

**THE “JUSTICE INDEX”  
IS A STEP TOWARDS THE IMPLEMENTATION OF THE GLOBAL GOAL 16  
OF THE U.N. AGENDA**

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*This paper proposes a method for measuring sustainable development as a means of the implementation of the Global Goal 16 of the United Nations Agenda. This method is the primary attempt to quantify the quality of the rules of the judiciary and access to a court in order to monitor sustainable development in the area of justice. In the recent years, the U.N. drew attention to the fact that qualitative changes should be evaluated through quantitative indicators.*

*The authors’ methodology is based on the fair trial standard formulated by the European Court of Human Rights based on the interpretation of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the public services standard of the Russian Federation. This indexing method helps to assess the current level of legal guarantees in the rules of legal proceedings and draft legislation, and to establish their compliance with the fair trial principles. Indexing the access to justice has another positive effect – it helps to monitor the local situations and every level of the judicial system.*

*Putting this method into practice will encourage avoidance of the adoption of bills that might reduce the level of legal guarantees and will assist attempts to monitor its dynamics. It could promote the introduction of effective procedures and better access to court, ensure the improved accountability of all public justice institutions at all levels and support overall societal wellbeing.*

*Keywords: sustainable development; rule of law; fair trial; quantitative measurement; statistics; access to court.*

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## Introduction

Adoption of the “Transforming Our World: The 2030 Agenda for Sustainable Development” by the General Assembly of the United Nations with an inclusion of the Global Goal 16 “To Promote Just, Peaceful and Inclusive Societies”<sup>1</sup> means that all countries of the world have recognized justice as the guarantee of the implementation of other sustainable development global goals. Mankind has entered a new era in which justice is characterized by these aspects: providing access to court, creating effective procedures and accountable institutions at all levels, which should be promoting societal peace as a result. This marked shift of the paradigm was brought to everyone’s attention by Dustin N. Sharp<sup>2</sup> and Rama Mani.<sup>3</sup>

The implementation of the U.N. Global Goal “To Promote Just, Peaceful and Inclusive Societies” should be carried out these days through a program-oriented and goal-oriented approach in every U.N. country. In the recent years, the U.N. drew attention to the fact that qualitative changes should be evaluated through

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<sup>1</sup> U.N. General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1, 21 October 2015 (Sep. 10, 2018), also available at [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_70\\_1\\_E.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf).

<sup>2</sup> Dustin N. Sharp, *Development, Human Rights and Transitional Justice: Global Projects for Global Governance*, 9(3) *International Journal of Transitional Justice* 517 (2015); Dustin N. Sharp, *Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition*, 9(1) *International Journal of Transitional Justice* 150 (2015).

<sup>3</sup> Rama Mani, *Dilemmas of Expanding Transitional Justice, or Forging the Nexus Between Transitional Justice and Development*, 2(3) *International Journal of Transitional Justice* 253 (2008).

quantitative indicators.<sup>4</sup> Therefore, several sustainable development monitoring indicators have been established: the Human Development Index, the Gender Inequality Index, the Human Poverty Index, and others.

However, none of them is applicable to the sphere of justice and none can be used to measure a vital part of the sustainable development – the achievement of the Global Goal 16 of the U.N. Agenda. The problem is also not resolved by proposals for the codification of national law and judicial protection;<sup>5</sup> indexing the development process of some countries<sup>6</sup> and a comparison of their national progress with other countries.<sup>7</sup> We may, as well, add here the multifactor indexes like the World Justice Project (WJP).<sup>8</sup>

Therefore, a special index is needed to measure sustainable development in the area of justice, which would take into account the regional legal system and court accessibility evaluation. It also should be able to provide an assessment of every stage of the entire judicial process: from initiating the case in ordinary court up to the hearing in the country's Supreme Court. This problem is being addressed differently in European countries. Some countries are guided by the Recommendation Rec(2004)5 of the Council of Europe Committee on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights adopted by the Committee of Ministers on 12 May 2004 at its 114<sup>th</sup> Session, while other countries do not.

As a result, there are cases appearing from time to time when the European Court of Human Rights reveals country's violations of the right to a fair trial in its judicial acts. Such was the *Airey v. Ireland* case from 9 October 1979. Unfortunately,

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<sup>4</sup> See, e.g., Joint UNECE/Eurostat/OECD Task Force, Summary of the Report on Measuring Sustainable Development, Proposed Indicators, and Results of Electronic Consultation, ECE/CES/2011/4, 29 May 2011 (Sep. 10, 2018), also available at <https://unstats.un.org/unsd/envaccounting/ceea/meetings/UNCCEA-6-14.pdf>; The Real Wealth of Nations: Pathways to Human Development, Human Development Report (2010) (Sep. 10, 2018), available at [http://hdr.undp.org/sites/default/files/reports/270/hdr\\_2010\\_en\\_complete\\_reprint.pdf](http://hdr.undp.org/sites/default/files/reports/270/hdr_2010_en_complete_reprint.pdf); Joyeeta Gupta & Courtney Vegelin, *Sustainable Development Goals and Inclusive Development*, 16(3) International Environmental Agreements 433 (2006).

<sup>5</sup> Polonca Kovač, *The Requirements and Limits of the Codification of Administrative Procedures in Slovenia According to European Trends*, 41(3/4) Review of Central and East European Law 427 (2016) (Sep. 8, 2018), also available at <http://booksandjournals.brillonline.com/content/journals/10.1163/15730352-04103007>.

<sup>6</sup> Richard R. Shaker & Igor Sirodoev, *Assessing Sustainable Development Across Moldova Using Household and Property Composition Indicators*, 55 Habitat International 192 (2016); Shona L. Russell & Ian Thomson, *Analyzing the Role of Sustainable Development Indicators in Accounting for and Constructing a Sustainable Scotland*, 33(3) Accounting Forum 225 (2009); Georg N. Fourlas, *No Future Without Transition: A Critique of Liberal Peace*, 9(1) International Journal of Transitional Justice 109 (2015).

