BOND UNIVERSITY
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THESIS

A Critical Analysis of the Extent to which the Personal Civil Rights Recognised in the Constitution of the Russian Federation are Enjoyed under Russian Law.

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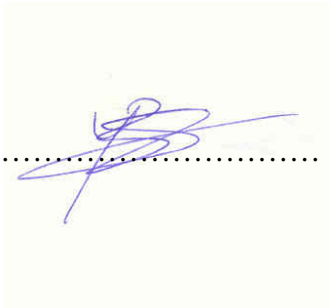
CERTIFICATE

This thesis is submitted to Bond University in fulfilment of the requirements for the Degree of Doctor of Legal Science.

This thesis represents my own work except where due acknowledgment is made, and contains no material which has been previously submitted for a degree or diploma at this University or any other institution.

Signature……  Date: 31 May 2006

SUMMARY

Aims and Scope of Thesis

This thesis examines the *Russian Constitution 1993* and the legislation flowing from it against the background of the former (Soviet) constitutions and international human rights instruments at the beginning of Russia's path towards democratization.

Research for the thesis was conducted over a period of four years (1998 - 2002) during particular political and economic instability in the country following the financial crisis of 17 August 1998.

A review was conducted of Russian laws that aim to protect, what are arguably the most fundamental rights of any democratic constitutional system - civil rights. Unlike political rights (which relate to the system of government), civil rights are the rights to liberty and equality granted to citizens of a country.

The civil rights enumerated in this thesis are known as 'natural' rights, and include the right to life; right to personal inviolability, right to privacy; right to dignity and good reputation; the freedom of information, movement, religion, language and nationality. These rights, are also referred to as 'personal civil rights', which is the term used in this thesis.

The thesis presents a critical analysis of personal civil rights proclaimed in the Russian Constitution, demonstrating that although their articulation accords with international standards, there are obvious problems associated with economic and political factors that limit their enjoyment by Russian people.

Most of the research for this thesis was conducted in Russia, providing a specific insight into the political, social and economic peculiarities (such as enduring totalitarian idiosyncrasies, and a prevailing context of corruption) the full extent of which is difficult to perceive from outside the country. Since, these peculiarities have a direct influence on the administration of justice in Russia, the thesis refers to local literature sources that contain an intimate knowledge of the effect of these factors on Russia's current legal system.

Chapter 1 of the thesis discusses the history and modern understanding of personal rights, as well as relevant parts of the current Russian Constitution, including how these differ from the previous constitutions. Subsequent chapters (2-9) discuss selected personal civil rights, which are particularly important in the context of Russian social, political, economic and legislative

development; namely the rights to life and personal inviolability, privacy, dignity; and the freedom of information, movement, language nationality and religion,. These rights are at the core of any democratic constitutional system as they are essential in securing fundamental human freedoms.

The Conclusion then summarizes the extent to which the personal civil rights proclaimed by the Russian Constitution are enjoyed by Russian people in light of Russia's present political and economic reality. For most of the rights discussed, specific problems are identified and suggestions made as to what measures may be taken in order to overcome them.

CONTENTS

INTRODUCTION

In the course of Russian history, the rights of the individual never held a significant position in either the country's politics or in its legal system; in fact they were openly ignored by the state powers and mainly had a formal character. Before 1917, the state's ideology proclaimed a triune slogan *"Autocracy, Orthodoxy and the Nation"*,[1] the mission of which was the formation of public spirit in accordance with government policy.

In October 1905, Emperor Nicolas II issued a Manifesto[2] providing for a number of civil and political rights. Russian legislation was amended accordingly, with the first section of the *Code of Fundamental State Laws 1906* containing Chapter 8 *"On the rights and obligations of the Russian people"*. It enumerated such rights as the inviolability of the home; freedom of religion; freedom of ideas and speech; the right to assemble peacefully without weapons; the right to choose a place of residence; and the right to leave the country without hindrance.

Although the list of rights was substantial, Russians had little time to enjoy them. Soon after the revolution of October 1917, the interests of the state, the nation and society were officially proclaimed[3] as being higher than those of the individual. The *Declaration of Rights of the Working and Exploited People 1918* stated that "… the proletarian revolution and the interests of the working class have absolute priority". Even though the first Soviet constitution[4] was not silent on the subject of personal rights, the Soviet ideology regarded the individual "as nothing more than a screw in the state mechanism".[5]

The *USSR Constitution 1918* contained provisions that dealt specifically with personal rights; yet, economic, social and cultural rights were viewed with far more importance than personal rights.[6] This meant that instead of protecting personal rights, the Soviet administration sought to

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[1] Until 1917, the slogan appeared in the letterhead text of official government documents.

[2] The October Manifesto *Polnoe sobranie zakonov Rossiiskoi Imperii*, 3rd series, vol. XXV/I, no. 26803.

[3] *The Declaration of Rights of Working and Exploited People*, approved by the 3rd All-Russian Congress of Soviets in January, 1918.

[4] *Constitution of the Russian Soviet Federative Socialist Republic ("**RSFSR**") 1918* (referred to as either the "*RSFSR Constitution 1918* " or the "*USSR Constitution 1918"*, the latter being the reference used in this thesis).

[5] Topornin B.N. *Konstitutsia Rossiskoy Federatsii – Nauchno Praktisheskii Kommentarii* (Constitution of the Russian Federation - Scientific and Practical Commentary), Academic Publ. 1997, p 28.

[6] See chapter 1.5 "Personal Rights in the Soviet Union" below.

control human behaviour and make people follow "the one and only right", that of communist ideology.[7]

History, however, shows that as societies evolve, the issue of personal rights protection is brought increasingly into the public focus.[8] Respect for the individual, acceptance of personal dignity, freedom of thought, speech and behaviour can arguably be considered as the main indicators of a successfully developed modern society. Wherever this idea is closely tied to individuals' responsibility, and is enforceable at law, the result is the type of equilibrium between public discipline and personal autonomy that exists in many democratic societies today.

The path towards personal rights protection in Russia commenced[9] with the *Declaration of Personal Rights 1991*, the provisions of which accorded with the *International Covenant on Economic, Social and Cultural Rights 1976* (the "**ICESCR**")[10] and the *International Covenant on Civil and Political Rights 1976* (the "**ICCPR**").[11]

Consequently, in April 1992, the title of Part II of the *USSR Constitution 1977* was changed from *"The State and the Individual"* to *"Rights and Liberties of Persons and Citizens"*.[12] However, the provisions themselves remained unchanged. The newly titled part was inconsistent with the old spirit of the *USSR Constitution 1977,* and so, in December 1993 a new and revamped constitution (referred to as the "***Russian Constitution***" in this thesis) voted in by referendum, proclaimed[13] the rights of the individual as a fundamental constitutional principle. The *Russian Constitution* recognised that the individual is the source of his/her own freedom, and that the individual exists independently of the state.

However, some Russian commentators[14] note that the effectiveness of personal rights protection in present-day Russia is at a stage that most modern democratic societies experienced in the

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[7] *Ibid.*

[8] Topornin B.N. op cit.

[9] See Report on Congress of People's Deputies and the Supreme Council of the RSFSR, 1991 No. 52, p 1865.

[10] International Covenant on Economic, Social and Cultural Rights G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976.

[11] International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

[12] See Appendix (downloaded from http://www.departments.bucknell.edu/russian/const/constit.html).

[13] Article 17.1 of the *Russian Constitution* 1993.

[14] See Karpov, L. *Rossiia i Pravovoe Gosudarstvo* (Russia and the Legal State), Svobodnaia Mysl (Free Thought) 1992, 9, pp. 21-29; Vengerov, A.B. *Tema 8. Teoreticheskie voprosy rossiiskoi gosudarstvennosti*, Teoriia *gosudarstva i prava. Chast 1.*

eighteenth and nineteenth centuries. In those times, civil and political rights (generally known as 'first generation rights') were given priority in consideration over other rights.[15]

The key to understanding why some personal rights are given priority over other rights in present-day Russia lies in the analysis of Russia's political, economic and legal systems. The previous and current legal regimes, as well as current political and economic factors, as they pertain to personal rights, help to elucidate the effectiveness of constitutional guarantees and protections of specific rights under present Russian legislation.

This thesis examines personal rights under the *Russian Constitution* and under Russian federal legislation in the context of adopted international instruments. These rights include: (a) constitutional limitations on the powers of the Parliament of the Russian Federation (the "**Duma**") and of the Executive, which prevent the enactment of laws or the making of decisions that erode personal rights - since these limitations are entrenched, they are often referred to as 'constitutional guarantees'; (b) federal laws enacted by the Duma that serve to protect personal rights from abuse by anyone who undermines or ignores those rights; for example, legislation against discrimination on grounds of sex, race or age; (c) federal laws that simply recognise personal rights and endeavour to balance those rights with the public interest - this is the bulk of Russian law, such as the criminal code, workplace safety code etc., referred to as 'general rights'; (d) legislation that establishes public infrastructure facilitating the enjoyment of constitutional rights; for example, laws establishing public schools that guarantee the right to education; although, in many instances these rights are not enforceable due to the lack of other necessary factors such as government funding; (e) and international laws that protect personal rights.

This thesis will examine the effectiveness of the above rights in Russia and the problems of their protection in light of Russia's current judicial, political and socio-economic forces.

As civil and political rights are often difficult to classify and even more difficult to assess which are more important than others, this thesis will focus on selected personal rights found in Articles 20-28 of the *Russian Constitution*, which are considered by Russian academics as significant to

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Teoriia gosudarstva, (Topic 8. Theoretical Questions of the Russian State System, Theory of State and Law. Part 1. Theory of State), Pbl. Moscow, 1995. p. 232.

[15] First generation rights were also initially given more emphasis and greater priority than 'second generation rights' (i.e. social, economic and cultural rights) by the international human rights foundation instrument, the *Universal Declaration of Human Rights 1948* General Assembly Resolution 217A (III), U.N. Doc A/810 at 71 (1948), and subsequently, both types of rights were equally embodied by the ICCPR and the ICESCR.

the establishment of fundamental human rights and freedoms in light of Russia's present social, political, economic and legislative development.

This thesis does not discuss other rights such as, political rights (i.e. rights relating to the system of government) and the right of sexual freedom and genetic privacy, since these rights have received little judicial and academic consideration in the relatively short history of Russia's movement towards democracy.

The subject of judicial independence, which is fundamental to the balance of powers and essential for the protection of personal rights, is considered in detail in chapter 1.7.2 of this thesis. Despite being proclaimed by the *Russian Constitution*,[16] judicial independence has not yet been established in the country, due principally to the inadequate funding of the courts, which makes them susceptible to corruption.

The approach adopted in writing this thesis is a critical analysis of the personal civil rights articulated in the *Russian Constitution*, illustrating their consistency with the standards espoused by international human rights instruments, and the problems of their protection in light of the shortcomings in Russian legislation and judicial system. This approach reveals the disparity between the proclamation of personal civil rights by the *Russian Constitution* and the limited enjoyment of these rights by Russian people.

The thesis concludes that the mechanisms for protecting personal civil rights in Russia are still in their formative stages and in many ways imperfect. Moreover, suggestions are made as to the possible measures, which can be taken to improve the enjoyment level of personal civil rights.

A significant part of the research for this thesis was undertaken in Russia over a period of four years (1998 - 2002). The thesis, therefore, provides an overview of the state of personal rights enjoyment in a nation that has recently[17] begun a process of democratization.

The thesis provides an insight into local political and socio-economic peculiarities (such as, the enduring totalitarian idiosyncrasies and the prevailing force of corruption), the full extent of which is difficult to perceive from outside the country. These peculiarities have a direct influence on the development of Russia's legal system; therefore, some of the research for this

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[16] Articles 118-122.

[17] The process towards the liberalization of political life was initiated by the communist party plenary meeting of January 1987, following introduction of new policies by Mr. Gorbatshov in 1985. However, the communist power, while stimulating the liberalization of the political system failed in its democratisation strategies leading to the coup d`État in August 1991, which marked the start of the current era of Russian democratisation.

thesis focused on the commentary of local academics and journalists, procured from Moscow's public and university libraries.

Given that a substantial part of the literature cited in the thesis originated in Russia, a problem arises concerning the citation of academic sources that may be unknown to non-Russian speaking audiences. However, the thesis must draw on the most accurate and legitimate information irrespective of its origin or language. Therefore, in an attempt to familiarize the non-Russian speaking audience with Russian commentators, the thesis contains a separate section (Appendix 2) that presents academic profiles of the main commentators that are cited.

1. PERSONAL RIGHTS

1.1 Historical Origins

The modern idea of human rights is a direct descendent of natural rights.[18] The idea of a human right, as a right that is natural, comes from the notion that human rights are conceived as moral entitlements that human beings possess in their natural capacity as humans, and not due to any special arrangement into which they have entered or any particular system of law under whose jurisdiction they fall.[19] Therefore, the establishment and development of human rights relates closely to the theory of natural law.

The historical origins of natural law can be traced back to the works of Aristotle,[20] in whose view, humans are distinguished by their capacity to reason and to exercise rational choices that provide the foundations for human well-being and 'good politics'.[21] Aristotle's work can be viewed as the beginning of the development of individual rights theories based on appeals to human nature.[22]

In Ancient Greece, the Stoics developed Aristotle's ideas on the exercise of rational capacities, and formulated the 'distinctive claim' of natural law theories; that is, the claim that natural law is the law of human nature. It was in this form that the idea of natural law was transmitted to the Roman and Medieval worlds.[23]

The idea of natural law was central to philosophical and theological debates during the Medieval period. Tuck[24], who surveyed the development of rights in that period, notes that important debates over the meaning of property rights (i.e. 'dominium') took place from the twelfth century onwards. He states:

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[18] Jones, P. (1991). Human Rights. The Blackwell Encyclopedia of Political Thought. D. Miller, J. Coleman, W. Connolly and A. Ryan. Oxford, Blackwell. First published 1987.

[19] Ibid.

[20] Aristotle ([350 BC] 1995). Politics: Translated by Ernest Barker. Revised with an Introduction and Notes by R.F. Stalley. Oxford, Oxford University Press; Aristotle ([c.330 B.C.] 1998). The Nicomachean Ethics: Translated with an Introduction by David Ross. Revised by J.L. Ackrill and J.O. Urmson. Oxford, Oxford University Press.

[21] Aristotle ([c.330 B.C.] 1998). The Nicomachean Ethics: Translated with an Introduction by David Ross. Revised by J.L. Ackrill and J.O. Urmson. Oxford, Oxford University Press.

[22] Miller, F.D., (1995). Nature, Justice and Rights in Aristotle's Politics . Oxford: Clarendon Press. p. 87-139.

[23] Buckle, S. (1993). Natural Law. A Companion to Ethics. P. Singer. Oxford, Blackwell. First published 1991.

[24] Tuck, R.. (1979). Natural Rights Theories: Their Origin and Development. Cambridge, Cambridge University Press.

> *" …men, were considered purely as isolated individuals, they had control over their lives which could correctly be described as dominium or property. It was not a phenomenon of social intercourse, still less of civil law: it was a basic fact about human beings, on which their social and political relationships had to be posited".*[25]

In response to these debates, the modern theory of human rights began to emerge.[26]

Development of human rights was influenced by major political events, particularly those of the 17th and 18th century. For example, the Glorious Revolution in England and the Bourgeois Revolution in Holland, brought about the philosophical and political thinking that form the basis of modern human rights.[27]

In the 17th century, Hobbes revolutionized the idea of human rights by taking the concept out of the theological context. Divorcing theology from human rights, he argued that everyone had a natural right to freely pursue their self-interest, though attainment of self-interest might be impeded by others. He argued that people have an inalienable liberty, power, or right to do what they in any case seek to do by their nature. However, in nature, there is no law to regulate the pursuit of self-interest or to give assurance of security that people seek. A claim to exist, or be secure in one's possessions, is not automatically justified. If everyone sought their own survival without regard for the interests of others, people would be living in a state of constant war. Therefore, according to Hobbes, individual rights are limited by one's desire for survival.[28]

Unlike Hobbes, Grotius defined human rights according to the 'social' nature of human beings. He argued that because of our natural need for social interaction, we tend to respect other's property, and fulfill our obligations and promises.[29]

Locke also defined human rights in terms of nature. He stated that:

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[25] Ibid.

[26] Ockham - Villey - Opus Nonaginta Dierum

[27] Martishin O. V. *The history of political study* 2nd Ed. 1996. p. 33.

[28] Hobbes T. Leviathan. Part 2. Chapter 17.

[29] Grotius H. De Juri belli et pads (1624). Preliminary Discourse.

> *" …men being… by nature all free, equal, and independent, no one can be put out of this estate and subjected to the political power of another without his own consent."* [30]

Individuals are endowed with natural rights to life, liberty and property. These natural rights are protected by "a law of nature ... which obliges everyone", and according to which "no one ought to harm another in his life, health, liberty or possessions". No one has the right to "take away or impair the life, or what tends to the preservation of the life, liberty, health, limb, or goods of another".[31]

In addition, Locke provided qualified support for the principles of liberty of conscience and religious tolerance. He argued that individuals have an "absolute and universal right to toleration" in matters of religious worship.[32] Given the proposition that the function of government is to protect and promote individual rights, Locke argued that, with certain notable exceptions, matters of individual conscience, faith and religion should be regarded beyond the legitimate jurisdiction of the state.

Another significant contribution to the development and understanding of human rights was provided by Kant, who stated that individuals are free in the sense that they are not forced to act in accordance with their personal desires, happiness or self-interest. They can act autonomously, in accordance with principles of reason.[33]

The second formulation of Kant's 'categorical imperative' states:

> *"Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end".*[34]

This formulation implies that no individual ought to be treated arbitrarily, as a means to an end. Individuals are intrinsically valuable, and the dignity and worth of all humans must be respected.

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[30] Locke, J. ([1689/90] 1947). Two Treatises of Government. T. I. Cook. New York, Hafner Press.

[31] Ibid.

[32] Locke, J. ([1667] 1993a). An Essay Concerning Toleration. Political Writings. D. Wootton. London, Penguin Books.

[33] Kant, I. ([1785] 1991). Groundwork of the Metaphysics of Morals. The Moral Law. H. J. Paton. London, Routledge. First Published 1948.

[34] Kant, I. ([1795] 1983). To Perpetual Peace: A Philosophical Sketch. Perpetual Peace and other essays on Politics, History, and Morals. Translated, with Introduction, by Ted Humphrey. Indianapolis., Hackett Publishing Company.

The realm of individual liberty for Kant was the notion of respect and equality to the similar liberty of others, constrained only by the enforcement of such rights by a sovereign state.

According to Kant, the social and legal institutionalization of human rights complements the moral enforcement by conscience:

> *"[s]ince only in such a society, which offers the maximum of freedom (with an implied general antagonism of its members), and which shall have determined with the maximum of precision and guarantee the limits of this freedom so it is compatible with the freedom of others – since only in such a society can nature realize within humanity its supreme intention of developing all humanity's aptitudes, nature also intends that humanity realize this design by itself…"* [35]

The principle that individuals have intrinsic value and worth are at the heart of contemporary theories of the inviolability of human rights. Indeed, Kant's theories are often cited as the reason for the inclusion of the term 'dignity' in the Preamble to the *Universal Declaration of Human Rights*.[36]

The emphasis of contemporary human rights theories on the individual as a basic unit of society is, however, absent from some 'traditional' societies. For example, Wilson[37] suggests that the concept of an individual 'human being' may be incomprehensible in some cultural contexts, and points out that American-Indian languages such as Navajo and Hopi construct the concept of 'humanness' as belonging solely to those within the boundaries of the community. Outsiders are perceived to be non-human to a certain degree.

Therefore, some commentators propose that human rights are culturally specific and historically contingent. For example, for Pollis and Schwab,[38] the dominant idea of human rights is that they are "a Western construct with limited applicability".[39] However, despite the great diversity of

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[35] Kant, I. ([1785] 1991). *Groundwork of the Metaphysics of Morals.* The Moral Law. H. J. Paton. London, Routledge. First Published 1948., Proposition .5.

[36] Vizard P. *Antecedents of the idea of human rights: A survey of perspectives,* United Nations Human Development Report 2000.

[37] Wilson, R. A., Ed. (1997). *Human Rights, Culture and Context: Anthropological Perspectives.* London, Pluto Press.

[38] Pollis, A. and P. Schwab (1979). Human Rights: *A Western Construct with Limited Applicability. Human Rights: Cultural and Ideological Perspectives.* A. Pollis, and Schwab, P. New York, Praeger.

[39] Ibid.

religious, cultural and ethical beliefs, a sufficient similarity of expressions of 'humanity' among the different cultures has been identified to justify the term 'human rights'.[40]

Not all philosophers have agreed that human rights can be analysed and defined completely. White, for example, argued that the task of analysing rights is impossible because the concept of a right is as basic as, for example, that of duty, liberty, and power, which themselves can be analysed by reference to a right. White's approach, however, has remained something of a minority one.[41]

Other approaches in defining human rights differ between those who think that 'rights' are the counterpart of notions such as duty, liberty or power, (i.e. a right is not a duty, liberty or power) and those who think that rights are fundamental to these notions (e.g. rights, liberties and powers are essentially the same thing). Bentham,[42] Hohfeld,[43] and Kelsen[44] appear to have adhered to the former view and more recent writers, such as MacCormick,[45] Raz,[46] Wellman,[47] Nozick,[48] and Rawls[49] take the latter. The latter view implies that the force of a right is not necessarily exhausted by any existing set of duties that follow from it.[50]

Hohfeld's system of 'interrelated concepts' argued that the analysis of legal issues is frequently incongruent because legal concepts are improperly understood. For him, a right and a duty are correlative concepts (i.e. one must always be matched by the other). For example, an individual would be considered to have total liberty if no other person has the power to prevent any given act of that individual. According to Hohfeld, power means the capacity to create legal

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[40] Ibid.

[41] White, Alan R. (1984). Rights, Oxford: Basil Blackwell.

[42] Bentham, Jeremy (1970 [1782]). *Of Laws in General*, ed Hart, HLA, London: Athlone Press. (Many of Bentham's other numerous, but scattered, discussions of rights are referred to in Hart (1973).)

[43] Hohfeld, Wesley Newcombe (1919). *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, ed Cooke, WW, New Haven: Yale University Press.

[44] Kelsen, Hans (1946). *General Theory of Law and State*, trs Wedberg, A, Cambridge, Mass: Harvard University Press.

[45] MacCormick, Neil (1977). Rights in Legislation, in Hacker, PMS & Raz, J, eds, *Law, Morality and Society: Essays in Honour of HLA Hart*, Oxford: Clarendon Press, 189.

[46] Raz, Joseph (1984a). The Nature of Rights, (1984) 93 Mind 194; reprinted in his *The Morality of Freedom*, Oxford: Clarendon Press, 1986, 165.

[47] Wellman, Carl (1985). A Theory of Rights, Totowa, NJ: Rowman & Allanheld.

[48] Nozick, Robert. Anarchy, State, and Utopia, Basic Books. 1974.

[49] Rawls, A Theory of Justice (Revised edition, Cambridge, Massachusetts: Belknap Press, 1999).

[50] Stanford Encyclopedia of Philosophy

relationships and to create rights and liabilities. The correlative of power is liability. The legal opposite of liability is immunity. Hence, the words 'liberty', 'power', or 'immunity', which are often used to describe a 'right' are clearly distinguished by Hohfeld.[51]

For Hohfeld, the rights we enjoy reflect the duties we owe as citizens and that these duties have a moral, if not legal, priority over rights. This mode of thinking was reflected in the Australian Government's proposal to rename Human Rights and Equal Opportunities Commission as the Human Rights and Responsibilities Commission.[52]

In contrast, Nozick[53] offered a model of a 'minimal state theory', described as 'libertarianism'. He argued that no state is ever justified in offering anything more than the minimal of state functions and further, that whatever might exist by way of rights exists only in the negative sense of those actions not yet prohibited.

Nozick, therefore, believed that there are no positive civil rights, only rights to property and the right of autonomy. For him, a just society does as much as possible to protect everyone's independence and freedom to take any action for their own benefit.

Rawls[54] on the other hand, developed a model of a different form of a just society, which relied on the 'liberty principle' providing that citizens require minimal civil and legal rights to protect themselves; and the 'difference principle' which states that every citizen would want to live in a society where improving the condition of the poorest is the main priority.

For Rawls, a right is an 'entitlement or justified claim on others' that comprises both negative and positive obligations; that is, others must not harm anyone (negative obligation), while surrendering a proportion of their earnings through taxation for the benefit of low-income earners (positive obligation).

The difference between Rawls and Nozick is that Rawls thought that a state should always provide the fundamentals of physical existence; whereas Nozick gave no guarantee other than an individual always had the freedom to pursue his or her interests.

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[51] Hohfeld, W. N. *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, ed. by W.W. Cook (1919); reprint, New Haven, CT: Yale University Press, 1964.

[52] Charlesworth H. *Australia and the protection of human rights*. University of New South Wales Press. 2002.

[53] Nozick R. Anarchy, State, and Utopia, Basic Books. 1974.

[54] John Rawls, *A Theory of Justice* (Revised edition, Cambridge, Massachusetts: Belknap Press, 1999).

The above arguments laid the foundations for the development of the modern idea of personal rights.[55]

1.2 Modern Understanding of Personal Rights

Today, personal rights are generally understood as those rights appertaining to the person such as the rights of a personal security, personal liberty, and private property.

For example, in the United States of America,[56] personal rights include the right of free expression and action; the right to enter into contracts, own property, and initiate lawsuits; the rights of due process and equal protection of the laws; opportunities in education and work; the freedom to live, travel, and use public facilities; and the right to participate in the democratic political system.

Personal rights are also commonly referred to as ‘human rights’, ‘citizens` rights’, ‘constitutional rights’, ‘civil liberties’, and ‘civil rights’.

The term 'civil rights' is often used synonymously with ‘civil liberties’, even though jurisprudence makes a distinction between a right and liberty.[57] The root of the word 'civil' reflects the association between rights and 'citizenship' to the extent that civil rights attached to people by virtue of their citizenship of a particular state.[58]

However, the modern understanding of the term ‘personal rights’ does not limit a particular right to the citizenship of a state, but reflects the concept of inalienable rights that all human beings can claim. The extent to which a state decides to give a particular right legal enforcement is ultimately determined by the balance struck between the competing interests within a society.

The term ‘human rights’ is more commonly used in the context of international law, the supranational systems of law that may or may not have direct effect in sovereign states depending on the treaties signed by each state and the nature of their legal systems.[59]

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[55] Butler C. *The reducibility of ethics to human rights.* Dialogue and universalism.1995. № 7. p. 34.

[56] Bill of Rights: Amendments 1-10 of the Constitution of the USA.

[57] See Hohfeld above.

[58] Mediaeval European states limited access to the status of citizenship and the civil rights associated with it. This practice of dividing societies by reference to class or caste associated privilege with the upper layers of society. See Stanford Encyclopedia of Philosophy.

[59] See generally Butler C. op cit

However, following the enactment of the *Universal Declaration of Human Rights 1948* (the "**UDHR**")[60], and coming into force of the first human rights treaties, the *International Covenant on Civil and Political Rights 1976* and the *International Covenant on Economic, Social and Cultural Rights 1976*, the traditional notions of basic human rights of individuals (for example, right to life, to personal liberty with respect to speech, association and conscience, and freedom from arbitrary violence) can also, according to Schnapper[61] and Laksiri,[62] be referred collectively to as 'citizenship rights'.

1.3 The Meaning of Personal Rights in Russia

In Russia, as in English speaking countries, there is a variety of terminology used in describing personal rights, which is evident from the title of Chapter 2 of the *Russian Constitution* "Rights and Liberties of Person and Citizen". However, according to leading Russian commentators,[63] personal rights display the following key characteristics: they must be (a) essential, that is, they are vital and of the greatest social importance for the individual, society and the state, and protect the basic values and interests of the individual; (b) common to everyone without exception (including non-citizens and prisoners),[64] regardless of sex, race, nationality, language, property, official status, place of residence, religion, personal convictions or membership of public associations, (c) legally effective throughout the Russian Federation; (d) inalienable and belong to everyone from the time of birth;[65] (e) acknowledged in accordance with the universally adopted standards (such as the 'presumption of innocence' provided by universally accepted conventions)[66] of international law;[67] (f) constitutionally guaranteed, that is, no governmental

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[60] Universal Declaration of Human Rights 1948 General Assembly Resolution 217A (III), U.N. Doc A/810 at 71 (1948).

[61] Schnapper, 1997

[62] Jayasuriya, Laksiri. ""Taking rights seriously' in Australia" Dialogue , 21:3 , 2002 , 14-24

[63] See Voevodin, L.D. *Juridicheskij Status Lichnosti v Rossii*, (Legal Status of a Person in Russia) Pbl. Moscow 1997.; Strekozov, V.G. & Kazanchev, I.D. *Gosudarstvennoe (Konstitutsionnoe) Pravo Rossii* (State (Constitutional) Law of Russia), Pbl. Moscow 1995.

[64] See Article 55(1) of the Russian Constitution.

[65] Article 17(2) of the *Russian Constitution 1993*; also see Article 55(2), which states "no laws denying or belittling human and civil rights and liberties may be issued". NB: subject to the exceptions contained in Article 55(3).

[66] For example, Article 14 (2) of the International Covenant on Civil and Political Rights.

[67] Article 17(1).

branch, body or official may adopt any legal act or regulation that contradicts constitutional guarantees;[68] and (g) limited only by federal law.

Given the above, Veovodin[69] provides the most commonly accepted[70] definition of personal rights in Russia today:

> *"Personal rights are the opportunities, set in the constitution and guaranteed by the state, that allow individuals to freely and independently select their own behaviour, construct and use their procured benefits in accordance with their personal and social interests."*

1.4 Classification of Personal Rights

There are numerous ways to classify personal rights. The most widely used approach is to categorize personal rights according to three generations of rights. The 'first generation' includes rights such as freedom of speech, freedom of religion, freedom of thought, the right to life, equality before the law, and the right to a fair trial. According to Berlin[71], these rights are essentially civil liberties, which "denote an absence of interference in the exercise of these rights"; in this sense, they are 'negative rights'.

The 'second generation' of rights covers social, commercial, and cultural aspects, which provide for social justice and human welfare. These include such rights as social benefits, access to education, and work. Berlin refers to these rights as 'positive rights'.[72]

The 'third generation' of rights are international collective rights that were formulated after World War II and include such rights as the right to peace, environmental rights, and freedom from nuclear threats.[73]

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[68] See section 96 of the Federal law *On the Constitutional Court of the Russian Federation*, July 21, 1994 № 1-ФКЗ according to which citizens whose rights and liberties have been infringed by a law adopted (or to be adopted) in a particular case, and organizations of citizens, have the right to take an individual or collective complaint regarding infringement of constitutional rights and liberties to the Constitutional Court.

