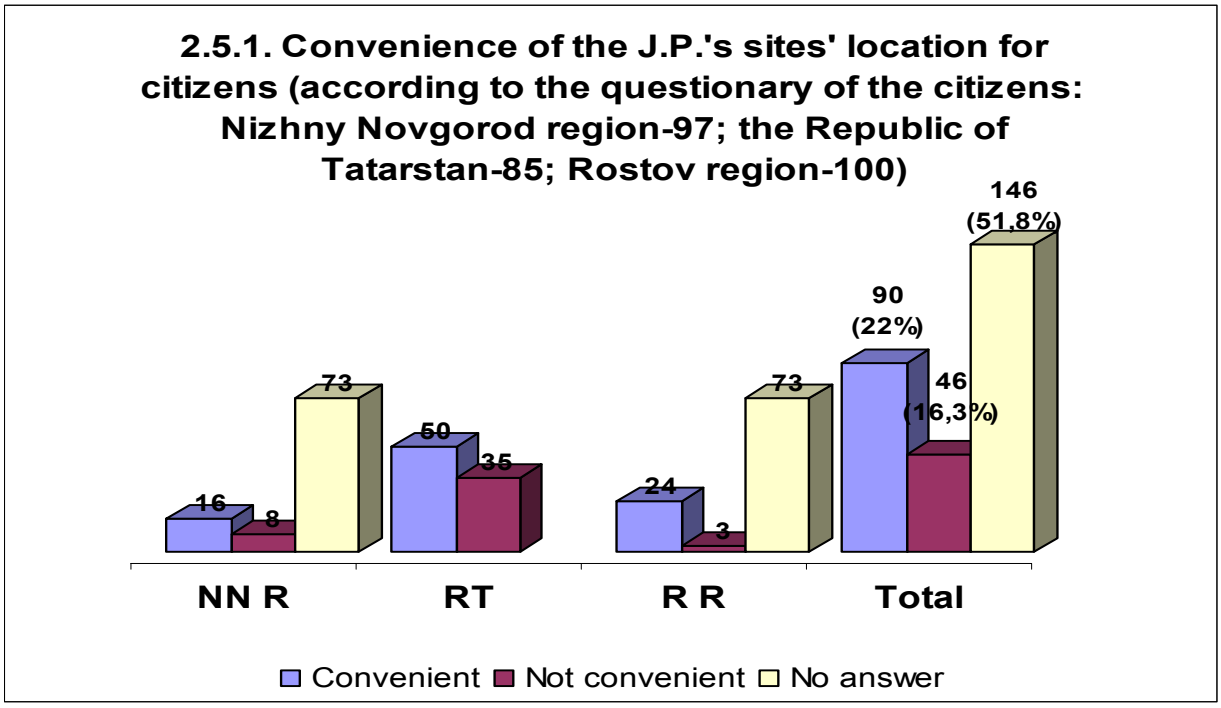


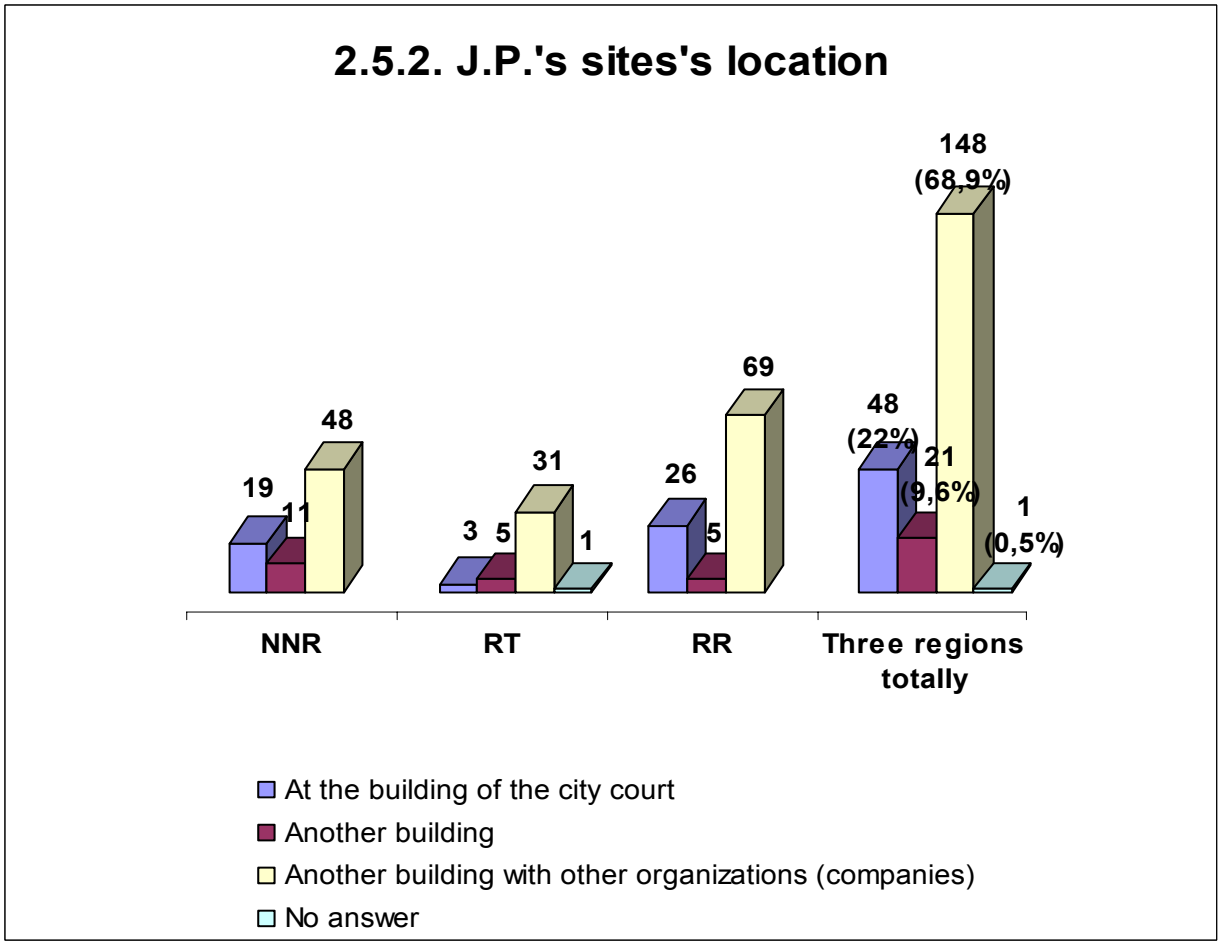

**1.4.8. Whether the salary of J.P. is adequate to his qualification and the volume of work performed (according to the questionaire of 149 judges)**



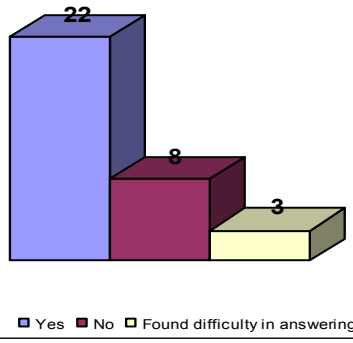

**1.4.9. Whether judges must be appointed or elected (according to the questionaire of 498 persons: citizens, oficcials, barristers, judges)**



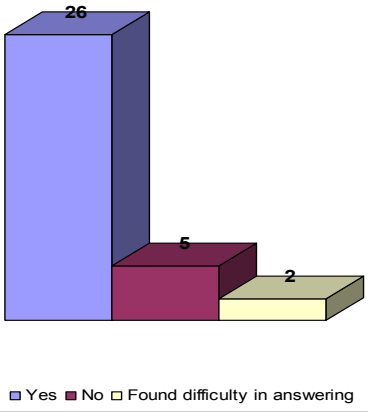

2.5.1. Convenience of the J.P.'s sites' location for citizens (according to the questionary of the citizens: Nizhny Novgorod region-97; the Republic of Tatarstan-85; Rostov region-100)
16
8
73
50
35
24
3
73
90 (22%)
46 (16,3%)
146 (51,8%)
NN R
RT
R R
Total
Convenient
Not convenient
No answer


2.5.2. J.P.'s sites's location
19
11
48
3
5
31
1
26
5
69
48 (22%)
21 (9,6%)
148 (68,9%)
1 (0,5%)
NNR
RT
RR
Three regions totally
At the building of the city court
Another building
Another building with other organizations (companies)
No answer