<sup>7</sup> Enrico di Bella et al., *Wellbeing and Sustainable Development: A Multi-Indicator Approach*, 8 Agriculture and Agricultural Science Procedia 784 (2016).

<sup>8</sup> World Justice Project (WJP) Rule of Law Index (Sep. 10, 2018), also available at <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2016>.

such violations are recorded throughout the court proceedings in Russia as might be illustrated by judgments on these cases: *Zagorodnikov v. Russia* from 7 June 2007, *Ryakib Biryukov v. Russia* from 17 January 2008, *Pshenichnyy v. Russia* from 14 February 2008, and others.

This explains why the Russian Federation and European countries were confronted by the Global Goal 16 of the U.N. Agenda, as well as the goal of complying with the regional fair trial standard.

Achieving this Global Goal, meeting the local challenge and also making up for the legal gap might be accomplished through the authors' method of quantitative measurement of quality changes in the rules of the judiciary and access to court – the "Justice Index."

## 1. Methods and Procedures

The "Justice Index" is an aggregated indicator of national guarantees of the rule of law and access to court. Its two basic indicators demonstrate the country's situation with regards to justice. In this article, we will begin by considering the first component of the "Justice Index" – the rule of law, then proceed with the second one – access to court.

The first component of the "Justice Index" is based on the fair trial standard formulated by the European Court of Human Rights in its judicial acts, which serves as an interpretation of the Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It is this standard that stands as the benchmark for the field of justice today. Our method helps assess the compliance of the actual rules of justice of any country with the fair trial concept and identify a presence or an absence of violations of this standard.

The fair trial standard consists of 16 principles today:

- A public hearing by the court;
- An independent and impartial tribunal;
- A court established by law;
- Consideration of the case by a court within a reasonable time;
- The person's awareness of proceedings affecting his rights and freedoms;
- Free exercise of procedural rights;
- A free assistance of an interpreter if the person cannot understand or speak the language used in court;
- A balance of private and public interests;
- Legal certainty;
- A prompt and detailed notification of the person in a language understandable to him of the nature and cause of the accusation against him;
- Equal treatment;

- Provision of the individual with the sufficient time and facilities to prepare his or her defense;
- A provision that anyone may defend himself in person or through legal assistance of his own choosing;
- If the individual does not have sufficient means to pay for legal assistance, he is to be given it for free when the interests of justice so require;
- The right to examine or have examined witnesses against him;
- The right to obtain an attendance and examination of witnesses on the individual's behalf under the same conditions as witnesses against him.

Following the fact that the European Court of Human Rights does not prioritize the fair trial principles, recognizing them as equally important, the authors' method views all these principles as equal and possessing the same proportion (6.25%) in an overall count. The set of all 16 principles of 6.25% each makes up 100%.

The Rule of Law Index is calculated as a percentage or the degree of the implementation of the fair trial principles in the legal regulation at a particular stage of the process, where 100% means their full implementation in a judicial procedure, and, at the other end of the index, 0% is when no stage of the process adheres to any of the principles. The degree of adherence to the fair trial principles in each code and at each stage of the trial is measured separately.

The principles of a fair trial, which have both structural and procedural dimensions, are divided further into two parts. Consequently, each of them has a rate of 3.125%, and such a division heightens even more the objectivity of an overall assessment, showing also, which particular aspect is the most problematic and is failing to meet the standard.

The principles with several aspects of implementation have their ratio divided into the number of aspects that exist at the time of an assessment, taking into account the continuous development of the fair trial standard by the European Court of Human Rights. For example, the principle of publicity of court proceedings currently has the greatest number of divisions (8), and we may estimate an implementation of each aspect. At the same time, the principle of a trial within a reasonable time has four dimensions, but we will analyze only one: efficiency of the court (judge), as it shows how effectively the state has organized the trial.

For the convenience of measuring the Rule of Law Index of a certain legislation, we provide here a convenient table, where the principles and their aspects are listed down in lines on the left, and the trial stages are given in the column headings to the right. The number of columns in the table should correspond to the number of stages laid out in the legislation. In inner cells of the table marks might be placed indicating a presence, or an absence of every aspect or principle of the fair trial standard.

The Rule of Law Index measurements were performed at each stage of the process, their values then added up to form a final value of each stage of the trial; and their sum-total makes the final value of the code. In mathematical terms it will look thus:

$$\text{Rule of Law} = \sum_{i=1}^n K^i \sigma^i = K^1 \sigma^1 + K^2 \sigma^2 + K^n \sigma^n$$

$\alpha^i = 1-i$  criterion weight coefficient

$n = 16$  – number of criteria

After determining the maximum and actual values, the calculation is made using the following formula:

$$\text{The Rule of Law} = \frac{\text{Actual value}}{\text{Maximum value}}$$

The official law-publishing media platforms served as a source of data on the current legal regulation of the judicial process. Measurements may be carried out right after the last day of the calendar year, during which time amendments to the procedural legislation might have been made. When this method is used to measure the dynamics of the procedural legislation and to compare the data obtained year after year, changes will be apparent.

The second basic parameter of the “Justice Index” is an access to court assessment. Let’s consider its structure. It has 12 units which include 131 subdivisions:

- Preparation of a petition to a court;
- Financial affordability of a court;
- Geographical accessibility of a court;
- Disabled access;
- User-friendliness of a court;
- Quality of a court service delivery;
- Preparation of an application to the Federal Bailiff Service;
- Geographical accessibility of the Federal Bailiff Service;
- Disabled accessibility of the Federal Bailiff Service;
- User-friendliness of the Federal Bailiff Service;
- Service quality of the Federal Bailiff Service;
- Electronic interaction between the judiciary and the public service recipients.

“Preparation of a petition to a court” unit consists of two criteria lists: (1) obtaining information about the court public services procedure, and (2) preparation of all the necessary documents as an attachment to the petition to the court.

There are several ways to obtain information about the court public services procedure: by phone, by written request, on the court information board, and through the official court website. Moreover, court information access includes territorial jurisdiction data access which also is available by phone, by written request, on the court information board, and through the official court website.