[69] Voevodin, L.D. *Juridicheskij Status Lichnosti v Rossii*, (Legal Status of a Person in Russia) Pbl. Moscow 1997, p 35.

[70] See Strekozov, V.G. & Kazanchev, I.D. *Gosudarstvennoe (Konstitutsionnoe) Pravo Rossii* (State (Constitutional) Law of Russia), Pbl. Moscow 1995, pp. 124-128; Baglai M.V. *Konstitustionnoe Pravo Rossiiskoi Federastii* (Constitutional Law of the Russian Federation), Pbl. Moscow 1999, pp. 164, 175

[71] Berlin I. Four Essays on Liberty. Oxford: Oxford University Press. 1969.

[72] Ibid.

Although the above classifications are recognized in Russia,[74] according to Veovodin,[75] personal rights and duties of individuals can also be divided into three categories: 1. personal safety and security in private life; 2. government and political life[76]; and 3. social and cultural life.[77]

Veovodin considers the first group of rights as the "pillars of modern societies" being the "essential and inalienable rights of individuals' the establishment of which is fundamental to the current state of social, political and economic development in Russia."[78] These include the rights set out in Articles 20-28[79] of the *Russian Constitution*, otherwise known in Russia as the 'civil component of personal rights' ("**personal civil rights**"). These are: right to life;[80] protection of personal human dignity by the state;[81] right to freedom and personal inviolability;[82] right to privacy;[83] protection of honour and good name;[84] right to privacy of correspondence, telephone, post, telegraph and other messages;[85] freedom of information;[86] inviolability of the home;[87] right to determine and indicate one's nationality;[88] freedom of choice of the language of communication, upbringing, education and creative work;[89] freedom of travel and choice of stay

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[73] Ibid.

[74] Voevodin, L.D. *Iuridicheskij status lichnosti v Rossii,* (Legal Status of Person in Russia)*,* Moscow Press 1997: 43

[75] Ibid.

[76] This group covers rights that belong to citizens of a particular state; these are, for example, freedom of speech, freedom of information, the right of free and fair election, and the right to a fair trial.

[77] This group provides for both material and moral aspects of individuals' life and includes *inter alia* the right to own property, the freedom to conduct commercial activity, the right to education, the right to artistic freedom, and the right to healthcare and clean environment.

[78] See Voevodin, L.D. op cit at 44

[79] See Appendix.

[80] Article 20(1).

[81] Article 21(1).

[82] Article 22(1).

[83] Article 23(1).

[84] Article 23(1).

[85] Article 23(2).

[86] Article 24(2).

[87] Article 25.

[88] Article 26.

[89] Article 26.

and residence;[90] right to leave the Russian Federation;[91] right of Russian citizens to return to the Russian Federation freely;[92] and freedom of religion.[93]

There is some dissention over Veovodin's classification among Russian academics, which raises the question of whether the list of rights contained in Articles 20-28 of the *Russian Constitution* is exhaustive. For example, Pyatkina[94] adds to the category of personal civil rights, the right of presumption of innocence; the right of access to a court; and the right of refuting illegally obtained evidence. Ivanets[95] adds the right to an ecologically safe environment and the right to reliable information, whereas Lukasheva[96] excludes all rights from the category of personal civil rights other than the right to private ownership and the right to protection of the family.

However, the above dissention has no direct bearing on the level of enjoyment of these rights by Russian people. Moreover, since Veovodin's emphasis on the importance of his first category of rights, has been accepted by most Russian academics,[97] the discussion contained in this thesis will focus predominantly on the 'personal civil rights' as listed in Articles 20-28 of the *Russian Constitution*.

1.5 Personal Rights in the Soviet Union

Although, the *USSR Constitution 1918* and the *USSR Constitution 1936* contained personal rights provisions,[98] the government eroded citizens' personal rights by performing illegal arrests, searches, and confiscation of property, which limited individuals' personal lives.[99] Such government action was possible due to an absence of independent judicial control of government

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[90] Article 27(1).

[91] Article 27(2).

[92] Article 27(2).

[93] Article 28.

[94] Piatkina, S. *Kommentarii k Konstitutsii Rossiskoy Federatsii* (Commentry to the Constitution of the Russian Federation) Pbl. Moscow, 1994, p 54

[95] Ivanets, G.I. *Prava i svobody cheloveka i grazhdanina; Konstitutsiia v voprosakh i otvetakh* (Rights and Freedoms of Man and Citizen; Constitution in Questions and Answers, Pbl. Moscow 1997, p. 33.

[96] Lukasheva, E.A. Prava cheloveka: poniatie, sushchnost, struktura; Obshchaia teoriia prav cheloveka (Human Rights: Definition, Essence, Structure; General Theory of Human Rights), Pbl. Moscow 1996, pp 43-44.

[97] See Strekozov, V.G. & Kazanchev, I.D. *Gosudarstvennoe (Konstitutsionnoe) Pravo Rossii* (State (Constitutional) Law of Russia), Pbl. Moscow 1995, pp. 124-128; Baglai M.V. *Konstitustionnoe Pravo Rossiiskoi Federastii* (Constitutional Law of the Russian Federation), Pbl. Moscow 1999, pp. 164, 175

[98] See Articles 13-18 of the *USSR Constitution 1918* and Articles 118 to 133 of the *USSR Constitution 1936*

[99] See Voevodin, *Op cit* at 30.

administrative agencies.[100] All judicial bodies at the time were subject to absolute compliance with policies of the Soviet party.

Therefore, these personal rights provisions were merely declarative in nature. As a result, many innocent individuals were sent (without investigation or due process) to either psychiatric institutions or to work camps where their labour was used for 'socialist construction'.[101]

The totalitarian regime destroyed such rights as personal inviolability and safety, and fair hearing in court. In fact, the entire scope of personal rights was considered to be of secondary importance in the hierarchy of human rights. Instead, according to Article 131 of the *USSR Constitution 1936,* socio-economic rights[102] were considered to be of primary importance:

> *"It is the duty of every citizen of the USSR to safeguard and strengthen public, socialist property as the sacred and inviolable foundation of the Soviet system, as the source of the wealth and might of the country, as the source of the prosperous and cultured life of all the working people."*[103]

In March 1936, in time for the adoption of *his* constitution, Stalin explained[104] his view of personal rights in light of socialism. Rejecting the notion that a totalitarian regime could deny personal rights or freedoms, he stated:

> *"…we built this society not in order to limit personal freedom, but to let a person feel himself really free. We built it for real personal freedom, without quotation marks... Real freedom exists only where exploitation is eliminated, where people do not oppress other people, where there is no unemployment and poverty; where a person does not tremble in fear that he might lose his job, housing, or food tomorrow. Only in such a society is true personal or other freedom possible, rather than one on paper".*

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[100] Ibid.

[101] Ibid.

[102] Social policy directives (as opposed to real personal rights) e.g. labour, leisure, old age pension, illness/disability pension, and education.

[103] Article 131 of the *USSR Constitution 1936*

[104] See Voevodin, *Op cit* at 30, Stalin quotes Engels' "Progress of Social Reform on the Continent," *The New Moral World,* 4-11-1843.

Subsequently, owing to evolution of Russian society,[105] which led to a new consideration of the individual, the *USSR Constitution 1977* reflected a two-sided nature of the government's attitudes towards personal rights. The constitution retained the socio-economic elements of the totalitarian regime created by Stalin (i.e. the hierarchy of rights) but at the same time enlarged the list of personal rights.[106]

The process of democratisation that followed in the 1980s further increased the importance of individuals' rights. Subsequently, in debates over the construction of the *Russian Constitution*, the following argument was predominantly relied upon:[107]

> *"The source of every right lies in a person, as only a person is a real, free and responsible creature. The best way to guarantee this development is to let a person direct it at their own discretion and at their own risk, provided that the rights of other persons are not violated. The main purpose of different freedoms that form personal rights is to ensure this development".*

Nowadays, the personal civil rights contained in the *Russian Constitution* are comparable to the rights proclaimed in major international human rights instruments.[108] However, Russia is still in the early stages of becoming a law-abiding nation that adheres to international legal standards. Influences of a tortuous Soviet bureaucratic system, continue to undermine the enjoyment of personal rights by promoting corruption among politicians and public servants (see detailed discussions in later chapters), and in turn compromising the interests of individuals.

1.6 Soviet influence on Corporate Rights

The *Russian Constitution* makes no express reference to rights of corporate entities. This is because during Soviet times, there were no private legal entities, and the conduct of private commercial activity was contrary to communist ideology.

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[105] That is, improvement in communications as a result of the growth in information technology, which lead to development of public infrastructure and improvement of living standards;

[106] See Chapter 7 of the *USSR Constitution 1977,* "The basic Rights, Freedoms, and Duties of Citizens of the USSR", Articles 39 to 69.

[107] See Voevodin, *Op cit* at 192.

[108] For example, the *Universal Declaration of Human Rights* GA res. 217A (III), UN Doc A/810 at 71 (1948).

In 1993, when the *Russian Constitution* came into force, the law regulating Russian legal entities had not yet been enacted.[109] Therefore, it was unnecessary to include provisions in the *Russian Constitution* for the protection of entities that did not exist.

However, as in all modern societies, the existence of corporate entities in present-day Russia is integral to the function of its economy and society.[110] Hence, it is argued[111] that corporate entities in Russia must have the same rights as human beings, and should be able, therefore, to claim a breach of their rights.

In the United States, for example, personal rights claims by corporations have been successfully brought before the courts for over one hundred years. In the *Kentucky Railroad Tax Cases (1885)*[112] an assertion was made that taxes violated a railroad's due process rights, and that corporations are persons under the Fourteenth Amendment. The corporate legal campaign to gain 'personhood' status succeeded when the report of the opinion in *Santa Clara County v. Southern Pacific. R.R.*[113] contained a statement purportedly made by Chief Justice Waite before oral argument that:

> *"(t)he court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does."*

However, the question of corporate rights protection is very new to Russia, and currently there are no laws to facilitate a claim of corporate rights breaches. Consequently, there have not been cases brought before Russian courts concerning the issue of corporate rights.

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[109] The Civil Code of the Russian Fedearion which came into force in 1996.

[110] Fogelson, Y.B. *Konstitutionaya Zaschita prav yuridicheskih lits* (On the Constitutional Defence of the Rights of Legal Entities), Gosudarstvo i pravo, 1996, No 6, pp 39-40.

[111] Ibid.

[112] Cincinnati, N O & T P R CO V. Com. Of Kentucky, 115 U.S. 321 (1885)

[113] Santa Clara County v. Southern Pac. R. Co., 118 US 394 (1886)

1.7 Protection of Personal Rights

The notion of rights 'protection' refers to the instrument or process implemented by the government or by international bodies[114] for the purpose of defending and or enforcing rights. For example, legal protection can be implemented either through mechanisms established by legislation or by activities of constitutionally authorized agencies[115] and through officials[116] specifically appointed for the protection of rights.

Some of the mechanisms provided in the *Russian Constitution* for protection of personal rights include the right of aggrieved individuals to apply to a court of law for protection of their personal rights;[117] the right of compensation as a result of loss or harm caused by the state arising from illegal actions of any governmental agency or official that violate personal rights;[118] and the protection that the Federal Assembly[119] of the Russian Federation cannot adopt laws that abolish or limit the rights of a person.[120]

The constitutional validity of any new law or executive act that abolishes or limits the personal rights contained in Chapter 2 can be challenged before the Constitutional Court of the Russian Federation (see chapter 1.7.1 below).

In addition, the contents of Chapter 2 are entrenched, in so far as the Federal Assembly cannot easily amend it. Any changes to this chapter must be implemented by the adoption of a new constitution, which according to Article 135 of the *Russian Constitution* requires a referendum or a two-thirds-majority vote of the Duma.[121]

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[114] Article 46(3); the *Russian Constitution* grants to everyone the right of appeal to international bodies concerned with human rights protection. An example of an international body that appeals can be referred to is the European Court for Human Rights.

[115] Article 45; for example, the health commission, juvenile commissions, fire safety inspections and labour dispute commissions.

[116] See 'ombudsman' below.

[117] Article 46(1).

[118] Article 53.

[119] The Federal Assembly is a Russian Parliament consisting of the two houses; the Council of the Federation and the Constitutional Assembly (the "Duma", which consists of representatives of each electoral region).

[120] Article 55.

[121] The rationale for such a provision is that the Duma is democratically elected; it is assumed, therefore, that a two-thirds-majority vote would be a fair representation of how two-thirds of the population would vote.

Constitutionally established personal rights are further protected by the constitutional requirement for an ombudsman (called the "**Authorised Representative**")[122] to review complaints from aggrieved individuals[123] (or to randomly assess the effectiveness of administrative decisions that concern the infringement of such rights),[124] and the corresponding federal law creating the Office of Plenipotentiary on Human Rights ("**OPHR**") that performs this function.

The OPHR performs its duties in a similar way, and has similar powers to, the Australian office of the Commonwealth Ombudsman.[125] Both the Commonwealth Ombudsman and the Russian Authorised Representative can investigate the administrative actions of government agencies[126] and produce a report,[127] which constitutes a recommendation to the administrative body in question regarding the correction of decisions that, in the opinion of the Ombudsman/Authorised Representative, have infringed the rights of individuals as provided by law.

Although reports of the Authorised Representative have no binding force, they are nevertheless taken seriously by the administrative body in question (see examples in later chapters) and, as a rule, acted upon to rectify the administrative error.

There are also mechanisms in Russian criminal legislation that are designed to protect personal rights. The Russian *Criminal Code 1996* imposes[128] criminal liability either on individuals, acting independently or on behalf of the state, who breach personal rights or breach the laws protecting such rights.

Although, there appear to be substantial rights protection mechanisms available in Russia, to date there have only been a limited number of cases brought before the courts and the OPHR to adequately test them. The primary reason for the low number of complaints is that most protection mechanisms (such as those provided by the *Criminal Code 1996*) have only recently

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[122] The Federal Law *On the office of Plenipotentiary on Human Rights in the Russian Federation* of February 26, 1997 № 1-ФКЗ.

[123] *Ibid*, Section 1.

[124] *Ibid*, Section 1(1).

[125] See Ombudsman Act 1976

[126] The Act sets out the limits on the Ombudsman's jurisdiction; for example, the Ombudsman may not investigate some actions related to Australian Government employment, or the actions of judges and ministers.

[127] Section 15 of the Australian Ombudsman Act 1976 and Sections 1(2)-(3) of the Federal Law *On the office of Plenipotentiary on Human Rights in the Russian Federation* of February 26, 1997 № 1-ФКЗ.

[128] See Chapter 19 of the *Criminal Code 1996*: "Crimes Against the Constitutional Rights of the Individual".

become available to Russian people. In some cases, the courts and the Authorised Representative have not yet fully established internal procedures concerning the filing, review, decision making and reporting of such complaints.

However, given the preponderance of personal rights abuse in Russia today (see discussion in later chapters) it is expected[129] that as internal procedures and decision-making mechanisms become more efficient, the complaint numbers will rise considerably.

1.7.1 The Constitutional Court

Article 125 of the *Russian Constitution* establishes the Constitutional Court of the Russian Federation, which is Russia's highest judicial body authorised to rule on whether or not challenged laws are in fact unconstitutional, and whether they conflict with constitutionally established rights and freedoms.

The Constitutional Court's structure, powers and procedures are provided by the Federal law *On the Constitutional Court of the Russian Federation 1994,*[130] which defines the court as:

> *"…a judicial organ of constitutional control, autonomously and independently exerting judicial power by means of constitutional legal proceedings."*[131]

The main task of the Russian Constitutional Court is to protect individual rights by determining the constitutional validity of federal and regional laws, decrees of the President of the Russian Federation, and declarations of the Federation Council.[132] Challenges can be brought to the Constitutional Court by the President of the Russian Federation, the Federation Council, the Duma, one-fifth of the members of the Council of Federation or individual deputies of the Duma.[133]

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[129] Fogelson, Y.B. op cit at 40.

[130] Federal law *On the Constitutional Court of the Russian Federation* Federal Constitutional Law of July 21, 1994 № 1-ФКЗ.

[131] *Ibid* Section 1

[132] *Ibid* See section 3(1)(a). *The Federation Council is equivalent to the Senate or Upper House.*

[133] *Ibid* See section 84. Other instigators of actions in the Constitutional Court include the Government of the Russian Federation, the High Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation, organs of legislative and executive power of subjects of the Russian Federation.

In addition, aggrieved citizens or organisations can instigate proceedings in the Constitutional Court by virtue of Article 125(4) of the *Russian Constitution* and section 96 of the Federal law *On the Constitutional Court of the Russian Federation 1994*, which allows the court to examine whether a law or regulation is constitutional.

According to section 79 of the Federal law *On the Constitutional Court of the Russian Federation 1994*, decisions of the Constitutional Court are final and not subject to appeal. However, section 79 contradicts Article 46(3) of the *Russian Constitution*, which allows individuals to apply to international bodies[134] for the protection of personal rights. Therefore, if a law allegedly contravenes, for example, a personal rights provision in the *Russian Constitution*, but is determined to be constitutional by the Constitutional Court, such a law cannot, according to section 79, be brought before such international bodies as the European Court for Human Rights for further consideration. To date, however, nobody has challenged the constitutional validity of section 79 in the Constitutional Court.[135]

Decisions of the Constitutional Court should have immediate force and should not require ratification by other government bodies.[136] However, despite the Council of the Russian Federation drafting new laws to safeguard[137] the decisions of the Constitutional Court, and passing it through the first reading of the Duma,[138] there are yet no conventions or procedures in place to automatically repeal or amend legislation based on Constitutional Court decisions. Presently, the Duma must vote on such issues, which represents a serious breakdown in the balance of power between the judiciary and the legislative arms of government.[139]

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[134] Specifically to the European Court for Human Rights (the decisions of which have direct effect in Russia).

[135] See: Kudriavtseva I.V. Kommentarii o Statiye 125, Kommentarii o Konstitutii Rossiskoy Federatsii Commentary to Article 125, Commentary on the Constitution of the Russian Federation, Pbl. Moscow, 1996; p 509.

[136] See section 79(2) of the Federal law *On the Constitutional Court of the Russian Federation*, July 21, 1994 № 1-ФКЗ, according to which the Court is made up of nineteen judges appointed by the Federation Council on nomination by the President; its powers, like those of all federal courts, are established by federal constitutional law, and they include the interpretation of the Constitution and the power to rule on charges against the President, at the request of the Federation Council.

[137] Such as, for example, providing the procedures for the Duma to amend or repeal illegal legislation.

[138] In April 1996, a draft law on safeguarding the decisions of the Constitutional Court passed the first out of the required three readings of the Duma.

[139] See Lediakh I.A. Zaschita Chelovechiskih I Konstitutsionih Prav, Lichniye Prava I Politichiskaya Reforma (Yuridicheskiye, Eticheskiye, Socpsychologisheskiye Aspekti) (Defence of Human Rights and Constitutional Justice, Human Rights and Political Reform (Judicial, Ethical, Socio-psychological Aspects)) Pbl. Moscow, 1997, p.83.

1.7.2 Judicial Independence

To protect the rule of law, the judiciary needs to be separate from and independent of the government. This ensures that the law is enforced impartially and consistently, no matter who is in power, and without undue influence from any other source.

The doctrine of the 'separation of powers' has traditionally proposed that the state is divided into separate and distinct arms of Executive, Legislature and Judiciary, whereby each arm acts as a 'check and balance' on the others. This is why the power and independence of the judiciary is important for the protection of citizens and their personal rights.

Hence, the status of Russia's judicial bodies and their respective procedures must ultimately determine the degree to which personal rights are protected at law, and in turn, enjoyed by Russian people.

For protection to be effective, the courts charged with determination of matters concerning personal rights must:[140] (a) be accessible to interested parties; (b) possess authority sufficient to carry out the decision; (c) be independent; (d) have expertise; and (e) act within due process of law.

The above requirements are met by a court, whose procedures:[141] (a) ensure equal standing to the parties before the court; (b) allow the right of legal representation; (c) allow an independent, objective and dispassionate elucidation of all relevant circumstances, discussion of arguments and objections put forward by the parties, and presentation of evidence in support and/or refutation; (d) provide a lawful, well-founded and enforceable judgment; and (e) allow appeal of the decision by parties on a question of law.

The President of the Russian Federation appoints judges in Russia after nomination by the qualifying collegian council.[142] The collegian council also has the authority to remove judges for misconduct, and to approve procurator's requests to prosecute judges.

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[140] These requirements can be drawn from Chapter 7 of the *Russian Constitution 1993* and the Federal Law *On Court System of the Russian Federation* of December 31, 1996 № 1-ФКЗ.

[141] See: Zhuikov, V.M. *Sudebnaia zashchita prav grazhdan i iuridicheskikh lits* (Protection of Rights of Citizens and Legal Entities by the Judiciary). Pbl. Moscow, 1997, pp 89-92.

[142] The Collegian Council is an assembly of judges established by Chapter 2 of the Federal Law *On Court System of the Russian Federation* of December 31, 1996 № 1-ФКЗ.

According to a recent report by the OPHR,[143] the collegian council's nomination of judges appears to be highly politically motivated, often reflecting the desires of various politicians who influence the collegian council by bribes and offers of career advancements.

The Russian court system is divided into three branches: the courts of general jurisdiction (including military courts), which fall into the Supreme Court hierarchy; the arbitration (commercial) court system under the hierarchy of the High Court of Arbitration; and the Constitutional Court. The lowest level of the courts of general jurisdiction is the municipal court, which serves each city or rural district and hears more than ninety percent of all civil and criminal cases. The next level up is the regional court. At the highest level is the Supreme Court.

Decisions of the lower trial courts can only be appealed to the immediately superior court unless a constitutional issue is involved, in which case the matter is referred directly to the Constitutional Court.

Since the 1990s, Russian legislators have displayed a tendency to emphasize the importance of the courts, with respect to the protection of personal rights. For example, Article 120 of the *Russian Constitution* states that judges are independent and must always pass judgment in accordance with the law. This provision empowers courts to deal with all matters of law without regard for prior administrative[144] decisions and/or acts. In this sense, judicial protection of personal rights, at least in theory, is more independent than the protection offered by government bodies.

In practice, however, a high level of corruption among the judiciary, which includes acceptance of bribes from parties to a court hearing, acquiescence to requests from administrative agencies predetermined rulings in exchange for promises of career advancements, or acquiescence to various threats, weakens protection personal rights.[145]

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[143] See Doklad o dejateljosty upolnomochennogo po pravam cheloveka v Rossiiskoi Federastii (Report on activities of the Plenipotentiary on Human Rights in the Russian Federation in 2001), Pbl. Moscow, 2002, pp. 147-149.

[144] For example, the findings of various commissions, resolutions or decisions of bodies with executive powers, and the resolutions of investigation agencies.

[145] See Doklad o dejateljosty upolnomochennogo po pravam cheloveka v Rossiiskoi Federastii (Report on activities of the Plenipotentiary on Human Rights in the Russian Federation in 2001), Op cit.

According to the Financial Times,[146] bribery in Russia has multiplied by a factor of ten during the past four years, and the amount of money changing hands is now twice the size of federal revenues. Corruption has thrived under President Eltsin and continues to do so under President Putin as bureaucrats and law enforcement agencies are demanding ever-higher bribes from businesses and private citizens. The biggest share of all bribes went to both the various branches of executive power in the country (including municipal and regional governments), and the judiciary.

The Chairman of the Constitutional Court of the Russian Federation has stated that:

> *"the bribery in courts has generated one of the most powerful corruption markets in Russia, it is built in the various corruption networks working at different levels of judicial authority, including technologies on disorder of criminal cases and on interception of someone's business".*[147]

Hence, an aggrieved party in Russia applying to a court for the protection of his/her personal rights cannot be sure of obtaining a fair and unbiased court decision.

The quality of judgments is further compromised by the fact that the court system is inundated with cases, and judges cannot keep up with demand.[148] To alleviate the backlog of cases, a new law in 1998 established a system of Justices of the Peace[149] to deal with all criminal cases involving maximum sentences of less than two years and petty civil cases.[150] There were more than 4,500 Justices of the Peace throughout the country by the end of 2001. In regions where the system of Justices of the Peace has been fully implemented, there was a significant decrease in backlogs and delays in trial proceedings, since courts were freed to accept cases that are more serious, more rapidly. In some regions, Justices of the Peace undertook approximately half of

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[146] Financial Times (London, England), July 22, 2001

[147] See Doklad o dejateljosty upolnomochennogo po pravam cheloveka v Rossiiskoi Federastii (Report on activities of the Plenipotentiary on Human Rights in the Russian Federation in 2001), Op cit.

[148] Yurist (The Jurist), ZAO Izdatelskaya Grupa Yurist, Journal Yurist № 4, 2002.

[149] Federal Law On Justices of the Peace in the Russian Federation of 15 December, 1998 № 188-ФЗ

[150] section 31(1) of the *Criminal Procedure Code 2001* broadens the jurisdiction of Justices of the Peace to all crimes with maximum sentences of less than 3 years.

federal judges' civil cases and up to fifteen percent of their criminal matters, which also eased overcrowding in pre-trial detention facilities.[151]

Low salaries and a lack of prestige make it difficult to attract talented new judges and contribute to the vulnerability of existing judges to bribery and corruption. For example, in 2002 the average salary of a district judge is equal approximately to US$ 250-300 per month, while the cost of living in Russia is similar to that of Western European countries.[152] Working conditions for judges are very modest, and support personnel are underpaid. Judges are, therefore, susceptible to widespread intimidation and bribery from officials and private individuals.

In this regard, Russian President Vladimir Putin said that:

> *"…all instances of court bribery and bureaucracy concerning judges undermine the trust in the judicial system and the state as a whole… Fair court rulings are a criterion the society relies upon in assessing the quality of justice."* [153]

To date, however, there have not been any proposals from the government regarding specific measures to help fight the spread of corruption in Russia.

Corruption and dishonesty in the Russian judicial process also manifests in forms that are not necessarily linked to judges themselves. Grechko[154] points out that prior to the new detention procedures provided by the *Criminal Procedure Code 2002*, suspects held in detention during trial were subject to having their cases artificially extended by procurators who delivered the case file to the court for prosecution. It was common for the procurator not to attend the trial itself, requiring the judge to rely solely on their review of the procurator's case file. Judges frequently returned poorly developed cases to the procurator's office for further investigation rather than dismiss them and offend powerful procurators. Procurators could review a case an unlimited number of times; and even after a defendant had been acquitted, the procurator could protest the acquittal and bring the case back to trial repeatedly.

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[151] The Jurist, *Op cit.*

[152] Yurist (The Jurist), ZAO Izdatelskaya Grupa Yurist, Journal Yurist, № 11, 2002.

[153] President Putin`s speech at the All-Russia Congress of Judges 30 November 2002.

[154] Grechko N. *Novii UPK i Sudebnaya Practika* (New UPK and Judicial Practice). Yuridicheskii Mir. № 26, 2003.

Russian lawmakers are aware of the need to strengthen the judiciary. The Federal Law *On the Status of Judges 2001*[155] provides an objective selection process (based on age limits, tenure and experience) for new judges to improve their accountability, and subjects judges to disciplinary and administrative liability.

The new *Criminal Procedure Code 2002* also introduces an adversarial style hearing process based on jury trials. The interests of the court are severed from those of the procurator, and the judge is required to serve as an impartial arbitrator between the two adversaries. The *Criminal Procedure Code 2002* requires that all regions of Russia have such adversarial jury trials in place by 2003.[156]

Although these measures will serve to strengthen the judicial process, they are unlikely to eradicate all factors that stand in the way of judicial independence in Russia. The process of establishing judicial independence is likely to be protracted and problematic owing to the significance of obstacles[157] standing before it.

Presently, the extent of judicial independence in Russia is questionable. Western companies conducting business in Russia prefer to settle disputes through arbitration outside of Russia to avoid Russian judges. It is a common view that "such poor compensation and conditions (experienced by Russian judges) invite corruption and intimidation, which greatly erode judicial independence."[158]

The questionable status of judicial independence in Russia (which is in part due to the prevailing authoritarian influence in administrative activity remaining from the Soviet era, and in part to the financially deficient judicial system), allows due process to be abused. This in turn undermines the enjoyment of personal rights, since they require protection by a court of law. Until most of the Soviet influence is eliminated from administrative and court procedures and sufficient funds allocated for the establishment of an incorruptible judiciary, the enjoyment of personal rights by Russian people is likely to remain compromised.

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[155] Federal Law *On the Status of Judges 2001* December 27, 2001 № 186-ФЗ

[156] See commentary in Chelovek i zakon (Person and Law), № 3б 2003, p. 21.

[157] Discussed previously in this chapter.

[158] The Federalist Society 2001, www.fed-soc.org/Publications/practicegroupnewsletters/federalism/fd020101.htm

1.8 The Level of Enjoyment of Personal Rights in Russia

Personal rights provisions contained in the *Russian Constitution* are consistent with the corresponding provisions of the UDHR, the ICCPR, the ICESCR and the *European Convention for the Protection of Human Rights and Fundamental Freedoms 1950*.[159]

In this regard, the Russian Federation has enacted laws that conform to almost all international standards of human rights protection. However, in practice, there are many serious problems concerning the application and function of these laws, and in turn the level of enjoyment of the rights that they purport to confer.

Presently, the focal topic in the context of human rights in Russia is the Chechen conflict. Both sides to the conflict[160] continue to commit serious breaches of domestic and international human rights laws. Violations committed by Russian forces during 2001 included arbitrary detention, torture, and extrajudicial executions of individuals, while Chechen forces attack civilians, kidnap people for ransom, and unlawfully kill captured Russian soldiers.

However, a very small percentage of reported cases are actually investigated by the authorities.[161] This leads to an overall decline in the number of complaints, which is indicative of the ineffectiveness of the complaints review mechanism, rather than a drop in rights abuse levels.

Nevertheless, human rights abuses in Russia are not confined to areas of military conflict. Russian police are known to frequently torture and mistreat suspects in their custody without fear of recourse.

For example, in April 2001, police in Elista (Russian Republic of Kalmykia) allegedly beat Nadezhda Ubushaeva, a former schoolteacher. She and her family had gone to the main square to protest peacefully outside the parliament building against their forcible eviction from their apartment earlier that day. She alleged that approximately five police officers, led by a police colonel, arrived and dragged her to a police car, beating her with a hard instrument. Doctors

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[159] European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 Rome, 4 November 1950.

