



Russian Federation: Stages in the Criminal Procedure

November 1997

LL File No. 1998-1191
LRA-D-PUB-001378

This report is provided for reference purposes only.
It does not constitute legal advice and does not represent the official
opinion of the United States Government. The information provided
reflects research undertaken as of the date of writing.
It has not been updated.

LAW LIBRARY OF CONGRESS

98-1191

RUSSIAN FEDERATION:

STAGES IN THE CRIMINAL PROCEDURE

Note: Except for the Chechen Republic where Sharia Courts which were recently introduced have competence and apply the nationally modified version of Islamic law in criminal cases, all components of the Russian Federation follow the federal legislation on criminal procedure, and basically the same laws are applicable in most (except of Baltics) of the newly independent former Soviet republics.

Even though the legislative history of the Russian criminal procedure runs parallel with the history of criminal law, the new Russian criminal legislation that entered in force since January 1997, was not accompanied by similar principles of criminal procedure. The USSR PRINCIPLES OF CRIMINAL PROCEDURE of 1958 and the CRIMINAL PROCEDURE CODE enacted on the basis of them in 1961 remain the only source of the law of criminal procedure. Traditionally, the Russian criminal procedure is a variant of the inquisitorial model of continental Europe and very different from the adversarial model. The Russian CODE OF CRIMINAL PROCEDURE has been subject to frequent amendments after Russia proclaimed its independence in 1990. The amendments reflect two diverse tendencies: to make the criminal proceedings more democratic and more respectful of the basic civil rights of the accused, and the introduction of more effective procedural institutions because of the concomitant rise in crime.

Jurisdiction

All levels of Russian judiciary have original jurisdiction. The CODE OF CRIMINAL PROCEDURE provides that district courts (courts of the first instance) have jurisdiction over all cases except those reserved to higher courts or military tribunals which are vested with jurisdiction over cases arising under specified articles of the CRIMINAL CODE or the Law on Military Crimes. A higher court always has jurisdiction at first instance over any case within a lower court's jurisdiction. Territorial jurisdiction is based in the place where the crime was committed; or, if this is impossible to determine, the place where the preliminary investigation or inquiry is completed.

Participants in the criminal process

A Russian court, procurator, investigator, and agency of inquiry are required to initiate a criminal case whenever the facts of a crime are disclosed on the grounds and in accordance with the established procedure. The role of the procurator in the criminal procedure is not so much that of a state attorney but rather of a supervisor. A peculiarity of the Russian criminal procedure is that it allows the participation of so-called public (or social) accusers and defenders, along with the regular state attorney (procurator) and defense counsel. The participation of a defense counsel is allowed by

the CODE from the moment of arrest or the presentation of the accusation (the conclusion to prosecute). Although opportunities for defense counsel to participate at the investigative stage recently increased, they remain very limited.

Pre-trial proceedings

A Russian criminal proceeding may pass through several stages before trial.

Initiation of a criminal case

A case may be initiated on the basis of statements or letters of citizens, communications from trade unions, other social organizations, enterprises, officials, information published by the mass media, or of someone giving himself up, or through direct discovery of the facts of a crime by a procurator, court, investigator or agency of inquiry. A case is initiated by issuing a formal decree to initiate the case, whereupon measures must be taken simultaneously to prevent or suppress the crime or preserve any traces of the crime. A refusal to initiate also must be by decree with reasons given and may be appealed to the appropriate procurator or higher court.

Inquiry

A criminal case is started by an inquiry, usually conducted by the police. The investigative powers of the police are regulated by the Law on Investigative Activities in the Russian Federation of March 13, 1992. The same powers are granted by this law to the investigative branches of the Federal Security Service (former KGB), the Federal Board Guard Service, and the Main Department for the Protection of the Russian Federation. Commanders of military units, heads of correctional labor and similar institutions, state fire supervision agencies, captains of sea-going vessels, or heads of polar stations may act as *Agencies of Inquiry* when necessary. Investigative activities are subject to supervision by the Procuracy.

An *Agency of Inquiry* undertakes the immediate steps to discover whether a crime has been committed and by whom. These include searches or other operational measures (seizure, examination, detention, and interrogation of suspects, victims and witnesses) to gather evidence. Defense counsel may not participate in such an inquiry, and the victim or civil parties may not see the materials of the case until trial. An inquiry may last up to one month, but that period is subject to indefinite extension. After that, the case shall be turned over to an investigator.

Russian law distinguishes such definitions as the *detention* and *arrest*. The CODE OF CRIMINAL PROCEDURE authorizes an *Agency of Inquiry* to detain a person suspected of committing a crime for which deprivation of freedom may be assigned as a punishment. Written notification of the detention must be given to the procurator within 24 hours by the *Agency of Inquiry*. The procurator has 48 hours from receipt of notice within which either to sanction the detention or to release the person detained. An individual, therefore, can be held in custody for 72 hours plus the time for an *Agency of Inquiry's* notification to reach the procurator. Detention could be several days in duration, but because arrest had not been imposed defense counsels have found access delayed or denied. Especially harsh this practice relates to foreigners because during the detention they have no right to meet with consul.