Preparation of all the necessary documents as an attachment to the petition to the court includes the availability of a petition samples (on the court stand and the official court website), completeness and comprehensibility of the posted list of necessary documents.

“Financial accessibility” unit also consists of a criteria list:

- Availability of a state fee calculation information (on the court stand and the official court website);
- Comprehensibility of the rules concerning deferred payment or payment by installments of state fee (on the court stand and the official court website);
- Apprehensibility of the state fee calculation principle (on the court stand and the official court website);
- Availability of online payments on the court website;
- Clarity of the online payment rules on the court website;
- The total amount of the state fees required for getting the anticipated trial outcome;
- The total amount of money a person would have to spend on the state fees required for getting the anticipated trial outcome.

The “geographical accessibility of the court” unit assesses the number of population per court.

The “disabled accessibility of the court” includes the following criteria:

- Availability of a court website version for the visually impaired;
- Availability of a parking space for disabled (road signs and markings);
- Availability of a ramp and an adapted entrance unit to the courthouse;
- Availability of Braille information boards in the courthouse;
- Availability of a call button for assisting the disabled around the courthouse;
- Availability of a reserved wheelchair in the courthouse;
- Availability of sliding doors in the courthouse;
- Written information duplication with a sound message;
- Availability of hoisting devices and lifts for disabled persons in the courthouse;
- Location of the information display in the courthouse convenient for disabled;
- Sufficient width of doorways and corridors for the independent movement of disabled persons throughout the courthouse;
- Availability of courtrooms equipped with induction loops and sound reinforcement system;
- Availability of a restroom for persons with disabilities in the courthouse.

The “user-friendliness of a court” unit contains the criteria applicable to the one-stop-shop service in Russia: accessibility of a high-security facility, the comfort level of the public services delivery conditions and visitor capacity assessment.

The assessment of the accessibility of a high-security facility includes the following criteria:

- The existence of registration of visitors at the courthouse entrance;
- The existence of inspection of visitors at the courthouse entrance;
- Availability of equipped room for inspection of visitors;
- Presence of a bailiff officer of the same sex as the visitor being examined.

The assessment of the comfort level of the public services delivery conditions consists of the following criteria:

- Availability of a cloakroom for visitors;
- Availability of a restroom for visitors;
- Air conditioning availability on the visitor premises;
- Drinking water availability;
- Sufficient lighting;
- Availability of desks, chairs;
- Availability of sufficient room for visitors;
- The proximity of functionally linked places of court public service;
- Sufficiency of the overall number of service windows for handling visitors;
- The actual number of working service windows for handling visitors;
- Availability of office equipment for visitors on the court premises.

The “Quality of a court service delivery” unit includes several lists of evaluation criteria: informing of the court public service progress (offline and online), clear articulation of a party’s rights and of terms of the public service delivery (at a preliminary hearing, the court session and in a court ruling) and conflict resolution order.

The assessment list of conflict resolution order consists of the following criteria:

- Availability of information on speeding up the process on the court bulletin boards;
- Availability of information on speeding up the process on the court website;
- Availability of an application sample required for speeding up the process on the court bulletin boards;
- Availability of an application sample required for speeding up the process on the court website;
- Apprehensibility of the procedure for considering an acceleration application;
- Informing about the result of consideration of the acceleration application;
- Availability of information on the conditions for bringing disciplinary proceedings against a judge on the court bulletin boards;
- Availability of information on the conditions for bringing disciplinary proceedings against a judge on the court website;
- Availability of an application sample required for bringing disciplinary proceedings against a judge on the court bulletin boards;
- Availability of an application sample required for bringing disciplinary proceedings against a judge on the court website;
- Apprehensibility of the procedure for considering the application required for bringing disciplinary proceedings against a judge;

- Informing about the result of consideration of the application for bringing disciplinary proceedings against a judge;
- The possibility of challenging the decision on the acceleration application;
- The possibility of challenging the decision on the application for bringing disciplinary proceedings against a judge.

Each of these lists provides the criteria which are separately assessed and calculated to obtain an overall evaluation.

“Preparation of an application to the Federal Bailiff Service,” “Geographical accessibility of the FBS,” “Disabled accessibility of the FBS,” “User-friendliness of the FBS” and its “Service quality” units contain criteria similar to the ones on “Quality of a court service delivery.” It is quite peculiar that the Russian procedural legislation does not regulate the enforcement stage of a judicial decision, but it is done through a special law which is enforced by the Federal Bailiff Service which is an executive agency. Therefore, part of the criteria of the Access to Court Index concerns the Federal Bailiff Service.

Electronic interaction between the judiciary and the public service recipients is assessed by the criteria included all the above units. One of those, for example, is “the availability of office equipment for visitors on the court and the bailiff service premises.” They allow us to see whether there is electronic justice in the country or not, including the sphere of execution of a judicial act.

The Access to Court Index is calculated in three steps.

The first step is to add up the binary criteria: existing or not (1 or 0).

Due to the fact that a ratio formula should be applied to some of the criteria, their calculation is carried out separately. It is expressed as a quotient where 100% is 1. For example, if the total number of windows for the reception of visitors is six, and only three of them are working, we evaluate the current premise capacity as not 100% or 1, but only as 50% or 0.5. Accordingly, 0.5 will be added to the overall amount. This type of data is calculated during the second stage.

The third stage consists of aggregating the amounts obtained at the first and second stages of the calculation.

The real court cases served as a source of this study. As this scientific research “Monitoring of the rule of law and access to the courts: 25 years of judicial reform” began in 2011 and continued until 2016, 57 cases were studied, 30 of which involved individuals and 27 – small and medium businesses. A calculation was based on this data.