[160] During the collapse of the Soviet Union in 1991, the government of the Chechen republic declared independence as the Chechen Republic of Ichkeria. The Soviet Union then opposed the declaration and sent in troops to maintain authority in the region. The Russian Federation has maintained a military presence in Chechnya ever since.

[161] Amnesty International Report 2002. Russian Federation

later recorded injuries to Nadezhda Ubushaeva's hips, shoulders and face consistent with these allegations, however, no investigation was known to have been initiated into these allegations.[162]

Russian people, in general, do not trust Russian police and other law enforcement authorities. According to a survey conducted by the Centre for Justice, forty percent of all victims of crime in Russia choose not to report incidents to the police. This is because people are apprehensive of the police and do not believe in their ability to enforce the law.[163] In fact, according to a survey[164] by the OPHR conducted among the employees of eighteen well-known Russian law enforcement authorities, only nine percent of all surveyed individuals considered that police are adequately protecting rights of Russian people.

Another, issue of human rights abuse in Russia concerns refugees and asylum-seekers. Many asylum-seekers in Russia are subjected to refoulement to countries where they are at risk of serious human rights violations before their claims for asylum could be fully considered. For example, on 29 March 2001 an Iranian asylum-seeker was forcibly returned to Iran, where it was believed he risked imprisonment and ill-treatment. The deportation was carried out despite a pending court procedure on his asylum claim.[165]

The issue of human rights abuse is, of course, not unique to Russia. In August 2001, the Australian federal government began developing a new policy to prevent refugees (arriving by boat without valid travel papers) from making asylum claims on mainland Australia. Warships and elite soldiers were ordered to stop so-called 'boat people' from reaching the continent.

By December 2001, Australian military and civilian authorities had transferred more than 1,700 asylum-seekers who had been intercepted at sea to remote islands in the Indian and Pacific Oceans. Almost all were then arbitrarily and indefinitely detained without independent review or legal justification for their detention.[166]

Another issue in the context of human rights protection in Australia relates to violence against women. The government recognized violence against women as an issue with the launch of its

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[162] Ibid.

[163] See Doklad o dejateljosty upolnomochennogo po pravam cheloveka v Rossiiskoi Federastii (Report on activities of the Plenipotentiary on Human Rights in the Russian Federation in 2001), Op cit.

[164] Results of the OPHR review February 2002. M.:ИНФРА-М, 2001

[165] Amnesty International Report 2002. Russian Federation

[166] Amnesty International Report 2002. Australia

"Australia says NO" campaign. In 2002, the results of an UN-coordinated survey revealed that thirty-six per cent of Australian women with a current or former partner had experienced violence in a relationship. It was subsequently reported that domestic violence was the leading cause of premature death and ill health in women aged fifteen to forty-four.[167]

In contrast, the Russian government does not give special attention to the question of personal rights enjoyment by certain members of society, such as refugees and/or women, despite these issues being at least as problematic as in Australia.[168] This is because in present-day Russia, there are more general issues concerning the enjoyment of human rights by every member of its society, such as battling the high crime rate and police brutality, which amount to a priority in the context of rights abuse issues for the current government.[169]

In this regard, Russia still has a long way to go on its road to ensuring enjoyment of personal rights. However, the fact that Russia has adopted international standards in its constitution and legislation provides hope to its people that the current level of rights enjoyment will improve.

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[167] Hilary Charlesworth. Writing in Rights: Australia and the Protection of Human Rights. University of New South Wales Press. 2002. P. ___

[168] Results of the OPHR review February 2002. Op cit.

[169] Ibid.

2. THE RIGHT TO LIFE

The right to life is intended to protect human life, and is fundamental to preventing the breakdown of society through preservation of its members. Therefore, its position at the top of the list of rights in a given human rights instrument may be justifiable.

The right to life is the first-mentioned right in Chapter 2 of the *Russian Constitution* and is consistent with the right to life provisions contained in the *Universal Declaration of Human Rights 1948*[170] and the *European Convention for the Protection of Human Rights and Fundamental Freedoms 1950* (the "**ECPHRFF**").[171]

The right to life is granted from the beginning of a person's life, which according to Russian academics[172] is the 'moment of birth'. However, Russian law[173] does not define the 'moment of birth', and the current debate[174] among Russian academics is whether the 'moment of birth' is the moment of appearance of the child's head from the womb of the mother or the moment the newborn takes its first breath.

Some religions[175] consider the beginning of life as the moment of conception, which raises the question of whether an abortion[176] of pregnancy (i.e. the evacuation of a living foetus from a mother's womb) can be deemed as birth. However, the issue of abortion[177] and the beginning of

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170 Article 3

171 Article 2 (1) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1950) E.T.S. 44, *entered into force* Sept. 21, 1970

172 Borodin, S.V. *Otvetstvennost' za ubiistvo: Kvalifikatsiia i nakazanie po rossiiskomu pravu* (Liability for Murder: Qualification and Punishment under Russian Law), Pbl. Moscow 1994, p 6; Pobegailo, E.F. *Kommentarii k st. 105', Kommentarii k UKRF. Osobennaia chast* (Commentary on section 105, Commentary on the Criminal Code of the Russian Federation. Special Part), Pbl. Moscow 1996, p 2; Kazachenko, I.Y. *Kommentarii k gl. 16, Kommentarii k UKRF* (Commentary on Chapter 16. Commentary on the Criminal Code of the Russian Federation), Rostov-na-Donu 1996, p 252.

173 See Federal Law *On Protection of the Health Of Citizens* of 22 July 1993 № 5487-1.

174 See, Karaulov, V.F. *Glava 2: Prestupleniia protiv zhizni i zdorov'ia. Ugolovnoe pravo Rossii. Osobennaia chast* (Chapter 2: Crimes against Life and Health. Criminal Law of Russia. Special Part), Pbl. Moscow 1996, pp.20-21.

175 For example Catholicism.

176 The issue of whether or not abortion should be legal is outside the scope of this thesis.

177 Abortion is legal in Russia. See Federal Law *On Protection of the Health Of Citizens* of 22 July 1993 № 5487-1. The only qualification stipulated by the law is that, if a woman is more than twelve weeks pregnant, satisfactory medical (include endangerment of the future health of the mother or the child) or social (living conditions, availability of accommodation and composition of family) reasons are necessary.

life, neither of which have yet been considered by Russian courts[178], are beyond the scope of this thesis.

The moment of death is defined by Russian law as 'brain death'[179] and determines the moment one's right to life ends. In this context, the question of euthanasia is also beyond the scope of this thesis, save to say that the *Russian Constitution* does not recognize the right to death. Moreover, section 45 of the Federal Law *On Protection of the Health Of Citizens*[180] prohibits medical personnel to hasten the death of a patient by any means, including administration of medication or switching-off life-supporting mechanisms. Individuals breaching section 45 are liable for prosecution pursuant to the *Criminal Code 1996*.

2.1 Protection

The right to life is protected by legislation; for example, social security laws for financially disadvantaged and disabled citizens;[181] the right to work in safety and hygiene;[182] and the right to free public health services.[183]

Besides the conferral of positive rights, such as those listed above, the right to life is also protected by legislative limitations on state powers. For example, state authorities are prohibited,[184] from taking any action through which a person is intentionally subjected to strong pain or suffering (physical or mental) in order to extract from them or a third party some information or confession, to punish them for an action which they or a third party have performed or are suspected of performing, or to frighten them or force them into some action.[185]

The right to life is also protected by laws concerned with preventing danger to life or health of a person. Such laws include regulations on the use of weapons, atomic energy and traffic rules.

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[178] The enactment of law on abortion and the coming into force of the *Russian Constitution* have been relatively recent events in Russian history. Consequently, these issues have not yet been considered by Russian judicial bodies.

[179] The moment of death is defined by Russian law as the death of the person's brain See section 9 of the *Federal Law On Human Organ and Tissue Transplantation* of 22 February 1992 N 4180-I "О трансплантации органов и (или) тканей человека"//Ведомости РФ. 1993. N 2. Ст. 62.

[180] Op cit.

[181] *Russian Constitution* Article 39(1).

[182] Ibid, Article 37(3).

[183] Ibid, Article 41(1).

[184] By laws against human torture, cruelty, and medical/scientific experimentation - See Chapter 6.1.1 of this thesis.

[185] *Ibid.*

For example, section 34 of the Federal law *On Fire Safety 1994* states, "citizens have the right to protection of their lives, health and property in the event of a fire".[186]

Russian criminal law considers crimes against life as the most serious type of offence. The *Criminal Code 1996* protects individuals against such crimes by punishing offenders for acts of murder;[187] life endangerment;[188] willful negligence;[189] and medical malpractice.[190]

Irrespective of the above legislative provisions, however, the protection of the right to life in Russia today is considered[191] ineffective overall due to profuse corruption among law enforcement agencies. Corruption compromises the legislative protection of the right to life by, enabling offenders to use bribes in obtaining favourable judgments or having their case dismissed for lack of evidence. This means that serious crimes against life, such as assassinations of business executives,[192] public service employees,[193] and politicians[194] can go unpunished.

Corruption, however, is not the only problem undermining protection of the right to life in Russia. An overwhelming number of cases that required administrative and/or judicial decisions outnumber the resources available for adequate processing of complaints by law enforcement agencies, and judicial bodies.[195]

According to the Office of Plenipotentiary on Human Rights ("**OPHR**"), there are virtually countless breaches of the right to life by the Russian police and other law enforcement agencies with respect to refugees, prisoners and soldiers.[196] Fatalities arising from abuse of new army recruits by senior ranked soldiers, which concerns many families in Russia whose children are

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[186] Federal Law *On Fire Safety 1994* of 21 December 1994, № 69-ФЗ.

[187] Articles 105-109.

[188] Article 125.

[189] Article 124.

[190] Article 235.

[191] Results of the OPHR review February 2002. М.:ИНФРА-М, 2001

[192] See *Hozain Evrotelekoma postradal za sviaz* (The owner of Eurotelecom, suffered for his connections), Kommersant-Daily, № 145, Москва, 03.10.98.

[193] See *Ot bandita do deputata* (From Bandit to Senator), Kommersant (Moscow), N156-п (1.9.2002).

[194] See *Ubitsa schital chto chistit gorod ot kriminala* (Killer considers that he was saving the city from crime), Kommersant (Moscow), N082 (15.5.2002).

[195] Results of the OPHR review February 2002. М.:ИНФРА-М, 2001

[196] Ibid.

already in the army or pending recruitment has received much media attention recently. Such abuse arises in the context of extreme punishment of often-innocent recruits.[197]

Another issue relating to the breach of the right to life of innocent people concerns the incidental death of citizens because of terrorist/anti-terrorist activity and kidnappings in Chechnya. Such cases are so frequent that the chief prosecutor of Chechnya refuses to investigate them.[198]

For example, in June 2002, the OPHR received a complaint from a legal assistance organisation based in Chechnya, regarding the failure by the local prosecutor to investigate a kidnapping of four individuals from their home in Sernovodsk earlier that month. One of the four individuals was found dead a few days following the kidnapping. Given the seriousness of the case, the OPHR referred the matter to the Federal Prosecutor for review, recommending that an investigation be conducted forthwith. The Federal Prosecutor concurred with the recommendation and instructed the chief prosecutor of Chechnya accordingly, who went on to investigate the matter.[199]

However, the OPHR does not have the capacity to investigate and report on all complaints of human rights breaches arising in Chechnya. According to the Authorized Representative, the number of complaints already exceeds the resources available to the OPHR.[200] This means that until either the conflict in Chechnya is resolved or until the Russian government allocates additional funds to expand the resources of both the law enforcement agencies and the OPHR, the right to life of innocent citizens of Chechnya will continue to be abused.

2.1.1 Limiting Protection

The right to life in Russia can be limited by legislation in the interests of "protecting the fundamentals of the constitutional system, morality, health, rights and lawful interests of other persons, for ensuring the defense of the country and the security of the state."[201]

Article 6 of the ECPHRFF states that:

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[197] Ibid.

[198] Ibid.

[199] Ibid.

[200] Ibid.

[201] See Article 55 of the *Russian Constitution*.

> *"…a deprivation of life which was the result of the use of force that was no more than absolutely necessary for protection of any person against illegal violence (e.g. for the legal arrest or prevention of the escape of a person apprehended on a lawful basis… [and] for the suppression of revolt or rebellion) does not constitute a breach of human rights…"*

In addition, Article 3 of the United Nations *Code of Conduct for Law Enforcement Officials*[202] provides that:

> *"…firearms [by law enforcement agencies] should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender."*[203]

Similarly, section 38 of the Russian *Criminal Code 1996* provides for the use of 'sufficient force' necessary to apprehend and detain criminals attempting to escape. In these circumstances, the use of lethal force is not prohibited by legislation and does not constitute a breach of the right to life if it is applied in accordance with Article 55 of the *Russian Constitution*.

2.2 Capital Punishment

Capital punishment, which involves the termination of a human life, in principle contradicts the right to life. However, Article 20(2) of the *Russian Constitution* declares capital punishment as a lawful penalty for especially grievous crimes against life,[204] and is consistent with Article 2(1) of the ECPHRFF, which states:

> *"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."*

In 1983, the Council of Europe introduced Protocol 6 of the ECPHRFF concerning the abolition of the death penalty, with the exception of acts committed in time of war or of imminent threat of

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[202] *United Nations Code of Conduct for Law Enforcement Officials* (34 U.N. GAOR Supp. (№ 46) at 184, U.N. Doc. A/34/46 (1979).

[203] See Commentary (c) to Article 3 of the *United Nations Code of Conduct for Law Enforcement Officials*; Ibid.

[204] Application of the penalty to a particular case is determined by a jury trial.

war. Subsequently, in 2002 the Council adopted Protocol 13 to the convention, which was the first legally binding international treaty to abolish the death penalty in all circumstances with no exceptions. So far, thirty-six European nations have signed the treaty.

Today, around one hundred and twenty-four countries worldwide have abolished the death penalty. However, some nations still execute people despite the above international human rights standards. The United States, China, Iran and Saudi Arabia account for over eighty percent of the executions. Since 2000, only four countries: the United States, the Democratic Republic of Congo, Pakistan and Iran, are known to have executed juvenile offenders. Between April and July 2001, at least 1,781 people were executed in an anti-crime campaign carried out by the Chinese government.[205]

In Russia, the question of capital punishment abolition remains open. From the 1930s to the mid-1950s, the criminal codes contained over forty offences that attracted such punishment.[206] In 1960 to 1970, the number of capital offences reduced to twenty-two. From the late 1980s, a scheduled reduction of offences of capital punishment focused on the exclusion of financial or economic offences from capital punishment. Since 1993, economic offences to which capital punishment previously applied are punishable by imprisonment for life only.[207]

The *Criminal Code 1996* limits capital punishment to five kinds of crimes: murder;[208] the attempted assassination of a state or public figure;[209] the attempted assassination of a person to obstruct justice;[210] the attempted assassination of an employee of a law-enforcement agency or a public servant;[211] and genocide.[212]

Section 59(2) of the *Criminal Code 1996* excludes women under age of eighteen and men over the age of sixty from capital punishment. In addition, section 59(3) makes the 'equivalent' sentence of twenty-five years in prison as an alternative to capital punishment available to the court.

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[205] See Amnesty International online reports (www.amnestyusa.org)

[206] Including burglary and/or robbery, receiving of a sizeable bribe, and disorganized maintenance of correctional establishments.

[207] Article 38 of the 1992 amendment to the *USSR Constitution 1977*.

[208] Section 105(2).

[209] Section 105(2).

[210] Section 295.

[211] Section 317.

[212] Section 357

Moreover, crimes attracting capital punishment committed during or following a 'state of emergency' are unlikely to result in the execution of the offender.[213] This is consistent with the *Resolution of United Nations' Economic and Social Council 1984*,[214] the rationale for which is that 'emergency' situations deprive a person of the opportunity to reasonably consider his/her behaviour.

Capital punishment, in Russia, can be effected only after final sentencing by a competent court[215] and a Petition of Execution[216] passing (by convention) through a level of political control[217] before capital punishment can be carried out. However, since 1996, the President of the Russian Federation[218] has refused to sign any of the Petitions of Execution placed before him. As a result, no individual has been executed since.

In 1985 there were 404 death sentences issued in Russia, whereas in 1986 and 1987 the numbers reduced to 227 and 130 respectively. In 1996, the number of such sentences was 62.

The reason for this is that in May 1996, the president of the Russian Federation signed the *Decree on the Gradual Reduction of Capital Punishment Sentencing 1996* as a step towards preparation of appropriate draft laws in line with Russia's entry[219] to the Council of Europe.[220] The decree obligates the Russian Federation to ratify and enforce laws of the Council of Europe concerning the abolition of capital punishment.

Subsequently,[221] the former Vice-Premier Boris Nemtsov directed the Ministry of Justice, the Ministry of Foreign Affairs and a number of other departments to prepare a set of measures on a gradual abolition of capital punishment in Russia. These measures, however, required substantial financial resources for maintaining non-executed prisoners, which were not considered in the country's annual economic budget.

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213 Section 63 of the *Criminal Code 1996*.

214 Resolution for the UN Commission of Human Rights on Death Penalty Abolition 1984/50 25.05.1984.

215 Article 6 of the *Russian Constitution*.

216 A document which orders the execution of a convicted person.

217 Such a petition must be endorsed by the President.

218 Who has the power to pardon a convicted person, according to Article 89(c) of the *Russian Constitution*.

219 The Russian Federation became a member of the Council of Europe on 28 February 1996.

220 This confirmed both Russia's adherence to democratic principles and its intentions to perform its obligations to the Council of Europe.

221 In May 1998.

In fact, two months before issuing his directives, Boris Nemtsov sent an official recommendation to the Duma, in which he rejected the draft law ratifying the *Decree on the Gradual Reduction of Capital Punishment Sentencing*,[222] stating that the annual economic budget required an additional 580 million rubles[223] for the construction of four specialised prisons for the death- row convicts. The implication in Nemtsov's recommendation was that it is much cheaper for the Russian government to execute death row convicts than to guard and sustain them for life.

The head of the Department of Execution of Punishment[224] agreed with Nemtsov's reservations, stating:

> *"Certainly it is impossible to put a value on life, but with respect to those who are convicted and sentenced to capital punishment, albeit blasphemous to say, it is more expensive to keep them in prisons than to shoot them. The custody of one inmate costs eight and a half thousand rubles per year; and as the number of these prisoners grows, they will become a perpetual burden for both the state and taxpayers".*[225]

Nemtsov's recommendation to the Duma was in contravention of Russia's obligations under the ECPHRFF, which requires Russia to abolish the death penalty.[226] Therefore, in an attempt to retain its eligibility for membership in the Council of Europe,[227] the Russian Government explained that Nemtsov's recommendation was not about the issue of capital punishment per se, but about a conflict-of-laws with internal budgeting provisions.

However, even if Russia abolished capital punishment today, it is questionable whether such action would lead to the observance of the right to life. The poor living conditions endured by the prisoners can be interpreted as a threat to their health and lives.[228] According to Articles 125 and 127 of Russia's *Criminal Procedures Code 2001*, inmates sentenced to life in prison must be

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[222] See Draft law On a Moratorium on Capital Punishment, Transnational Radical Party Press Release, 13/05/98.

[223] See www.mrvassociates.com/Buckleyourseat.pdf

[224] M. Nazarkin.

[225] See summary in *Nasha Gazeta* (Our Newspaper) № 20 (96) 11 June 2001.

[226] See Amnesty International, The Death Penalty Worldwide: Developments in 2002.

[227] The EC, at the beginning of 1997, had already promised to divest its Russian delegate of authorities if even one Russian was executed.

[228] The number of people currently sentenced to capital punishment in Russia is about nine hundred. If the law on capital punishment abolition is ratified, these people will automatically become prisoners sentenced for life with poor living conditions.

kept in cells with 'harsh' regimes. After ten years of incarceration, these inmates are transferred to cells with 'standard' conditions. After twenty years, they are transferred to secured hostel accommodation, where, for the first time, they are allowed meetings with relatives.

Presently, there are only two special prisons for such inmates in Russia.[229] According to the head of the Department of Execution of Punishment,[230] one of the recently reconstructed prisons can accept 170 inmates. The other prison has been reconstructed to accommodate 120 inmates. Therefore, the total number of places currently available is 290.

At present, there are more than two hundred inmates sentenced to life imprisonment, and there are about nine hundred sentenced to death, who will become inmates sentenced to life imprisonment if capital punishment is abolished.

According to section 57 of the *Criminal Code 1996*, judges have a choice to either apply the death penalty or sentence to life imprisonment. The draft law ratifying the *Decree on the Gradual Reduction of Capital Punishment Sentencing*, however, abolishes that choice; judges will be required by law to sentence offenders only to life in prison. If the draft law comes into force, within a few years, there might be thousands of inmates sentenced to life imprisonment in Russia, many of whom will be subjected to life threatening conditions, which in itself may evoke right to life infringements.

The question of capital punishment abolition has already been decided on the political level; that is, eventually capital punishment in Russia will need to be abolished, since Russia is a signatory to the Council of Europe. However, this will be done contrary to public opinion, because seventy-four percent of Russians today consider that capital punishment is necessary to control the high level of crime in the country.[231]

Moreover, the Russian government will need to find the funds to construct new prisons to accommodate the abolition process. Current tactics by the Russian government, as shown by the issue with Nemtsov's conflict-of-laws over internal budgeting provisions, are most likely designed to 'buy' the time necessary for the government to do so.

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[229] In Vologda and Sverdlovsk districts.

[230] *Nasha Gazeta* (Our Newspaper) № 20 (96) 11 June 2001.

[231] See survey results of by «Общественное мнение» Foundation (www.fom.ru)

3. THE RIGHT TO FREEDOM AND PERSONAL INVIOLABILITY

Article 22(1) of the *Russian Constitution* states that "[e]veryone shall have the right to freedom and personal inviolability."

The provision accords with both Article 1 of the *Universal Declaration of Human Rights 1948* (the "**UDHR**"), which states that "all people are born free and equal in respect of their dignity and rights", and Article 9(1) of the *International Covenant on Civil and Political Rights 1976*, which grants the right to freedom and security of person, and protects people from arbitrary arrest and detention.

The notion of 'personal freedom' is closely connected to 'personal inviolability', since one cannot enjoy a constitutionally guaranteed freedom without the security of personal inviolability. For example, one cannot be free to follow a religion[232] of their choice if there are no laws protecting them from enmity and hatred on religious grounds.[233]

Personal inviolability is associated with a wide range of physical and social aspects. For example, 'physical inviolability' concerns one's life, health, bodily inviolability and sexual freedom; whereas, 'moral inviolability' concerns one's honour, dignity and freedom of thought.[234] There is also 'inviolability of privacy', which relates to matters such as limitation of surveillance.[235]

In this chapter, the term 'personal inviolability' will refer to the physical aspects only. The issue of 'moral inviolability' and 'inviolability of privacy' will be dealt with in later chapters.

3.1 Protection of the Right to Freedom and Personal Inviolability

In Russia, personal inviolability is protected by constitutional guarantees such as the right to life;[236] the prohibition of torture, violence and forced medical experimentation;[237] the right to

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[232] See Article 28 of the *Russian Constitution*.

[233] See Article 13 and 29 of the *Russian Constitution*.

[234] See Chapter 6 of this thesis.

[235] See Chapter 4 of this thesis.

[236] Article 20.

[237] Article 21.

work in safe and hygienic conditions;[238] the right to a healthy environment and compensation for damage to one's health caused by ecological crime;[239] and the right to compensation for harm and damage resulting from crime.[240]

Personal inviolability is also protected by legislation. These include the liability for murder;[241] the prohibition[242] of medical assistance without the consent of the patient;[243] and the prohibition of any action that may endanger a suspect's health in the process of a criminal investigation.[244]

Russian legislation also provides protection of the right to personal inviolability in respect of safeguarding one's own life and health. Section 37 of the *Criminal Code 1996* states that:

> *"…it is not a crime to inflict harm on an offender as an act of necessary defense, that is, in the defense of one's own person or rights or those of others, or of the interests of society or the state as protected by law, from socially dangerous infringement, so long as the limits required for the defense are not exceeded."*

In practice, however, the abovementioned protections often do not work. According to Amnesty International Report 2002, Russian police routinely used torture and ill-treatment to extract confessions from suspected offenders, and investigations into allegations of torture or ill-treatment are rare and often inadequate, contributing to a climate of impunity.

3.2 Procedures for Arrest and Detention

According to Article 22(2) of the *Russian Constitution*, arrest and detention of individuals is only permitted on the basis of a court order; otherwise, a person may not be detained for more than forty-eight hours.

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238 Article 37.

239 Article 42.

240 Article 52.

241 Section 105 *Criminal Code 1996*

242 Vedomosti sezda narodnykh deputatov RF i Verkhovnogo Soveta RF (Official Gazette of the Congress of the People's Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation), 1993, No. 33, Article 1318.

243 Medical assistance can only be provided without the patient's consent if his or her condition makes them unable to express their will. In the case of minors under fifteen years or incapacitated persons, the consent of a guardian or legal representative is sufficient. See section 32 of Federal Law *On Fundamentals of the Russian Legislation on the protection of the health of citizens* of 22 July 1993.

244 For example, sections 181 and 183 of the *Criminal Procedures Code 2001.*

Article 22(2) applies to all individuals on Russian territory, including citizens of the Russian Federation, foreign citizens, and those without citizenship. That is, no foreigner may be subjected to arbitrary arrest or detention. This is consistent with the UDHR, which states that:

> *"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty".*[245]

In 1998, the Constitutional Court of the Russian Federation considered the question of the constitutionality of section 31(2) of the law *On the Legal Status of Foreign Citizens in the USSR*.[246] The section stated:

> *"A foreign citizen or stateless individual shall leave the country within the period indicated in the deportation order; a failure to leave is punishable (with the approval of the prosecutor) by detention and forced deportation… the period of detention which is allowed is that necessary to arrange the deportation."*

A complaint[247] by a non-citizen, Gafura, was filed in the Constitutional Court claiming that section 31(2), infringed his constitutional right to freedom and personal inviolability provided by Article 22(2) of the *Russian Constitution*.

Gafura, while visiting the Russian Federation, was detained following a decision made by the Immigration Department of the Moscow Department of Internal Affairs and approved by the Moscow Public Prosecutor, to force his deportation. He was held in custody, without a court order, for more than two months while his deportation was being arranged. The Immigration Department argued that the two months was necessary to arrange for funding of the deportation.

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[245] Article 2.

[246] The Law On the Legal Status of Foreign Citizens in the USSR of 24 June 1981.

[247] The case was reported in *Rossiiskaia gazeta*, 3 March 1998, and in the Bulletin of the Constitutional Court of the Russian Federation. 1998, № 6.

In his complaint to the Constitutional Court, Gafura did not challenge the whole of section 31(2), but only the part allowing detention for the period necessary to arrange deportation, which he claimed infringed the forty-eight hour limit prescribed by Article 22(2) of the *Russian Constitution*, since there was no court order issued.

The Constitutional Court concluded that in the light of Article 22(2) a foreign citizen or stateless person located on Russian territory and ordered by the Immigration Department to be deported from Russia may be held in detention for a period necessary to arrange deportation, but no longer than forty-eight hours. However, the Court added that the person may be kept in detention beyond the forty-eight hour period if without such detention the deportation order could not be carried out at all (that is, for example, if their was no available transport in time to effect the deportation).

Effectively, the Constitutional Court, in interpreting section 31(2), allowed the detention of a person beyond forty-eight hours without a court order. It is a common opinion among Russian academics[248] that the Constitutional Court was obliged in this case (as in other similar matters),[249] due to its dependence on government funding, to rule in favour of the government authority responding to the complaint.

3.3 Limiting the Right to Freedom and Personal Inviolability

The right to freedom and personal inviolability can be lawfully limited in the event that, for example, a person is suspected of insanity and/or posing a danger to others. In such cases, the person can be placed in a psychiatric institution for examination.[250]

Other means of limiting the freedom of citizens, provided for by legislation, include the temporary isolation and treatment of those suffering from certain dangerous infectious diseases;[251] and the committal of juvenile delinquents to special educational institutions.[252]

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[248] See Weitsel A. *Prava cheloveka in Russia. Vivodi I zamechaniye otnositelno prav cheloveka, imeyuchih osobo vazhnoe znacheniye dlia demokraticheskovo obschestva.* (Personal Rights in Russia. Conclusions and commentary regarding personal rights of special significance for the democratic society), Legal Protection Network, Pbl Moscow 2002, and Grechko N. *Novii UPK i Sudebnaya Practika* (New UPK and Judicial Practice). Yuridicheskii Mir. № 26, 2002.

[249] See Fagan G. *Previously Unpublicised Case Brings Number of Expelled Catholics to Seven;* Keston News Service, 17 September 2002.

[250] Section 34 of the *Russian Family Code 1996*

[251] For example, leprosy; See On the recording of all leprosy sufferers and their compulsory isolation, Diokter Sovnarkom RSFSR 1923.

[252] Section 98 of the *Criminal Code 1996.*

Minors may also have their right to inviolability limited by their parents, guardians and/or trustees, in the event that they require life saving medical assistance, which they themselves may reject. Evidence of abuse of parental rights, such as cruelty to children, may result in a loss of parental rights or the dismissal of guardians and trustees from their positions.[253]

The limitation of freedom in all of the above cases may only be executed on the basis of a court order.[254] However, often a court order may not be sought at all, since the authorities know that aggrieved parties lack the opportunity, physical ability or mental capacity to file a complaint.[255]

[253] Section 69 of the *Russian Family Code 1996*.

[254] Part III *Criminal Procedures Code 2001*

[255] See further *Rossiiskaia gazeta*, 3 March 1998.

4. THE RIGHT TO PRIVACY AND INVIOLABILITY OF THE HOME

4.1 General Provisions

Article 23 of the *Russian Constitution* states that:

> *"1. Everyone shall have the right to privacy, to personal and family secrets, and to protection of one's honour and good name.*
>
> *2. Everyone shall have the right to privacy of correspondence, telephone communications, mail, cables and other communications. Any restriction of this right shall be allowed only under an order of a court of law."*

This provision is consistent with international standards. For example, Article 8(1) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms 1950* (the "**ECPHRFF**"), states that "[e]veryone has the right to respect for his private and family life, his home and his correspondence."

Likewise, Article 12 of the *Universal Declaration of Human Rights 1948* states that:

> *"[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."*

Also, Article 17 of the *International Covenant on Civil and Political Rights 1976* states that:

> *"[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."*

The European Court of Human Rights (the "**ECHR**"), which hears human rights complaints from Council of Europe member states with a mission to enforce the ECPHRFF, has upheld the

right of privacy in a number of judgments.[256] For example, in *Dudgeon v. United Kingdom*[257] Mr. Jeffrey Dudgeon, a homosexual resident of Belfast filed a complaint with the European Commission of Human Rights challenging several laws in Northern Ireland that criminalized homosexual conduct.

