

# The New Russian Code of Criminal Procedure: The Next Step on the Path of Russia's Democratization

VICTOR V. FILIPPOV

**R**ussian legislation in the field of criminal procedure has recently undergone changes aimed at strengthening the rights and liberties of Russian citizens. Implemented 1 July 2002, the new Code of Criminal Procedure contains innovations that distinguish it from the previous code, adopted in the 1960s, but that have given rise to controversy and debate among lawyers, prosecutors, investigators, and judges. Some practitioners have called the new code a “revolution in the Russian system of justice.”

For several decades, the communist regime used the criminal code to apprehend and arrest both ordinary criminals and persons who did not agree with the policies and practices of the Soviet regime, so-called dissenters or dissidents. The Russian Criminal Code contained special statutes mandating punishments for dissidents who “undermined the government” or “defiled the Soviet social order” by spreading information critical of the Soviet regime. For example, statutes on anti-Soviet agitation and propaganda directed that “anticommunists” and “enemies of the communist regime” could be imprisoned for anywhere from six months to ten years.<sup>1</sup>

## **Commencement of Prosecution (Opening of a Criminal Case)**

Under the new code, investigators of law-enforcement branches such as the police, FSB (Federal Security Service), Tax Police, Customs, Border Guard, and Procuracy have the authority to open a criminal case, subject to the procurator's later approval.<sup>2</sup> Previously, criminal cases could be commenced only with a prosecutor's consent. After a prosecutor deemed the case worthy of investigation, police investigators would do the groundwork, collecting evidence and building the case, while the prosecutor supervised. This system created a lot of tension between

---

Victor V. Filippov is a senior lecturer in criminology at the Khabarovsk Academy of State Service, in Khabarovsk, Russia. A retired MVD colonel, he spent eight years investigating international organized crime cases.

investigators and prosecutors because, in the investigator's view, prosecutors would periodically look over the case materials, interrupt the course of the investigation, and demand certain things of the investigators. Under the new code, prosecutors are required to study all of the documents related to the criminal case and to work directly with the investigators on a day-to-day basis. Under Article 146 (4) of the code, the procurator must still approve the initiation of the criminal case.

Even the new code, however, cannot put an end to corruption within law enforcement agencies. There are still many instances when criminal groups blackmail corrupt officers and investigators to initiate cases against their business competitors. For example, an investigator may open a case against a "disagreeable businessman" using false documents or evidence. The businessman may be arrested and all his commercial documents seized. Not only does the criminal case severely disrupt the business's operations, but bad publicity harms its image. Therefore, the criminal investigation alone can be enough to bring about the demise of a business. In other instances, corrupted investigators and officers threaten the accused and demand money in exchange for closing the case against them. Normally, the accused will agree, and the bribe takers receive their cash.

#### **Arrests, Private Correspondence, and Telephone Conversations**

For many decades in the Soviet Union and today in Russia, prosecutors have had the authority to arrest suspects, give permission for a person to be arrested, read private correspondence, and tap telephone conversations. Under the old code, in most cases arresting a suspect consisted of two stages. First, at the beginning of an investigation an investigator could hold the suspect for seventy-two hours in a guarded cell. In the Soviet era, if the prosecutor sanctioned the arrest, the suspect was placed in a pretrial detention center, where he could remain for months and sometimes years. The length of his stay would depend on the course of the investigation and the date of his trial. Often innocent people were arrested, but these procedures were acceptable to state law-enforcement and police systems.

Today the situation has changed significantly. Under the new code, the investigator and the procurator must obtain a judicial warrant for arrest. According to Article 92 (3), the investigator must inform the procurator within twelve hours of the apprehension, and then the judge takes over. The new Russian legislation dictates that a judge is a neutral arbiter, fully independent of the state's influence and authority. The prosecutor or the investigator must ask the permission of the court to make an arrest. At a special session where a prosecutor, the investigator, and the suspect are present, the judge hears from each participant and decides whether to allow the arrest or not. Under Article 94, the judge must decide on detention of the suspect within forty-eight hours from the time he/she is taken into custody. At the special session, the suspect may plead his innocence and explain any extenuating circumstances.

The judge is also important in deciding whether the opening of private correspondence and the tapping of telephone conversations will further an investigation and provide evidence. Earlier, investigators performed those tasks with the permission of a prosecutor. According to Article 185 of the new Criminal

Code, permission to perform telephone and mail interception is granted only by a judge, who must look through all the documents of the case before deciding. This helps to protect the citizen's privacy. In Khabarovsk, criminals involved in a series of car thefts were apprehended partly as a result of the judge's granting permission to prosecutors to intercept telegrams that provided information about accomplices.

These essential changes of the Russian legislation have caused considerable controversy and debate among Russian lawyers and have divided them into two camps. On one side, many investigators, prosecutors, and law enforcement officers believe that obtaining a judge's permission is an unnecessary formality that could compromise an investigation. Another group, consisting of scholars, barristers, and lawyers, believes that getting a judge's permission decreases the number of investigative mistakes, including the arrest of innocent victims. Now a judge is central to both the investigation and the protection of individual rights.