After determining the maximum and actual value, the Access to Court Index calculation is made using the following formula:

$$\text{Access to Court} = \sum_{j=1}^m K^j / 131$$

$m = 131$  number of evaluation criteria

$K^j$  –  $j$  criterion value

Another way of putting it:

$$\text{Access to Court} = \frac{\text{actual value}}{\text{maximum value}}$$

Then the 2 intermediate values are being aggregated to get a final value

$$\text{Justice Index} = \text{Rule of Law} + \text{Access to Court}$$

Obtaining the maximum value of each Justice Index component allows us to draw informed conclusions.

## 2. Results

Let us, for example, consider the application of the Rule of Law Index to Russian reality. To demonstrate the increase of legal guarantees as a result of judicial reform, two timepoints were chosen. The first point was the adoption of the Concept of Judicial Reform in 1991; the second point is a current procedural legislation, 25 years later. We did not take into account the indicators in-between, by which we mean laws introducing ongoing amendments and additions to the rules of justice during this period. Thus, the measurements of the initial and final state of the rules of legal proceedings were made. Their comparison gave us a picture of the moderate growth dynamics of legal guarantees in national procedural legislation.

Let us now consider in detail the application of the Rule of Law Index to the assessment of the quality of the civil proceedings in Russia. The civil proceedings are established as one of many types of proceedings in the Constitution of the Russian Federation (Art. 118). The Russian procedural legislation further breaks them into two categories: the civil process, and the arbitration process. The former means consideration of civil cases for the individuals, and the latter is meant for business. The dynamics measurements have an academic interest in both cases. Therefore, comparing their results might prove beneficial.

The initial de facto Rule of Law Index of the Soviet Code of Civil Procedure of the RSFSR (1964) was 133.59% where proceedings in the court of the first instance made up 57.03125%, proceedings in the cassation court – 46.875%, and the court of supervisory instance – 12.5%. The revision proceedings on judicial acts which have entered legal force were 17.1875%. The final Rule of Law Index of the old CCP is 0.26718.

The current de facto Rule of Law Index of the Code of Civil Procedure of the Russian Federation amounts to 237.5% which is higher than the earlier value by 103.91%. However, it still is quite short of 500% (5 stages of 100% each). This is evidence that not all fair trial principles are present in the current national civil

process. Rule of Law Index of the court of the first instance amounted to 92.96875%, the court of appeal – to 94.53125%. At the same time, Rule of Law Index values of the cassation and supervisory courts which verify the legitimacy of enforceable judicial acts, rose slightly and amounted to 16.40625%, and of the revision proceedings of judicial acts that entered legal force, it remained unchanged – 17.1875%. The de facto final Rule of Law Index figure of the new CCP RF is 0.475.

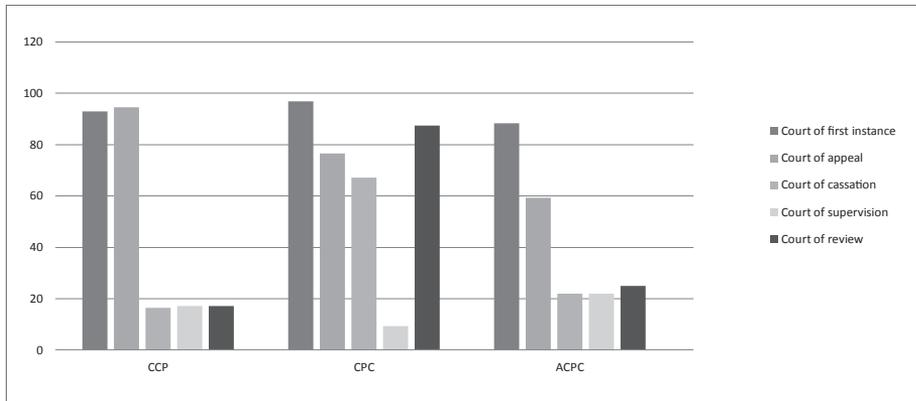
It should be noted here, that the measurement does not include the stage of execution of a judicial act which is regulated by a separate law in Russia – a Federal law of 2 October 2007 No. 229-FZ “On Enforcement Proceedings.”

For one thing, comparing the de facto civil proceedings Rule of Law Index values “then” and “now,” we notice the rise in a number of legal safeguards in the judicial procedure of a civil process. However, the most intriguing values appear when we look separately at each stage of the trial and measure the implementation of each fair trial principle.

As it turns out, the number of legal guarantees has increased significantly at court hearing stages in courts of a first and second instance in the civil process. However, the higher Rule of Law Index values of the appellate court are due to the latest refinement of the procedural court duties which increased the number of legal guarantees for the persons participating in the case. At the same time, a relatively stable Rule of Law Index was found at the stages of validation of the court rulings that entered into force, and their revision. The rather small Rule of Law Index value surplus in the cassation and supervisory proceedings is due to the mechanical transfer of the old rules of the process to the new Code which definitely does not imply any growth of legal guarantees. Therefore, there is still a potential for growth in this area, and this might be the matter for the legislator to look into with the aim of improving the rules of the civil process.

Figure 1 shows that the mere reproduction of the civil process rules, namely, the verification stages of the legally enforceable acts, in the Administrative Court Procedure Code of the Russian Federation (ACPC) does not give rise to legal guarantees in the courts of supervision.

Figure 1: Compliance of the Russian Rules of Justice with the Fair Trial Standard



Next, we will discuss the situation with an implementation of the principles of a fair trial. Concerning the principle of publicity, only one of eight aspects is present in Russia which suggests a major drawback with the implementation of the remaining seven (publicity of the process; media access to the information about the case; access to the case materials; publishing of the information about the case; disclosure of evidence; disclosure of the judicial act; and receipt by the case parties of the full text of the reviewing court judicial act).

Actually, exactly the same can be said with regard to the principle of free exercise of procedural rights: only one out of four is realized (participation in a court hearing). Only the institutional aspect of the principle of an independent and an impartial court is accounted for, while the procedural aspect still needs to be implemented. Sadly, there are principles that are completely absent in the current legal regulation: the observance of a reasonable period; a prompt notification of a case involving individual's rights and freedoms; equality of the initial conditions; availability of a free interpreter in case a person doesn't know the language; possibility to defend yourself in person, or through a chosen individual; availability of a free attorney in the absence of funds, in the interests of justice; balancing of private and public interests; the principle of legal certainty; provision of sufficient time and opportunity to an individual to prepare his own defense; interrogation of witnesses testifying against a person; and the right to summon and interrogate witnesses testifying in a person's favor.