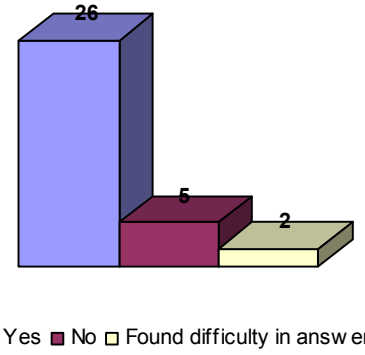
**2.5.3. Location of the J.P.'s site's influence on the availability and efficiency of the court (according to the questionaire of jfficials)**



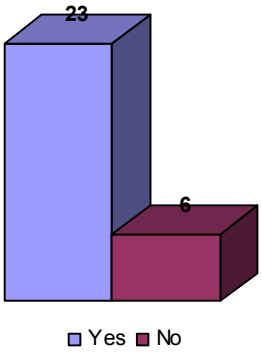

**2.5.4. The quantity of residence of the J.P.'s site influence on the availability and efficiency of the court site (according to the questionaire of officials.)**



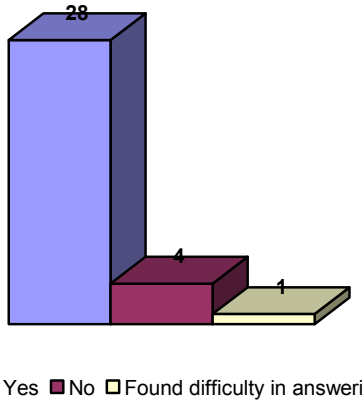

**2.5.5. The level of criminalization of the territory, where the site is located, nfluence jn availability and efficiency of the court (according to the questionaire of officials)**



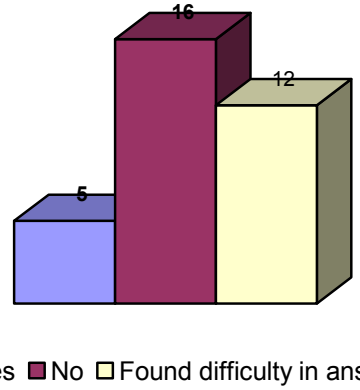

**2.5.6. Whether it is necessary to take into consideration the criminal situation as a factor of court site's border definition (according to the questionaire of officials)**



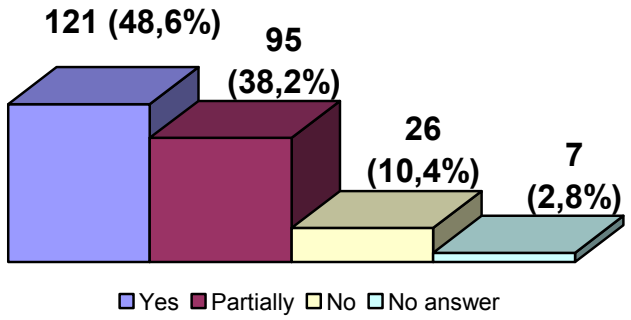

**2.6.1. Material and technical equipment influence on availability and efficiency of the court (according to the questionaire of officials)**



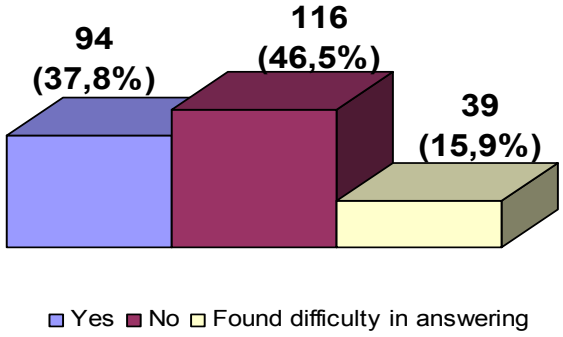

**2.6.2. Whether the material and technical equipment sutisfy the views on the conception of the court (according to the questionaire of officials)**



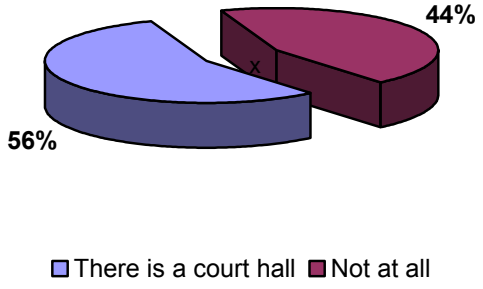
**2.6.3. Does the building of the court site fit the appropriation& (according to the questionaire of barristers and citizens)**



