

Russia

I. Brief Introduction to the Legal System of Russia

The Russian Federation is a civil law country where legislation is the main source of law. In recent years, however, the significance of judicial decisions has increased. According to the Constitution of the Russian Federation, Russia is “a democratic federal law-bound State with a republican form of government.” The essential legal values established, guaranteed and secured under the Constitution are the supremacy of the law; the recognition, observance, and protection of the inalienable rights and freedoms of man and citizen; the protection of the democratic federal, law-bound, and social state; and the sovereignty of the state.

The Russian legal system is a federal structure based on the following fundamental principles: the separation of powers into three branches (“trias politica”) — legislative, executive and judicial (including a system of “checks and balances”) — on the federal and states levels; independence of the judiciary; and recognition of rights and freedoms as supreme values. The Constitution specifies the division of authority between the federal government and the 83 state governments. The federal structure has three levels of jurisdiction: federal, joint federal and state, and state. The federal jurisdiction includes classic issues such as adoption and amendment of the federal laws; regulation and protection of rights and freedoms; establishment of the system of federal authorities; issuance of money and the federal budget; federal taxation and duties; foreign economic relations; the federal judicial system; and criminal and civil legislation. Joint federal and state jurisdiction includes, for example, administrative matters, administrative procedure, labor, and family law. All remaining issues are left to the 83 Russian states, whose laws cannot conflict with federal or joint federal/state laws. In case of conflict of the federal law and state law (or other state act) on the issues of federal and joint jurisdiction, federal law prevails. However, in case of conflict of the federal law and state act on the issues referred to remaining exclusive state jurisdiction, the state act prevails.

II. Russia’s Anticorruption Laws

Russia signed the UN Convention against Corruption on December 9, 2003, and

ratified it on May 9, 2006.¹ Russia also joined the OECD Convention in 2012² and on May 4, 2011, amended its anti-bribery legislation to comply with the OECD Convention.³ Before the adoption of this law, however, Russia had other laws in place to combat corruption. For example, Federal law No. 273-FZ, dated December 25, 2008, *On Prevention of Corruption*,⁴ was adopted before as a special legal mechanism against corruption. Its reach was limited to reciting the main principles and organizational basis for preventing corruption. Many anticorruption rules are provided for in the Criminal Code. Criminal law is within the exclusive federal jurisdiction and therefore it applies throughout the Russian Federation. Article 204 of the Criminal Code makes commercial bribery an offense.⁵ Article 290 prohibits public officials from taking bribes and Article 291 prohibits persons from offering bribes to public officials.

The May 2011 federal law (*i.e.* Federal law No. 97-FZ) addresses the demand side of bribes, or passive bribes. This law prohibits foreign officials from accepting bribes.⁶ Pursuant to Article 290(1) of the Criminal Code⁷ bribe-taking occurs when “a

¹ Federal law No. 40-FZ, dated March 8, 2006, *On Ratification of the United Nations Convention against Corruption*. Sobranie Zakonodatelstva of the Russian Federation, March 20, 2006, No. 12, Art. 1231.

² Federal law No. 3-FZ, dated February 1, 2012, *On Accession of the Russian Federation to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Official Internet-Portal of the Legal Information <http://www.pravo.gov.ru>, February 2, 2012.

³ Federal law No. 97-FZ dated May 4, 2011, *On Amendments to the Criminal Code of the Russian Federation and Code of Administrative Offences of the Russian Federation in connection with Improvement of the Public Governance in the Sphere of Counteraction to Corruption*. Rossiyskaya gazeta, No. 97, May 6, 2011. (“Federal law No. 97-FZ”).

⁴ Federal law No. 273-FZ, dated December 25, 2008, *On Prevention of Corruption*. Sobranie Zakonodatelstva of the Russian Federation, December 29, 2008, No. 52 (part 1), Art. 6228.

⁵ Criminal Code of the Russian Federation, dated June 13, 1996, No. 63-FZ (“Criminal Code”). Sobranie Zakonodatelstva of the Russian Federation, June 17, 1996, No. 25, Art. 2954.

⁶ Pursuant to the Criminal Code Russia could potentially get jurisdiction over foreign official.

