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# ROLE OF THE SUPREME COURT OF THE RUSSIAN FEDERATION IN LAW-MAKING PROCESS

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### *Abstract*

The paper considers the functions of the Supreme Court of the Russian Federation in the context of the judicial policy – a phenomenon of the judicial power of modern Russia, which through the practice of law enforcement aims to participate in the legal order in the Russian Federation in relation to the following two aspects: first, acting as the final stage of enforcement where the law is refined and specified, and secondly, summarizing the public request for the improvement of legislation expressed in the array of legal disputes and judicial acts. First, the Supreme Court of the Russian Federation is the bearer of legislative initiative. Secondly, the acts of the courts of general jurisdiction and the arbitration courts of the first instance. Thirdly, the Supreme Court has the functional capacity to test the rules of law for constitutionality. Fourthly, the Supreme Court of the Russian Federation regulates the judicial policy and practice of judicial law enforcement. It is of interest to note the amendments made in 2018 to the Arbitration Procedure Code of the Russian Federation and the Civil Procedure Code of the Russian Federation, according to which, by the decision of the Presidium of the Supreme Court of the Russian Federation. In other words, judicial practice, the change of which is confirmed by the decision of the Presidium of the Supreme Court of the Russian Federation, is a full-fledged source of law extending to an indefinite range of persons and meeting all the characteristics of the rule of law.

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**Keywords:** Judicial system, justice, judicial power, judicial policy.



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## 1. Introduction

It seems reasonable to argue that the nature of justice is determined by the fact that it forms a judicial policy as a phenomenon of the judicial power of modern Russia, which through the practice of law enforcement aims to participate in the legal order in the Russian Federation in relation to the following two aspects: first, acting as the final stage of enforcement where the law is refined and specified, and secondly, summarizing the public request for the improvement of legislation expressed in the array of legal disputes and judicial acts.

The judicial policy is formed in the process of flexible interpretation of the law and its principles taking into account different factual circumstances of each judge of each instance, the application of the analogy of law by the courts, the application of the analogy of statute by the courts, as well as exclusively in criminal proceedings – an assessment of the possibility to ensure the achievement of the purpose of punishment (Yakovlev, 2003).

The objective of the judicial policy is to close the gaps in legislation and law, as well as to close the legal gap with the development of social relations in the process of the administration of justice and the final introduction of law into public life (Potapenko, 2006).

The conceptual expression of judicial policy takes place through the study and synthesis of judicial practice by the Supreme Court of the Russian Federation, the activities of the Constitutional Court of the Russian Federation to recognize normative and legal acts and their provisions as non-legal, as well as the exercise of the right of legislative initiative of senior courts.

Judicial system and judicial policy are concepts correlated due to risks related to the existence of subsystems of judicial power in Russia carrying out related types of proceedings in accordance with various sectoral legislative acts in terms of different interpretation and application of administrative and civil law by the courts. Therefore, one of the main tasks of judicial policy is to ensure the unity of interpretation and application of the norms of the branches of law that form the basis for proceedings carried out by various subsystems of the judiciary.

## 2. Problem Statement

It is obvious that the Supreme Court of the Russian Federation is a key structural element of the system of judicial policy, which simultaneously serves a precursor of law and a final stage of enforcement (Mikhaleva, 2000). The question that has to be answered is how or what is the conceptualization mechanics of judicial policy securing the status of the Supreme Court of the Russian Federation and judicial legislation?

## 3. Research Questions

The subject of the study covers social relations that arise due to the activities of the Supreme Court of the Russian Federation with regard to the judicial policy and its conceptual part, namely:

First, the Supreme Court of the Russian Federation is the bearer of legislative initiative, which is prescribed by the law. In accordance with Part 6 of Article 2 of the Federal Constitutional Law of the Russian Federation *On the Supreme Court of the Russian Federation*, the Supreme Court of the Russian

Federation exercises the right of legislative initiative belonging to it in accordance with Part 1 of Article 104 of the Constitution of the Russian Federation on matters of its conduct and develops proposals for improving the legislation of the Russian Federation on matters of its conduct (Fokina, 1999; Hart & Sacks, 1994).