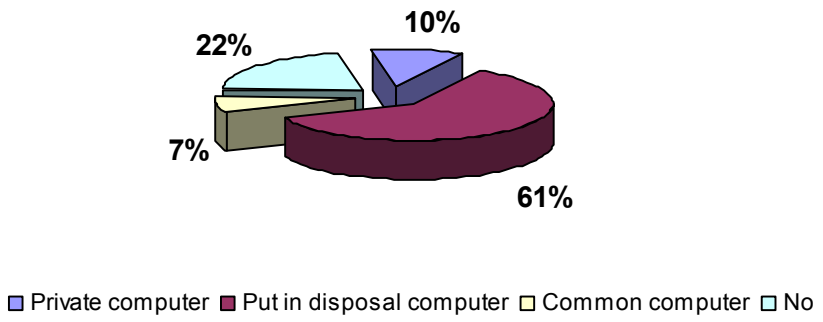

**2.6.4. Are there enough tables and chairs? (according to the questionaire barristers and citizens)**



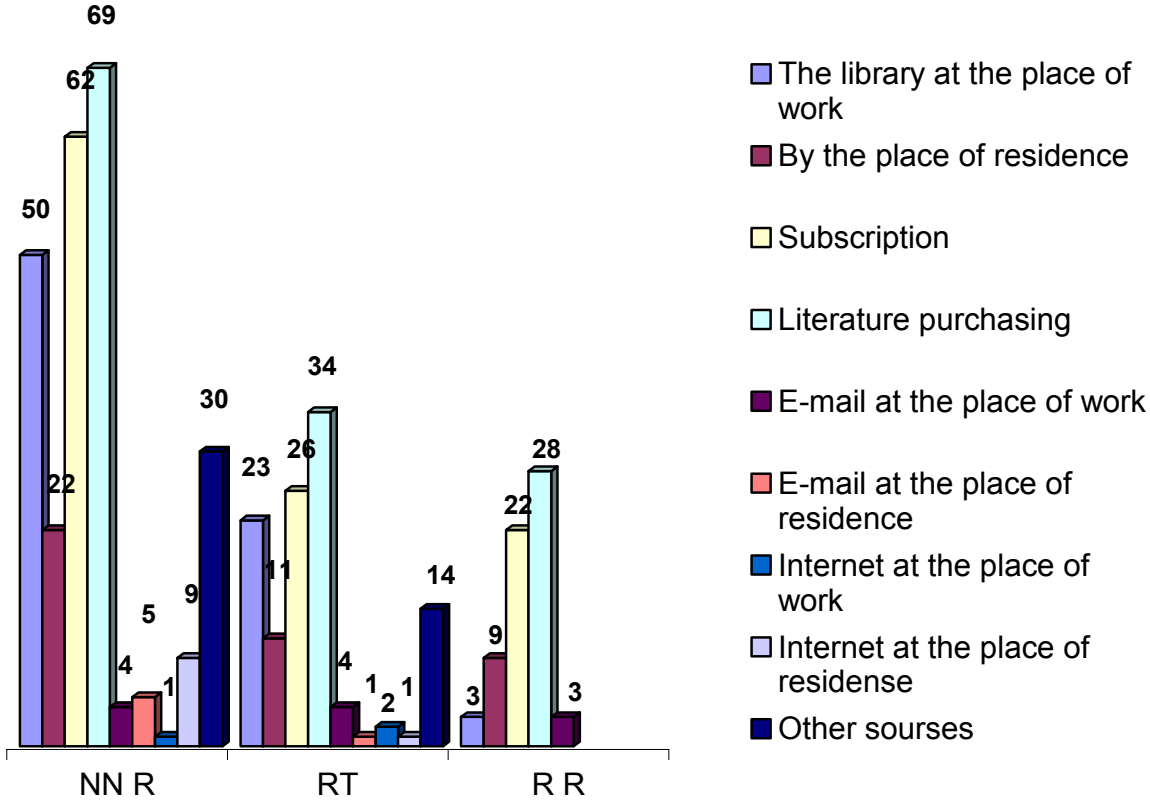

**2.6.5.Halls' of the court sessions presence at the J.P.'s sites (totally for three regions)**



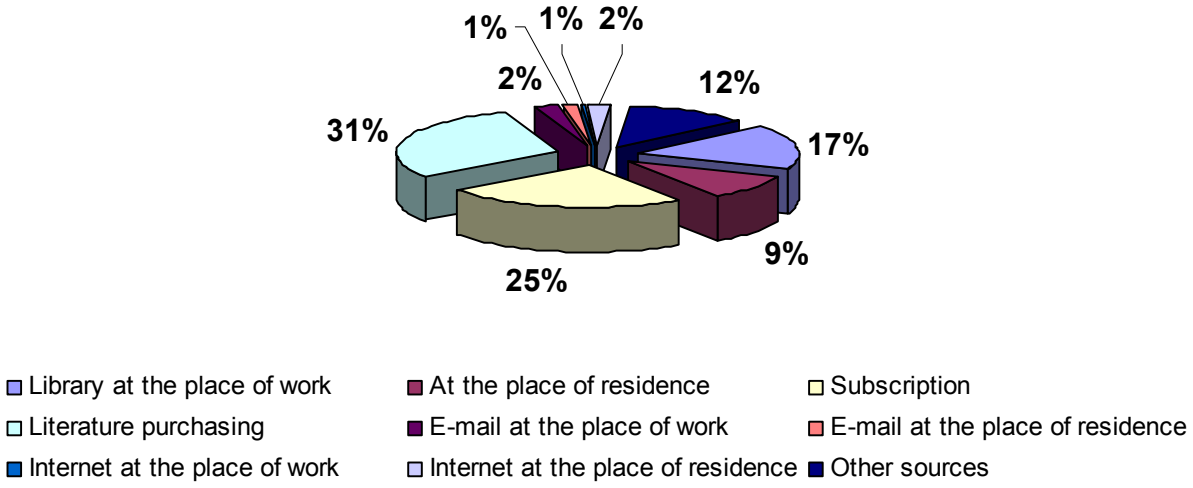