Mr. Dudgeon complained that under the law in force in Northern Ireland[258] (the "**NI laws**") he was liable to criminal prosecution because of his homosexual conduct and that he experienced fear, suffering and psychological distress directly caused by the very existence of the NI laws. He further complained that, following the search of his house in January 1976, he was questioned by the police about certain homosexual activities and that personal papers belonging to him were seized during the search and not returned until more than a year later. He alleged that, in breach of Article 8(1) of the ECPHRFF, he has thereby suffered an unjustified interference with his right of respect for his private life.

In its response, the Government drew attention to what it described as profound differences of attitude and public opinion between Northern Ireland and Great Britain in relation to questions of morality. Northern Ireland society was said to be more conservative and to place greater emphasis on religious factors, as was illustrated by more restrictive laws even in the field of heterosexual conduct.

In assessing the requirements of the protection of morals in Northern Ireland, the Government emphasized that the contested measures must be viewed in the context of Northern Ireland society. The fact that similar measures are not considered necessary in other parts of the United Kingdom or in other member-States of the Council of Europe does not mean that they cannot necessarily exist in Northern Ireland. Where there are disparate cultural communities residing within the same State, it may well be that different requirements, both moral and social, will face the governing authorities.

In the opinion of the ECHR, the restriction imposed on Mr. Dudgeon under Northern Ireland law was disproportionate to the aims sought to be achieved. The ECHR had acknowledged the legitimate necessity in a democratic society for some degree of control over homosexual conduct; notably in order to provide safeguards against the exploitation and corruption of those

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[256] See Dudgeon v. United Kingdom, 45 Eur. Ct. H.R. (1981); Norris v. Ireland, 142 Eur. Ct. H.R. (1988); Modinos v. Cyprus, 259 Eur. Ct. H.R. (1993).

[257] *Ibid.*

[258] Offences against the Person Act 1861 ("the 1861 Act"), the Criminal Law Amendment Act 1885 ("the 1855 Act") and the common law.

who are especially vulnerable by reason of, for example, their youth. However, it falls in the first instance to the national authorities to decide on the appropriate safeguards of this kind required for the defence of morals in their society and, in particular, to fix the age under which young people should have the protection of the criminal law.

The ECHR concluded that the NI laws interfered with the applicant's right of respect for his private life (as guaranteed by Article 8(1) of the ECPHRFF), in so far as they prohibited homosexual acts committed in private between consenting males.

The case demonstrates that in a democratic society, one's private life should mainly be influenced by moral and social standards, the boundaries of which are protected by law. Hence, where private life is a matter of government control, through imposed regulations and prohibitions, expressions of individuality are at risk of being limited.[259]

A regime controlling private life was prevalent in Russia during Soviet rule, and continues to exist today in some aspects of personal life. For example, until recently it was illegal to use a mobile telephone or global positioning device in Russia without a licence permitting such use.[260] People (including foreigners) using such devices without a licence were liable to received on-the-spot fines. However, given the proliferation of communication technology throughout Russia, the licensing regime soon became impossible to police, and was consequently withdrawn.[261]

4.2 Personal and Family Privacy

Personal and family privacy concerns the protection of information about individuals or their family that they wish to keep secret. In Russia, information about one's private life is protected by legislation, which establishes barriers to arbitrary intrusion into someone's private life. For example, section 137 of the *Criminal Code 1996* declares it a criminal act to breach the inviolability of private life where this action is carried out for purposes of gain or personal interest and causes damage to a person's rights and lawful interests.[262]

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[259] See further: Kotieva, L.I. *Chastnaia zhizn' kak iuridicheskaia kategoriia* (Privacy as a Legal Category)', *Yuridicheskii mir*, 9, 1997, pp. 18-19.

[260] Ibid.

[261] Ibid.

[262] See further: Borzenkov, G.N. *Ugolovno-pravovoe obespechenie neprikosnovennosti chastnoi zhizni* (Protection of the Inviolability of Private Life in Criminal Law) *Yuridicheskii mir*, 9, 1997, pp 19-23.

The *Criminal Code 1996* also establishes criminal liability for the disclosure of information concerning adoption against the will of the adoptive parent;[263] the disclosure of information relating to a preliminary investigation or inquiry, if the individual concerned was warned against this;[264] a breach of the privacy of a person's correspondence, telephone conversations, postal, telegraphic or other communications;[265] and a breach of the privacy of the home, by illegal searching or eviction.[266]

In addition, the *Criminal Procedures Code 2001* requires the preservation of the privacy of all information supplied to a lawyer (i.e. legal professional privilege).[267] The same principle applies to employees of notary offices who, as part of their work, have access to information concerning the private life of individuals, such as the contents of wills and deeds. Such information must, at law, also be kept secret.[268]

Reznik[269] points out that many democratic societies have established laws concerning individual and social interests, including the protection of privacy. In the USA, for example, there is the *Privacy Act of 1974,*[270] which states:

> *"[t]he Congress finds that… the right of privacy is a personal and fundamental right protected by the Constitution of the United States".*

Most provisions of the *Privacy Act 1974* have been found to be constitutional in a number of decisions[271] of the U.S. Supreme Court.

By comparison, in Australia the protection of privacy is not found on the constitutional level. The main protection is provided by the federal *Privacy Act 1988 (Cth)*, which contains 'privacy

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263 Section 155.

264 Section 310 of the *Criminal Code 1996*, and Section 139 of the RSFSR *Criminal Procedures Code 1960.*

265 Section 138 of the *Criminal Code 1996.*

266 *Ibid,* section 139.

267 *Ibid*, sections 51, 72.1 and 72.3.

268 Federal Law *On Notaries* of July 3, 1993, № 10.

269 See Reznik, G.M. *Pered zakonom vse ravny, ne nekotorye ravnee drugikh,* (All are Equal before the Law but Some are More Equal than the Others) Yuridicheskii mir, 9, 1997, pp. 23-24

270 P.L. 93-579. 5 U.S.C.A. para. 552a.

271 See Accuracy in Media, Inc. v. National Park Services., 194 F.3d 120, 123 (D.C. Cir. 1999); and Blazy v. Tenet, 979 F. Supp. 10, 27 (D.D.C. 1997)

principles' that apply to both government agencies, and the private sector (including credit providers and credit reporting agencies).

In addition, there are other federal laws, such as the *Telecommunications Act 1997 (Cth)*, *National Health Act 1953 (Cth)*, *Data Matching Program (Assistance and Tax) Act 1990 (Cth)* and the *Crimes Act 1914 (Cth)* that contain privacy protection provisions.

The *Privacy Act 1988 (Cth)* also establishes the Office of the Privacy Commissioner, who is empowered to investigate complaints from individuals about interferences with privacy under the *Privacy Act 1988 (Cth)* and to conduct audits of government and private sector agencies.

In Russia, however, there is no special commissioner assigned to deal exclusively with breach of privacy complaints. Administrative reviews of decisions concerning breaches of privacy may, however, be referred to the Office of the Plenipotentiary of the Russian Federation.

4.3 Privacy of Communications

Article 23(2) of the *Russian Constitution* provides the right of privacy of correspondence, telephone conversations, postal, telegraphic and other communications. The Article states that:

> *"Everyone shall have the right to privacy of correspondence, telephone communications, mail, cables and other communications. Any restriction of this right shall be allowed only under an order of a court of law."*

This right is protected by Russian legislation. For example, section 22(3) of the Federal Law *On Postal Communication 1995*[272] states that the delaying, inspection and confiscation of posted items or documentary correspondence, tapping telephone conversations and reading electronic communications, or any other interference with the privacy of communication are permitted only pursuant to the conditions set out in a court order. In addition, the Federal Law *On Security Services 1995,*[273] states that investigative activity by any government department, which affects people's right to privacy of correspondence, telephone conversations, postal, telegraphic and other communications is permitted only on the grounds of a court order.

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[272] Federal Law *On Postal Communication* of August 9, 1995 № 129-ФЗ – August 14, 1995 № 33. See *Rossiiskaia gazeta*, 16 August 1995 for commentary.

[273] Federal Law On *Federal Security Services* of 3 April 1995 – April 15, 1995.

However, neither of the above laws stipulates the conditions under which a court order may be issued. Therefore, the court must determine on a case-by-case basis the level of evidence required in granting or refusing a court order. In the context of Russia's current problems with judicial independence, such arbitrary court decisions are prone to the influence of prosecutors, politicians and interested parties, which subjects the rights enjoyed under Article 23(2) of the *Russian Constitution* to possible compromise.[274]

4.4 Limitations on the Right to Privacy

The right to privacy is subject to a series of legislative exceptions where the interests of society dictate the necessity of such intrusion by the state into the private sphere. Such limitations on the right to privacy arise in the context of criminal procedure; the preservation of health and safety; and military situations.

Article 8(2) of the ECPHRFF provides that:

> *"There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

Likewise, Russian legislation[275] allows police, federal security services and other law-enforcement bodies to intrude into a person's private life in connection with the investigation of crimes. There are three ways in which the above legislation limits the right to privacy: (a) examination and seizure of postal and telegraphic correspondence or other such communications conducted through any technical communication channel; (b) tapping of telephone and other conversations using modern technology; and (c) entry into a home without the consent of the occupants and inspection or searching of the residence and, further, in the case of operational

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[274] Reznik, G.M. op cit at 23.

[275] Cf. section 68(1)(3) of the *Criminal Procedures Code of the RSFSR 1960*; section 11 of the RSFSR law *On the Police* of 18 April 1991 (*Vedomosti S"ezda narodnykh deputatov RF i Verkhovnogo Soveta RF*, 16, 1991, p. 503.); section 11 of the Russian Federation law of 24 June 1993 *On the Federal Taxation Office* (*Vedomosti S"ezda narodnykh deputatov RF i Verkhovnogo Soveta RF*, 29, 1993, p. 1114); and section 13 of the Federal Law of 3 April 1995 *On the Federal Security Services in the Russian Federation* (*Sobranie zakonodatel'stva RF*,15, 1995, Article 1269) (Code of Legislation of the Russian Federation, 1995, № 15, Article 1269).

investigative activity ("**OIA**"), the installation of listening or other detection devices in the home and electronic surveillance of the home from a distance.

The above criminal and investigative procedures are regulated by the *Criminal Procedure Code 2001*, and the Federal Law *On Operational Investigative Activity 1995*, the latter permitting considerable intrusion of government security agencies into people's private lives; for example, sections 2 and 7 allow the use of modern surveillance technology even before the evidence of a crime is detected; that is, on the basis of suspicion alone.

All special-service organs of the government may conduct OIA.[276] For the public prosecutor, such activity is practically impossible to control, since the methods of OIA are secret, as are the names of agents and informers.

Judicial control over OIA is also subject to limitations given that in order to receive court approval for conducting OIA, a government agency applying to the court to carry out a given operation, does not have to produce operational evidence.[277] A specially empowered judge who has access to classified material considers this application. Access to such material is provided to the judge by the same bodies that applied for the court order, and the material is in the judge's exclusive control.

Material collected by OIA in relation to people whose guilt is not substantiated, may be retained for one year unless the interests of justice require otherwise.[278] However, establishing what is or is not in the 'interests of justice' is a matter for the prosecutor, not the court.

A recent and notable case in Russia concerning OIA, involved a journalist from the Volgograd region, Chernova, who applied to the Constitutional Court after publishing articles exposing a local Internal Affairs agent involved in illegal activity. Chernova made a tape-recording of a conversation with the agent who threatened to divulge information about her private life (which had been acquired by surveillance with electronic devices), if she did not cease publishing

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[276] Ministry of Internal Affairs, the Federal Security Service, the External Intelligence Service, the Taxation Office (The Ministry of Taxes and Dues) the Federal Government Communications Agency (Included in the structure of the Federal Security Service), the Federal Border Service, and the Presidential Security Service.

[277] Smirnov A.V., Kalinovski K.B. *Commentary on OIA*, SPB, 2002, 1008c.

[278] Section 5.

material that compromised the Internal Affairs department.[279] Chernova then published a transcript of the tape-recording exposing the surveillance activity against her.

She subsequently applied to the Constitutional Court claiming a breach of her rights under Article 23(2) of the *Russian Constitution*. However, the Internal Affairs department refused to submit any evidence to the Constitutional Court concerning the nature of the surveillance operation in view of its secrecy.

Therefore, a report of an OIA agent, which might be intentionally fabricated, cannot be verified by anyone, even the court. The same may be said about the status of the OIA itself, which is treated as a state secret, making it impossible to challenge the justifications for the applied investigative procedures.

Chernova claimed that such secrecy:

> *"…lays the ground for the abuses which took place in my case: the use of acquired information for purposes of blackmail in order to curtail my journalistic activity, the refusal to inform even an empowered prosecutor or the court of the operation, the misleading of the prosecutor's office and the court as to whether the operation was still in effect or as to when it might be terminated. Thus the law does not offer any opportunity of accessing information necessary to determine whether one's rights have been breached or not, thereby indirectly blocking one's access to justice."*[280]

In obiter dicta, Judge G.A. Gadzhiev[281] acknowledged that the Federal Law *On Operational Investigative Activity 1995* in effect allows a large degree of freedom for law enforcement agencies with respect to the standards used in determining the degree of intrusion into privacy. Moreover, Judge V.I. Oleinik stated that it was inappropriate for a court to make a decision in a case where a substantial amount of material evidence was unavailable to it. He ruled that the

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[279] See Study on the tapping of telephones according to provisions of international law and the laws of 11 European countries, Harkov Legal Group Vol. 12 (49), 1999.

[280] See: Smirnov, S. *Dokazat' lozhnost' donosa nevozmozhno, potomu chto donesenie agenta iavliaetsia gosudarstvennoi tainoi* (It is impossible to Prove an Untrue Testimony because Information of an Agent is a State Secret), *Novaia gazeta*, No. 23, 15-21 June 1998, p. 15.

[281] See Decision of the Constitutional Court of the Russian Federation On "Г.А. Гаджиева" 12 August 1995 *Rossiiskaia gazeta*, 11 August 1998.

Federal Law *On Operational Investigative Activity 1995* required amendment to the extent that it must compel the special-service operatives to submit all evidence to the court.[282]

In its decision,[283] however, the Constitutional Court ordered the cessation of the OIA with respect to Chernova; saying that the Federal Law *On Operational Investigative Activity 1995* did not contradict the Constitution, and that the appellant's rights had been breached not by the law, but by its incorrect application.[284]

Russian academics[285] say that the practical effect of the decision is that the initial stages of an OIA operation may only involve actions that do not infringe people's constitutional rights (for example, making inquiries, interrogation, verification etc.) should be allowed; however, as soon as the agents have uncovered evidence of a crime, they may instigate criminal procedures (i.e. 'violate privacy') but should inform a court to oversee aspects that infringe people's constitutional rights.

Consequently, the Constitutional Court's decision in the case of Chernova opens the way for covert operations that may continue to compromise the enjoyment of the right of privacy of correspondence, telephone conversations, postal, telegraphic and other communications.

4.5 Inviolability of the Home

The right to the inviolability of the home is provided by Article 25 of the *Russian Constitution*, which states:

> *"The home shall be inviolable. No one shall have the right to enter the home against the will of persons residing in it except in cases stipulated by the federal law or under an order of a court of law."*

In comparison with Article 8(1) of the ECPHRFF, which states that "[e]veryone has the right to respect for his private and family life, his home and his correspondence" it is arguable that Article 25 of the *Russian Constitution* provides stronger protection than its international

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[282] See Decision of the Constitutional Court of the Russian Federation On "В.И. Олейника" 12 августа 1995 *Rossiiskaia gazeta*, 11 August 1998.

[283] Russian Federation Constitutional Court of 14 July 1998, No. 12-C *On the matter of Chernova* (Bulletin of the Constitutional Court of the Russian Federation, 1998, № 3).

[284] *Rossiiskaia gazeta*, 11 August 1998.

[285] See: Smirnov, S. op cit at 17.

counterpart, given that the term 'respect' is less specific than the clear prohibition against entering the home provided by Article 25.

Legislative protection for Article 25, can be found in the *Criminal Code 1996,* which makes any entry into a home, other than as permitted by law or a court order, a crime.[286]

However, according to the Federal Law *On Security Services 1995*, security agents may enter unopposed into homes (or into the premises of businesses, institutions or organizations), regardless of their ownership status, "where evidence suggests a crime is being or has been committed or in the pursuit of individuals suspected of a crime".[287] The law does not require a court order for entry into a home in such circumstances. Moreover, there no references to control by a prosecutor; the prosecutor needs only to be notified within twenty-four hours of the operation having been carried out.[288]

Given that the level of evidence required to 'suggest' that a crime is being or has been committed, is not defined by the Federal Law *On Security Services 1995,* the law effectively provides an opportunity for law enforcement agents to arbitrarily demonstrate any level of evidence as grounds for entering a home. This results in a potential abuse of Article 25 of the *Russian Constitution*, and a limitation on its enjoyment by Russian people.

A court order is also not required, in cases of emergency (for example, fire, earthquake or accident).[289] However, the procedures for entry in such circumstances are set out in various departmental guidelines (i.e. not legislation) and are, therefore, ineffective in light of Article 25.

The term 'home' is defined by section 139 the *Criminal Code 1996* to represent a place intended or equipped for permanent or temporary residence.[290] Vehicles and garages, compartments on a train or ship, plots of land adjacent to the house and work areas temporarily converted for residence are not included in the definition of 'home'.

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[286] Article 139.

[287] Section 13(h).

[288] Section 13(z) of the Federal Law *On Security Services 1995*

[289] See section 168 of the *Criminal Procedures Code 2001* says that a search may be conducted on the basis of a justified decision by a magistrate with approval by the prosecutor.

[290] This would include living and common use areas (for example, corridors, bathrooms, toilets, balconies, verandas, cellars, attics, kitchens, annexes, external constructions used for maintenance purposes, rooms in hotels, sanatoriums, convalescent homes, private rooms in hospitals, tents, and garden sheds.)

However, Russian commentators agree that a broad definition of 'home' is the best guarantee of a person's rights, since entry into a home is only permitted in special circumstances and with the observance of specific rules established by law.[291] They argue that a 'home' should be any living space regardless of its legal status, whether municipal, private business, cooperative, departmental, official, or communal.

In the USA and England there are many precedents that give 'home' a very broad meaning.[292] Moreover, Sir William Pitt wrote that the home should be inviolable irrespective of its condition:

> *The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail - its roof may shake - the wind may blow through it - the storm may enter - the rain may enter - but the King of England cannot enter; all his forces dare not cross the threshold of that ruined tenement".* [293]

Moreover, Russian commentators[294] argue that the prohibition on entering a home should cover other forms of 'entry', including the accessing of information about the activities inside a home by use of any audio or video surveillance technology. In order for such actions not to violate Article 25 of the *Russian Constitution*, a court order allowing this form of surveillance should be necessary.

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[291] See Neprikosvennost' zhilishcha: ugolovno-protsessual'nye aspekty (na materialakh Gruzii) (Inviolability of Home: Criminal Procedural Aspects (Georgian Experience) , Gosudarstvo i pravo, 5, 1995, p. 102.

[292] See: Stanley v. Georgia, 394 U.S. 557 (1969) for interpretation of the IV Amendment to the US Constitution: "home" includes lands adjacent to farms, farm buildings etc.

[293] See Savitskii, V.M. (ed.) Sudebnyi kontrol' i prava cheloveka, (Judicial Control and Human Rights) Pbl. Moscow, 1996, p. 36.

[294] *Ibid.*

5. DISCLOSURE OF AND ACCESS TO INFORMATION

5.1 Disclosure

Article 24(1) of the *Russian Constitution* states:

> *"It shall be forbidden to gather, store, use and disseminate information on the private life of any person without his/her consent."*

This provision complements Articles 23 of the *Russian Constitution*, which provides:

> *"1. Everyone shall have the right to privacy, to personal and family secrets, and to protection of one's honour and good name.*
>
> *2. Everyone shall have the right to privacy of correspondence, telephone communications, mail, cables and other communications. Any restriction of this right shall be allowed only under an order of a court of law."*

The above provisions reflect the principles espoused in international rights instruments. For example, Article 12 of the *Universal Declaration of Human Rights 1948* provides that:

> *"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."*

Also, Article 8(1) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms 1950*, states:

> *"Everyone has the right to respect for his private and family life, his home and his correspondence."*

However, Russian legislation provides that collection of information by government authorities be permitted without the consent of the individual. Section 11 of the Federal Law *On*

Information Collection and Protection 1995,[295] provides for 'personal data' to be supplied by any person, company, organization or association to state authorities upon demand.

Section 2 of the Federal Law *On Information Collection and Protection 1995* defines 'personal data' to be "factual information about the events and circumstances of an individual's life which can be used to identify the individual." This includes information contained in databases of government, social and corporate organizations.[296]

Therefore, there is an apparent contradiction between Article 24(1) of the *Russian Constitution*, which provides for the right of non-disclosure of information, and the above legislative provisions, which compel disclosure of information upon demand.

5.2 Access

Article 24(2) of the *Russian Constitution* provides that:

> *"…bodies of state authority and the bodies of local self-government and the officials thereof shall provide to each citizen access to any documents and materials directly affecting his/her rights and liberties unless otherwise stipulated under the law."*

Russia is among the sixty-one countries around the world that have implemented some form of 'freedom of information' legislation, which sets rules on government secrecy. In Australia, for example, the *Freedom of Information Act 1982 (Cth)* provides for the right of access[297] to official documents of government agencies and of Ministers, but restricts access to exempt documents.[298] Exempt documents are listed in section 32 of the Act and include documents relating to matters such as national security, defence, international relations, legal professional privilege, personal privacy, business affairs, and confidential information.

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[295] 20 February 1995.

[296] Bachilo I. *Personal data in the Sphere of Business*. "Zakon" (*Law*)- N 12. - 2002. - pp 26-29.

[297] Section 11

[298] Section 32

The equivalent legislation in Russia is the Federal Law *On Information Collection and Protection 1995,*[299] section 14 of which provides for the right to access information about oneself, the right to correct it in the interests of completeness and accuracy, and also the right to know who is using (or used) the information, and in what circumstances.

The Federal Law *On Information Collection and Protection 1995* defines the holders of information as not only state and local government authorities, but also non-governmental organisations and private individuals, who are equally obliged to make available information of a personal nature and to maintain care in the protection, updating and use of such information. Any refusal of access to a concerned party by a holder of information may be challenged in court.[300]

The failure by government authorities to make such information available or to provide incomplete or knowingly false information is subject to penalties under section 140 of the *Criminal Code 1996*.

However, as in Australia, the right of access to information is subject to exemptions.

Some exemptions are contained in the *Federal Law On State Secret 1993,*[301] which states that information may be given to an applicant only "within the limits permitted by the requirements of security, excluding any divulgence of a state secret."

State secret is defined by section 2 of the *Federal Law On State Secret 1993* as information maintained by the government that concerns military activity, foreign policy, economy, intelligence and counter-intelligence, which may cause harm to the security of the Russian Federation.

However, section 7 of the *Federal Law On State Secret 1993* provides that information about disasters or catastrophes, forthcoming disasters such as storms, wars, disease or ecological disasters cannot be considered as a state secret for the purposes of the law.

In addition, a state secret cannot be maintained over information concerning privileges of public servants, administrative decisions concerning the personal rights of individuals, and over the size of the federal gold reserve.

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[299] Federal Law *On Information Collection and Protection of Information* of February 20, 1995 № 24-ФЗ.

[300] *Ibid*.

[301] The Federal Law *On State Secret 1993* of 21 July 1993.

At the present time, however, it is difficult to assess the effectiveness of Article 24 of the *Russian Constitution* and its related legislation, since there are yet to be cases brought before the courts concerning these provisions.

A possible explanation for the lack of judicial testing in this area may be attributed to the attitude of the Russian people, who have yet to fully accept the notion of 'freedom of information'. Historically, the Soviet regime was renown for both suppressing government information concerning individuals, and for its ruthlessness in procuring information from people.[302] Consequently, today there is a high degree of skepticism among Russian people concerning the idea that the bulwark of the Soviet regime, the Committee of Government Security (known as the "KGB") and its successor the Federal Security Services (known as the "FSB"), will abide by the law, and refrain from collecting and using information about a person without their consent; or will easily and willingly deliver up requested information.[303]

According to one Russian commentator[304], "…many more years have to pass before the public reaches a level of trust in the new system that will eclipse their level of distrust in the old".

[302] Bachilo I. op cit at 27

[303] Ibid at 28

[304] Ibid.

6. THE RIGHT TO PROTECT ONE'S DIGNITY, HONOUR AND GOOD NAME

6.1 Dignity

Article 21(1) of the *Russian Constitution* states that:

> *"The dignity of the person shall be protected by the state. No circumstance may be used as a pretext for belittling it."*

According to Russian commentators,[305] 'dignity' is defined as the recognition of the individual's value regardless of what they think of themselves or what others think of them. Dignity differs from honour in that the latter is understood in terms of a person's positive reputation (i.e. the recognition of their merits).[306]

According to the preambles of the *Universal Declaration of Human Rights 1948* (the "**UDHR**"), *the International Covenant on Civil and Political Rights 1976* (the "**ICCPR**"), and the *International Covenant on Economic, Social and Cultural Rights 1976*, human dignity is common to all members of the human race, from which they derive all their inalienable rights; it is the foundation of freedom, justice and peace. Moreover, Article 1 of the UDHR states that all human beings are born free and equal in dignity and rights.

The principle of human dignity is also commonly linked with that of peoples' sovereignty and the responsibilities of the state,[307] since failure to recognise and protect human dignity can lead to destabilisation (through corruption, subversion or assassination) of judicial, economic and political structures that form the democratic foundation of a society.

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[305] For example, Petrukhin. I.L. *Kommentarii k st. 21, Konstitutsiia RF: Nauchno-prakticheskii kommentarii* (Commentary on Article 21, Constitution of the Russian Federation: Scientific and Practical Commentary), Pbl. Moscow 1997, p. 188.

[306] Annotated Constitution of the Russian Federation by the Moscow Government Law Academy Edited by O.E.Kutafina 2002; commentary on Article 21.

[307] For example, Germany, Greece and Portugal. In the German constitution Article 1(1) speaks of the dignity of people; Article 1(2) speaks of the inviolability and inalienability of human rights; and Article 1(3) speaks of the government's responsibility to ensure that these rights are upheld.

In the *USSR Constitution 1977* and the *Russian Declaration of Human and Citizens' Rights and Freedoms 1991* there is no mention of protecting individual's dignity. Whereas, in the *Russian Constitution* there are many provisions aimed at such protection.[308]

Petrukhin[309] argues that the guarantee provided by Article 21(1) extends to the protection of the dignity of prisoners, of the poor, and of those suffering from a mental illness and venereal disease.

Petrukhin also highlights the importance of protecting one's dignity in situations where a person is 'under someone else's authority', that is, where they are the subjects of guardianship, medical treatment, or military service. He states that a person with limited rights or in a position of subservience is in particular need of respect for their dignity.

In Australia,[310] the protection of dignity, honour and reputation is subject to civil liability, where a person who publishes an assertion of fact or a comment that injures or is likely to injure the personal, professional, trade or business reputation of an individual or a company, or exposes them to ridicule or cause people to avoid them, is guilty of a tort (i.e. a civil offence). Only malicious and knowingly false statements may attract criminal liability.[311]

However, in Russia, protection of dignity is only found in the *Criminal Code 1996*, which imposes criminal liability for all defamatory acts including insults[312] and slander.[313] This highlights the importance conferred upon the right to protection of one's dignity in Russia.

The *Criminal Procedures Code 2001* protects personal dignity by measures such as a prohibition on belittling the dignity of persons undergoing medical examination[314] or scientific experiment;[315]

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308 For example, see Articles 22-25 of the *Russian Constitution* with respect to the right to a dignified life, the inviolability of private life, the protection of one's honour and good name, the prohibition on the collection of information about one's private life or the prohibition on forced entry into one's home.

309 Petrukhin. I.L. *op cit*. at 189.

310 See for example: Submission of the Australian Press Council to the ACT Legislative Assembly Standing Committee on Justice and Community Safety on the Defamation Bill 1999 of 16 October 2000.

311 For example, in South Australia, Victoria and the Northern Territory under common law any libel of sufficient seriousness can lead to criminal proceedings. Examples have been action in 1960 against Rohan Rivett, editor of Adelaide's The News, as part of the 'Stuart Affair' (three charges of seditious libel and three of malicious libel) and charges in 2005 against staff members of former SA speaker Peter Lewis over claims that politicians and police officers were paedophiles.

312 Section 130.

313 Section 129.

314 Section 181.

the provision of witnesses of the same sex as a person being searched or examined;[316] and a prohibition on violence, solicitation or threats in the conduct of any investigative activity.[317]

The *Russian Constitution* protects the dignity not only of adults (as responsible individuals), but also of children and the mentally ill. Hence, insulting minors or the mentally handicapped, even if they are unaware of it, is a crime.[318]

The contemporary German jurist Heberle states:

> *"One may talk of the meaning of the concept 'human dignity' in reference to the whole of a person's life, from birth to death. However, in many cases this constitutional principle also functions before and after these events. An example includes the protection of the dignity of deceased people…."*[319]

In Russia, even after the death of a person, the protection of their dignity and honour is important. For example, in the case of criminal proceedings, where the name of the accused may be tarnished by criminal allegations, the restoration of their good name may be in the interests of justice and the public. These include those imprisoned and executed on political grounds from the 1930s to the 1950s.[320] According to section 5(8) of the *Criminal Procedures Code 2001*, if an accused person dies, the criminal proceedings must be terminated, and can be re-opened only for the purpose of clearing the name of the accused.

Protection of human dignity is also provided by Russian health legislation. In accordance with section 30 of the law *on the Protection of the Health of Citizens 1993* a person seeking and receiving medical assistance has the right to a respectful and attentive attitude; examination, treatment and housing under the required conditions of sanitary hygiene; and the relief of pain associated with the illness and/or such medical intervention as will allow the preservation of dignity even in a serious condition.

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315 Section 183.

316 Section 172.

317 Section 20.

318 Section 130.

319 *Gosudarstvennoe pravo Germanii* (State Law of Germany), vol. 1 (translated from German). Pbl. Moscow 1994, p. 22.

320 Reviewed first in the 1950s and 1960s (the so-called first, or 'Khrushchev' wave), then in the 1980s, with the onset of the social changes associated with perestroika. Amongst them are famous cases of the 'counter-revolutionary crimes' of prominent statesmen and military and economic leaders.