Russia establishes its criminal territorial jurisdiction over crimes committed in the territory of the Russian Federation, including the territorial waters or the air space of the Russian Federation, the continental shelf and the exclusive economic zone of the Russian Federation (Article 11(1), 11(2) of the Criminal Code). Criminal territorial jurisdiction of the Russian Federation also extends over the vessels registered in the port of the Russian Federation being in the open sea or in the air space outside the Russian Federation, unless otherwise prescribed by an international agreement of the Russian Federation (Article 11(3) of the Criminal Code). If the foreign persons who enjoy the immunity (including diplomatic representatives) commit a crime within the territory of the Russian Federation, the question of whether they are subject to criminal liability in Russia is decided in accordance with the rules of international law (Article 11(3) of the Criminal Code).

Under the personal jurisdiction test, Russia may hold criminally liable those foreign nationals and those stateless persons who do not reside permanently in Russia who committed crimes outside the Russian Federation, if such crimes are directed against the interests of the Russian Federation or the interests of a Russian citizen or the interests of a stateless person permanently residing in Russia or if such cases are predetermined by the international agreement of the Russian Federation, unless those foreign nationals and those stateless persons who do not reside permanently in Russia were convicted

public official, foreign official or an official of public international organization in person or through an intermediary, [takes] a bribe in the form of money, securities, other property or [in the form of] illegal rendering of services of proprietary nature or granting of other proprietary rights for actions (or inaction) in favor of a bribe-giver or the persons he represents, if such actions (or inaction) [of a bribe-taker] which are part of the official powers of public official, or if public official, by virtue of his office, may further such actions (or inaction); and equally for overall patronage or connivance in the service.”⁸ To implement the OECD Convention, Article 291(1) of the Criminal Code was amended to provide that a bribe to a foreign official or an official of a public international organization (personally or via an intermediary) shall constitute a crime.

A foreign official is defined by law to be “any person appointed or elected to hold an office in legislative, executive, administrative or judicial authorities of foreign state and any person who exercises public functions for foreign state, including for public department or public enterprise; the official of the public international organization shall be an international civil servant or any person who is authorized by such organization to act on its behalf.”⁹

Legal entities are not subject to criminal liability under Russian criminal law. Consequently only officers of legal entities may be criminally liable, for example, for paying a bribe to foreign official. The law that implemented the OECD Convention, Federal Law No. 97-FZ,¹⁰ required an amendment to the Code of Administrative Offenses¹¹ to provide for civil liability of legal entities¹² that bribe foreign officials. Sanctions are fines, up to 100 million rubles, and confiscation.

in the other foreign state, and are hold criminally liable in Russia (Article 12(3) of the Criminal Code). Those citizens and stateless persons residing permanently in Russia who committed crimes outside the Russian Federation and against the interests protected by the Criminal Code of the Russian Federation, are also subject to the extra-territorial personal jurisdiction of the Russian Federation, unless those persons were convicted in the foreign state by the foreign court (Article 12(1) of the Criminal Code).

Thus according to the rules of territorial and personal criminal jurisdiction and subject to the specific circumstances Russia may potentially hold foreign official liable.

⁷ See footnote 5, *supra*.

⁸ The connivance in the service shall mean, for instance, consent of a public official from controlling authorities not to take measures against a bribe-giver. (Clause 5 of the Resolution of Plenum of the High Court of the Russian Federation No. 24, dated July 9, 2013, *On the Court Practice on the Bribery Cases and on Other Corruption Offense*. Rossiyskaya gazeta, No. 154, July 17, 2013).

⁹ Note 2 to Article 290 of the Criminal Code.

¹⁰ See footnote 3, *supra*.

¹¹ The Code of Administrative Offenses of the Russian Federation, dated December 30, 2001 No. 195-FZ. Rossiyskaya gazeta, No. 256, December 31, 2001.

¹² Administrative law is subject to joint jurisdiction of the Russian Federation and the States (subjects). However administrative offences specified in the Code of Administrative Offences are effective and applicable throughout the entire territory of the Russian Federation; Article 2(4) of the Federal law No. 97-FZ.