The Commercial Procedure Code of the RSFSR was adopted a year later than the 1991 Judicial Reform Concept, so the initial de facto Rule of Law Index figures are calculated for 1992 and amount to 167.96875%, of which proceedings in the court of the first instance make up 59.375%; in cassation court – 47.65625%; in supervising court – 17.1875%; and the revision of decisions due to newly surfaced circumstances – 43.75%. The final Rule of Law Index of the old CPC is 0.3359375.

The current de facto Rule of Law Index value of the arbitral process is higher than its initial value and is 365.625%. It consists of the following values of each stage: the court of the first instance – 96.875%; the court of appeal – 76.5625%; cassation court – 67.1875%; and supervisory court – 9.375%; and the revision of enacted judicial acts due to newly surfaced circumstances – 87.5%. Today, the final Rule of Law Index of the new CPC is 0.73125.

Thus, a comparison of the Rule of Law Index measurements in the commercial (arbitration) process “then” and “now” brings us to an acknowledgment of a more rapid growth than the civil process values. However, it should be noted that the starting de facto Rule of Law Index value of the Commercial Procedure Code was higher than that of the civil process.

Therefore, comparison of the “then” and “now” results of the stages of the arbitration process with those of the civil process allows us to conclude that the level of fair trial principles implementation in the arbitration process is higher than in the civil process which infers a higher level of legal guarantees to parties participating in a case. On the one hand, it is good for business whose disputes are considered in the commercial court. On the other hand, it is bad for the individuals because their disputes are dealt with in civil proceedings where the level of legal guarantees is significantly lower.

Finally, another negative conclusion is the uneven volumes of legal guarantees in Russian court proceedings.

The implementation of the fair trial principles in the commercial process is as follows. In the court of the first instance (lawsuit proceedings), the principles of a fair trial are fully implemented, except for the principle of appointing a defender in the absence of funds to pursue the justice. The absence of a free defender precluded the achievement of 100% of the implementation of the fair trial principles in the commercial process.

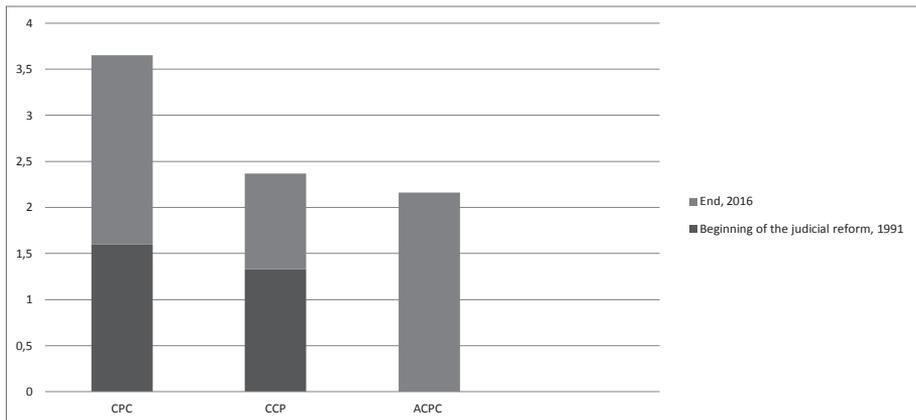
Although it is assumed that the economic agents can effectively protect their rights and legitimate interests in court, in reality this is far from the truth. A large business might be able to have lawyers within its staff, and hire additional ones, if necessary; at the same time, small and medium businesses usually do not have such financial freedom, especially lately, taking into account the overall economic slowdown and the plummeting number of individual entrepreneurs following another tax increase. Therefore, it would only be reasonable to provide procedural guarantees for small and medium-sized businesses lacking funds, analogous to the help to destitute citizens, which would not only allow to implement the fair trial principle but also ensure the growth of legal guarantees in accordance with the general concept of sustainable development. The institution of the commercial ombudsman might take it upon itself to stand for the rights of small and medium enterprises.

Furthermore, the implementation of the fair trial principles in judicial acts, as the assessment shows, is rather opposite to that of the civil process: it is easier to single out the principles that are implemented than the ones that are not. Among those

implemented only in the institutional aspect are the principles of an independent court, an impartial court, and a court established by law. Frankly speaking, the ethereality of the fair trial principles is rapidly increasing as the case progresses up the hierarchy of judicial instances. The fair trial principles practically evaporate and stop showing up in the Supreme Court. This is quite conspicuous and is true of the principles of publicity, an independent and impartial court, and a court established by law, also of the principles of a prompt notification of the commencement of the audit, observation of a reasonable time, equality of the initial conditions, legal certainty, and others. None of those requirements is fixed in legal regulation, and, therefore, is barely provided.

However, the dynamic is quite different with the measurements taken at shorter periods of time. For example, before the merger of the Supreme Arbitration Court of Russia and the Russian Supreme Court in 2013, the Rule of Law Index at the stage of cassation proceedings was 70.3125%, while after the merger it fell to 67.1875%. Thus, the merger of two Supreme Courts led to a reduction in procedural guarantees. The reason could be a mere mechanical reproduction of the civil process rules in the arbitration process, which does not provide for any increase of guarantees.

Figure 2: "Fairness Growth" in Russia During Last 25 Years



In addition, the short-period measurements allow the government to see more clearly whether it is going to reach the desired level of development and whether the forecasts of the strategic development justice programs are consistent with the Rule of Law Index values. Negative answers to these questions will surely lay bare the poor planning and ineffective efforts. Such an assessment is quite beneficial for a consistent overall development of any country.

Unfortunately, the authors could not have access to court data for 1991. Due to this objective factor, 2011 was the year in which we could begin the scientific

research in this area. Nevertheless, we now have data for 6 consecutive years but will pay attention only to the initial and final indexation as in the case above.