Secondly, the acts of the courts of general jurisdiction and the arbitration courts of the first instance, courts of appeals and courts of cassation, adopted on the basis of the interpretation of the rules of law by each judge in various cases, are studied and summarized by the Supreme Court of the Russian Federation, which introduces a conceptual political component into the body of judicial acts (Gressman, 1989). In accordance with Article 2, Paragraph 7, Paragraph 1 of the Federal Constitutional Law of the Russian Federation *On the Supreme Court of the Russian Federation* the “Supreme Court of the Russian Federation:

1) in order to ensure uniform application of the legislation of the Russian Federation, shall provide the courts with explanations on the issues of judicial practice on the basis of its study and synthesis”.

Thirdly, the Supreme Court of the Russian Federation has the functional capacity to test the rules of law for constitutionality. In accordance with Paragraph 2, Paragraph 7 of Article 2 of the Federal Constitutional Law of the Russian Federation *On the Supreme Court of the Russian Federation* the “Supreme Court of the Russian Federation:

2) shall apply to the Constitutional Court of the Russian Federation in accordance with Part 2 of Article 125 of the Constitution of the Russian Federation with requests to check the constitutionality of laws, other normative legal acts and treaties, and on the basis of Part 4 of Article 125 of the Constitution of the Russian Federation with a request to check the constitutionality of a law subject to application in a case considered by it in any instance”.

Fourthly, the Supreme Court of the Russian Federation regulates the judicial policy and practice of judicial law enforcement in its supervision of activities of the courts of arbitration and the courts of general jurisdiction. In accordance with Part 2 of Article 2 of the Federal Constitutional Law of the Russian Federation *On the Supreme Court of the Russian Federation*, the “Supreme Court of the Russian Federation shall exercise judicial supervision of the activities of courts established in accordance with the Federal Constitutional Law in the forms provided for by the federal law *On the Judicial System of the Russian Federation* and federal laws, when considering civil cases, cases on economic disputes, criminal, administrative and other cases, jurisdictional to the specified courts, as a court of supervision and within its competence as the court of appeals and the court of cassation”.

#### **4. Purpose of the Study**

The purpose of the study is to determine the role and place of acts of the Supreme Court of the Russian Federation in the law-making process.

## 5. Research Methods

The methodological basis of the study includes general scientific methods (analysis, including the system analysis and synthesis, induction, deduction, etc.), as well as private and scientific methods (technical-legal, legal-linguistic, etc.).

## 6. Findings

Based on the above, the following conclusions can be made.

First, the conceptual expression of judicial policy takes place through the examination and synthesis of judicial practice by the Supreme Court of the Russian Federation in the following forms: the exercise by the Supreme Court of the Russian Federation of the right of legislative initiative, clarification on the issues of judicial practice, verification by the Constitutional Court of the Russian Federation of the rules of law on constitutionality and judicial supervision of the activities of the courts (Ivanov, 2010).

Secondly, the possibility provided for in procedural legislation to review decisions that have entered into force on the basis of a change in judicial practice, as decided by the Supreme Court of the Russian Federation, is an element of the precedent law borrowed from the Anglo-Saxon legal family and included into the legislation of the Russian Federation.

## 7. Conclusion

In accordance with Article 104 of the Constitution of the Russian Federation, the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation are the holders of legislative initiative (Putin, 2013). In addition to the right of legislative initiative, the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation (when applying to the Constitutional Court of the Russian Federation) have the right to declare normative and legal acts and their individual provisions unconstitutional, and therefore they become null and void. Both these aspects of senior courts form the judicial policy.

The Supreme Court of the Russian Federation is also examining and summarizing jurisprudence that is emerging through the interpretation of law by each judge of each instance. The synthesis of practice expressed in the definitions of the Supreme Court of the Russian Federation, as well as the decisions of the Plenum of the Supreme Court of the Russian Federation, are the elements of judicial policy (Grebnev, 2016).

The system of law – precedent and continental, can borrow methods typical for another system of law. Referring to the prospects of the precedent law typical for Russian legal reality, it is necessary to touch upon the issues of synthesis of judicial practice by the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation, which was liquidated in 2014. It is of interest to note the amendments made in 2018 to the Arbitration Procedure Code of the Russian Federation and the Civil Procedure Code of the Russian Federation, according to which, by the decision of the Presidium of the Supreme Court of the Russian Federation, on the basis of the change in judicial practice, the act of the court that has entered into force may be revised. In other words, judicial practice, the change of which is confirmed by the decision of the Presidium of the Supreme Court of the Russian

Federation, is a full-fledged source of law extending to an indefinite range of persons and meeting all the characteristics of the rule of law.

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