Russia has jurisdiction over crimes committed in Russia as well as outside Russia.¹³ Any person who has committed a crime within the territory of the Russian Federation is subject to criminal liability under the Russian Criminal Code.¹⁴ Russian citizens and stateless persons who permanently reside in the Russian Federation and who have committed crimes outside Russian boundaries are subject to criminal liability under the Criminal Code, unless these persons have been convicted in a foreign state.¹⁵ Foreign citizens and stateless persons who do not reside permanently in the Russian Federation and who have committed crimes outside Russia are subject to criminal liability in Russia (unless convicted in the foreign state¹⁵), if the crime is contrary to the interests of the Russian Federation or if the act is a crime under an international agreement.¹⁶ Therefore, under Russian law, a person is subject to criminal liability for international bribery irrespective of where the bribery took place.¹⁷

The Criminal Code sets forth different sanctions for bribery that include: fine of 15-fold to 100-fold amount of the bribe (since 2011 fines are calculated as a multiple of the amount of the bribe); prohibition to hold certain positions or engage in certain activities for a term up to 3 years; compulsory labor for a term of 3 years for giving a bribe and term of 5 years for taking a bribe; deprivation of freedom (maximum term for deprivation of freedom is 15 years for taking especially large bribes and 12 years for giving a bribe). The bribe-giver shall be relieved from criminal liability if he actively facilitated the investigation of the crime, or, if after making the bribe voluntarily informed the authorities, or in the case of extortion.¹⁸

III. Assessment

Russia became the 39th state party to the OECD Convention on April 17, 2012. On March 16, 2012, the OECD Working Group released its Phase 1 report¹⁹ on Russia's

¹³ Articles 11, 12 of the Criminal Code.

¹⁴ Article 11(1) of the Criminal Code.

¹⁵ Article 12(1) of the Criminal Code.

¹⁶ Article 12(3) of the Criminal Code.

¹⁷ Paragraph 58 of the Phase 1 Report on the Russian Federation by the OECD Working Group on Bribery On implementing the OECD Anti-Bribery Convention in the Russian Federation (March 2012) // Available at: <http://www.oecd.org/daf/briberyininternationalbusiness/anti-briberyconvention/49937838.pdf>.

¹⁸ Note to Article 291 of the Criminal Code.

¹⁹ The Working Group examines a country's implementation of the OECD Convention in three separate on-site evaluations, called "Phases."

implementation of the treaty.²⁰ The Working Group offered recommendations relating to investigation, prosecution, and sanctioning of foreign bribery on the one hand and prevention and detection of foreign bribery on the other hand.²¹ The main problem is the ambiguity of certain terms and the absence of some rules (for example, the necessity to add “offer” and “promise” of a bribe to the Criminal Code in order to definitely criminalize this actions (for instance, offer and promise for mediation in bribery are criminalized under the Article 291.1 of the Criminal Code)).

The Working Group made many specific recommendations including defining “effective regret” (Note to Article 291 of the Criminal Code) to avoid the abuse aimed at escaping from criminal liability in a case of foreign bribery. The defense of “effective regret” due to its broadness may provide for possible different schemes to defeat the OECD Convention.²² The Working Group suggested that Russia has to affirm that bribes in intangible, “non-pecuniary” form should be included in the foreign bribery offence²³ and that process for lifting immunity of public officials be clarified.²⁴

The Russian government has not reacted to these recommendations. There are no amendments in the Russian anticorruption laws since the release date of Russia Working Group Report. Currently the Federal Assembly is not considering any bill that takes into account recommendations of the Working Group.

Most of the convictions made by Russian courts for bribery in 2010 were against medical workers (25%), road police officers (14%), or police officers (11%).²⁵ Approximately 25% of persons giving the bribe were imprisoned, 63% were placed on probation, and the rest, 11.8%, were fined.²⁶ Forty-three percent of those convicted were also banned from holding certain positions and from being engaged in certain types of activities.²⁷ According to the

²⁰ Phase 1 Report on the Russian Federation by the OECD Working Group on Bribery On implementing the OECD Anti-Bribery Convention in the Russian Federation (March 2012) (“Russia Working Group Report”).

