LEGAL SYSTEMS OF THE WORLD
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tem by the state during the 1947–1989 period, people in Romania came to view legal processes with mistrust and skepticism. But since 1989 the government has been trying to inculcate a new respect for law through substantive legal reforms. This new effort is the result of a desire to bring the Romanian legal system into compliance with European Union requirements for membership candidacy, create an environment conducive to attracting foreign capital investment, and, most importantly, establish a rule of law that works for people throughout society. Nevertheless, the formal legal reforms have not had, to date, the intended effects at the local level. Corruption and mistrust still characterize people’s perceptions of legal processes at various levels, and Romania’s record of attracting foreign investment has not been as extensive as legal and business leaders would hope. Despite this, Romania has made a concerted effort to reform its legal system in ways that could bear fruit in the near future.

Mark Goodale

See also Civil Law; Customary Law; Legal Pluralism; Legal Professionals—Civil Law Traditions; Magistrates—Civil Law Systems; Marxist Jurisprudence; Moldova; Napoleonic Code; Notaries; Roman Law; Soviet System

References and further reading

RUSSIA

GENERAL INFORMATION

Following the dissolution of the Soviet Union in December 1991, the Russian Federation became a sovereign state with its own self-contained legal system. The Russian legal system, as it has evolved, represents an amalgamation of the influences of the preexisting Soviet and czarist legal systems and the legal systems of various Western liberal democracies. Without doubt, the civil law tradition constitutes the strongest influence.

The Russian Federation is the largest country in the world, with a total of 17,025,200 square kilometers spread out over the northern Eurasian landmass. Its population of approximately 147 million is concentrated in the European portion of the country. The majority of the population (approximately 80 percent) is ethnically Russian, though there are more than one hundred other ethnic groups represented throughout Russia. Russian is the official language. The Russian government continues to struggle with its policy regarding ethnic minorities, and in the decade following the breakup of the Soviet Union, the tolerance for ethnic diversity in terms of language and culture has increased, though discrimination remains a problem.

Russia is a federation of eighty-nine subjects (geographic units to which political-legal rights attach), including forty-nine regions (oblasti), twenty-one autonomous republics (avtonomnye respubliki), ten autonomous areas (avtonomnye okrugi), six territories (krai), two federal cities (Moscow and St. Petersburg), and one autonomous region (avtonomnaya oblast’). The relationship between the government of the Russian Federation and its subjects is governed by the constitution, as well as legislation and administrative regulations.

HISTORY

The legal system of the Russian Federation emerged out of the Soviet legal system, which, in turn, was the successor to the czarist legal system. For most of the Soviet era, law was used instrumentally by those in power to achieve their goals. During the mid-1980s, under the leadership of M. S. Gorbachev, reforms were undertaken that had a significant effect on the legal system. In particular, Gorbachev articulated the goal of moving toward a “rule-of-law-based state” (pravovoe gosudarstvo), in which all citizens would be treated equally before the law. Although not fully realized during his tenure, concrete changes were made that curtailed the influence of the Communist Party within the legal system. Among these changes were the introduction of competitive elections for the national legislature (which had the effect of opening up the legislative process) and a revised selection process for judges. The introduction of a constitutional tribunal with limited powers (the Constitutional Supervisory Committee of the USSR) signaled the acceptance of judicial review.

The reform of the Russian legal system accelerated with the emergence of the Russian Federation as a sovereign state in January 1992. The Yeltsin regime openly embraced the goals of moving toward a market democracy and set about to reform the existing legislative base and legal institutions so as to facilitate that transition. The process of adopting the legislation necessary for the evolution toward a market economy (including privatization) proved laborious and contentious, with a prolonged struggle for dominance between the legislative and executive branches. This struggle culminated in the so-called
October Events, during which violence broke out when the legislature refused to accept the decision of then-president Yeltsin to dissolve it. In the wake of this crisis, a new constitution was adopted by referendum in December 1993. The cornerstone principles of socialist law, such as the guiding role of the Communist Party and the educative function of courts, were abandoned. Although the legacy of state socialism could not be eliminated overnight, the Russian government exhibited a strong desire to be seen as having a civil law legal system. All of the major codes were amended and most were completely redrafted. The 1990s witnessed an unprecedented flurry of legislative activity. Many of the changes were profound. For example, this new legislation endorsed basic market principles, such as private property, the profit incentive, the protection of shareholders' interests, and bankruptcy.