Persons suffering from psychiatric disorders are also entitled, in the process of administering psychiatric treatment, to "a respectful and humane attitude, without any demeaning of their human dignity".[321] Force is regarded as an extreme measure applicable in cases where the patient represents a danger to themselves or those around them.[322]

6.1.1 Protection against Torture

Article 21(2) of the *Russian Constitution* states that

> *"No one may be subjected to torture, violence or any other harsh or humiliating treatment or punishment. No one may be subjected to medical, scientific or other experiments without his or her free consent."*

This Article guarantees protection against torture violence and any other harsh or humiliating treatment or punishment, and corresponds to the principles contained in Article 5 of the UDHR, and Article 7 of the ICCPR that prohibit the subjection of individuals "to torture or to cruel, inhuman or degrading treatment or punishment".

Torture is defined by Article 1 of the *UN Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment 1984*[323] (the "**UNCTOCIDTP**") as

> *"…any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."*

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[321] Section 5(2) of the Federal Law On Psychiatric Treatment and the Rights of Those Undergoing It of July 2, 1992 № 3185-1.

[322] Section 30.

[323] UN Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December, 1984, to which Russia is a signatory.

Moreover, Article 2 of the UNCTOCIDTP, states that neither a state of emergency, a state of war, political instability nor any other exceptional circumstance may serve as justification for torture or other forms of demeaning human dignity.[324]

According to decisions of the European Commission on Human Rights,[325] 'treatment or punishment' should be regarded as inhuman if it entails severe mental or physical suffering and cannot be justified in the given situation; and it should be regarded as degrading if it is aimed at instilling in its victim a feeling of fear, depression or inferiority, insulting or degrading them, or breaking their physical or mental resistance.

Signatories to the UNCTOCIDTP (one of which is the Russian Federation) are bound to impose criminal liability for the use of torture.[326]

In Russia, the *Criminal Code 1996* imposes criminal liability by operation of section 286(3) with respect to the abuse of official powers where this is accompanied by violence or the threat of violence; and by operation of section 302(2) with respect to taunting of persons under interrogation. Despite of these provisions, evidence of torture in Russia is widespread.[327]

Detention in custody for an excessive length of time with the aim of punishing an individual or extracting from them a confession is also arguably a form of torture. While the period of detention of an accused person during a preliminary investigation is proscribed by Article 22(2) of the *Russian Constitution* (to no more than forty-eight hours without a court order), the period of detaining a defendant (on the basis of a court order) during the course of a trial is not regulated by Russian legislation. It may be years – effectively punishing the accused before their guilt is established. This falls under the definition of 'torture' provided by the UNCTOCIDTP, and serves to demonstrate the shortcomings of the Russian criminal procedures legislation.

Another practice that may be regarded as a form of torture is the detention of insane individuals, who have been accused of a crime, in solitary confinement before their trial date. This is usually

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[324] The same position is taken in section 27 of the Federal Law *On State of Emergency* of the RSFSR of May 17, 1991, № 1253-1.

[325] For example, the European Commission defined degrading treatment as treatment or punishment which "grossly humiliates one or drives him to act against his will or conscience." See *The Greek Case* in the *Year Book of European Convention on Human Rights* (European Commission on Human Rights, 1969) p. 186.

[326] Russia became a party to the European Convention on the Protection of Human Rights and Fundamental Freedoms and to the UN Convention against Torture on 20 February 1998.

[327] *Confessions At Any Cost*, Police Torture in Russia Human Rights Watch; November 1999; Library of Congress, United States of America.

done to pacify them during bouts of violent behaviour. Such actions, however, contradict section 82(1) of the *Standard Minimum Rules for the Treatment of Prisoners 1977,*[328] which states that persons who are found to be insane should not be subjected to standard prison conditions.

As discussed earlier, the conditions under which arrested persons are held in Russian prisons are likely to limit the enjoyment of the right provided by Article 21(2) of the *Russian Constitution*. Although steps[329] are being taken towards making the conditions for prisoners and those held in custody more humane, the financial difficulties facing Russia render these steps as merely declarative rather than a realistic plan for change to Russia's penal system.

6.2 Honour and Good Name

Article 23(1) of the *Russian Constitution* states that:

> *"Everyone shall have the right to privacy, to personal and family secrets, and to protection of one's honour and good name."*

Ozhegov's Explanatory Dictionary of Russian Language defines 'honour' as:

> *"…those moral qualities of a person worthy of respect and pride; his corresponding principles; a good, unsullied reputation, a good name; esteem, recognition, respect."*[330]

While dignity is the recognition of the individual's value regardless of what they think of themselves, honour is society's evaluation of an individual, a specific assessment of their merits and qualities. Hence the nature of honour is purely social and does not depend on the will or desires of the individual concerned.[331]

Protection of one's honour and good name concerns the prohibition and dissemination of information about a person's private and family life against their will, where this information

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328 Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

329 See the Federal Law On Custody of Suspects and the Accused 1995 as well as the Criminal Procedures Code 2001.

330 Ozhegov, S.I. *Slovar' russkogo iazyka* (Dictionary of Russian Language). Pbl. Moscow, 1990, pp. 880-881.

331 See: A.L. Anisimov. Chest', dostoinstvo, delovaia reputatsiia: grazhdansko-pravovaia zashchita (Honour, Dignity, Commercial Reputation: Protection in Civil Law) Pbl. Moscow, 1994, pp. 6-7.

might undermine their reputation in society (i.e. defamatory information), including the tendentious publishing of information about a person which creates a one-sided impression; the spreading of untrue information about an individual's personal, family, professional or political life; and public actions which are disrespectful or insulting to an individual; or the misappropriation of another's deeds or merits.[332]

Claims for the protection of one's honour and good name are filed in accordance with the *Civil Code 1994*, which refers to "honour, dignity and commercial reputation" (albeit undefined) and provides the conditions and procedures for its protection.[333] For example, the *Civil Code 1994* provides the procedures for compensation against moral harm caused by actions infringing personal non-property rights or encroaching on a person's non-material possessions or in other situations established by law.[334] Part II[335] of the code also contains provisions for restitution for damage, including compensation for suffering.[336]

According to Trubnikov,[337] the enjoyment of the right to the protection of one's honour and good name is not significantly compromised in Russia. This is due largely to the fact that most cases are small disputes between low-income parties that do not involve government authorities. In this respect, the extent of corruption and judicial bias is minimal.

6.2.1 Personal and Commercial Reputation

Personal reputation differs from commercial reputation in that the former refers to "society's evaluation of someone, the general opinion of their qualities, their merits and shortcomings",[338] while the latter refers specifically to the reputation of an individual involved in commercial or entrepreneurial activity.

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[332] See further: P.E. Kondratov. 'Kommentarii k st. 23', Kommentarii k Konstitutsii RF (Commentary on Article 23. Commentary on the Constitution of the Russian Federation), ed. Yu.V. Kudriavtseva. Moscow 1996, p. 106.

[333] Section 152.

[334] Section 151.

[335] Came into force on 1 March 1996.

[336] Chapter 59.

[337] See Trubnikov, P.Ia. *op cit.*

[338] For example, Ozhegov, S.I., *op. cit.*, p. 876.

The *Civil Code 1994* limits[339] the meaning of reputation to 'commercial reputation'. However, according to some commentators,[340] the definition of 'reputation' in Russian (whether it be in the context of commercial activity or otherwise) is closely related to 'good name' and 'honour'. Therefore, an infringement against an individual's 'good name' and 'honour' would be an infringement against their 'reputation'.[341]

In light of the above, Russian commentators[342] argue that it would make sense to exclude from the *Civil Code 1994*[343] the limitation of 'commercial reputation' (i.e. use the term "reputation" instead of "commercial reputation") or replace the term "commercial reputation" by that used in the *Russian Constitution* – "honour and good name".

6.2.2 Defamation

According to section 152(1) of the *Civil Code 1994*, a person has the right to demand through the court the retraction of a publication that has defamed his/her honour, dignity or commercial reputation where the person who has disseminated this information cannot prove that it is true. Therefore, in Russia, unproven information that is subject to a defamation claim is presumed at law to be false and, therefore, defamatory.[344] That is, the only defence available to the defendant is to show that the disseminated information is not false.

The present state of defamation law in Australia,[345] for example, provides a number of defences including, absolute privilege, qualified privilege, justification, fair comment, innocent distribution, unintentional defamation, and apology and payment. However, since the test for some of these defences (e.g. the test of public interest in the defense of qualified privilege is subjective and difficult to perform,)[346] the Australian Press Council to the ACT Legislative

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339 See section 152.

340 See: Sheliutto, M.L. 'Grazhdansko-pravovaia zashchita chesti, dostoinstva i delovoi reputatsii', (Protection of Honour, Dignity and Commercial Reputation in Civil Law), Dissertation for Master of Law. Pbl. Moscow, 1997, p. 7.

341 *Ibid.*

342 Gubayeva T., Muratov B., et al *Expertise On Protection fo Dignity Honour and Commercial Reputation* "Российская юстиция" (Russian Jurisprudence) N 4, апрель 2002 г.

343 Sections 150, 152 and 1100.

344 See: Malein N.S.. *Okhrana prav lichnosti sovetskim zakonodatel'stvom* (Protection of Individual Rights by Soviet Legislation). Pbl. Moscow 1985, p. 32.

345 At the time this thesis was researched (1998-2002).

346 Defence of qualified privilege. See *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520

Assembly Standing Committee on Justice and Community Safety on the Defamation Bill 1999 recommended[347] that the defence to defamation be based on truth alone.

The Supreme Court of the Russian Federation has indicated that untrue information is also deemed to be defamatory where it contains statements to the effect that an individual or a company is alleged to have broken the law or 'moral principles',[348] which adversely affects their honour, dignity or commercial reputation.[349]

Untrue information presented in any court hearings can also be made the subject of a defamation claim. That is, in Russia, there appears to be no immunity for witnesses, prosecutors and/or legal representatives in court proceedings with respect to the presentation of untrue information.[350] This is an exception to the principle that guarantees the binding legal force of court decisions; that is, a court which holds a person guilty of a crime must allow the guilty party action in defamation pursuant to section 152 *Civil Code 1994* over matters covered in the court proceeding.

In light of Article 46 of the *Russian Constitution*, which guarantees judicial protection of constitutional rights and freedoms, all testimony provided during judicial procedures should be immune to actions available under section 152 of the *Civil Code 1994*. Ivanenko argues that it would, therefore, be essential in the interests of administration of justice, for this limitation to be included in section 152.[351]

6.2.3 Jurisdiction in Matters of Defamation

Actions for the protection of honour and commercial reputation pursuant to section 152 *Civil Code 1994* can be initiated in either courts of general jurisdiction or courts of arbitration.[352] The jurisdiction of the court of arbitration is defined in section 22 of the *Arbitration Procedures Code*

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[347] Submission of 16 October 2000. See submission 3.1.

[348] For example, committed a dishonest act, behaved inappropriately in the workplace or in a public place, or any other information that defames one's industrial, economic or social activity or commercial reputation.

[349] See *Sbornik postanovlenii Plenuma Verkhovnogo Suda RF*, 1961-96. Pbl. Moscow 1997, pp. 117-121; and No. 10 of 20 December 1994 'Aspects of the application of legislation on compensation for moral harm' (with amendments and additions of Resolution No. 10, 25 October 1996), pp. 167-171.

[350] See Supreme Court decisions: No. 11 of 18 August 1992 'On questions arising from court actions for the protection of people's honor and dignity, and of the commercial reputation of individuals and companies' (published version of Resolution No. 11 of the Plenum, 21 December 1993, with amendments and additions of Resolution No. 6, 25 April 1995), at p33.

[351] Ivanenko Y. G. Civil Protection of Honour Dignity and Commercial Reputation "Законодательство"(Law), 1998, N 12

[352] See section 4 of the Federal Law *On Arbitration Courts in the Russian Federation* of April 29, 1995 № 1-ФКЗ.

1995[353] and concerns primarily (but is not limited to) economic disputes arising from civil, administrative or other branches of the law in situations between companies, or individuals carrying out entrepreneurial activity. That is, actions by corporate plaintiffs concerning the protection of their honour and commercial reputation that arise in non-commercial[354] activities should be referred to courts of general jurisdiction.

The courts of general jurisdiction are competent in awarding damages for economic loss (as well as punitive damages) in disputes concerning the honour and commercial reputation of corporate plaintiffs arising in non-commercial activity.[355] Moreover, such disputes are often not concerned with demands of compensation by the plaintiff. For example, the dissemination of untrue and defamatory information by Russia's mass media is frequently associated with unscrupulous political competition rather than commercial interest.[356] The main objective of plaintiffs in such disputes is the recognition that the disseminated information is untrue and damaging to the plaintiffs' honour or commercial reputation and forcing the defendant to retract it.

Prior to the introduction of the *Arbitration Procedures Code 1995*, disputes over loss of honour and commercial reputation arising in non-commercial activity[357] came under the exclusive jurisdiction of the general court. It seems that the introduction of the *Arbitration Procedures Code 1995* does not, however, in itself provide adequate rationale for courts of arbitration to have jurisdiction over such cases.[358]

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353 Arbitration Procedures Code (Federal Law of May 5, 1995 № 71-ФЗ – 1995, № 19, Article 1709; *Repealed on September 1, 2002).*

354 Such as charitable, cultural or other activity where are corporation does not act in pursuit of commercial interest.

355 Sections 25 and 28 of the RSFSR GPC (*The Civil Procedure Code of the RSFSR),* Federal Law № 138, 14.11.2002.

356 See Resolution No. 11 of the State Plenum, 21 December 1993, with amendments and additions of Resolution No. 6, 25 April 1995.

357 See: Zhuikov V.M. *Sudebnaia zashchita prav grazhdan i iuridicheskikh lits* (Protection of Rights of Citizens and Legal Persons by the Judiciary). Moscow, 1997, pp. 277-279.

358 *Ibid.*

6.2.4 Retraction and Right of Reply

The *Civil Code 1994* provides special procedures for the retraction of defamatory information.[359] As a rule, defamatory information must be retracted in the same manner by which it was disseminated.[360]

This rule also arises with respect to the right of comment in situations where publication of information, (such as a critique of a person) encroaches in some way on a person's rights or legitimate interests or reflects badly on their reputation. In such cases, the person has the right to demand publication of a reply (or comment) in the same publication or program.[361]

Pursuant to section 12 of the *Civil Code 1994*, a person may also force the withdrawal of all copies of a book or magazine that contains defamatory information, or prevent additional publications.

6.2.5 Compensation

Pursuant to section 152(5) of the *Civil Code 1994* a person has the right to demand compensation for any loss of reputation incurred in connection with the dissemination of defamatory information. Also, according to section 151 of the *Civil Code 1994* where a person has suffered (either physically or mentally) through actions infringing their personal non-property rights, the court may impose the requirement of monetary compensation for such harm.

According to sections 151 and 1101(1) of the *Civil Code 1994*, compensation for mental or physical suffering must be made in monetary form. Yaroshenko[362] has noted that other forms of compensation are possible by agreement of both sides; however, this would contradict the opinion of the Supreme Court of the Russian Federation, which has stated that in all disputes initiated after 1 January 1995, compensation should only be calculated in monetary terms.[363]

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[359] For example, if an entry is made in an employee's records to the effect that he has been dismissed for absenteeism or for systematic breaches of workplace discipline, and this is shown to be untrue, the worker has the right to demand the issue of a new record card not showing the defamatory entry about dismissal; see section 152(2)(2) of the *Civil Code 1994.* .

[360] See: Yaroshenko K.B. *Nematerial'nye blaga i ikh zashchita* (Non-material Goods and their Protection) (sections 150-152)', Chap. 8 of *Kommentarii chasti pervoi GK RF dlia predprinimatelei* (Commentary on Part I of the Civil Code of the Russian Federation for Businessmen) , ed. V.P. Karpovich. Pbl. Moscow 1995, p. 194.

[361] See section 152.3 of the *Civil Code 1994.*

[362] Yaroshenko, *op. cit.*, p. 198; other compensation might, for example, be providing the victim with an apartment, car or other tangible property.

[363] Section 8 Decree of the Supreme Court of the Russian Federation 20 December 1994.

However, Russian law contains no set rules for determining the amount of compensation for mental or physical suffering, such determination is entirely at the discretion of the court.[364] Article 151 of the *Civil Code 1994* states, however, that amongst the circumstances to be taken into account in determining the amount of compensation are, the degree of guilt of the perpetrator; and the degree of physical or mental suffering relating to the individual characteristics of the victim as assessed in conjunction with factual circumstances of the offence.

The Supreme Court has also stated[365] that in assessing the amount of compensation the court must consider the ability of the perpetrator to pay the awarded amount.

In the opinion of the Supreme Court,[366] laws and rules governing the assessment of compensation for mental and physical suffering of an individual in the context of a defamation matter are also applicable to corporate plaintiffs. Moreover, it can be argued that a corporation may be compensated for the mental or physical suffering of its shareholders, insofar as these are real people; yet this would contradict the definition of mental and physical harm provided in section 151 and the rules for assessing the amount of compensation in sections 151 and 1101.2 of the *Civil Code 1994*.[367]

However, the courts of arbitration continue to take the view that compensation for mental and physical suffering cannot be applied to corporations.[368] This view is based on the argument that a corporation cannot undergo physical or mental suffering. Hence, physical pain and mental harm cannot be inflicted on a corporation and the court cannot assess the amount of monetary compensation for damage to a corporation's commercial reputation. Therefore, the main remedy that a corporation is entitled to is retraction of the defamatory information; however, punitive damages may also be awarded.[369]

Russian scholars have yet to deliver their verdict on this issue, but the establishment of a consistent approach, between the courts of general jurisdiction and courts of arbitration, to the question of compensation for mental and physical harm of corporations, is extremely important

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[364] Sections 151 and 1101 of the *Civil Code 1994.*

[365] Decree of the Supreme Court of the Russian Federation 28 April 1994.

[366] Item 5 of Plenum Resolution No. 10 of 20 December 1994.

[367] Sheliutto, *op. cit.*, p. 16.

[368] See Solovieva L.A. *Rassmotrenie del o zashchite delovoi reputatsii iuridicheskikh lits* (Consideration of Cases on Defence of Commercial Reputation of Legal Entities) , Yuridicheskii mir, 2, 1997, p. 58.

[369] *Ibid.*

for fair and proper jurisprudence in civil lawsuits, which ultimately affects the enjoyment of the right provided by Article 21(1) of the *Russian Constitution.*

The matter of corporate compensation for non-pecuniary damage (such as pain and suffering) has received considerable attention in cases before the European Court of Human Rights ("**ECHR**"). For example, section 41 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms 1950* states that:

> *"If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."*

In *Immobiliere Saffi v. Italy*[370] the ECHR considered that it was unnecessary to examine whether a corporate entity could allege that it had sustained non-pecuniary damage through anxiety as, having regard to the facts of the case, it had decided to make no award under that claim. However, the court did say that such a claim was possible given the right circumstances. Hence, in *Freedom and Democracy Party (Ozdep) v. Turkey* the court, by way of just satisfaction, awarded 30,000 French francs for non-pecuniary damage suffered by a political party arising from its dissolution by the Constitutional Court of Turkey, which infringed the right of its members to freedom of association, as secured by Article 11 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.*[371]

Subsequently, in *Comingersoll S.A. v. Portugal*[372] the ECHR held that the possibility of a corporate entity being awarded compensation for non-pecuniary damage could not be ruled out. Moreover, the court reiterated that the European Convention on Human Rights had to be interpreted and applied in such a way as to guarantee rights that were practical and effective. Since the principle form of redress, which the court could order was pecuniary compensation, it necessarily had to be empowered to award pecuniary compensation for non-pecuniary damage to commercial companies too.[373]

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[370] Immobiliere Saffi v. Italy European Court of Human Rights 28 July 1999, N 22774/93.

[371] *Freedom and Democracy Party (Ozdep) v. Turkey* European Court of Human Rights 8 December 1999, N 23885/94

[372] *Comingersoll S.A. v. Portugal* European Court of Human Rights No. 259 of 6 April 2000.

[373] See Ibid.

The above reasoning of the ECHR was subsequently applied in the ruling of the Constitutional Court of the Russian Federation in the case of Shlafman.[374] Mr. Shlafman was ordered to compensate Municipal Waterworks Company of Irkutsk for 'moral suffering' incurred by the Municipal Waterworks Company of Irkutsk as a result of a public claim by Mr. Shlafman that he had to pay a bribe in order to obtain water supply to his home. The Constitutional Court of the Russian Federation stated that the problem of considering 'moral' or 'mental' harm by a corporate entity seems nonsensical. However, it referred to the case of *Comingersoll S.A. v. Portugal* and recommended that the section 152(5) of the *Civil Code 1994*, which provides for the right of compensation for loss of reputation by a person, be reworded to include the right of compensation for loss of reputation by both persons as well as corporate entities.

[374] Decision of the Constitutional Court of the Russian Federation 4 December 2002 N 508-O.

7. FREEDOM OF MOVEMENT

7.1 Constitutional Provisions

Article 27(1) of the *Russian Constitution* states that:

> *"Everyone who is lawfully staying on the territory of the Russian Federation shall have the right to freedom of movement and to choose the place to stay and reside."*

The wording of this constitutional right accords with international standards provided by Article 13(1) of the *Universal Declaration of Human Rights 1948* (the "**UDHR**"), which states that "[e]veryone has the right to freedom of movement and residence within the borders of each state"; and Article 12 of the *International Covenant on Civil and Political Rights 1976* (the "**ICCPR**"), which states that "[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

During Soviet rule, freedom of movement was not constitutionally protected. From 1932, movement within the Soviet Union was limited by the compulsory prescription of one's place of residence, which could not be changed without the issuance of special permits.[375] The possibility of travelling outside the country, particularly to 'western' countries was kept at an absolute minimum in order to avoid "the corrupting influence of bourgeois ideology".[376]

The enactment of the *Russian Constitution* opened the way for substantial review of legislation relating to travel and movement, which included the repeal of many Soviet laws,[377] which were inconsistent with Article 27(1).[378]

At the same time, exceptions to the right to freedom of movement were being established by new legislation[379] on the grounds of public interest.[380] These exceptions accorded with international

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[375] Weitsel A. Prava cheloveka in Russia. Vivodi I zamechaniye otnositelno prav cheloveka, imeyuchih osobo vazhnoe znacheniye dlia demokraticheskovo obschestva. (Personal Rights in Russia. Conclusions and commentary regarding personal rights of special significance for the democratic society), Legal Protection Network, Pbl Moscow 2002.

[376] *Ibid.*

[377] Law of the RSFSR of July 19, 1959 Sovet Ministrov *On entry into the USSR and exit from the USSR.*

[378] See: Sheinin, K.B. *Kommentarii k st. 27', Kommentarii k Konstitutsii RF,* (Commentary on Art. 27, Commentary on the Constitution of the Russian Federation), Pbl. Moscow, 1996, p.117.

standards, such as Article 12(3) of the ICCPR, which provides that the right to freedom of movement:

> *"…shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others…"*

As a result, the Federal Law On *Rights of Citizens to Free Travel, Choice of Place of Stay and Residence within the Boundaries of the Russian Federation 1993*[381] allows freedom of movement within the territory of Russia (except for entry into restricted military, contaminated or other government areas); but restricts movement of people across international border zones, subject to proper documentation (e.g. valid visas).

Similarly, in Australia, where section 117 of the constitution guarantees physical movement of people within its territory, the *Migration Act 1958 (Cth)* requires both citizens and non-citizens, entering Australia to identify themselves and restricts certain non-citizens entry into the country without valid visas.

7.2 Place of Temporary Stay and Permanent Residence

Article 27(1) of the *Russian Constitution* provides the right to choose one's place of stay and residence within the boundaries of the Russian Federation. The right is subject to the provisions of the Federal Law *On Rights of Citizens to Free Travel, Choice of Place of Stay and Residence within the Boundaries of the Russian Federation 1993*,[382] the Federal Law *On Refugees 1993*[383] and the Federal Law *On Forced Resettlement 1995*.[384] These provisions are directed at abolishing a permit-based system and establishing a free notification regime, resulting in any change of residence simply being recorded in the town register.

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379 Federal Law On Rights of Citizens to Free Travel, Choice of Place of Stay and Residence within the Boundaries of the Russian Federation 1993 of 25 June 1993 № 5242-1.

380 Article 55(3).

381 Federal Law On Rights of Citizens to Free Travel, Choice of Place of Stay and Residence within the Boundaries of the Russian Federation 1993 of 25 June 1993 № 5242-1.

382 Federal Law On Rights of Citizens to Free Travel. Choice of Place of Stay and Residence within the Boundaries of the Russian Federation 1993 of 25 June 1993 № 5242-1.

383 Federal Law *On Refugees 1993* of June 28, 1997 № 95-ФЗ – June 30, 1997, № 26.

384 Federal Law *On Forced Resettlement 1995* of December 20, 1995 № 202-ФЗ.

The procedure for registering Russian citizens according to their respective place of stay and/or residence within the boundaries of the Russian Federation is provided for in a 1995 government decree.[385] The decree provides for government authorities to register the place of residence (temporary or permanent) of everyone on the territory of the Russian Federation. The refusal by government authorities to register a person on any grounds (including the non-payment of taxes or other duties) constitutes a contravention of Article 27(1), and may be referred to the OPHR for review. This decree has been affirmed by a decision of the Constitutional Court of the Russian Federation[386] clarifying that personal rights are guaranteed by the *Russian Constitution* without any fiscal considerations.

It might be assumed that the procedure for registering citizens' place of temporary stay (which can change regularly) should be substantially simpler (quick and burden free) than the procedure for registering their place of permanent residence (which changes infrequently, if at all). However, the 1995 government decree does not differentiate between the two mechanisms, linking both forms of registration to the citizen's "current place of accommodation".

In clarifying the 1995 decree, the Constitutional Court[387] excluded 'place of stay' from the meaning of "current place of accommodation", stating that "accommodation" implies 'permanent residential accommodation'. Therefore, the requirement to register one's place of stay (such as a hotel, camping site, or hospital) can now be effectively avoided as it is not related to one's place of residence.

Any forthcoming review of Russian legislation concerning the rights of citizens to choose a place of stay and residence must take into account the 1995 decree together with the clarifications of the Constitutional Court. Also, Russian academics[388] propose that such legislative review should include a simplification of the entire registration system by (a) requiring the presentation of a document establishing a person's identity only (i.e. requests for other documents are superfluous); (b) there should be no limit on the period of registration of a

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385 Decree of the Government of the Russian Federation of 17 July 1995 No 713 as amended in *Sobranie zakonodatel'stva RF*, 1995, No. 30, Article 2939; 1996, No.18, Article 2144; 1997, No. 8, Article 952.

386 Issued by the Constitutional Court of the Russian Federation on 4 April 1996, No. 9-P On the matter of verifying the constitutionality of a series of normative acts by the City of Moscow and Moscow Oblast, Stavropol Region, Voronezh Oblast and the City of Voronezh, regulating the procedure for registration of citizens arriving as permanent residents in the forenamed regions.

387 In the Constitutional Court Decree of 2 February 1998.

388 See, Kiliaskhanov, I.Sh. *op. cit.*, p.19.

place of stay; however, stay should be regarded as residence if the period exceeds a set duration; and (c) the registration procedure should be conducted expeditiously.

7.3 The Right to Enter and Leave the Russian Federation

The right to freely leave the Russian Federation is constitutionally guaranteed for all individuals by Article 27(2) of the *Russian Constitution*. Also, in accordance with section 12(2) of the ICCPR a Russian citizen travelling outside the Russian Federation has the right to freely return to the Russian Federation.

The departure of a citizen from the Russian Federation does not exclude them from constitutional protection of their rights as citizens.[389] That is, when leaving the Russian Federation, citizens retain their rights to personal property, real estate, finances, securities and other assets. Moreover, while outside the borders of the Russian Federation citizens remain under the protection and care of the Russian Federation. Diplomatic missions and consular offices of the Russian Federation are obliged by law to ensure that measures are in place for the protection of Russian citizens and to provide them with care in the manner determined by the Russian law and all binding international treaties.[390]

All of the above rights were absent from the Soviet constitutions.[391] For decades, the 'iron curtain' of the Soviet Union prohibited citizens from travelling abroad freely. However, in the final years of Soviet rule this position changed with the enactment of the Law *On Procedures for Citizens of the USSR to Leave and Enter the USSR 1991*.[392] As a result, some citizens were permitted to leave the Soviet Union to take up permanent residence in other countries. However, in order to leave the Soviet Union citizens required an exit visa, which could be denied by authorities without providing reasons for such denial.[393]

Presently, the right to travel in and out of the Russian Federation (including transit) is protected by the Federal Law *On Procedures for Leaving and Entering the Russian Federation 1996*

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389 Section 2.3 of the Federal Law *On Procedures for Leaving and Entering the Russian Federation 1996.*

390 Section 4 *Ibid*.

391 Chirkin V.E. *Konstitutsionnoe pravo zarubezhnykh stran* (Constitutional Law of Foreign Countries), Pbl. Moscow, 1997, p.81.

392 Procedures for Citizens of the USSR to Leave and Enter the USSR Law 1991 of 20 May 1991.

393 Which gave rise to a rather large category of citizens known as "refuseniks".

("***PLE Law***"),[394] section 2(1) of which states that a citizen of the Russian Federation cannot be arbitrarily restricted in the right to leave the country.

Section 15 of the Federal Law *On State Borders 1993*[395] lists the grounds upon which a citizen can be restricted from leaving Russia. Such grounds include citizens who have access to information of particular importance or to secret information;[396] who have signed a work contract entailing temporary restriction of the right to leave the Russian Federation; who are called to military service or directed into alternative civilian service; who are detained on suspicion of committing a crime; who are convicted of a crime and currently serving a prison sentence; who are avoiding obligations imposed on them by the court; and who have given false information when submitting an application to leave the Russian Federation.

In accordance with section 16 of the Federal Law *On State Borders 1993*, the Ministry of Internal Affairs is accountable to applicants for any restriction of their right to leave the Russian Federation. The Ministry is obliged to provide the applicant with information containing the grounds and the period of the restriction, the date and registration number of the decision to restrict, and the full name and legal address of the government body which has taken on itself the responsibility of restricting the right of the said applicant to leave the Russian Federation.

Decisions to restrict the right of departure from the Russian Federation of a citizen who is privy to state secrets can be appealed to the Joint Commission for Protection of State Secrets, which is obliged to consider the appeal and give an answer within three months.[397]

7.4 Passports

Section 8 of the *PLE Law* provides for the procedure of issuing a passport, the possession of which entitles a citizen of the Russian Federation to leave and enter the country. In accordance with section 8(3), a passport can be issued on application by a citizen residing outside the territory of the Russian Federation. Accordingly, such a passport is prepared and issued by the consular office of the Russian Federation in the foreign state.