²¹ Paragraphs 3—10 and paragraphs 11—12 of the Russia Working Group Report at 33.

²² Paragraph 27 of the Russia Working Group Report at 12, Paragraph 3(b) of the Russia Working Group Report at 33.

²³ Paragraph 3(c) of the Russia Working Group Report at 33.

²⁴ Paragraph 8 of the Russia Working Group Report at 33.

²⁵ Comparative Summary of Anticorruption Laws in the CIS Economic Region (CIS Leading Counsel Network, Second edition, 2011).

²⁶ *Ibid.*

General Prosecutor's Office, in 2011 the number of bribe-taking offences decreased by 10.3%, while the number of bribe-giving offences decreased by 6.1%.²⁸

Russia is a member of Group of States against Corruption (GRECO) and was evaluated by GRECO in December 2012.²⁹ As was the case with the OECD, GRECO criticized Russia's law that grants certain officials excessive immunity from prosecution, including for bribery, and suggested that the categories of officials enjoying immunity from prosecution be reduced.³⁰ GRECO also suggested that Russia should abolish the practice of presenting gifts to public officials in connection with their office and performance of their official duties even in the amount allowed by Article 575 of the Civil Code (not more than 3 thousand Russian Rubles).³¹

Russia also acceded to the International Anti-Corruption Academy on March 1, 2011. Russia ranks 133 on Transparency International's 2012 Corruption Perceptions Index.

IV. Texts

A. Constitution, dated December 12, 1993;³²

B. The Criminal Code of the Russian Federation, dated June 13, 1996 (in Russian only);³³

C. The Code of Administrative Offences, dated December 30, 2001 (in Russian only);³⁴

²⁷ *Ibid.*

²⁸ Available at: <http://top.rbc.ru/society/28/04/2012/648775.shtml>.

²⁹ Addendum to the Compliance Report on the Russian Federation Adopted by GRECO at its 58th Plenary Meeting (Strasbourg, 3—7 December 2012) ("**GRECO Addendum**") // Available at: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2\(2010\)2_Add_RussianFederation_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2010)2_Add_RussianFederation_EN.pdf).

³⁰ Paragraphs 40—45, 132 of the GRECO Addendum.

³¹ Paragraphs 99—104 of the GRECO Addendum; Civil Code of the Russian Federation (Part Two), dated January 26, 1996, No. 14-FZ. Sobranie Zakonodatelstva of the Russian Federation, January 29, 1996, No. 5, Art. 410.

³² Available at: <http://www.constitution.ru/en/10003000-01.htm>.

³³ Available at: <http://www.consultant.ru/popular/ukrf/>.

³⁴ Available at: <http://www.consultant.ru/popular/koap/>.

D. Civil Code of the Russian Federation (Part Two), dated January 26, 1996 (in Russian only);³⁵

E. Federal law No. 40-FZ, dated March 8, 2006, *On Ratification of the United Nations Convention against Corruption* (in Russian only);³⁶

F. Federal law No. 273-FZ, dated December 25, 2008, *On Prevention of Corruption* (in Russian only);³⁷

G. Federal law No. 97-FZ dated May 4, 2011, *On Amendments to the Criminal Code of the Russian Federation and Code of Administrative Offences of the Russian Federation in connection with Improvement of the Public Governance in the Sphere of Counteraction to Corruption* (in Russian only);³⁸

H. Federal law No. 3-FZ dated February 1, 2012, *On Accession of the Russian Federation to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (in Russian only);³⁹

I. Resolution of Plenum of the High Court of the Russian Federation No. 6, dated February 10, 2000, *On the Court Practice In the Public Bribery and Commercial Bribery Cases* (in Russian only).⁴⁰

³⁵ Available at: <http://www.consultant.ru/popular/gkrf2/>.

³⁶ Available at: http://www.cbr.ru/today/anti_legalisation/un/40-FZ.pdf.

³⁷ Available at: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=146206>.

³⁸ Available at: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=113656>.

³⁹ Available at: <http://pravo.gov.ru:8080/page.aspx?11568>.

⁴⁰ Available at: http://www.vsrp.ru/Show_pdf.php?id=7952.