LEGAL CONCEPTS
The adherence to legal positivism, which persisted from the czarist legal system through the Soviet era, endures in post-Soviet Russia. The codes remain the primary source of law, though tempered by an increased willingness to recognize judicial interpretations as mediating influences. Judicial review has been institutionalized through the operation of the Constitutional Court. This court, along with the Russian Supreme Court and the Higher Arbitration Court, has been active in interpreting the codes, both in the context of cases and on their own initiative. The lower courts view these interpretations as binding, though whether they technically tie the hands of the lower courts is debatable.

Russian judicial process remains principally inquisitorial. In both civil and criminal settings, the judge continues to be the central figure. Typically the judge questions the witnesses first, and, although the litigants' counsel has the right to ask additional questions, the preemptive rights of the judge often result in counsel being marginalized. The 1993 Constitution grants citizens the right to an adversarial procedure. The procedural codes passed thereafter have declared that the litigants are responsible for assembling and presenting evidence supporting their claims. Yet observers in both the courts of general jurisdiction and the arbitral courts have commented that the day-to-day reality remains judge-centered and inquisitorial.
The problem of corruption within the legal system of Russia is a source of concern. As a consequence of their low salaries and the irregularity of wage payments in the 1990s, officials within the legal system are often assumed to be susceptible to bribes. Many Russian firms and individuals distrust the police and have engaged private security firms to protect themselves. The true extent of corruption is almost impossible to document, but the widespread belief in its pervasiveness has convinced some potential litigants that justice is elusive, has discouraged international investment, and has given rise to the common wisdom that it is impossible to do business legally in Russia.

As during the Soviet period, attitudes about law are disparate. The transition away from state socialism has brought a greater prominence to law within Russian society. In contrast to the Soviet period, when the Communist Party elite dictated the content of law, the law-making process has now become more contested. The popular media regularly reports on the ongoing debates on draft laws and publishes a wide variety of opinions. Even so, many ordinary Russians continue to regard law with cynicism, believing that law remains a tool that the state uses to impose its will on society. Contributing to this skepticism is a recognition that the Russian state routinely flouts the law in its interactions with individuals and businesses. That leaves ordinary citizens unconvinced of the legitimacy of the law. At the same time, the propensity to use legal institutions, such as the courts, has escalated in the decade following the breakup of the Soviet Union. Not only do Russians use the courts for family law and housing issues, as was true even during the Soviet era, but they are increasingly challenging state authority via the courts. This suggests that the legal culture of post-Soviet Russia may be in the middle of a profound shift.

CURRENT STRUCTURES
The judicial system of the Russian Federation is divided along jurisdictional grounds. The basic framework is outlined in the constitution and elaborated in laws detailing the procedural norms for each court.

Courts of General Jurisdiction
Most cases are heard by the courts of general jurisdiction. These courts have jurisdiction over all cases involving physical persons, including criminal cases, labor disputes, family law issues, housing disputes, and consumer complaints. This system is organized hierarchically. Most cases begin in the district courts, which are located in each rural or urban district. Cases can be appealed, though the names given to these appellate courts vary across the country. More serious civil and criminal cases are heard for the first time by these appellate courts. Depending on the subject matter and seriousness of the cases, they are heard either by a judge and two lay assessors or by a three-judge panel. Military tribunals hear cases involving servicemen and certain crimes that raise national security concerns, as specified by legislation. The decisions of these tribunals can be appealed to appellate military courts. The court of last resort for military-related cases as well as all other cases within this system is the Supreme Court of the Russian Federation. As of 2001, there were more than fifteen thousand judges within the hierarchy of the courts of general jurisdiction.