**2.6.6. Computer equipment of working places (according to the questionaire of J.P.)**



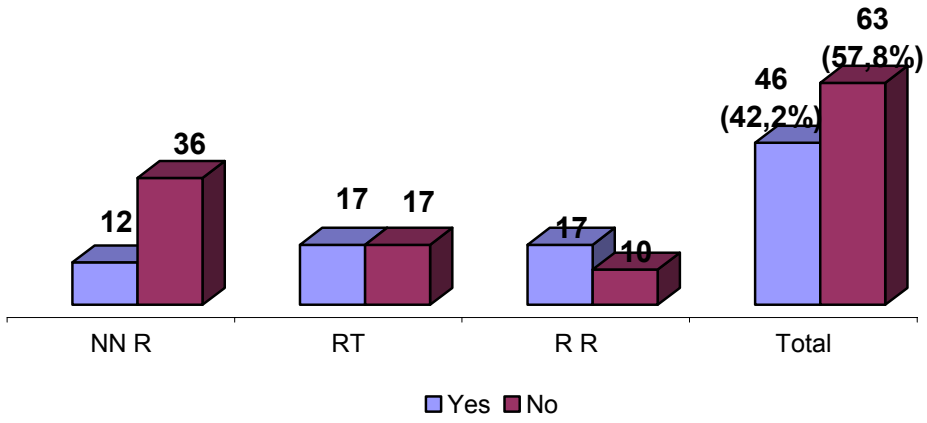

**2.7.1. The ways J.P. gets the necessary information (according to the questionaire of 149 J.P.)**



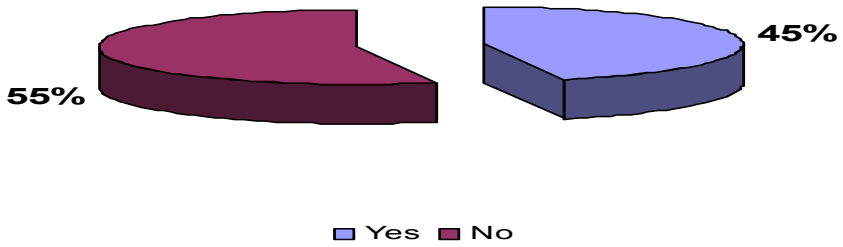
**2.7.2. The rating of the informational sources for J.P. (according to the questionaire of 149 J.P.)**