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394 Federal Law On Procedures for Leaving and Entering the Russian Federation No. 34 of 15 August 1996.

395 Federal Law *On State Borders 1993* of 1 April 1993, No. 4730-1. See amendments to Federal laws of 10 August 1994, No. 23-F3, of 29 November 1996; No. 148-F3, of 19 July 1997; No. 106-F3; and the Federal Law of 15 August 1996.

396 Information is treated as a state secret in accordance with the Russian Federal Law *On State Secrets* 1994. The law proscribes the definition of secret information, limiting the possible abuse of the restriction provided by section 15 of the Federal Law *On State Borders 1993*.

397 Federal law On Joint Commission for Protection of State Secrets №. 12-ФЗ of 14 March 1997.

The constitutionality of section 8 has been considered by the Constitutional Court of the Russian Federation in an appeal by Russian citizen Avanov against an alleged infringement of Article 27(2) of the *Russian Constitution* and the protection provided by section 2(1) of the *PLE Law* to freely depart from the Russian Federation.

The Constitutional Court established that Avanov, being registered as a permanent resident of Tbilisi (Republic of Georgia), but de facto resident for many years in Moscow, had applied to the Moscow Department of Visas and Permits of the Internal Affairs department to issue him with a passport. However, he had been refused because his name was not entered in the Moscow town register as residing in Moscow. A lower court[398] had refused Avanov, stating that according to section 8 of the Federal Law *On State Borders 1993* the applicant needed to apply at the Russian Consulate in the Republic of Georgia.

However, getting to Georgia required Avanov to leave Russia, which he could not do because he had no passport. Therefore, his rights under Article 27(2) of the *Russian Constitution* were denied.

The Constitutional Court found that the issuing of a passport on the basis of registered place of residence limits the citizen's constitutional right to freely leave the Russian Federation, in as much as it substantially interferes with the individual's rights. Therefore, the Constitutional Court upheld that constitutional rights and freedoms are guaranteed to citizens irrespective of place of residence and the presence or absence of registration for permanent or temporary residence. Consequently, the Constitutional Court held certain parts of the Federal Law *On State Borders 1993* as unconstitutional.[399]

As a result, the President of the Russian Federation[400] signed a decree that within the territory of the Russian Federation a citizen of the Russian Federation, not having valid registration of place of residence or stay, or having a place of residence outside the territories of the Russian Federation, can arrange and be issued with a passport establishing his or her identity outside the Russian Federation by special declaration issued by the Ministry of Internal Affairs.

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[398] The Tver Intermunicipal Court of the Central Region of Moscow 14 November 1997.

[399] Sections 8.1, 8.3, 19.1, 19.2, 27.2, 55.3; See: the Constitutional Court of the Russian Federation. Decision on the Case of the Examination of Constitutionality of the Provisions of Parts 1 and 2 of section 8 of the Federal Law *On Sequence of Departure From and Entry to the Russian Federation* in Connection with the Complaint Filed by Citizen A. Ya. Avanov. Bulletin of the Constitutional Court of the Russian Federation, 1998, № 1.

[400] In his Decree On measures ensuring the right of citizens of the Russian Federation to free departure from the Russian Federation of 4 May 1998.

Furthermore, the Ministry of Internal Affairs was directed by the President to amend its rules in line with the decree.[401]

7.5 Foreigners' Rights to Enter and Leave Russia

The *PLE Law* provides the procedures for foreign citizens[402] to enter and leave the Russian Federation as well as the transit procedures to cross Russian territory.

According to section 6.2 and 24 of the *PLE Law*, foreign citizens are required to present valid documents establishing their identity and a Russian visa[403] at the point of entry to the Russian Federation.

The principal difference between the legal status of a Russian citizen and that of a foreign citizen, in relation to crossing the border into Russia, is that in accordance with section 24(3) of the *PLE Law*, a foreign citizen may be denied entry.

Section 26 of the *PLE Law* states that entry to the Russian Federation may not be permitted to foreign citizens or stateless persons, if on application for a Russian visa they were unable to confirm the availability of means of support in the territory of the Russian Federation and the means to leave the Russian Federation or provide a guarantee of obtaining such means; if they have broken the rules for crossing the state borders of the Russian Federation (for example, customs regulations or health requirements); or if they have given knowingly false information about themselves or about the purposes of their stay in the Russian Federation.

Also, section 27 of the *PLE Law* provides for refusal of entry to foreign citizens or stateless persons in cases where this is necessary to safeguard national security; for example, where during a previous stay in the Russian Federation the foreign citizen was sentenced for committing a serious crime or was forcibly expelled from the Russian Federation; where the foreign citizen did not present the documents required for obtaining a Russian visa in accordance with the legislation of the Russian Federation; or where the foreign citizen failed (in the process of obtaining a Russian visa) to provide a certificate that they are free of HIV infection.

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401 Rossiiskaia Gazeta, 6 May 1998.

402 According to section 1 of the *Status of Foreign Citizens in the USSR Law* of 24 June 1981, foreign citizens were defined as persons who are not citizens of the USSR and have proof of citizenship of another country.

403 Issued by an appropriate diplomatic mission or consular office of the Russian Federation outside the territories of the Russian Federation.

Departure from the Russian Federation may be restricted for foreign citizens or stateless persons according to section 28 of the *PLE Law* in cases where, for example, they have been detained on suspicion of committing a crime; where they have been sentenced for committing a crime on the territory of the Russian Federation; where they avoid complying with orders imposed by a court; or where they have failed to comply with their obligation to pay taxes in accordance with the legislation of the Russian Federation.

The Federal Law *On State Borders 1993* establishes that foreign citizens who have been lawfully denied entry to the Russian Federation are not eligible to cross the state border. Where such a 'trespasser' is identified, the Russian Federation must officially hand them over to the state authorities from whose territory they have crossed the state border.[404]

Forced expulsion of Russian citizens from the territory of the Russian Federation is not permitted. Citizens arriving at a state border without their documents have the right to enter the Russian Federation subject to establishing (within 30 days) their identity at the border point.[405]

International treaties determine the necessary documents for the right to leave or enter the Russian Federation and, in the case of neighbouring countries, establish a simplified procedure for Russian citizens crossing the state border.[406] In this context, such 'transparency' of the state borders between Russia and the Newly Independent States,[407] helps maintain fraternal links between the peoples of the former USSR.[408]

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[404] Section 13

[405] *Ibid* section 14.

[406] See, for example, Treaty between Russian Federation and the Republic of Moldova (Moscow, 30 November 2000); Treaty between Russian Federation and the New Independent States (Bishkek, 9 October 1992); Treaty between Russian Federation and the Republic of Belarus (Minsk, 30 November 2000).

[407] It is an association of 12 former republics of the Soviet Union: Armenia, Azerbaijan. Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan. 3 Baltic republics did not join this association.

[408] Russian Federation. Failure to Protect Asylum Seekers, *"We don't want refugees here - go back to your own country"* Amnesty International Report of April, 1996.

8. NATIONALITY AND LANGUAGE

8.1 Nationality

The term 'nationality' in Russia is not an indication of one's citizenship, but rather of one's ethnicity. For example, the nationality of a Russian citizen could be Georgian, Jewish or Ukrainian.[409]

In times of the Soviet Union the requirement to declare one's 'nationality' appeared in all administrative application forms.[410] Article 26(1) of the *Russian Constitution*, however, now establishes that everyone has the right to declare their nationality, but that no one has the obligation to do so.

According to new regulations on the issuance of internal passports to Russian citizens,[411] the 'nationality' section no longer appears in passport format criteria, bringing it in line with international passport standards. This has provoked criticism from many Russian politicians; the former Chairman of the State Duma, G. Seleznev, suggested that the absence of the 'nationality' section infringes Article 26(1), in so far as the right to declare one's 'nationality' is limited by the new passport criteria. He stated that:

> *"Belonging to a particular 'nationality' is important to Russian people from the point of view of their participation in the development of their culture and identity through their historic origins."*[412]

However, the compulsory declaration of one's 'nationality' has been known to lead to ethnic discrimination. For example, during Soviet rule, the admission of Jews into educational institutions and subsequent promotion in the course of their professional careers were restricted by unofficial quotas imposed by the Soviet government.[413]

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409 See Morozovoj, L.A. 'Printsipy, predely, osnovaniia ogranicheniia prav i svobod cheloveka po rossiiskomu zakonodatel'stvu i mezhdunarodnomu pravu. "Kruglyi stol" zhurnala. (Principles, Bounds, Foundations of Limitations of Rights and Freedoms of Man under Russian and International Law), *Gosudarstvo i pravo*, 1998, No.8, p.55

410 Employment, travelling abroad, joining social organizations.

411 Ratified by the Russian Federation Decree on 8 July 1997, No. 828. See *Rossiiskaia Gazeta*, 16 July 1997.

412 Morozovoj L. A. op cit at 57.

413 Korey, William, Quotas and Soviet Jewry See at https://www.commentarymagazine.com/V57I5P57-1.htm

It was commonplace for the Soviet Union to unofficially pursue policies of oppression on grounds of 'nationality'. This was accompanied by forced resettlements, abolition of national (other than Soviet) education curricula, redrawing of territorial borders and installing regimes of terror and violence in places of ethnic settlement.[414]

Officially, however, one's declaration of 'nationality' was used to assess eligibility for special compensation[415] (e.g. loans for housing construction). Also, declaring one's 'nationality' was necessary for those who were eligible for immigration programs under the legislation of foreign countries.[416] Belonging to a particular 'nationality'[417] made it possible to immigrate to those countries.

Today, the reaction of Russians to the abolition of the option to indicate their nationality in their passports has been negative overall. The Russian Duma received numerous letters from influential members of society attesting to the negative reaction by citizens to the introduction of the new passport criteria.[418]

Over recent years people's national consciousness has been raised with hopes of developing their specific national identity, preserving and regenerating their cultures.[419] The right to indicate 'nationality' is perceived by Russians as an achievement, not an infringement, of democracy.

Morozovoj[420] argues that the absence of the 'nationality' section in the new Russian passports represents an infringement of a fundamental human right - the right of self-determination, which is particularly relevant for ethnic minorities who have special rights to international protection against government actions aimed at assimilating that ethnic minority.[421]

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414 See Morozovoj, L.A. op cit at p.55

415 See section 2 of the RSFSR Law *On the rehabilitation of repressed peoples* of 26 April 1991.

416 Germany, Israel, Canada.

417 German, Jewish, Ukrainian.

418 See: *Punkt 5: byt' ili ne byt'? Interv'iu s deputatom Gosudarstvennoi Dumy I. Saifullinym* (Point 5: to be or not to be? Interview with Deputy of the State Duma I. Saifullin), *Rossiiskaia Gazeta*, 25-28 November, 1997.

419 *Ibid*.

420 See Morozovoj, L.A. op cit at p.56.

421 See Article 1.1 of the *International Covenant on Civil and Political Rights* U.N. General Assembly Resolution 2200A [XX1]. 16 December 1966.

8.2 Language

The right to use one's native language is provided for in Article 26(2) of the *Russian Constitution*, which states that:

> *"Everyone shall have the right to use his native language, and to freely choose the language of communication, education, training and creative work."*

Therefore, in Russia, one's legal rights do not depend on one's knowledge of the Russian language.[422] All citizens have the right to make applications to government organs or participate in court proceedings using their native language, whatever it may be. For example, a Chinese speaking Russian citizen has the right to address the government or a court in Chinese, in the presence of a translator.[423]

Moreover, every ethnic region in the Russian Federation has local legislation allowing for the freedom of choice of language to be used in education and official correspondence.[424]

One's 'native language' is generally considered as the language of one's parents; that is, the language in which a child pronounces its first words. In certain instances, however, it may be the language of the ethnic group where the child is born and raised (for example, if a child was adopted in infancy by parents of another 'nationality').

It is the child's parents who have the right to choose an educational institution with a particular language of instruction.[425] However, this choice is limited to those options that the education system provides.[426]

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[422] Section 10 of Federal Constitutional Law *On Judicial System in the Russian Federation* of 31 December 1996.

[423] В постановлении Пленума Верховного Суда РФ от 31 октября 1995 г. "О некоторых вопросах применения судами Конституции Российской Федерации при осуществлении правосудия" особо подчеркнуто, что в силу ч. 2 анализируемой статьи суд по ходатайству участвующих в деле лиц обязан обеспечить им право делать заявления, давать объяснения и показания, заявлять ходатайства и выступать в суде на родном языке Бюллетень Верховного Суда РФ, 1996, N 1, с. 5.

[424] See Статья 9 Закона Республики Адыгея "О языках народов Республики Адыгея" Ведомости Парламента Республики Адыгея. 1994. N 5, Статья 8 Закона Республики Башкортостан от 15 февраля 1999 года "О языках народов Республики Башкортостан" Ведомости Государственного Собрания, Президента и Кабинета Министров Республики Башкортостан. 1999. N 8 (92). Ст.472: Статья 2 Закона Республики Татарстан от 8 июля 1992 года "О языках народов Республики Татарстан" Ведомости ВС Татарстана. 1992. N 6. Ст.80, изм. в: Ведомости ГС Татарстана. 1996. N 4. Ст.100.

[425] Section 9.3 of the Federal Law *On the languages of the peoples of the RF* № 126 of 24 July 1998.

[426] Section 62 of the Federal Law *On education* of January 13 1996.

Therefore, one's ability to exercise the right provided by Article 26(2) depends largely on the conditions and opportunities provided by the government authorities. In order to obtain education in one's native language it is essential that there be corresponding educational institutions in which instruction takes place in the language by specialists who are native speakers of the language and that there be all the necessary textbooks and teaching materials.

Although the law allows for such native language education, currently in Russia there are no incentives on behalf of the government targeted to promote such forms of education.

9. FREEDOM OF RELIGION

9.1 Russia as a Secular State

According to Article 14 of the *Russian Constitution*, the Russian Federation is a secular state. This means, it is a state with no official religion; no ecclesiastical authority above the state authorities;[427] no administrative function performed by a religious authority on behalf of the state; no obligatory religion for civil servants; no religious rules serving as a source of the law; no compulsory religious education linked with state schools; no state influence over the attitudes and beliefs of citizens towards religion; no state interference in 'inter-church' activity;[428] no state influence over the activity of religious authorities;[429] and no political involvement by religious organisations.

The *Russian Constitution*, however, contains provisions that allow people to observe religious practices. For example, a prohibition against the kindling of religious dissension,[430] hatred or enmity;[431] equality of human and citizen's rights and freedoms, irrespective of their attitude towards religion, religious beliefs, membership of public religious associations, and the prohibition of any forms of limitation of the rights and freedoms of citizens on the basis of religious adherence;[432] a prohibition against coercion of those who express religious beliefs;[433] liberty of conscience;[434] and the right of the citizen to choose civil service as an alternative to military service on religious grounds.[435]

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427 Religion, its canons and doctrines, and also religious associations acting in it, have no right to render an influence on a state system, on the activity of state bodies and their officials and other spheres of activity of a state. The policy of separation of church and state means the orientation of public life towards secular values and standards. See *On Liberty of Conscience and Church and Religious Associations*, RSFSR Council of People's Commissars, 21 January, 1918.

428 In particular, the state does not interfere in the content of dogmas, rites or ceremonies of a cult or other forms of satisfaction of religious needs, in the internal self-management of religious organizations, in the mutual relations between branches of religious organizations, their relations with believers, or in expenditure related to religious needs. See *Ibid.*

429 The state regulates the activity of religious organizations, which provides the required balance of church-state relations and allows the co-operation of the church and the state in the handling of social questions, the state according to the law protects the individual and collective rights and freedoms of believers and the legal activity of religious organizations.

430 Article 13

431 Article 29

432 Article 19

433 Article 29

434 Article 28

435 Article 59

While, the secular character of most democratic societies is declared in their constitutions,[436] there are countries[437] whose constitutions do not declare secularity but whose citizens predominantly follow a single religion. There are also states with an official national religion, including for example, Norway[438] and Denmark.[439]

Distinct from the secular state is the religious state, such as for example the Vatican, where authority belongs to a church hierarchy. Religious states differ to clerical states in that the latter politicize their official religion, meaning that those who run the state use religion for political ends. Examples of clerical states are Iran and Saudi Arabia.

Pre-revolutionary Russia was a clerical state. The main church was the Russian Orthodox Church, which was a part of the government's political machinery. The synod (i.e. ecclesiastical assembly) consisted of representatives of the clergy appointed on the direction of the Tsar. It was headed by a chief-prosecutor, who was a secular officer and had powers to interfere with internal affairs of the Orthodox Church, including the appointment of the higher order of clergy members. By convention, only those who professed the Orthodox religion were eligible for appointment to the leading state positions.[440]

Some aspects of the Russian Orthodox religion in pre-revolutionary Russia (such as crimes against faith like apostasy, heresy and schism) were gaining popularity while in western Europe these concepts were being phased out. For example, *Napoleon's Penal Code 1810* contained only five articles on crimes against faith; the *Charter of Criminal Procedures of Germany 1871* contained three such articles; yet the Russian *Code of Criminal and Corrective Penalties 1845* had eighty-one articles concerning crimes against the Russian Orthodox faith.

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[436] For example, Article 1 of the French Constitution states that France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. Lois organique et ordonnances relatives aux pouvoir publics. Paris, 1977

[437] For example, Italy. Article 3 of Italian Constitution states tat all citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. Article 8: All religious confessions are equally free before the law. Religious confessions other than the Catholic one have the right to organise themselves in accordance with their own statutes, provided that these statutes are not in conflict with Italian law. See Constituzione Italiana. Torino, 1976.

[438] According to Article 2 of the Constitution of the Kingdom of Norway all inhabitants of the Realm shall have the right to free exercise of their religion. The Evangelical-Lutheran religion shall remain the official religion of the State. The inhabitants professing it are bound to bring up their children in the same.

[439] Article 4 of the Constitution of Denmark states tat the Evangelical Lutheran Church shall be the Established Church of Denmark, and, as such, it shall be supported by the State.

[440] See Loviniukov, A.S. *Svoboda sovesti (analiz, praktika, vyvody)* (Liberty of Conscience [Analysis, Practice, Conclusions]), *Gosudarstvo i pravo* 1995, No. 1, p. 24

Until the Russian revolution of 1917, the Russian Orthodox Church was exempt from taxes and civil duties. According to statistics,[441] in 1905 the Orthodox Church had about three million 'desyatinas'[442] of land, and received large grants from the state. In 1907 the Russian Treasury granted thirty one million rubles for the maintenance of church equipment, which was three times greater than the amount granted to the Ministry of National Education.[443]

Following the 1917 revolution, political relations between the state and the church were effectively eliminated. The creation of the Soviet Republic was based on the Marxist understanding of religion, the fundamental principle of which was the demolition of the old bourgeois state machine.[444]

Karl Marx approved of the measures taken by the Paris community during the French Revolution, including the separation of church and state, expropriation of church property, expelling churchmen from local government bodies, ending judicial swearing by oath, and depriving churches of the right to register acts of civil status. According to Marx, these measures characterised a prototype policy for the future Soviet state. Engels remarked[445] that the necessity of complete separation of church and state meant that the state should consider all religious organisations as private associations, which should be deprived of any state support and of any influence over schools.

Lenin concurred with Marx's and Engels' points of view and considered that "religion is beyond the sphere of state interests…[and that] religious associations should not have any relations with state authority."[446] This statement became the basis for the policy of the Soviet state, and was proclaimed in a number of its first statutes.[447]

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441 See Federal Service of State Statistics at www.gks.ru

442 2.7 thousand acres (or 1.09 thousand hectares).

443 See Federal Service of State Statistics at www.gks.ru

444 See Ryder, A. J. Critical review of the Erfurt Program of the German Social-Democratic Party (*The German revolution of 1918: a study of German socialism in war and revolt)*. Cambridge: Cambridge University Press, 1967

445 *Ibid.*

446 *Ibid.*

447 See preamble to State Decree *On liberty of conscience and church and religious associations;* approved by the RSFSR Council of People's Commissars on 20 January and published on 21 January, 1918.

The first decree on the separation of the church[448] from the state, deprived churches of any economic and/or commercial status, and established that no churches or religious associations had the right to possess property. The decree also provided that no actions of state may be accompanied by any religious rituals or ceremonies. Religious oaths were also withdrawn from all administrative and judicial procedures.

The Russian Orthodox Church lost the right to register acts of marriage, to receive state financial support, and to exert influence over state education. Also, church buildings and religious literature were destroyed;[449] church members, as well as ordinary believers, were executed.

Lenin's famous letter to Molotov,[450] shows the leader of the proletariat offering to blame the terrible famine of 1921-22 on the churches, and to punish its clerics. Lenin recommended that:

> *"…as many representatives of the clergy should be shot… It is necessary to teach the people a good lesson so that for some decades to come they will not dare to think of resistance".*[451]

It seems that the proclaimed 'secular' nature of the Soviet state was in reality a proactive form of atheism.

During World War II, the relations of the Russian Orthodox Church with the state had improved due to significant patriotic activity by the church.[452] By a Decree of the Presidium of the Supreme Soviet *On the Rights of Religious Organisations 1944*, religious organisations were granted the right to build, lease or purchase premises necessary for their needs; to acquire transport vehicles; to open special schools; to prepare clerics; to set up workshops for manufacturing religious goods; and to publish religious literature. However, religious activity was not permitted to develop beyond the few religious centres that were known to exist in the Soviet Union.

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448 *Ibid.*

449 According to the KGB archives, the Central Archives of the Communist Party, and the State Historical Archives of the USSR, between 1930 and 1940 one third of all Russian churches were destroyed. The gilding was removed from their domes and the valuables, which had been amassed over centuries, were confiscated. See S. Mel`gunov. Red Terror in Russia. N.Y., BRANDY Publ. House, 1979

450 Lenin V.I.. Complete Collection of Works. M. Politizdat, 1974, v. 37, p. 442; See *To the members of the Politburo of the Central Committee of the Russian Communist Party(b)* of 19 March, 1922.

451 *Ibid.*

452 See Loviniukov, A.S. *op cit* at 25.

The history of the Russian Orthodox Church, which saw its exploitation by state authorities for political purposes, prosecution of its clergy and worshippers, and the destruction of its property, highlights the importance in modern Russia for strengthening the freedom of religion and the legal equality of religions and churches.

Presently, the Russian Orthodox Church, which has the right to freely propagate religious faith, plays an important role in the spiritual revival of Russia and in the establishment of a national identity for the Russian people.[453]

9.2 Freedom of Conscience and Religion

The freedom of conscience is the person's right to think and act according to their convictions. It is an expression of independence in intellectual evaluation and control over one's own actions and thoughts, which includes the right of each person to solve independently the problem of whether to be guided in his or her actions and thoughts by religious teaching, or to deny such guidance.

The freedom of conscience has become a way of expressing a person's attitude towards religion. The person can either trust in God (or some other divine being), and profess some religion, or not trust in God and stand neutral towards religion, or they can be an atheist, that is, refuse to profess any religion, argue against the existence of God and disclaim religion altogether.[454]

Historically, the freedom of conscience and religion has been of major importance to the Russian people. Lovinyukov explains:

> *"This seemingly simple combination of only two words 'freedom' and 'religion', mirrors the age-old struggle for freedom, equality and the absence of oppression from a single dominating ideology."*[455]

9.3 Legislative Protection

Freedom of religion in Russia is guaranteed by Article 28 of the *Russian Constitution* which states:

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[453] See Loviniukov, A.S. *op cit* at 24.

[454] Rosenbaum, Y. A. *op cit*.

[455] See: Loviniukov, A.S. *op cit* at p. 25.

> *"[e]veryone is guaranteed freedom of conscience and freedom of religious belief, including the right to profess individually or together with others any religion or not to profess any, to freely choose, hold and broadcast religious and other convictions and to act in accordance with them".*

This is consistent with Article 18 of the *Universal Declaration of Human Rights 1948* (the "**UDHR**"), which states that each person has the right "to manifest his religion or belief in teaching, practice, worship and observance."

According to Article 55(3) of the *Russian Constitution*, the freedom of conscience and religion can be limited by a federal law only to the extent to which it is necessary for the purposes of the protecting the fundamentals of constitutional order, morals, health, rights and legitimate interests of the person and citizen, the maintenance of national defence and the security of the state.

The Federal Law *On Liberty of Conscience and Religious Associations 1997*[456] ("***LCRA Law***") provides legislative protection for the freedom of conscience and religion. The *LCRA Law* governs legal relations in the field of human rights in respect of liberty of conscience and freedom of religion, as well as the legal status of religious associations.

Section 15 of the *LCRA Law* provides that all religious associations are equal before the law, and that the state must not interfere with peoples' religious preferences; religious education of children; and with the lawful activity of religious associations.

Moreover, the state is obliged[457] to protect the lawful activity of religious associations. However, the government goes beyond simple protection, and provides tax exemptions and other privileges such as rendering financial support for the restoration, maintenance and protection of religious monuments and buildings.[458]

Such support accords with Article 14 of the *Russian Constitution*; that is, it helps to ensures the freedom and equality of all religions in the country. However, the Russian government displays a clear preference in favour of the Russian Orthodox Church. For example, the Patriarch of the

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[456] Federal Law *On Liberty of Conscience and Religious Associations 1997* of the Russian Federation of 26 September 1997.

[457] See section 15 of the *LCRA Law*.

[458] See Rosenbaum, Y. A. Kommentarii st. 28', Konstitutsiia RF: Nauchno-prakticheskii kommentarii, Pbl. Moscow 1997, pp. 228-229.

Russian Orthodox Church is regularly seen in public guarded by Federal security officers. Leaders of other religions in Russia do not enjoy such privileges.

The exact nature of the relations between the Russian government and the Russian Orthodox Church are not publicly known. However, section 5 of the *LCRA Law* states that a religious association is established to perform its activity on the basis of its own institutional structure and must not perform the functions of public authorities, other state bodies, state institutions or local government bodies. Also, the Russian Orthodox Church must not participate in the election of public authorities or local government bodies; and must not participate in the activity of political parties or political movements.

However, this does not mean that members of a religious association cannot be elected into public office or local government bodies. They can be elected if they do not officially act as representatives of their religion.[459] The Federal Law *On the Bases of Civil Service 1995*[460] prohibits civil servants from using their positions in (or against) the interests of religious associations; and their political campaign must not rally churches and religious educational institutions throughout Russia.

Nevertheless, Russian politicians frequently refer to the revival of the Russian Orthodox religion.[461] After the demise of the Soviet Union, the Orthodox religion is a key uniting force that helps to form a national identity for Russian people. Hence, by a decree of the President of the Russian Federation,[462] the Bolshevik persecution of clerics and worshippers was officially condemned. The decree provided that law-enforcement agencies should rehabilitate citizens who were groundlessly accused of crimes, imprisoned or exposed to other deprivations and limitations of rights in connection with their religious activity and beliefs.

Moreover, a Presidential Committee for Interaction with Religious Associations was established.[463] This Committee is an advisory body providing a communication forum between the President and religious associations.

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459 Section 6(3) of the *LCRA Law*.

460 Federal Law *On the Basis of Civil Service* 1995 of 31 July, 1995.

461 See Rosenbaum, Y. A. *op cit.*

462 Decree of the President of the Russian Federation On Measures for the rehabilitation of clerics and believers who have become the victims of ungrounded reprisals of 14 March, 1995.

463 Pursuant to the decree of the President of the Russian Federation of 24 April 1995.

9.4 The Right to Change Religion

Section 3 of the *LCRA Law* establishes the right to change one's religion. It protects individuals, who change their religion as a result of, for example, persecution by former co-religionists.

Historically, Russian law on this subject was very strict. According to the 17th-century decree entitled *On the Criminal Office,*[464] a person professing a non-Christian religion who enticed a Christian orthodox believer to change his or her religion was subject to capital punishment. Under the 19th-century *Code of Criminal and Corrective Penalties 1845,*[465] for the mere propagation of Islam, Judaism or any other non-Christian religion the penalty was up to ten years imprisonment.

In conditions of religious favouritism, the right to change religion is of considerable value. Nowadays, however, when the church is independent of the state, the value of the right to change one's religion is of little significance, particularly, when the right to profess any religion means having the freedom to choose a religion, which consequently implies one's right to change it.

However, there are countries where the right to profess a religion does not imply the right to change one's religion: for example, the constitutions and criminal laws of Greece, the Malaysian Federation and Nepal prohibit citizens from changing their religion.[466] Certainly, in the context of the laws of these countries, the right of Russian citizens' to change their religion has significant value.

9.5 The Privacy of Religious Belief

The right to privacy in relation to one's religious belief is an important legal achievement. In the past, citizens of the Russian Empire had to disclose[467] their religion because this was important for handling such vital matters as preventing Jews from entering higher education,[468] prohibiting

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[464] See Filist A. *Vedeniye christianstvo na Rusi: predposilki, obstoyatelstvo, posledstviya*, (Introduction of Christianity into Russia: Assumptions, Circumstances, and Effects). Belarus Press 1988.

[465] *Code of Criminal and Corrective Penalties 1845* of 15 August, 1845 (volume XV of Consolidated Laws of the Russian Empire).

[466] Lerner, Natan, *Religious Human Rights Under the United Nations*, The Hague: Martinus Nijhoff Publishers, 1996 at page 21.

[467] Report on the Freedom of Religion in the World for the year 2002. Published by the Democracy, Personal Rights and Labour Bureau. Author: John V. Handford III.

[468] Beyond the official 5% limit.

Orthodox Christians from being employed as servants by Jewish families and prosecuting non-Christians for their religious beliefs.[469]

Nowadays, section 3 of the *LCRA Law* establishes that "no one [in Russia] is obliged to disclose their attitude to religion, and that they may not be subjected to coercion to disclose it".

9.6 The Privacy of Confession

The privacy of confession relates to the inadmissibility of evidence regarding the interrogation of a 'priest' of any religion on matters entrusted to him by a believer.

According to section 3.7 of the *LCRA Law* a 'priest' of any religion cannot be interrogated as a witness on evidence that became known to him in the course of a confession. 'Priests' cannot be brought to justice for refusing to give explanations that would violate the privacy of confession, unless countervailing circumstances or public interest can be demonstrated.[470] The court considers submissions as to the existence of countervailing circumstances or public interest from parties on a case-by-case basis.[471]

A 'priest' cannot be an agent or informer of a law enforcement body. To keep secret and confidential information acquired in the course of a confession is not only a legal, but also an ethical duty of a 'priest'.