As can be seen from the Access to Court Index units, their structure might be divided into two components: an assessment of the court and the bailiff service. Therefore, it is noteworthy to consider the accessibility index, first, of each component and then as a whole.

Firstly, the starting value of the court accessibility index for 2011 is 0.34920635 and the final is 0.380955238 for 2016.

Secondly, the bailiff service accessibility index had the following values: for the year 2011 – 0.21818182, for the year 2016 – 0.23636364.

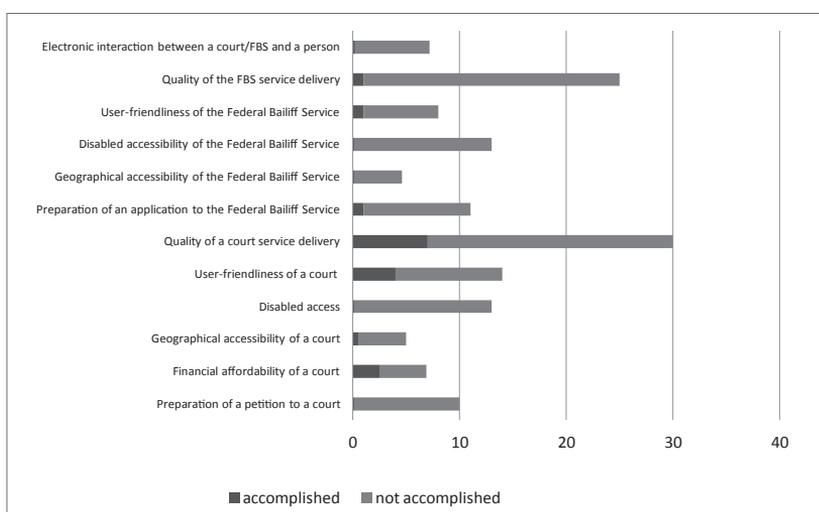
The overall value of the Access to Court Index for 2011 was 0.58556999 and for the year 2016 – 0.61731887.

Their comparison brings us to a conclusion that the second component of the “Justice Index” (the Access to Court Index) has quite moderate growth in contrast to the first component – the Rule of Law Index. However, given that we measured only the 6-year dynamics, this result might be reevaluated later.

At the same time, the figures reveal the bailiff service lagging behind the court which seems to be another issue that requires attention in the access to the realm of justice.

Just like it was with the Rule of Law Index, the most interesting contrasts are found at the micro level, when each Access to Court Index criterion is analyzed separately. This zooming in allows us to comprehend all the seriousness of the issue with access to a court or the bailiff service in Russia. The resulting visualization gives a better view of the scope of the problem. We will consider the issues in descending order.

Figure 3: Evaluation of Access to Court and the Federal Bailiff Service



The greatest number of negative values was found in the “Access to court and the Federal Bailiff Service” unit. The only positive result was shown by the “Availability of a court of general jurisdiction website version for the visually impaired” criterion. Arbitration courts received even lower rating during surprise inspections.

The next negative leader is the “Conflict resolution in court cases” unit which implies the fight with red tape and disciplinary offenses inflicted by judges. Hence, the problem with the consideration of an application for bringing disciplinary proceedings against a judge.

The next unit, the “Geographical accessibility of the court and bailiff service,” comes as only a little less problematic.

The “Public service delivery deadlines” unit differs from the criteria specified in the Rule of Law Index in its compliance with the procedural deadlines assessed in the Access to Court Index.

The “User-friendliness of a court and the Federal Bailiff Service” unit also leaves much to be desired.

And, to close the list, we should note a slightly better performance of the financial accessibility of the court and electronic interaction between the judiciary and the public service recipients. Judging by the figures, it seems to us that the electronic justice in Russia is still in its infancy.

It should be noted that the low access to court figures might be explained by the government’s failure to apply the above-mentioned evaluation criteria to the court and bailiff service in general. At the same time, these criteria are applied to the one-stop-shop service which is an executive public agency. This brings us to the conclusion that the government did not set the task of achieving a unified level of legal guarantees throughout the country’s public services and this might be estimated as an inconsistency with the global concept of sustainable development. We are convinced that the Russian Federation can and should use these criteria as a benchmark for its Federal Targeted Programs aimed at the development of the judicial system. Undoubtedly, this study might be of a great help in this regard.

Finally, due to the fact that the starting points of the Rule of Law Index and the Access to Court Index do not share a common time horizon, we believe it is not correct to aggregate them in this article to form an overall starting Justice Index of the Russian Federation.

At the same time, we consider it possible to aggregate the final value of the Justice Index for 2016. As was previously noted, the civil litigation in Russia is regulated by two codes: the Code of Civil Procedure of the Russian Federation and the Commercial Procedure Code of the Russian Federation. Therefore, we will give here the Justice Index values of each process.

To obtain the Justice Index we use the formula:

$$\textit{The Justice Index} = \textit{Rule of Law} + \textit{Access to Court}$$

Thus, the 2016 Justice Index of the civil process is 1.09231887 consisting of 0.475 (Rule of Law Index) and 0.61731887 (Access to Court Index). The 2016 Justice Index of the commercial process is 1.348556887 consisting of 0.73125 (Rule of Law Index) and 0.61731887 (Access to Court Index). The comparison of these values shows that the commercial process (business disputes) is leading between the two.

### 3. Final Comments

The application of this method allowed us to conclude that the level of legal guarantees in the Russian civil justice during the period of the judicial reform is growing but not as fast as we would like. These conclusions were made by choosing two points for the Rule of Law Index measurements in civil legal proceedings in Russia.

If you measure the Rule of Law Index for each law that has amended the rules of civil proceeding (as well as other types of proceedings) and transfer its consecutive values to the diagram, you will get the dynamic trajectory of the growth or decline of the level of legal guarantees. Such diagrams might be created for each stage of the court proceedings, as well as for the legislation as a whole.