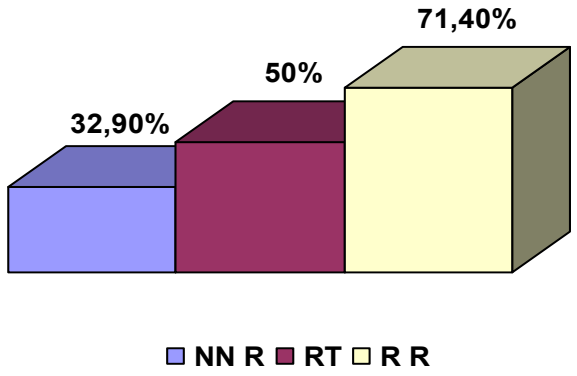

**2.7.3. ELS presence on the J.P.'s computers (according to the questionaire of 149 J.P.)**



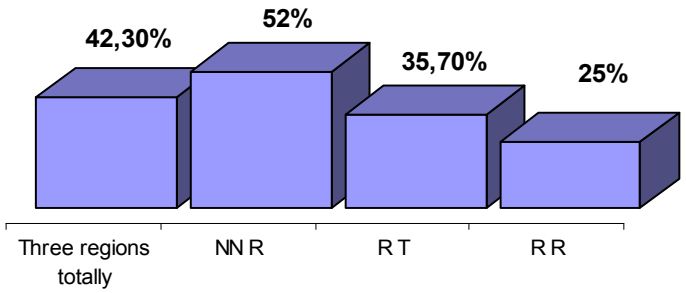

**2.8.1. J.P.s increased their qualification while total work duration (according to the questionaire of J.P. in three regions)**



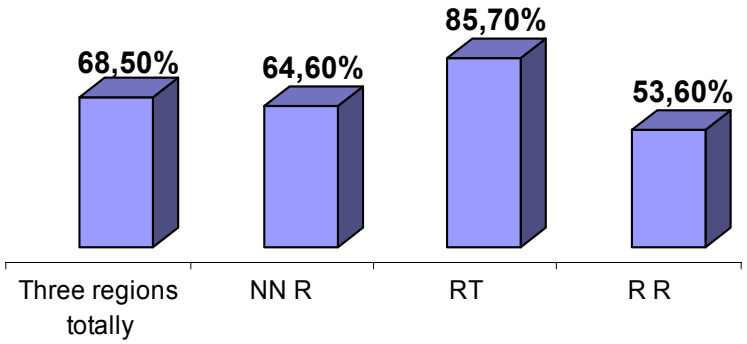
**2.8.2. J.P.s increased their qualification while total work duration**