### Jury Trials

Jury trials were an important element of justice in Imperial Russia. After the communist revolution of 1917, however, jury trials were abandoned, and the judge, with his assistants, so-called assessors, rendered justice. Assessors were pensioners or were employed elsewhere, but they had equal rights with the judge and could ask questions of the prosecutor, defendant, witnesses, and solicitors during the trial. They discussed with the judge whether there was sufficient evidence of guilt and what kind of sentence would be best.

With respect to the Russian judicial system, one should remember that in the 1930s there were so-called extrajudicial *troika* that judged people and passed sentences, including the death penalty. The *troika* consisted of three individuals: a secretary of the local communist organization (CPSU), a prosecutor (Procuracy), and a chief of the local secret police (NKVD). Extrajudicial *troika* judged non-conformists, "enemies of the people," and "spies" of the capitalist states. The main purposes of the *troika* were suppression and persecution of dissidents. Fortunately, in the beginning of the 1950s, in the aftermath of Stalin's death, the *troika* were abolished. Then the judge and two assessors tried cases and passed sentences. The judge was, as a rule, a member of the Communist Party. He was periodically called to the local party cell for advice and directions, and in many instances he followed the instructions of local authorities and the secretary of the local communist cell on passing "necessary" sentences. The Soviet system of justice was founded on communist ideology. The defendant had few rights and no means of defending himself against lawlessness and arbitrariness.

The adoption of jury trials in Russia is an extremely important step toward democratization and defense of human rights. In the mid-1990s, jury trials were organized as an experiment in nine regions of the Russian Federation; they became mandatory in all sixty-nine additional regions of the Russian Federation on 1 January 2003. Under the new Code of Criminal Procedure, the jury can try cases on "heinous" crimes, such as murder, kidnapping, rape, child trafficking, and terrorism.<sup>3</sup> The jury consists of twelve residents of the area in which the trial

is taking place. Their duties and rights include questioning persons during a session and discussing a verdict in a jury room. If they return a verdict of guilty to the defendant, the judge must pass a sentence. If they return a verdict of innocent, the defendant is free to go. The defendant and his lawyer have considerable opportunities for explaining the defendant's innocence during the trial.

Because jurors are ordinary citizens and do not depend on the local authorities or on the state mechanism, they can evaluate the criminal case and all evidence impartially and independently. Therefore, it is very difficult to falsify evidence being brought to a criminal case. Having jurors render a verdict promotes the principles of equity and justice.

Nonetheless, there is criticism of jury trials. Many investigators and prosecutors maintain that the jurors cannot examine the particularities of a specific criminal case properly because they do not have legal training. These critics suggest that the jurors are likely to draw the "wrong" conclusions about the accused by being either too lenient or too harsh. It is also thought that they can be bribed or blackmailed easily. However, the new code contains preventive measures, such as random selection of all jurors, substitution of the primary juror by a reserve, and so on. This seems to guarantee that the verdict will be fair.

Of course, the new Russian legal procedures are surrounded by numerous organizational problems. For example, how will the jury be formed? Will the jurors go to court voluntarily or will the government regulate their summons? The code does not address all of these practical matters fully.

### **Criminal Counsel**

Under the new code, a defense counsel, relatives of a defendant, or other persons can take part in an investigation or court trial. For example, if the defendant has a friend with juridical education and wants her to be his counsel, he may ask the judge's permission. The counsel can begin to work for the defendant in the following conditions: from the moment of a prejudgment about bringing a person to account as an accused; from the moment a case is opened; from the moment of arrest or apprehension of a person; as prescribed by a psychiatric examination; or from the moment that procedures affect the rights of the defendant.

It is important to note that the code also protects a person from illegal influence. The counsel has several rights. First, he or she can meet with his client privately. Second, he or she can collect evidence. Previously, the counsel could use and examine only the evidence gathered by an investigator. Now the counsel can find her own witnesses, prepare her own arguments and exhibitions, and thereby support her defendant to the extent possible. Third, counsel may invite specialists, or expert witnesses, to participate in the trial. Fourth, counsel may also be present during cross-examination of the client and during any procedural actions. Fifth, counsel may examine and make copies of all documents after the investigation has ended and may issue complaints about the actions of the investigator, prosecutor, judge, or jury involved in the trial.

This short analysis of the Russian Criminal Procedure Code illustrates the steady advancement of Russia in improving its justice system.

**NOTES**

1. The Articles from the Criminal Procedure Code of 1961 that apply to apprehending and punishing dissidents included Articles 70, 72 and 190.

2. Investigators exist within each branch of law enforcement, but there are more investigators in the police (MVD) than in other branches. The police tend to investigate "simple" crimes, whereas investigators within the Procuracy investigate complex, often political crimes involving the corruption of public officials. Moreover, the investigators in the Procuracy tend to be educated in the areas of law and criminology, possess more experience, and are compensated much better than police officers. An investigator in the Procuracy earns the equivalent of about \$500.00 per month, whereas a police investigator earns about \$200.00 per month. This helps explain, in my view, the prevalence of bribery and corruption among police officers in the MVD.

3. Article 31 of the Criminal Procedure Code lists the crimes classified as "heinous." A sentence for heinous crimes is at least ten years or more, and in some cases, life imprisonment or death.