Preliminary investigation

In simple and less serious cases, the inquiry will lead to a conclusion to indict, which is to be presented for approval by the procurator. In other cases the preliminary investigation will take a place.

The investigation is entrusted to an official called an investigator who is required to prepare an opinion to indict or not. Investigators are attached to the police, the security organs (the old KGB), or the Procuracy. The type of crime involved determines which investigating officer is competent. Complex cases may be accepted by several investigators. Investigators must be law graduates.

Historically, the investigating officer goes back to the investigating judge, well known in continental criminal procedure. His powers in collecting evidence are considerable. As an intermediate step during the preliminary investigation, a conclusion to prosecute will be taken by the investigator, once he has sufficient grounds to do so; this turns the suspect into the accused. If the investigator is of the opinion that the evidence collected is sufficient to warrant a trial, he draws up a conclusion to indict and addresses the conclusion to the procurator for approval. If the procurator confirms the conclusion to indict, he refers the case to the appropriate court.

In most cases, the defense counsel retained by the accused enters the case at this point of the proceedings. The accused or his counsel may request further investigation, which must be granted or reasoned refusal given.

Administrative court session

When the conclusion to indict is received by the court, an administrative session consisting of a judge, two people's assessors, and the procurator decides whether there are sufficient grounds to bring the accused to trial. This decision must be made within fourteen days from the moment the case comes to the court. Without predetermining guilt, the court examines a variety of issues, from jurisdiction to the sufficiency of evidence to securing property.

A court may rule to bring an accused to trial, return the case for supplementary investigation, suspend proceedings, refer the case to the proper jurisdiction, or terminate the case. Certain matters concerning the conduct of a trial are decided in administrative session, for instance, whether to allow defense counsel selected by the accused or to appoint defense counsel or whether the case is to be heard in open or closed session.

Once the judge decides to bring a person to trial, the judicial consideration of the case must commence, under the Law, within fourteen days. However, in practice, this time restriction is almost never fulfilled, and this period may continue for years.

Trial

Judicial examination

Judicial examination takes place in an open court. All trial participants and their representatives shall enjoy equal rights in presenting and analyzing evidence or submitting petitions. Trials of persons in absentia may occur only at their request or if the person is abroad and evades appearance in the court. The procurator supports the state accusation in most cases. Social accusers or defenders may appear by ruling of the court. Unless the accused expressly refused counsel, he must be represented by defense counsel if the procurator appears in the case.

On this stage of the trial, the composition of the court is announced and the right of challenge explained. Then each trial participant's rights are explained. The court inquires whether any trial participant has petitions to summon new witnesses, experts and specialists, or to acquire additional evidence and documents. Should some trial participants not be present, the court must decide whether the case may proceed in their absence.

Judicial investigation

The investigation by the court is limited to the terms of the accusation. In accordance with continental principles, the court itself conducts the examination of the case at trial by interrogating the accused and witnesses, the hearing of expert evidence, and the examination of documents. The investigation is concluded by oral argument. The accused is allowed to have the last word.

Appeal and review

There is normally a seven days' period for filing an appeal. A full right of appeal is granted to the person standing trial, his defense counsel, the procurator and the victim. Civil plaintiffs and civil defendants have a limited right of appeal. The filing of an appeal suspends the execution of the judgement.

The appellate court consists of three judges. Participation of the person convicted is up to the discretion of the appeal court; if he appears he has the right to be heard. The examination in appeal is not bound by the terms of the appeal. The appellate court may not increase the penalty. Once the possibilities for appeal have been exhausted, the judgment takes legal effect and must be executed. Presently, the execution of the penalties of deprivation of freedom and correctional tasks remains the responsibility of the Ministry of Internal Affairs (police).

However, criminal cases often do not end with the appeal judgement. Russian law provides a special procedure, the so-called supervision proceedings, to put aside judgements which have taken legal effect. The official rationale for these proceedings is the consideration that faulty judgements should not be allowed to stand just because time limit had lapsed. The real reason is that the Russian state cannot accept being bound by its own laws. Although the entire judicial system and personnel administering it (courts, police, procurators and investigators) are under strong governmental control, political requirements could change, and a *correct* judgement might become undesirable at a later moment. In such a case, supervision proceedings offered a convenient way out.

Supervision proceedings can only be initiated by court presidents and procurators of certain rank. The proceedings themselves are quite similar to those prescribed by ordinary appeals. Unlike the latter, supervision proceedings are not limited to a single opportunity; it is possible to pursue them upwards through several instances right up to the Russian Federation Supreme Court.

Prepared by Peter Roudik
Legal Specialist
Eastern Law Division
Law Library of Congress
November 1997