However, the 'priest' may divulge the content of a confession at the request of the believer or with his or her consent, if this is necessary for the protection of the rights of that individual.[472]

9.7 The Legal Equality of Persons Irrespective of their Religion

The principle of equal rights of religious worshippers and atheists is an important aspect of freedom of religion. Section 3 of the *LCRA Law* states:

> *"The establishing of advantages, limitations or other forms of discrimination depending on attitude to religion is not allowed. Citizens*

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469 Persecutions on religious grounds were common in other countries also; nowadays in some Islamic countries non-Moslems are not allowed to enter state service.

470 See also section 5(11) of the Criminal Procedures Code of the RSFSR 1960.

471 Ibid.

472 Petrukhin, I.L. *Lichnye tainy (cheloveka i vlast')* (Personal Secrets [Person and the Power]), Pbl. Moscow, 1998, p. 224.

> *of the Russian Federation are equal before the law in all spheres of civil, political, economical, social and cultural life irrespective of their attitude to religion and religious beliefs… obstructing the right to freedom of religion, including by violence, by deliberately offending citizens' feelings on religion, by propagation of religious superiority, by destruction or damage to property or by threat to undertake such actions, is forbidden and is punishable by law."*

The interests of worshippers and the church are also protected by the *Criminal Code 1996* of the Russian Federation, which imposes criminal liability for violation of equal rights of citizens in connection with their attitude to religion.[473]

9.8 Incorporation, Regulation and Termination of Religious Associations

Under section 6 of the *LCRA Law* a 'religious association' is defined as:

> *"…a voluntary association consisting of citizens of the Russian Federation and other persons residing permanently and lawfully on the territory of the Russian Federation, established for the purposes of spreading faith… which features an identifiable creed, a rite of worship, rituals and ceremonies…"*

Incorporation of religious associations whose purpose in any way conflicts with the laws of the Russian Federation (for example, causing injury to the health of citizens or refusal to perform civil duties) is prohibited.[474]

In order to prevent the registration of such religious associations, the *LCRA Law* requires that the number of promoters of a registered local religious organisation cannot be less than ten citizens of the Russian Federation, and that the association must prove its existence on the given territory for not less than fifteen years.[475] Although these preventative measures appear innocuous, it is almost impossible for any religious organization to provide documented proof of its secret

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[473] Section 136.

[474] The procedure for incorporation of a religious association set forth in the section 9 of the *LCRA Act*.

[475] Given by a local authority, or a confirmation of its merging into the structure of a centralized religious organization of the same religion.

existence[476] for at least fifteen years, since such proof requires ratification by government investigative agencies, which are unlikely to disclose secret information.

The application for state registration of a religious association[477] is considered within one month from the date of submission of all necessary documents. A registering body has the right to prolong the term of consideration of the documents up to six months to carry out a an investigation.[478]

A religious association can be refused registration in cases where, the purposes and activity of the association contradict the *Russian Constitution* or the legislation of the Russian Federation; the proposed association is not recognised as a religious one; the charter and other presented documents do not conform to the legislation of the Russian Federation or this information is not authentic; an organisation under the same name is already registered in the national register of legal entities; or where the promoter(s) is/are unauthorised.

Upon refusal of registration of a religious association, the applicant is notified about the decision in writing, with reasons for the refusal. The decision can be appealed in court.[479]

9.9 Foreign Religious Organizations

A foreign religious organisation is one established outside the Russian Federation, pursuant to the laws of a foreign state. Foreign religious organisations can be given the right of representation on the territory of the Russian Federation.[480]

In a draft version of the *LCRA Law*, preferential treatment[481] of the Russian Orthodox religion to foreign religious organisations was evident. However, as a consequence of the President of the

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[476] Since the few religious centres operating during Soviet rule were well known.

[477] After it is established by a centralized religious organization or on the basis of the confirmation given by the centralised religious organisation.

[478] The procedure for the state religious investigation is set forth in the Russian Federation Government Resolution № 565 of 3 June, 1998. The provision for an Expert Council within the Ministry of Justice for carrying out the investigation is approved by Ministry of Justice Order № 140 of 8 October, 1998.)

[479] *Ibid.*

[480] Russian Federation Government decree № 130 of 2 February, 1998 approves the provision of the procedure for the incorporation, opening and closing of branches of foreign religious organizations within the Russian Federation.

[481] Preferential treatment was expressed in relation to taxation obligations of the Russian Orthodox Church.

Russian Federation coming under international pressure,[482] he did not approve the draft law. In the final version, the preferential provisions were removed; however, the preamble of the *LCRA Law* acknowledges the special role of the Russian Orthodox religion in the history of Russia and in the establishment and development of Russia's spirituality and culture.

The inclusion of the special role of the Russian Orthodox religion reflected the belief of the authors of the draft in the significant role of this religion in the history of the country and the fact that the vast majority of the Russian population profess it. However, legislative instruments are not the appropriate place to express such beliefs and assert such historical facts.

Russian Orthodoxy is the most widespread religion in Russia. According to the Russian Centre for Public Opinion Research, seventy percent of Russian citizens claim adherence to Orthodoxy, twenty five percent to Islam and five percent to other religions. Out of a total of fifteen thousand religious organisations registered with the Russian Ministry of Justice, eight thousand are Christian orthodox.[483]

With regard to the activity of foreign religious organisations that are not registered in Russia,[484] their representatives are prohibited from engaging in any cult or other religious activity on Russian territory, and they are expressly denied the status of 'religious association' provided under the *LCRA Law*. Therefore, foreign citizens may not have the possibility of undertaking worship according to the rituals of their religions if they profess a religion that is not registered.

This would seem to contradict the notion of Russia as a secular state, the idea of freedom of religion[485] and also Article 18 of the UDHR, which states that each person has the right "to manifest his religion or belief in teaching, practice, worship and observance." Such limitations infringe the rights not only of foreigners, but also of Russian citizens, who are similarly deprived of the choice and freedom to express their religious values.

The danger of penetration of unwanted religions into Russia should be countered not by the power of state authority, but by people's own judgement; after all, it is the people (i.e. the

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[482] On 24 June 1997 the Pope expressed his disagreement with the Act, followed by congressmen and senators of the USA on 7 July, and by the President of the USA on 9 July.

[483] The remainder being: 2850 Islamic, 93 Judaic, 155 Buddhist, 220 Catholic, 195 Old Believers (Orthodox), 35 Armenian apostolic church, and 3452 others.

[484] By virtue of section 13.

[485] Including the right to legal equality of religions and churches and the constitutional provision on equality of citizens irrespective of their religious beliefs.

citizens of a free and democratic state) who make the decision about whether a religion is wanted or not. However, criminal legislation should impose penalties on religious organisations that promote anti-racial or violent behaviour.

According to section 14 of the *LCRA Law* religious organisations (both local and foreign) can be terminated by decision of their promoters; or by a decision of a court in the case of repeated or gross violations of either the *Russian Constitution* or federal law, or in the case of activity contradicting the authorised purposes of its establishment.

Either the Prosecutor's Office of the Russian Federation, the body which registers religious organisations, or local authorities have the right to bring a court action for termination of a religious organisation or for prohibiting the activity of a religious organisation or group on any one of the following grounds:[486] (a) violation of public safety or public policy or subversion of state security; (b) actions directed at endangering the integrity of the Russian Federation; creation of armed units; (c) propagation of war, kindling of social, racial, national or religious dissension; (d) causing the break-up of a family; (e) invasion into the personal rights and freedoms of citizens; (f) causing a harmful effect on the morals and health of citizens, including the use of drugs and hypnosis in the course of religious activity; (g) support of suicide or refusal of medical aid on religious grounds; (h) impeding the compulsory education of children;[487] (i) urging members and followers of a religious organisation or other persons to dispose of their property for benefit of the religious organisation; (j) coercion by threat of injury to life, health or property, or other violent influence, against those who attempt to leave the religious organisation; (k) inducement of citizens not to carry out their statutory civil duties.

Some of the above grounds are not entirely clear: for example, what does "endangering the integrity of the Russian Federation" mean? Does every religious doctrine that in some way contradicts the standards of the secular society undermine the fundamentals of the state?

One of the most famous Russian saints, Feodosy Pechersky, left home against his mother's will and entered a monastery when he was not yet fourteen years old. This fact might allow us to accuse the Russian Orthodox Church of "causing the break-up of a family", as noted above.

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[486] *LCRA Law* sections 12-14.

[487] It is arguable that this is an aspect of child abuse, however, no direct mention of child abuse per se, as a ground for termination is present.

9.10 The Right to Conduct Religious Rituals and Ceremonies

An essential part of any religion is the performance of religious rituals and ceremonies. They are often concerned with important events in the life of a person, such as birth, baptism, marriage, burial, commemoration of the deceased, acts of pilgrimage and procession. Therefore, the absence of rituals and ceremonies is what prevents a mere personal belief or practice from being called a religion.[488] For example, divinations by cards or coffee grounds, or superstitions are not considered to be religions.

The right to a venue where religious rituals and ceremonies can be conducted is provided by section 16 of the *LCRA Law*. Religious organisations have the right to establish and maintain buildings and premises in hospitals, children's homes, boarding houses for elderly and disabled persons, or prisons that are intended for meetings, worship, and other religious rituals.

9.11 The Right to Propagate Religion

Freedom of religion was declared by both the *RSFSR Constitutions 1918* and *RSFSR Constitutions 1925.*[489] In 1929, however, the 14th All-Russian Congress of Soviets made changes to Article 4 of the *RSFSR Constitutions 1925*, which resulted in the words "freedom of religious propagation" being replaced by "freedom of religious profession". The difference between 'propagating' and 'professing' a religion is that the right to profess a religion, unlike propagation, does not imply dissemination of one's beliefs to stimulate its infiltration throughout society.

This wording changed again in the *USSR Constitution 1936* to "the liberty to practise religious rituals", and was maintained this way up to and including the *USSR Constitution 1977*.

Presently, people in Russia have the right to propagate religion in accordance with section 17 of the *LCRA Law*.

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[488] See Preamble of *LCRA Act.*

[489] Articles 4 and 13 respectively.

9.12 The Right to Propagate Atheism

Article 28 of the *Russian Constitution* establishes not only the right to atheism, but also the right to propagate atheism.[490]

Any association with atheism was officially denied by the Soviet state. The former RSFSR Law *On Religious Organisations 1974*[491] stated that:

> *"public associations founded with the purpose of joint analysis and dissemination of atheistic views are independent of the state. The state does not provide to such associations any material or ideological assistance and does not charge them with fulfilment of any state functions."*

However, it is widely known that the Soviet state provided broad support and funding for the propagation of atheism.[492]

Nowadays, however, the state does not fund any such activity, and the *LCRA Law* is silent on the issue.

9.13 The Right of Charitable Activity

The right[493] of charitable activity follows from the concept of religious duty, which is determined by the conscience of the believer. As part of their religious duty, believers may express their faith through charitable acts. If they are deprived of such a capability, they are limited to the expression of their faith through other means.

Soviet legislation did not expressly contain a prohibition on charity.[494] However, it only allowed religious associations to create mutual benefit societies that render medical help to their members.[495]

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490 To disseminate religious or other convictions.

491 Section 8 of the RSFSR Law *On Religious Organisations* of 10 June, 1974.

492 Petrukhin, I.L. *op cit* at 225.

493 Expressed in Article 39 of the *Russian Constitution*.

494 See the Resolution of the All-Union Central Executive Committee and of the Council of People's Commissars *On religious associations* 1929.

495 *Ibid.*

In 1990,[496] such limitations were revoked; now religious organisations have the right to conduct all types of charitable activities both independently and, by application to the Government, through public charitable funds.[497]

9.14 The Right to Religious Education

Due to prohibitive laws,[498] which were revoked in 1990,[499] access to religious education in Russia was limited. There were very few special theological institutions, and religious organisations were not allowed to create common biblical or literary groups, departments of religious teaching, libraries or reading-rooms. Parents were deprived of the ability to give their children religious education other than by passing on their own knowledge and ideas about religion. The teaching of any religious doctrines in state educational institutions was not allowed.[500]

Parents engaging in religious education of their children were prosecuted for violating the laws that obligated parents to educate children "in the spirit of high communist morals" and "in the spirit of the moral code of the builders of communism".[501]

Presently, the law[502] states that each child has the right of access to religious education in accordance with the desires of their parents. Also, section 19 of the *LCRA Law* provides that religious organisations may create schools for religious education of children.[503] However, children cannot be forced by their parents to receive religious education. Moreover, the law emphasises that any religious education must not injure, either physically or mentally, the health of the child, nor hinder their development.[504]

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496 With the Russia's first legislation granting religious freedom; the predecessor of the *LCRA Law: On Freedom of Belief 1990.*

497 The State renders assistance and support to the charity activity of religious organizations, and also to the implementation by these organizations of socially significant cultural and educational programs and missions.

498 That is, the Soviet constitutions and legislation.

499 See the predecessor of the *LCRA Law: On Freedom of Belief 1990.*

500 *Ibid.*

501 The Gazette of the Supreme Soviet of the USSR, № 3, 1969.

502 Section 65 of the *Family Code 1995* (Federal Law of December 29, 1995 № 223-ФЗ.)

503 Schools may also educate priests and religious staff. These institutions are subject to registration as religious organizations and receive a state license for the right to conduct educational activity. Full-time students of such institutions have the right of deferment from military service.

504 *Ibid.*

9.15 The Right to Waive Military Service

The right[505] to waive military service on religious grounds accords with international standards[506] and is well established as part of the law in most countries.[507]

For example, in Germany the right to waive military service on religious grounds was introduced over 40 years ago in accordance with chapters 3 and 4 of *Basic Law for the Federal Republic of Germany 1949*.

In other countries such as Italy, a similar law was only introduced in 1972, with a burdensome test to prove one's religious convictions.[508]

Waiving military service on grounds of religious beliefs[509] has been practised throughout Christian history. For example, Tertullian,[510] a presbyter of the Carthaginian church who established a theological foundation for Christian pacifism, protested against military service of the Christians in Roman legions. He said:

> *"[f]irstly, it should be examined whether Christians may be soldiers at all... the supposition is incorrect in its essence".*

Another historically notable waiver of military service was in the case of the religious writer Lactancium[511] who said:

> *"Why should he who in his soul is in peace with all people, be at war and be entangled in others' conflicts?"*

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505 Article 59 of the *Russian Constitution*.

506 See the United Nations Commission on Human Rights (General Commitment No. 22 (48) 1993, Recommendation 1995/83 from March 8, 1995); by OSCE/SCSE (Document of SCSE Copenhagen Meeting on Human Dimension from June 29, 1990); by the Council of Europe (Recommendation No. R (87) 8 of the Committee of Ministers to Member States Regarding Conscientious Objection to Compulsory Military Service from 9 April 1987; Rodota Report, adopted by Parliamentary Assembly of Council of Europe, Doc. 6752 from 29 January 1993); by the European Parliament (Resolutions from October 13, 1989 and from March 11, 1993; Recommendation from January 18, 1994).

507 See: Liukaitis, D. *Goden k al'ternativnoi sluzhbe* (Fit for an Alternative Service) , Kommersant-Vlast' 1998, № 19, pp. 68-71; Fomina, E. *Al'ternativa avtomatu* (Alternative to a Submachine Gun), Ekspert 1998, № 18, pp. 70-71; Rosenbaum, Y.A. *Al'ternativnaia grazhdanskaia sluzhba (Proekt Federal'nogo zakona)* (Alternative Civil Service [Draft of the Federal Law])', Gosudarstvo i pravo 1997, № 9, pp. 31-35.

508 Lozbinov V. *Alternative Civil Service* Russian Jurisprudence 2000, N 1

509 Based on the 6th commandment of the Holy Bible 'thou shalt not kill'.

510 The end of the second century A.D.

511 Liukaitis *op. cit.* quoted at 70

In 1874, the introduction of compulsory military service in Russia resulted in mass objections on the grounds that such service was incompatible with the country's mass religious beliefs.[512] As a form of protest, about fifteen thousand people immigrated to the USA and Canada. Concerned by the economic consequences of further immigration, the government was compelled to offer a compromise. The *Charter on Compulsory Military Service 1874* was changed so that religious believers who categorically refused military service were freed from taking up arms and spent their terms of mandatory service in non-combatant divisions.

Subsequently, an exemption from military service on religious grounds was established by the *Decree of the Government of the Republic 1918*.[513] The burden of proof with regard to the existence of religious beliefs was on the person who was called to military service. The person had to demonstrate to judicial bodies that his religious beliefs are not a simple cover for cowardice or dishonesty. On establishment[514] of the fact that the religious beliefs of the person were sincere, this person could be freed from direct fulfilment of military duties and sent to serve his or her military duty in the medical corps. This decree became an essential step forward in the achievement of compromise between military duty and the right to freedom of religion declared by the Soviet government.

On 4 January 1919, Lenin signed a decree *On Exemption from Compulsory Military Service on Religious Grounds 1919*. This decree, by defining the nature of non-military duties, established the principle of substitution of non-military duties for military service. However, Russia's post-revolutionary chaos substantially encumbered the observance of this decree. Consequently, many citizens who refused military service were convicted and even executed.[515]

In the second half of the 1920s the Soviet regime 'hardened'.[516] Prior decrees on the waiver of military service on grounds of religious conviction were revoked. The right to waive military service was officially annulled by the Soviet law *On Universal Military Draft 1939*, which did

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[512] See: Pchelintsev, A.V. *Pravo ne streliat'(Right not to Shoot)*, Moscow Press, 1998, pp. 11-25.

[513] Signed in October 1918.

[514] By the appropriate judicial bodies.

[515] See: Alexeeva, L.B., Zhuikov, V.M., and Loukashuk, I.I. *Mezhdunarodnye normy o pravakh cheloveka i primenenie ikh sudami RF* (Rules of International Law on Human Rights and their Implementation by Russian Courts), Moscow, 1996, pp. 61-62

[516] Ibid.

not provide for this right, and people who refused military service were severely punished by the state.[517]

However, the issue of waiving military service on religious beliefs was not resolved by punitive measures. Today, it is still questionable whether a compromise between the state and the individual has been reached. The constitutional right to substitution of military service by alternative civil service on religious grounds[518] is supported by section 3 of the *LCRA Law*, which states that:

> *"A citizen of the Russian Federation whose convictions or religion contradict the performance of military service has the right to replace such military service with alternative civil service…At the request of religious organisations, by a decision of the President of the Russian Federation, in accordance with the current legislation of the Russian Federation on military duty and military service in the time of peace, a deferment from conscription and military service may be granted …"*

In 1996, Bakalin was accused of breaching section 80 of the *Criminal Code 1996* by avoiding military service. In his defense, Bakalin argued that he recently became a Jehovah's Witness and that military service was against his religious convictions.

The Supreme Court of the Russian Federation upheld Bakalin's defense stating that the prosecution could not demonstrate that Bakalin's reason for becoming a Jehovah's Witness was solely to avoid military service. However, the court also emphasized the ability of the accused to demonstrate genuine religious convictions.

Although Bakalin's case establishes that the prosecution carries the burden of proof in such cases, the issue of 'genuineness' in using such defenses continues to lie with the accused.[519]

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[517] Ibid.

[518] Article 59 of the *Russian Constitution*.

[519] Review of the Supreme Court of the Russian Federation of 11 September 1996.

CONCLUSION

As shown in the preceding chapters, the extent to which human rights recognized in the *Russian Constitution* are enjoyed under Russian law is limited by a number of legal, social, political and economic problems. These include: (a) lack of judicial independence; (b) deficiencies in legislation concerned with human rights protection; (c) lack of government funding of administrative and judicial bodies; (d) high crime rates; (e) military activities; (f) tortuous bureaucratic system; and (g) high level of corruption.

Resolving these problems may take a long time as Russia advances through a state of transition from totalitarianism to democracy. However, this period of 'post-socialist' (or 'pre-democratic') development is not mentioned in the *Russian Constitution*. Article 1 of the *Russian Constitution* simply proclaims Russia as a 'democratic state'.

Yakovlev, however, warns that proclamations of constitutional ideals should not be misinterpreted in light of specific state ideology. For example, Stalin's idea of 'freedom', as expressed in the *Soviet Constitution 1936*, is satisfied in a society where "there is no unemployment and poverty",[520] which differs significantly from the notion of 'freedom' in modern democratic societies, such as Australia, wherein personal 'freedom' can co-exist with both poverty and unemployment. Therefore, the proclamation of Russia as a 'democracy' must be considered in light of the country's adherence to modern international democratic standards.

With regard to the *Russian Constitution*, it is for the most part a document that accords with internationally recognised standards on human rights, such as the *Universal Declaration of Human Rights 1948*, the *European Convention for the Protection of Human Rights and Fundamental Freedoms 1950*, the *International Covenant on Economic, Social and Cultural Rights 1996*, and the *International Covenant on Civil and Political Rights 1976*.

Moreover, Yakovlev believes that Russia is decisively moving towards democratization and that the *Russian Constitution* should be viewed as a political (rather than a legal) document. He states that, presently the *Russian Constitution* can:

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[520] Veovodin, op cit at 30.

> *"…serve as the focus for the national identity and thereby acquire legitimacy… [and in time] become an inseparable part of Russia's social reality".*[521]

Chetvernin, however, states that the future of the *Russian Constitution* is dubious. He argues that seventy-five years of Soviet rule has conditioned a culture that understands the function of personal rights and freedoms only within the boundaries of totalitarian leadership. That is, by providing high levels of free social benefits, and punishing individuals for expressions of capitalistic or democratic initiatives, the Soviet regime effectively created a culture that is both complacent and skeptical with respect to personal rights protection. In that regard, Chetvernin states that:

> *"…the Constitution, de facto, …has established a separation of powers that will not provide Russian people with acceptable... institutional guarantees of freedom, security and property".*[522]

However, if Russia does not evolve beyond the current state of post-socialist development, the greatest negative effect will be on the functions of society; and first and foremost on the enjoyment of personal civil rights, as they are essential for the function of modern democratic states.[523] The French *Declaration of the Rights of Man and of the Citizen 1789*[524] cautioned that:

> *"…ignoring, forgetting or failing to respect human rights are the sole causes of public calamities and the decay of governments."*

Much of Russia's success in its path towards personal rights protection will depend on the establishment of a properly functioning and independent judicial system. Such a system will provide the necessary mechanisms to: (a) increase the efficiency of government funding and reduce budget deficits by punishing government representatives who, through abuse of statutory power, pursue personal interests before the state's (e.g. stealing budgetary funds); (b) aid in the fight against corruption by bringing to justice politicians and individuals engaged in illegal

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[521] Yakovlev, A.M. *Konstitutsionnyi stroi: sotsial'nyi i pravovoi aspekt* (Constitutional System: Social and Legal Aspect), Voprosy filosofii 1995, No 10, p7.

[522] Chertvernin, V.A. *Ideologiia prav cheloveka i printsipy razdeleniia vlastei v Konstitutsii RF* (Ideology of Humatn Rights and Principles of Separation of Powers in the Constitution of the Russian Federation', *Stanovlenie konstitutsionnogo gosudarstva v posttotalitarnoi Rossii* (The Making of a Constitutional State in Post-totalitarian Russia), Vyp.1, Moscow, 1996, pp.18, 24.

[523] Yakovlev, A.M. *Ibid.*

[524] Adopted in August 26, 1789, by the National Constituent Assembly (Assemblée nationale constituante), as the first step toward writing a constitution.

activities (e.g. assassination and bribery) that compromise administrative processes; (c) help reduce levels of bureaucracy by providing competent judicial review of administrative decisions; and (d) identify and correct deficiencies in legislation aimed at protecting personal rights.

However, the notion of judicial protection, together with its procedures and means for enforcing personal rights, has only recently been introduced into Russian social culture.[525] The presence of cultural complacency and skepticism regarding personal rights protection, compounded by the experience of costly and ineffective law enforcement mechanisms, may lead to the discounting of available rights by Russian people.

For example, the right to a court hearing, which according to the *Russian Constitution*[526] is unlimited and inalienable, has clear limitations in practice. The enormous overload of cases[527] considered by the courts (which results in civil matters not being heard for a very long time), means that the actuality of the claim for the protection of one's right is often lost by the time their matter is heard by the court. Secondly, the low level of legal understanding among the population and the need for professional knowledge to take part in court cases requires the services of lawyers, but not everybody can afford a 'good' lawyer. Thirdly, court decisions are ineffective, since they are often not supported by proper enforcement mechanisms.

As a result, only ten percent of those in Russia who consider that their rights have been violated resort to court proceedings.[528] Therefore, the enjoyment of personal rights in Russia depends on a series of economic and social preconditions and circumstances. On the one hand, the *Russian Constitution* has recognised the value and importance of inalienable personal civil rights; while, on the other, the Russian government, which is charged with the duty to protect the rights and freedoms,[529] is not in a position to safeguard these rights through proper judicial mechanisms.

Nevertheless, Russia has significantly modified the relationship between the state and the individual from that experienced during Soviet times. The imprint of Soviet paternalism has

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525 See: Mordovets, A.S. *Sotsial'no-iuridicheskii mekhanizm obespecheniia prav cheloveka i grazhdanina* (Social and Legal Mechanism of Ensuring Rights of Man and Citizen), Saratov, 1996.

526 Articles 46 to 48.

527 See Decision of the Constitutional Court of 24 April 2000 N 7-П On a complaint by Zoporozhets

528 See: Morozova, L.A. *Problemy sovremennoi rossiiskoi gosudarstvennosti* (Problems of Modern Russian State System), Moscow, 1998, p.170.

529 Article 2.

been removed from the very name of the chapter dealing with personal rights,[530] and state privileges have given way to humanitarian ones.

However, the notion of Russia as a modern democratic state, for now, remains an ideal. Most academics share the viewpoint that present-day Russia is transitional in nature, and includes elements of both liberal democracy and of authoritarianism. In other words, the political regime in Russia today is semi-democratic or liberal-authoritarian.[531]

The future tendencies for development of Russia's political and legal systems may be either an evolution to a liberal-democracy or a return to an authoritarian-bureaucratic regime. Most Russian academics believe that Russia will follow the general course of post-socialist states, the essence of which is that:

> *"...they gradually zig-zag their way to the forms and institutions of statehood, corresponding to the general democratic values evolved through the experience of human civilisation."*[532]

In Russia's path towards democracy, legislative and judicial protection of personal civil rights are important factors for ensuring the enjoyment of these rights by Russian people. Therefore, in addition to the general aims of abolishing corruption, increasing funding of law enforcement, administrative and judicial organs, and minimisation of bureaucracy, the following specific protective measures (relating to the personal rights discussed in this thesis) would assist Russia's process of democratisation:

Proposed measures:

Article 21(2) of the Russian Constitution

Introduce into the *Criminal Procedures Code 2001* a limitation on the period of detention of a defendant during the course of a trial.

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530 No longer "The State and the Individual", as in Soviet Constitutions of the seventies (Chap. 11), but "The Rights and Freedoms of the Individual and Citizen", Chap. 2 of the 1993 Constitution.

531 See, for example: Alekseev, S.S. *Filosofiia prava (Philosophy of Law)*, Moscow, 1997, pp. 202-206; Vengerov, A.B. 'Tema 8. Teoreticheskie voprosy rossiiskoi gosudarstvennosti', *Teoriia gosudarstva i prava. Chast' 1. Teoriia gosudarstva (Topic 8. Theoretical Questions of the Russian State System, Theory of State and Law. Part 1. Theory of State)*, ed. A.B. Vengerov, Moscow, 1995. p. 232; Chirkin, V.E. *'Perekhodnoe sotsialisticheskoe gosudarstvo: soderzhanie i forma' (Transitional Socialist State: Forms and Contents), Gosudarstvo i pravo*, 1997, No. 1, pp. 4-11; Dmitriev, Iu.A. *'Glava IV. Forma gosudarstva i ee konstitutsionno-pravovaia osnova', Obshchaia teoriia prava*, *((Form of a State and its Foundation in Constitutional Law. General Theory o Law)* ed. A.S. Pigolkina, Moscow, 1996, p. 81.

532 See for example, Chirkin. V., *op.cit.*, p. 11.

Article 22 of the Russian Constitution

Bring the *Criminal Procedures Code 2001* into line with the provisions of Article 22 of the *Russian Constitution*.

Article 23(1) of the Russian Constitution

Exclude from sections 150, 152 and 1100 of the *Civil Code 1994* the reference to "commercial reputation" and substitute it by the reference to "reputation" or to "good name", as used in the *Russian Constitution*.

Make necessary amendments to the *Civil Code 1994* or to *Criminal Procedures Code 2001* to ensure that all testimony provided during judicial procedures should be immune from actions available under section 152 of the *Civil Code 1994*.

Article 23(2) of the Russian Constitution

Provide in the Federal Law *On Postal Communication 1995* or in the Federal Law *On Security Services 1995* the conditions under which a court order may be issued, for government activity that affects people's right to privacy of correspondence, telephone conversations, postal, telegraphic and other communications.

In the first stage of searches conducted by government investigative agencies, when there is no specific suspect, allow only such actions that do not limit the constitutional rights of people (for example, making enquiries, interrogation, test purchase, etc.).

In the Federal Law *On Operational Investigative Activity 1995*, providing special procedures for conducting searches, covering confidentiality of correspondence, telephone conversations, postal, telegraph and other communications of citizens.

Article 24(1) of the Russian Constitution

Eliminate the contradiction between Article 24(1) of the *Russian Constitution*, which provides for the right of non-disclosure of information, and section 11 of the Federal Law *On Information Collection and Protection 1995*, which compels disclosure of information upon demand.

Article 25 of the Russian Constitution

Either define in the Federal Law *On Security Services 1995* the level of evidence required to 'suggest' that a crime is being or has been committed, or strike out of the text of Article 25 of the *Russian Constitution* the reference to a court order, and in the relevant section of the legislation establish all the grounds and procedures for entering a home (including the accessing of information about the activities inside a home by use of any audio or video surveillance technology).

Article 26(1) of the Russian Constitution

Restore the option of indicating one's nationality in Russian passports, with every citizen having the discretionary right to declare same.

Article 27(1) of the Russian Constitution

Establishing the simplest possible procedure for registering place of residence. For example, registration can be effected by presentation of a document certifying identity; no other documents should be required. Registration should be effected irrespective of accommodation.

Article 28 of the Russian Constitution

Permit the representatives of foreign religious organisations to engage in cult and other religious activities on Russian territory.

Article 46(3) of the Russian Constitution

Amendment of section 79 of the Federal Constitutional Law *On the Constitutional Court of the Russian Federation 1994* to the effect that a decision of the Constitutional Court can be appealed to international judicial bodies.