The diagram would make it easy to see how each fair trial principle or its aspect is implemented throughout the legislation, and to detect the legal gaps which would be a reason for initiating amendments to the current procedural legislation with a purpose of bringing it to conformity to the fair trial standard.

We believe that, had these legal gaps been filled by the proper regulation, our government could have avoided many violations being recorded by the international supervisory court, as could be seen from the following cases adjudicated by the European Court of Human Rights: *Gavrilenko v. Russia* from 15 February 2007, *Ignatieva v. Russia* from 3 April 2008, *Gudkov v. Russia* from 3 December 2009 and *Votintseva v. Russia* from 11 February 2010. Undoubtedly, this would have not only precluded the supervision procedure and saved budget spent on compensating the victims of violations, but would have also helped to reach an overall societal wellbeing. Thus, systemic issues might have been resolved before they are discovered by supranational justice authorities.

Similar figures might be constructed with respect to the Access to Court Index to promote better access to court, eliminate barriers and achieve the uniform overall level of legal guarantees. The Access to Court parameters can be used for evaluation of both the courts (or any judicial level of review) and the state law enforcement system. The comparative values are obtained as a ratio of actual values to the maximum. Annual measurements would show the dynamics of the access to justice in Russia as a whole and at every level of the judicial system.

Similar quantitative assessment of the judiciary sphere is carried about by the WJP index, but it relies on expert assessments which might be inherently erroneous due to the experts' subjective perception of reality.

The proposed method has an advantage over the conventional expert assessment since it is impartial and does not carry the imprint of departmental interest which is usually inherent in analysis of staff experts appointed by public agencies. The proposed “Justice Index” allows any lawyer to evaluate any procedural legislation which is a big advantage of this technique. It is notable that no special training or accreditation is required which greatly expands the possibilities for its application.

Moreover, the existing conventional expert evaluation has other flaws. For example, as Attiva Havas notes, the legislator does not always take experts’ opinion into account.<sup>9</sup> In most cases, this might be explained by the authorities’ reluctance to accommodate the society and their desire to adopt only those rules of legal regulation that are easier for the government to fulfill. However, this position of the authorities does not create prerequisites for societal consensus and equity, as was noted in the scientific literature<sup>10</sup> and in some international documents.<sup>11</sup>

Indeed, an impartial assessment of the sustainable development and a quantitative measurement of quality in the field of justice best corresponds to the United Nations practice.

The Rule of Law Index used as an assessment tool allows one to take steps towards the first twofold component of the Global Goal 16 – the establishment of effective procedures and accountable institutions. First, the effectiveness of a procedure proposed in this research is quite obvious as it equips one with a simple tool to measure the Rule of Law Index at each stage of the trial revealing its compliance to the fair trial standard. Moreover, it might help the country as a whole to achieve the goal of sustainable development in the field of justice. The evaluation will allow the government to address the discovered problems. Second, the accountability of public institutions at all levels is achieved by publishing their strategies and performance reports, as well as bills they propose together with their Justice Index evaluation, on their official websites.

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<sup>9</sup> Attiva Havas, *STI Policies, National Innovation System and Framework Conditions: Their Impacts on Innovation Performance in Hungary*, Higher School of Economics International Scientific Conference, Foresight and STI Policy, Moscow, Russia, 2016.

<sup>10</sup> Partha Dasgupta & Geoffrey Heal, *The Optimal Depletion of Exhaustible Resources*, 41(5) *Review of Economic Studies* 3 (1974); John M. Hartwick, *Intergenerational Equity and Investing of Rents from Exhaustible Resources*, 67(5) *American Economic Review* 972 (1977); Patrick Vinck & Phuong Pham, *Ownership and Participation in Transitional Justice Mechanisms: A Sustainable Human Development Perspective from Eastern DRC*, 2(3) *International Journal of Transitional Justice* 398 (2008).

<sup>11</sup> See, e.g., United Nations, *Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda)*, the final text of the outcome document adopted at the Third International Conference on Financing for Development (Addis Ababa, Ethiopia, 13–16 July 2015) and endorsed by the General Assembly in its resolution 69/313 of 27 July 2015 (Sep. 15, 2018), available at [http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA\\_Outcome.pdf](http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf). See also United Nations, *The Future We Want, Outcome document of the United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 20–22 June 2012* (Sep. 15, 2018), available at <https://sustainabledevelopment.un.org/content/documents/733FutureWeWant.pdf>.

## Conclusion

The “Justice Index” has proved to be of great practical importance. The following objectives might be reached by applying it or its components to practice.

Firstly, the Rule of Law Index can be used to assess the current legislation which might raise the government’s awareness of the existing problems with the implementation of the fair trial standard in the rules of judicial procedures and of legal deficiencies in the court’s procedural rules. This is important because thus an objective assessment can be obtained previous to the European Court of Human Rights ruling on the complaint against the Russian Federation, and thus the negative consequences might be avoided, including compensating the victim of violations from the state budget.

The state itself may take action for the benefit of an individual, especially since it is responsible, on the one hand, for sustaining the prosperity of its people, and, on the other hand, for achieving the U.N. Global Agenda goals. The United Nations has repeatedly called attention to the fact that responsibility for the implementation of global sustainable development instruments lies exclusively with the state, be that a government,<sup>12</sup> or a parliament.<sup>13</sup>

Secondly, the Rule of Law Index can be used in legislative work of the state lawmakers. An explanatory note to the bill which is to be amended might include a comparison of the current and forecasted (“before” and “after”) values of “The Justice Index” which are to be taken into account during an adoption of the amendments to the law. It is desirable to publish such data so that the parliament and the population may see the dynamics of the level of legal guarantees. This will also increase the legislator’s personal responsibility for the proposed changes before the society and voters while visibly showing the quality of the changes to judicial procedures that are being proposed.

The application of the Rule of Law Index in the daily routine of the legislator will allow correlation of the proposed changes with fair trial principles and will make it easier to approve of their validation or rejection. Therefore, implementation of this method will help adoption of only the laws that improve the legal safeguards which conform to the concept of sustainable development. With regard to Russian practices, “The Justice Index” would also be helpful in the harmonization of rules of civil and arbitration processes and their compliance with the fair trial standard.