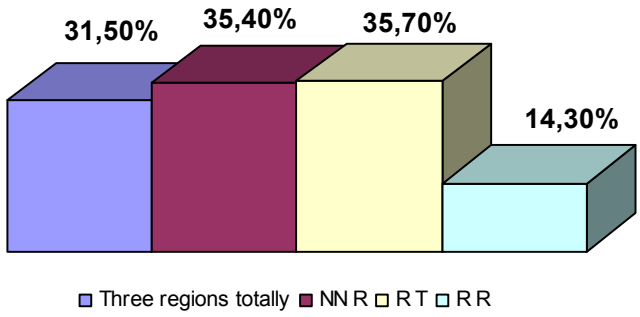

**2.9.1. Whether J.P. fulfil unjudicial functions (according to the questionaire of J.P.)**
**affirmative answer**



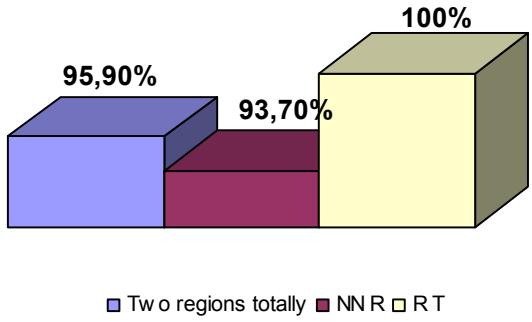

**2.9.2. Whether the J.P. 's apparatus staffed enough (according to the qyestionaire of 149 J.P.)**
**negative answer**



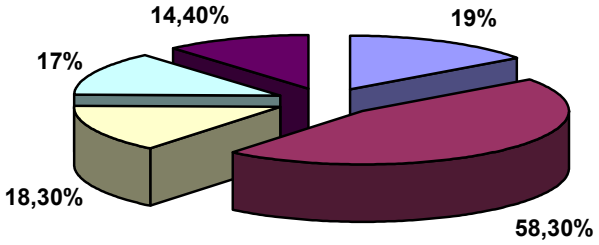
**2.9.3. J.P.'s apparatus increased the professional level (according to the questionaire of 149 J.P. including NN R-79, RT-42, RR-28)**



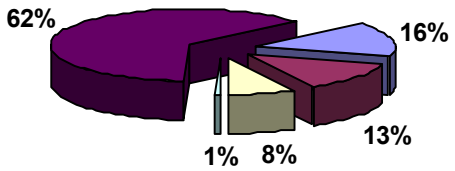

**2.9.4. Whether the salsry level corresponds to the administrative duties and the qualification of J.P.(NN R;R T) negative answer**




**2.10.1. Security provision at the J.P.'s sites researched in three regions**

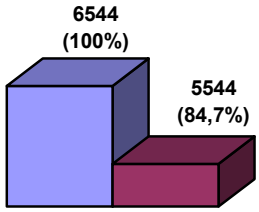


**2.11.1 The rating of the J.P.'s suggestions on peace justice activity improvement ( according to the questionaire of 149 Judges of the Peace)**



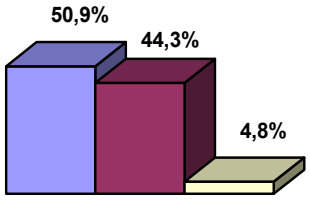

To increase the quality of the informational provision
To reduce the w ork load, to increase the apparatus
To provide the security
To take actions on qualification grow th
To improve the material and technical provision

**3.1. J.P.'s staffing in RF 01.09.03.**



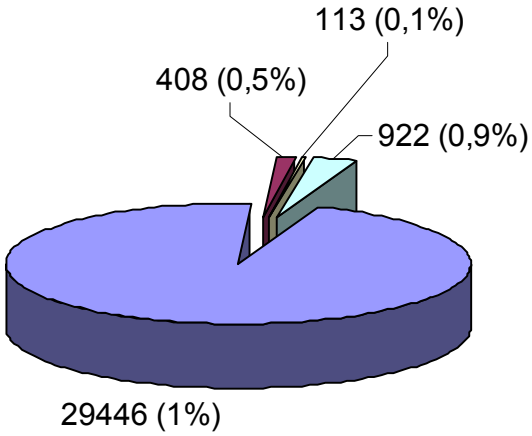

As in FL "On total quantity of J.P. and court sites in RF subjects" defined
J.P. appointed