Article 125 of the Russian Constitution

Ensure that conventions or procedures are in place to automatically repeal or amend unconstitutional legislation based on Constitutional Court decisions.

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APPENDIX 1

THE CONSTITUTION OF THE RUSSIAN FEDERATION

Part I

Chapter 2. Rights and Liberties of a Person and Citizen

Article 17.

1. The basic rights and liberties in conformity with the commonly recognised principles and norms of the international law shall be recognised and guaranteed in the Russian Federation and under this Constitution.
2. The basic rights and liberties of the human being shall be inalienable and shall belong to everyone from birth.
3. The exercise of rights and liberties of a human being and citizen may not violate the rights and liberties of other persons.

Article 18.

The rights and liberties of man and citizen shall have direct effect. They shall determine the meaning, content and application of the laws, and the activities of the legislative and executive branches and local self-government, and shall be secured by the judiciary.

Article 19.

1. All people shall be equal before the law and in the court of law.
2. The state shall guarantee the equality of rights and liberties regardless of sex, race, nationality, language, origin, property or employment status, residence, attitude to religion, convictions, membership of public associations or any other circumstance. Any restrictions of the rights of citizens on social, racial, national, linguistic or religious grounds shall be forbidden.
3. Man and woman shall have equal rights and liberties and equal opportunities for their pursuit.

Article 20.

1. Everyone shall have the right to life.
2. Capital punishment may, until its abolition, be instituted by the federal law as exceptional punishment for especially grave crimes against life, with the accused having the right to have his case considered in a law court by jury.

Article 21.

1. The dignity of the person shall be protected by the state. No circumstance may be used as a pretext for belittling it.
2. No one may be subjected to torture, violence or any other harsh or humiliating treatment or punishment. No one may be subjected to medical, scientific or other experiments without his or her free consent.

Article 22.

1. Everyone shall have the right to freedom and personal inviolability.
2. Arrest, detention and keeping in custody shall be allowed only by an order of a court of law. No person may be detained for more than 48 hours without an order of a court of law.

Article 23.

1. Everyone shall have the right to privacy, to personal and family secrets, and to protection of one's honour and good name.

2. Everyone shall have the right to privacy of correspondence, telephone communications, mail, cables and other communications. Any restriction of this right shall be allowed only under an order of a court of law.

Article 24.

1. It shall be forbidden to gather, store, use and disseminate information on the private life of any person without his/her consent.

2. The bodies of state authority and the bodies of local self-government and the officials thereof shall provide to each citizen access to any documents and materials directly affecting his/her rights and liberties unless otherwise stipulated under the law.

Article 25.

The home shall be inviolable. No one shall have the right to enter the home against the will of persons residing in it except in cases stipulated by the federal law or under an order of a court of law.

Article 26.

1. Everyone shall have the right to determine and state his national identity. No one can be forced to determine and state his national identity.

2. Everyone shall have the right to use his native language, freely choose the language of communication, education, training and creative work.

Article 27.

1. Everyone who is lawfully staying on the territory of the Russian Federation shall have the right to freedom of movement and to choose the place to stay and reside.

2. Everyone shall be free to leave the boundaries of the Russian Federation. The citizens of the Russian Federation shall have the right to freely return into the Russian Federation.

Article 28.

Everyone shall be guaranteed the right to freedom of conscience, to freedom of religious worship, including the right to profess, individually or jointly with others, any religion, or to profess no religion, to freely choose, possess and disseminate religious or other beliefs, and to act in conformity with them.

Article 29.

1. Everyone shall have the right to freedom of thought and speech.

2. Propaganda or campaigning inciting social, racial, national or religious hatred and strife is impermissible. The propaganda of social, racial, national, religious or language superiority is forbidden.

3. No one may be coerced into expressing one's views and convictions or into renouncing them.

4. Everyone shall have the right to seek, get, transfer, produce and disseminate information by any lawful means. The list of information constituting the state secret shall be established by the federal law.

5. The freedom of the mass media shall be guaranteed. Censorship shall be prohibited.

Article 30.

1. Everyone shall have the right to association, including the right to create trade unions in order to protect one's interests. The freedom of public associations activities shall be guaranteed.

2. No one may be coerced into joining any association or into membership thereof.

Article 31.

Citizens of the Russian Federation shall have the right to gather peacefully, without weapons, and to hold meetings, rallies, demonstrations, marches and pickets.

Article 32.

1. Citizens of the Russian Federation shall have the right to participate in the administration of the affairs of the state both directly and through their representatives.

2. Citizens of the Russian Federation shall have the right to elect and to be elected to bodies of state governance and to organs of local self-government, as well as take part in a referendum.

3. Citizens who have been found by a court of law to be under special disability, and also citizens placed in detention under a court verdict, shall not have the right to elect or to be elected.

4. Citizens of the Russian Federation shall have equal access to state service.

5. Citizens of the Russian Federation shall have the right to participate in administering justice.

Article 33.

Citizens of the Russian Federation shall have the right to turn personally to, and send individual and collective petitions to state bodies and bodies of local self-government.

Article 34.

Everyone shall have the right to freely use his or her abilities and property for entrepreneurial or any other economic activity not prohibited by the law. 2. No economic activity aimed at monopolisation or unfair competition shall be allowed.

Article 35.

1. The right of private property shall be protected by law.
2. Everyone shall have the right to have property in his or her ownership, to possess, use and manage it either individually or jointly with other persons.
3. No one may be arbitrarily deprived of his or her property unless on the basis of decision by a court of law. Property can be forcibly alienated for state needs only on condition of a preliminary and equal compensation.
4. The right of inheritance shall be guaranteed.

Article 36.

1. Citizens and their associations shall have the right to have land in their private ownership.
2. The possession, use and management of the land and other natural resources shall be freely exercised by their owners provided this does not cause damage to the environment or infringe upon the rights and interests of other persons.
3. The terms and procedures for the use of land shall be determined on the basis of federal laws.

Article 37.

1. Work shall be free. Everyone shall have the right to make free use of his or her abilities for work and to choose a type of activity and occupation.
2. Forced labour shall be prohibited.
3. Everyone shall have the right to work under conditions meeting the requirements of safety and hygiene, to remuneration for work without any discrimination whatsoever and not below the statutory minimum wage, and also the right to security against unemployment.
4. The right to individual and collective labour disputes with the use of means of resolution thereof established by federal law, including the right to strike, shall be recognised.
5. Everyone shall have the right to rest and leisure. A person having a work contract shall be guaranteed the statutory duration of the work time, days off and holidays, and paid annual vacation.

Article 38.

1. Motherhood and childhood, and the family shall be under state protection.
2. Care for children and their upbringing shall be the equal right and duty of the parents.
3. Employable children who have reached 18 years old shall care for their non-employable parents.

Article 39.

1. Everyone shall be guaranteed social security in old age, in case of disease, invalidity, loss of breadwinner, to bring up children and in other cases established by law.
2. State pensions and social benefits shall be established by laws.
3. Voluntary social insurance, development of additional forms of social security and charity shall be encouraged.

Article 40.

1. Everyone shall have the right to a home. No one may be arbitrarily deprived of a home.
2. State bodies and organs of local self-government shall encourage home construction and create conditions for the realisation of the right to a home.

3. Low-income citizens and other citizens, defined by the law, who are in need of housing shall be housed free of charge or for affordable pay from government, municipal and other housing funds in conformity with the norms stipulated by the law.

Article 41.

1. Everyone shall have the right to health care and medical assistance. Medical assistance shall be made available by state and municipal health care institutions to citizens free of charge, with the money from the relevant budget, insurance payments and other revenues.

2. The Russian Federation shall finance federal health care and health-building programs, take measures to develop state, municipal and private health care systems, encourage activities contributing to the strengthening of the man's health, to the development of physical culture and sport, and to ecological, sanitary and epidemiological welfare.

3. Concealment by officials of facts and circumstances posing hazards to human life and health shall involve liability in conformity with the federal law.

Article 42.

Everyone shall have the right to a favourable environment, reliable information about its condition and to compensation for the damage caused to his or her health or property by ecological violations.

Article 43.

1. Everyone shall have the right to education.

2. The accessibility and gratuity of pre-school, general secondary and vocational secondary education in public and municipal educational institutions and enterprises shall be guaranteed.

3. Everyone shall have the right to receive, free of charge and on a competitive basis, higher education in a state or municipal educational institution or enterprise.

4. Basic general education shall be mandatory. Parents or persons substituting for them shall make provisions for their children to receive basic general education.

5. The Russian Federation shall institute federal state educational standards and support various forms of education and self-education.

Article 44.

1. Everyone shall be guaranteed freedom of literary, artistic, scientific, intellectual and other types of creative activity and tuition. Intellectual property shall be protected by the law.

2. Everyone shall have the right to participation in cultural life, to the use of institutions of culture, and access to cultural values.

3. Everyone shall care for the preservation of the historic and cultural heritage and safeguard landmarks of history and culture.

Article 45.

1. State protection for human rights and liberties in the Russian Federation shall be guaranteed.

2. Everyone shall have the right to defend his or her rights and liberties by any means not prohibited by the law.

Article 46.

1. Everyone shall be guaranteed protection of his or her rights and liberties in a court of law.

2. The decisions and actions (or inaction) of state organs, organs of local self-government, public associations and officials may be appealed against in a court of law.

3. In conformity with the international treaties of the Russian Federation, everyone shall have the right to turn to interstate organs concerned with the protection of human rights and liberties when all the means of legal protection available within the state have been exhausted.

Article 47.

1. No one may be denied the right to having his or her case reviewed by the court and the judge under whose jurisdiction the given case falls under the law.

2. Anyone charged with a crime has the right to have his or her case reviewed by a court of law with the participation of jurors in cases stipulated by the federal law.

Article 48.

1. Everyone shall be guaranteed the right to qualified legal counsel. Legal counsel shall be provided free of charge in cases stipulated by the law.

2. Every person who has been detained, taken into custody or charged with a crime shall have the right to legal counsel (defence attorney) from the moment of, respectively, detention or indictment.

Article 49.

1. Everyone charged with a crime shall be considered not guilty until his or her guilt has been proven in conformity with the procedures stipulated by the federal law and established by the verdict of a court of law.

2. The defendant shall not be obliged to prove his or her innocence.

3. The benefit of doubt shall be interpreted in favour of the defendant.

Article 50.

1. No one may be repeatedly convicted for the same offence.

2. In the administration of justice no evidence obtained in violation of the federal law shall be allowed.

3. Everyone sentenced for a crime shall have the right to have the sentence reviewed by a higher court according to the procedure instituted by the federal law, and also the right to plea for clemency or mitigation punishment.

Article 51.

1. No one shall be obliged to give evidence against himself or herself, for his or her spouse and close relatives, the range of which shall be established by the federal law.

2. The federal law may stipulate other exemptions from the obligation to give evidence.

Article 52.

The rights of persons who have sustained harm from crimes and abuses of power shall be protected by the law. The state shall guarantee the victim’s access to justice and compensation for damage.

Article 53.

Everyone shall have the right to compensation by the state for the damage caused by unlawful actions (or inaction) of state organs, or their officials.

Article 54.

1. The law instituting or aggravating the liability of a person shall have no retroactive force.

2. No one may be held liable for an action that was not recognised as an offence at the time of its commitment. If liability for an offence has been lifted or mitigated after its perpetration, the new law shall apply.

Article 55.

1. The listing of the basic rights and liberties in the Constitution of the Russian Federation shall not be interpreted as the denial or belittlement of the other commonly recognised human and citizens' rights and liberties.

2. No laws denying or belittling human and civil rights and liberties may be issued in the Russian Federation.

3. Human and civil rights and liberties may be restricted by the federal law only to the extent required for the protection of the fundamentals of the constitutional system, morality, health, rights and lawful interests of other persons, for ensuring the defence of the country and the security of the state.

Article 56.

1. Individual restrictions of rights and liberties with identification of the extent and term of their duration may be instituted in conformity with the federal constitutional law under conditions of the state of emergency in order to ensure the safety of citizens and protection of the constitutional system.

2. A state of emergency throughout the territory of the Russian Federation and in individual areas thereof may be introduced in the circumstances and in conformity with the procedures defined by the federal constitutional law.

3. The rights and liberties stipulated by Articles 20, 21, 23 (part 1), 24, 28, 34 (part 1), 40 (part 1), 46-54 of the Constitution of the Russian Federation shall not be subject to restriction.

Article 57.

Everyone shall pay lawful taxes and fees. Laws introducing new taxes or worsening the situation of taxpayers shall not have retroactive force.

Article 58.

Everyone shall be obliged to preserve nature and the environment, and care for natural wealth.

Article 59.

1. Defence of the homeland shall be a duty and obligation of the citizen of the Russian Federation.

2. The citizen of the Russian Federation shall do military service inconformity with the federal law.

3. The citizen of the Russian Federation whose convictions and faith are at odds with military service, and also in other cases stipulated by the federal law shall have the right to the substitution of an alternative civil service for military service.

Article 60.

The citizen of the Russian Federation shall be recognised to be of legal age and may independently exercise his rights and duties in full upon reaching the age of 18.

Article 61.

1. The citizen of the Russian Federation may not be deported out of Russia or extradited to another state.

2. The Russian Federation shall guarantee its citizens defence and patronage beyond its boundaries.

Article 62.

1. The citizen of the Russian Federation may have the citizenship of a foreign state (dual citizenship) in conformity with the federal law or international treaty of the Russian Federation.

2. Possession of the citizenship of a foreign state by the citizen of the Russian Federation shall not belittle his or her ranks and liberties or exempt him or her from the duties stemming from Russian citizenship unless otherwise stipulated by the federal law or international treaty of the Russian Federation.

3. Foreign citizens and stateless persons shall enjoy in the Russian Federation the rights of its citizens and bear their duties with the exception of cases stipulated by the federal law or international treaty of the Russian Federation.

Article 63.

1. The Russian Federation shall grant political asylum to foreign citizens and stateless citizens in conformity with the commonly recognised norms of the international law.

2. The extradition of persons persecuted for their political views or any actions (or inaction), which are not qualified as criminal by the law of the Russian Federation, to other states shall not be allowed in the Russian Federation. The extradition of persons charged with crimes and also the hand-over of convicts for serving time in other countries shall be effected on the basis of the federal law or international treaty of the Russian Federation.

Article 64.

The provisions of these articles form the basis of personal rights in the Russian Federation and may not be changed other than by the means set forth in this constitution.

NOTE ON TRANSLATION:

In the original Russian text the word “chelovek” is used, which means “a person”, “a human being”. But usually the official Russian translation gives the word “a man” which is not quite correct; however, this is a long-standing practice.

APPENDIX 2

ACADEMIC PROFILES

Name: Alekseev S.S.
Degrees / Awards: Master of Laws
Notable Posts: One of the author of the *Russian Constitution*. Former member of the Presidential Council on Human Rights (1993-1995).
Notable Publications:

- *Pravovaia Sistema Rossii (Russian Legal System), Pbl. Moscow, 1997*
- *Obschaia teoriia prava (The Theory of Rights), Pbl. Moscow, 1981*
- *Grazhdanskoe pravo v sovremennuju epokhu (Modern Civil Law), Pbl. Moscow, 1999*
- *Statut (Statute), Pbl. Moscow, 2000*
- *Pravo i Politica (Law and Politics), Pbl. Moscow, 1989*

Name: Alexeeva L.B.
Degrees / Awards: Master of Legal Science
Notable Posts: Honourable Judge of the Russian Federation. First Vice-President of the Russian Legal Academy.
Notable Publications:

- *Zaschitnic v sude prisiazhnikh (The Defendant in a Jury Trial), Pbl. Moscow, 1995*
- *Sudebnoe sledstvie (Judicial Investigation), Pbl. Moscow, 1993*

Name: Anisimov A.L.
Degrees / Awards: Doctor of Legal Science
Notable Posts: Resident professor at Moscow State University.
Notable Publications:

- *Trudovoe i socialnoe pravo Rossii (Russian Labour and Social Law), Pbl. Moscow, 1999*
- *Trudovoe i socialnoe pravo zarubezhnikh stran (Labour and Social Law of Foreign Countries), Pbl. Moscow, 1999*
- *Zaschita po ugolovnim i grazhdanskim delam (Protection of Legal and Civil Rights), Pbl. Moscow, 2000*
- *Trudovoi codeks RF (Labour Code of the Russian Federation), Pbl. Moscow, 2002*

Name: Baglai M.V.
Degrees / Awards: Master of Legal Science, Holder of the Order of Friendship of the People (1975).
Notable Posts: Judge of the Constitutional Court of the Russian Federation; Honoured Scientist of the Russian Federation.
Notable Publications:

- *Doroga k svobode (The Road to Freedom) Pbl. Moscow, 1994*
- *Constitutsionnoe pravo RF (Constitutional Law of the Russian Federation), Pbl. Moscow, 1998*
- *Ugolovno-ispolnitelnoe pravo Rossii (Russian Criminal Law), Pbl. Moscow, 2000*
- *Politicheskie problemi teorii gosudarstva (Political Problems and Government Theory), Pbl. Moscow, 1996*

Name: Borodin S.V.
Degrees / Awards: Doctor of Legal Science
Notable Posts: Resident professor at Moscow State University.
Notable Publications:

- *Prestuplenia protiv zhizni (Crimes against Life), Pbl. Moscow, 1997*
- *Processualnie acti predvaritelnogo rassledovania (Legal Procedures in Preliminary Investigation), Pbl. Moscow, 1991*
- *Processualnie documenti predvaritelnogo rassledovania (Legal Documents in Preliminary Investigation), Pbl. Moscow, 1998*
- *Borba s prestupnostju (Fight against Crime), Pbl. Moscow, 1990*

Name: Borzenkov G.N.
Degrees / Awards: Doctor of Legal Science

Notable Posts: Resident professor at Moscow State University.
Notable Publications:

- *Otvetstvinost Obmana (Responsibility for Fraud), Pbl. Moscow, 1971*

Name: Chirkin V.E.
Degrees / Awards: Doctor of Legal Science
Notable Posts: Assistant Professor at Sverdlovsk State Law Institute.
Notable Publications:

- *Controlnaia vlast / Gosudarstvo i pravo (The Controlling Authority / The State and the Law), Pbl. Moscow, 1993*
- *Constitutsionnoe pravo zarubezhykh stran (Constitutional Law of Foreign Countries), Pbl. Moscow, 1997*
- *Constitutsionnoe pravo Rossii (Russian Constitutional Law), Pbl. Moscow, 1996*
- *Osnovi gosudarstvennoi vlasti (Principles of State Authority), Pbl. Moscow, 1993*
- *Politicheskaia i gosudarstvennaia vlast / Sovetskoe gosudarstvo i pravo (Political and State Authority / Soviet State and Law), Pbl. Moscow, 1997*

Name: Dmitriev Y.A.
Degrees / Awards: Doctor of Legal Science.
Notable Posts: Honorary Professor of the European University (1999), Deputy Director of the Institute of the Social Insurance of Moscow Social University (1999-2000). Currently the manager of the Social Department of Moscow Social Academy.
Notable Publications:

- *Parlamentskoe pravo. Uchebnoe posobie (Parliamentary Law. Educational aid), Pbl. Moscow, 1996*
- *Municipalnoe pravo RF (Municipal Law of the Russian Federation) Pbl. Moscow, 1995*
- *Novie constitucii stran SNG i Baltii (New Constitutions of SNG and Baltic) Pbl. Moscow, 1997*

Name: Fogelson Y.B.
Degrees / Awards: Master of Mechanical Science
Notable Posts: Resident professor at Moscow State University.
Notable Publications:

- *Commentarij k strakhovomu zakonodatelstvu (Commentary on Insurance Legislation), Pbl. Moscow, 1999*
- *Vvedenie v strakhovoe pravo. Uchebnoe posobie (Introduction to Insurance Law. Educational Aid), Pbl. Moscow, 1996*

Name: Ivanets G.I.
Degrees / Awards: Master of Legal Science
Notable Posts: Resident professor at Moscow State University.
Notable Publications: Co-author of the book "Commentary on the Constitution of the Russian Federation" Pbl. Moscow, 1998

Name: Karaulov V.F.
Degrees / Awards: Master of Legal Science
Notable Posts: Resident professor at Moscow State University.
Notable Publications:

- *Ugolovnoe pravo (Criminal Law), Pbl. Moscow, 2003*
- *Pravovedenie (Science of Law), Pbl. Moscow, 1999*
- *Pravo v celom (Law Generally), Pbl. Moscow, 1998*
- *Stadii sovershenia pristuplenia (Committing a Crime), Pbl. Moscow, 1999*

Name: Lediakh I.A.
Degrees / Awards: Master of Legal Science
Notable Posts: Resident professor at Saint-Petersburg Academy of Science.
Notable Publications:

- *Protection of Human Rights and Legal Justice Pbl. Moscow, 1997*

Name: Lukasheva E.A
Degrees / Awards: Doctor of Legal Science

Notable Posts: Honoured Judge of the Russian Federation, Chief editor of "The Soviet State and Rights" magazine.

Notable Publications:

- *Prava cheloveka (Human Rights) Pbl. Moscow, 1997*
- *Obschaia teoria prav cheloveka (Common Theory of Human Rights) Pbl. Moscow, 1996*
- *Prava cheloveka: itogi veka, tendencii, perspectivi (Human Rights: century's results, tendency, prospects) Pbl. Moscow, 1996*

Name: Mordovets A.S.
Degrees / Awards: Doctor of Legal Science
Notable Posts: Resident professor at Saint-Petersburg Academy of Science.
Notable Publications:

- *Strakhovanie imuschestva i otvetstvennosti (The insurance of property and responsibility), Pbl. Moscow, №15, 2000*
- *Teoria gosudarstva i prava (The Theory of the State and Rights), Pbl. Moscow, 1997*

Name: Yakovlev A.M.
Degrees / Awards: Doctor of Legal Science
Notable Posts: Resident professor at Moscow State University.
Notable Publications:

- *Sovocupnost prestuplenij po sovetskomu ugolovnomu pravu (The whole complex of crime), Pbl. Moscow, 1998*
- *Socialnaia structura obschestva (Social Structure of Society), Pbl. Moscow, 1999*

Name: Morozova L.A.
Degrees / Awards: Master of Legal Science
Notable Posts: Resident professor at Moscow State University.
Notable Publications:

- *Problemi Pravovoi Otvetstvennosti Gosudarstva, ego Organov i Sluzhaschikh (The problems of Law Responsibility of the Country, its organizations and employees), Pbl. Moscow, 1998;*
- *Yuridicheskaja tekhnika (Juridical technique), Pbl. Moscow, 1997*
- *Osnovi Gosudarstva i Prava (Principles of State and Law), Pbl. Moscow, 1997*
- *Teoria Gosudarstva i Prava (Theory of State and Law), Pbl. Moscow, 2003*

Name: Nagornikh I.V.
Degrees / Awards: Doctor of Legal Science
Notable Posts: Resident professor at Moscow State University.
Notable Publications:

- *Konstitutsia Rossii. Uchebnoe posobie (Russian Constitution. Educational Aid), Pbl. Moscow, 2004*
- *Kriminalistika ("Criminality"), Pbl. Moscow, 2003*

Name: Kamishev D.C.
Degrees / Awards: Master of Legal Science, Honoured Academic of the Russian Federation.
Notable Posts: Resident professor at Moscow State University.
Notable Publications:

- *Mezhdunarodnoe i natsionalnoe ugolovnoe zakonodatelstvo (International and Social Criminal Legislation), Pbl. Moscow, 2004*
- *Ugolovnoe pravo Rossii. Uchebnoe posobie (Russian Criminal Law. Educational Aid), Pbl. Moscow, 2004*

Name: Ozhegov S.I.
Degrees / Awards: Doctor of Philological Science
Notable Posts: Founder of the Russian Language Association at the Institute of Russian Language (Academy of Science of Soviet Union). Chief Editor of "The questions of culture of the Russian language" magazine.
Notable Publications:

- *Slovar' russkogo iazika. 50 000 slov (Dictionary of Russian Language. 50 000 words), Pbl. Moscow, 1949*
- *Slovar' russkogo iazika. 53 000 slov (Dictionary of Russian Language. 53 000 words), Pbl. Moscow, 1964*

- *Leksikologia. Leksikografia (Lexicology. Lexicography), Pbl. Moscow, 1974, 352*

Name: Pchelintsev A.V.
Degrees / Awards: Master of Law Science
Notable Posts: Chief editor of the magazine "Religion and Law". Member of the Chamber of Human and Religious Organizations.
Notable Publications:

- *Pravo ne streliat' (Right not to shoot), Pbl. Moscow, 1998*
- *Sudebnaia praktika (Judicial Practice), Pbl. Moscow, 2001*
- *Religioznie objedineniia (Religious Unions), Pbl. Moscow, 2001*

Name: Petrukhin I.L.
Degrees / Awards: Doctor of Legal Science
Notable Posts: Dean of Criminal Law at Moscow's Academic University
Notable Publications:

- *Lichnie tainy (Personal Secrets), Pbl. Moscow, 1998*
- *Konstitutsiia RF (Constitution of the RF), Pbl. Moscow, 1997*
- *Nauchno-prakticheskii kommentarii (Scientific and Practical Commentary), Pbl. Moscow, 1997*

Name: Petukhov S.I.
Degrees / Awards: Master of Pedagogical Science
Notable Posts: Assistant Professor of Archangelsky State University
Notable Publications:

- *Million, chtoby otviazalis'. Bezvestno otsutstvuiushchie (Take a Million and Leave me Alone. Citizens Declared Missing), Ekspert 21, 1999, pp. 56-59*
- *Osnovi gosudarstva i prava (Principles of State and Law), Pbl. Moscow, 2000*

Name: Reznik G.M.
Degrees / Awards: Doctor of Legal Science
Notable Posts: Ex-investigator of the Ministry of Internal Affairs of Kazakhstan
Notable Publications:

- *Predeli prav i polnomochij zaschitnika (Limited Right and Proxy of a defender), Pbl. Moscow, 2002*
- *Vozmozhnosti zaschiti v ramkakh novogo UPK Rossii (Possibilities of the defence within limits of new UPK of Russia), Pbl. Moscow, 2003*

Name: Smirnov A.V.
Degrees / Awards: Doctor of Legal Science
Notable Posts: Dean of the Criminal Law Faculty at Saint-Petersburg University of Economics.
Notable Publications:

- *Ugolovnii process. Uchebnoe posobie (Criminal procedure. Educational aid), Pbl. Saint-Petersburg, 2003*
- *Ugolovnii kodeks dlia detei i ikh roditelei (Criminal Code for children and their parents), Pbl. Moscow, 2003*

Name: Solzenitsyn A.I.
Degrees / Awards: Nobel Prize Winner in Literature (1970).
Notable Publications:

- *Odin den' Ivana Denisovicha (One day from the life of Ivan Denisovich), Pbl. Moscow, 1961*
- *Arkhipelag Gulag (Archipelago Gulag), Pbl. Moscow, 1973*
- *Matrenin dvor (Matrenin's Homestead), Pbl. Moscow, 1963*
- *Rossiia v obvale (The fall of Russia), Pbl. Moscow, 1998*

Name: Strekozov V.G.
Degrees / Awards: Doctor of Legal Science
Notable Posts: Judge of the Constitutional Court of the Russian Federation since 1994
Notable Publications:

- *Sovetskoe gosudarstvennoe pravo (Soviet State Law), Pbl. Moscow, 1991*
- *Konstitutsionnoe pravo Rossii (Constitutional Law of Russia), Pbl. Moscow, 2002*

- *Konstitutsionnii Sud RF: Postanovleniia. Opredeleniia (Constitutional Court of the Russian Federation. Resolution), Pbl. Moscow, 2002*

Name: Topornin B.N.
Degrees / Awards: Doctor of Legal Science
Notable Posts: Academic-Secretary of the Faculty of Philosophy, Sociology and Law at the Russian Academy of Sciences.
Notable Publications:

- *Konstitutcia Rossiskoy Federatsii – Nauchno Praktisheskii Kommentarii (Constitution of the Russian Federation – Scientific and Practical Commentary), Pbl. Moscow, 2003*
- *Evropeiskoe pravo. Uchebnik (European Law. Text-book), Pbl. Moscow, 1998*

Name: Trubnikov P.I.
Degrees / Awards: Master of Legal Science
Notable Posts: Resident Professor at Saint-Petersburg Academy of Social Sciences.
Notable Publications:

- *Ugolovnoe pravo. Obschaia chast' (Criminal Law. The General Part), Pbl. Moscow, 2000*
- *Ugolovnoe pravo. Obschaia i osobennaia schast' (Criminal Law. The General and Special Part), Pbl. Moscow, 2003*

Name: Vengerov A.B.
Degrees / Awards: Doctor of Legal Science
Notable Posts: Resident Professor at Moscow State University.
Notable Publications:

- *Teoriia gosudarstva i prava (Theory of State and Law), Pbl. Moscow, 2002*
- *Teoriia gosudarstva i prava. Uchebnoe posobie dlia juridicheskikh vuzov (Theory of State and Law. Educational aid for Juridical Institutes of Higher Education), Pbl. 1999*
- *Pravo i Zakon (Right and Law), Pbl. Moscow, 1997*

Name: Voevodin L.D.
Degrees / Awards: Doctor of Legal Science
Notable Posts: Resident professor at Moscow State University.
Notable Publications:

- *Konstitutsionnoe pravo RF (Constitutional Law of the Russian Federation), Pbl. Moscow, 2004*
- *Ugolovnij process Rossii (Russian Criminal Process), Pbl. Moscow, 2004*

Name: Yaroshenko K.B.
Degrees / Awards: Doctor of Legal Science
Notable Posts: Honoured Judge of the Russian Federation
Notable Publications:

- *Kommentarii sudebnoi praktiki. Vipusk 5 (Commentary on the Legal Practice. Issue 5), Pbl. Moscow, 2000*
- *Kommentarii sudebnoi praktiki. Vipusk 7 (Commentary on the Legal Practice. Issue 7), Pbl. Moscow, 2001*
- *Gosudarstvo i Pravo (State and Law), Pbl. Moscow, 2001*

Name: Zhuikov V.M.
Degrees / Awards: Doctor of Legal Science
Notable Posts: Honourable Judge of the Russian Federation
Notable Publications:

- *Kommentarii k zakonodatelstvu"O mirovikh Sud'iakh" (Commentary on the Law "On Justices of the Peace")*
- *Nauchno-prakticheskii kommentarii k grazhdanskomu kodeksu (Scientific and Practical Commentary on the Civil Code), Pbl. Moscow, 2000*
- *Sudebnaia praktika po grazhdanskim delam (Judicial Practice on Civil Rights), Pbl. Moscow, 2003*