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<sup>12</sup> See, e.g., General Assembly, United Nations Millennium Declaration, Resolution, A/RES/55/2, 18 September 2000 (Sep. 10, 2018), also available at <http://www.un.org/millennium/declaration/ares552e.htm>; United Nations, *The Future We Want*, *supra* note 11.

<sup>13</sup> See, e.g., UNESCO Helsinki Declaration, Science, Technology and Innovation Policy: Parliamentary Perspective International Roundtable, Helsinki, Finland, 13–14 January 2003 (Sep. 10, 2018), also available at <http://www.unesco.org/new/en/natural-sciences/science-technology/science-legislation/helsinki-declaration/#c85621>.

On a regional and global scale, this method promotes the rule of law, which is part of the Global Goal 16 of the U.N. Agenda.

It also correlates with the practice of a democratic government holding itself accountable to the population when citizens are given an unobstructed opportunity to be informed about existing problems.<sup>14</sup> The equitableness degree of the judicial process correlates with the degree of democratic development in the country.<sup>15</sup> If the government does not give consideration to the protection of human rights and freedoms, it contributes to conflicts, which, in itself, is destructive to the country's stability. For example, a number of researchers believe that China will inevitably face modifications of its government model because it consistently overlooks issues of justice, accountability, and effectiveness in the protection of human rights and freedoms, but, on the contrary, sets the economic development as a public policy priority.<sup>16</sup> However, the application of the proposed method might help eliminate the infringement of human rights and freedoms by the government.

Thirdly, publication of the Rule of Law and Access to Court Index values on the official websites of public authorities, whose competence includes issues of justice, will make it possible for the state and society to effectively track the changes, find the best way to implement fair trial standards in national law, and demonstrate the results of the legislator's work. This is especially important in the context of state programs of development of the judicial system and procedural legislation which must pursue the ideals of international law and objectives of the U.N. Agenda. This, in turn, contributes to the effectiveness of procedures at all levels through the problems' identification and addressing.

Publication of the Rule of Law Index values together with any corresponding bill and the indication of the bill's author (authors) will help prevent the speculations of political parties and candidates, who tend to convince voters that they do their best for the prosperity of the people, during their pre-election rallies. A thorough assessment of the Russian procedural legislation using this methodology showed that such a political statement, at any rate, is far from the truth. The voters have their lawful right to clearly see which laws a candidate offered at the time when he was a subject of the legislative initiative, so that during the election, an informed decision could be made.

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<sup>14</sup> Kevin P. Gallagher & Strom C. Thacker, *Democracy, Income, and Environmental Quality*, PERI Working Paper 164 (March 2008) (Sep. 10, 2018), available at [https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1135&context=peri\\_workingpapers](https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1135&context=peri_workingpapers).

<sup>15</sup> Michael Walton, *Capitalism, the State, and the Underlying Drives of Human Development*, UNDP-HDRO Occasional Papers No. 2010/9 (June 2010) (Sep. 10, 2018), available at <https://ssrn.com/abstract=2351532>.

<sup>16</sup> Epaminondas Christofilopoulos & Stavros Mantzaniak, *China-2025: Research and Innovation Landscape*, 10(3) *Foresight and STI Governance* 7 (2016); Zhang Weiwei, *Meritocracy Versus Democracy*, *The New York Times*, 9 November 2012 (Sep. 10, 2018), available at <https://www.nytimes.com/2012/11/10/opinion/meritocracy-versus-democracy.html>.

The annual publication of the Access to Court Index and its application to any changes of the national access to justice criteria, that are being proposed, makes it possible to attain the global goal of accountability at all levels and for all authorities. Improving the transparency in the quality of the amendments that are being introduced to the legislation will significantly reduce all forms of corruption and manipulations with the public opinion, as well as increase the rulers' responsibility for decisions.

Fourthly, the use of our methodology for the purpose of the ongoing measurement of procedural legislation will allow aligning the level of legal guarantees of civil procedures with criminal and administrative procedures, as well as judicial with non-judicial procedures, the latter of which corresponds to the standard of a fair trial.

Thus, another global challenge of sustainable development is simultaneously being settled: a provision of a unified level of legal guarantees without gaps and fallbacks.

The proposed methodology helps monitor the quality of changes in procedural legislation, which must comply with the standard of a fair trial. The introduction of the methodology into the legislative work of the state government will promote transparency and accountability of the competent authorities that establish rules of procedure. The publication of bills amending procedural legislation along with their Justice Index values should allow society to monitor the activity of government bodies. It will also promote social dialogue and harmony, overall stability across the country, especially in case of introduction of interactive services which could allow the people's opinion on the draft law to be heard and taken into account.

Fifthly, the Access to Court Index can be used to create a barrier-free justice. Constant assessment and analysis of the results would provide a dynamic picture of problems to help address them. Open publication of Access to Court Index values and their evaluation criteria will promote accountability and transparency of the public bodies at all levels, increasing the effectiveness of their procedures.

All these practical aspects of the Justice Index enable us to achieve the Global Goal 16 of the U.N. Agenda.

Certainly, the proposed method does not assume addressing every issue in the field of justice. It is formulated only pertaining to the standard of fair trial, that is, it may be applied only to countries that have ratified the Convention for the Protection of Human Rights and Fundamental Freedoms. The countries that are part of other human rights protection systems, such as the African, or Inter-American system, as well as countries that are not parties to international organizations and the aforementioned Convention, cannot take advantage of it.

However, the proposed method may serve as a Justice Index prototype for any existing system of the human rights protection taking into account the local peculiarities, and interpretation of the provisions of the regional human rights protection laws. This method, surely, cannot claim to be of global universality but might prove to be quite suitable for the European human rights protection system.

Summing it up, the “Justice Index” might be regarded as the first step towards measuring sustainable development in the field of justice and may become a foundation for further development of the quantitative measurement of the justice quality.

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