**3.2. Case considered by J.P. categories correlation for the first 6 months 2003 (absolute figure in Russia 2930534)**



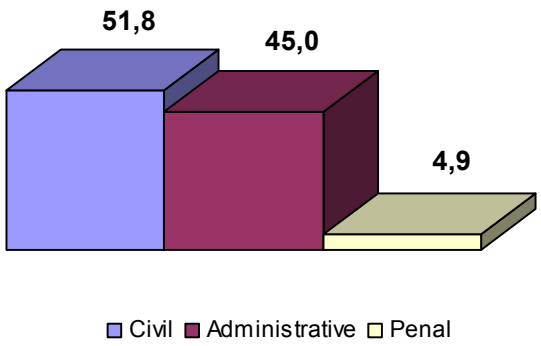

Civil
Administrative
Crime

**3.3. Writs' nonsuit (first 6 months 2003.)**

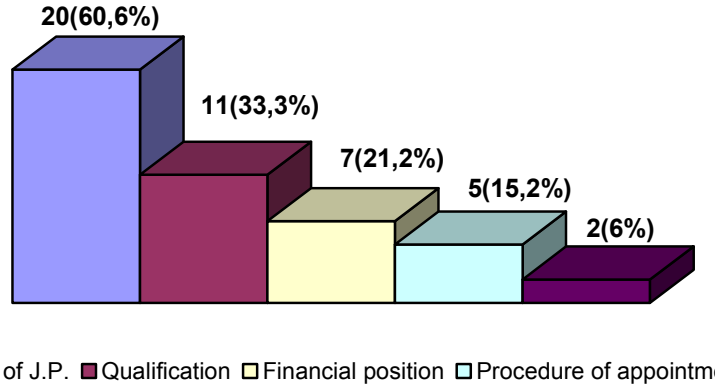



Russia in general
RT
NN R
R R

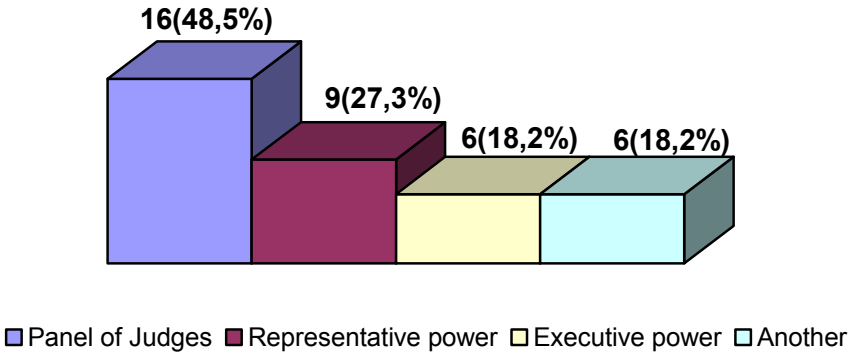
**3.4. Work obligation of J.P. in Russia (relative ratio per 1 judge mothly for the first 6 months of 2003)**



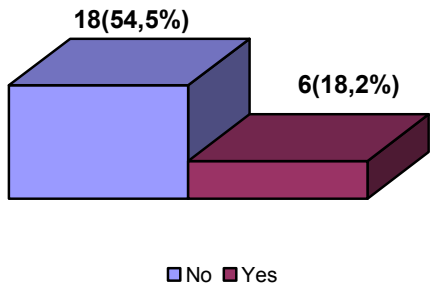

**3.5. Factors affecting judges while dispensation of justice (according to the questionaire of 33 officials)**



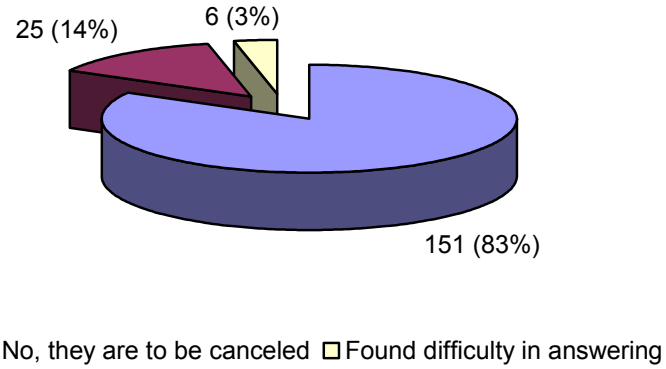

**3.6. Which bodies affects efficiency most of all (according to the questionaire of 33 officials)**

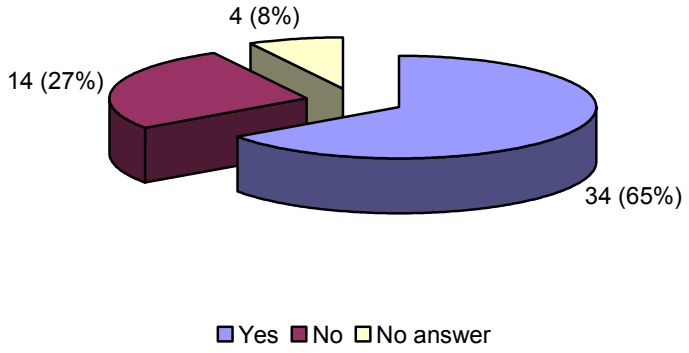


**3.7. Whether the judicial authority has the same position as representative and executive powers have (according to the questionaire of 33 officials)**




**3.8. Whether the Judges of the Peace are necessary (according to the questionaore of 182 citizens in NN R and R T)**




**3.9. Whether the Judges of the Peace are necessary (according to the questionaire of 52 barristers)**