The Supreme Court is made up of 111 judges, divided into three panels that focus on civil cases, criminal cases, and military matters (see figure). This court has two basic functions. Its primary task is to supervise the activities of the lower courts. As such, it reviews judgments of individual cases at the request of litigants. It also exercises supervisory review, which is initiated by the procurator general or the chairman or deputy chairman of the Supreme Court. Its second function is to oversee the general development of judicial practice. To that end, it periodically issues guiding explanations of legislation that has been interpreted in contradictory fashion by lower courts and occasionally uses its right of legislative initiative to submit draft laws to the legislature.

The rules governing the operations of the courts of general jurisdiction are set forth in the procedural codes (civil, criminal, and military). The legislature has been working on revising these codes since the late 1980s. It has proven more difficult for the legislators to come to a consensus on the procedural law than on the underlying substantive law. The criminal procedure code has proven particularly perplexing, with reformers pushing for greater controls on the police and the procuracy, while others defend the status quo. Most criminal cases are heard by a judge and two lay assessors, though an experiment with jury trials for the most serious cases (especially, in practice, aggravated murders) has been under way in nine regions since 1993. Jury trials tend to be adversarial, with a more central role for lawyers than in the case in nonjury trials, in which the old-style inquisitorialism persists.

The procedural codes establish strict timetables for resolving civil and criminal cases. Civil cases are to be resolved within ten days of the commencement of the trial. In criminal cases, judges have fourteen days after receiving the case from the procurator to decide whether to proceed to trial, and they must proceed to trial within fourteen days thereafter. The popular news media is rife with accounts of delays in the courts of general jurisdiction. The reality, however, is more complicated. In comparative perspective, the Russian courts are not unduly sluggish, and the perception of high delay rates is due in no small part to the unrealistic deadlines established in the procedural codes. Criminal defendants are understandably disgruntled by the often lengthy pretrial investigation, during which most are detained by the state.
The living conditions for these pretrial detainees are horrific in many parts of Russia.

Those responsible for investigating alleged crimes are not considered neutral, but are part of the prosecutorial team. These investigators are keen to maintain a high rate of solved cases, which tends to bring an accusatorial bias into the criminal system. An effort was made to ameliorate this dilemma in 1990 by introducing a right to counsel for the accused within twenty-four hours of arrest, and allowing defense counsel to participate in the pretrial process at other key moments. The actual impact of this apparently significant reform has been undermined by the lack of competent defense counsel and by the persisting limits on the rights of such counsel.

In an effort to relieve the burden on trial courts and to get cases resolved more quickly, legislation was adopted in 1998 to create justice of the peace courts. These courts, which took their inspiration from an analogous czarist institution, will gradually assume responsibility for all administrative offenses: simple civil disputes and criminal cases that involve charges that could bring no more than two years' imprisonment. The decisions of these courts can be appealed to the district courts. Precisely how these justice of the peace courts will operate in practice is not yet entirely clear. Each subject of the Russian Federation has to make an independent decision about introducing these courts by passing legislation and making budgetary commitments. Legal officials anticipated that, by the end of 2001, approximately forty-five hundred justice of the peace courts would be operational.

**Constitutional Court**

The Constitutional Court was first established in 1991, and it was modeled on the German Federal Constitu-
tional Court. In the first few years of its existence, it became embroiled in a series of controversial and highly politicized cases that tended to undermine its effectiveness as an independent institution. In the clash between the executive and legislative branches that culminated in the dismissal of the legislature by President Yeltsin in September 1993, a majority of the Constitutional Court sided with the legislators. Yeltsin responded by suspending the activities of the court. The court was given new life, however, by the constitution that was approved by popular referendum in December 1993. In the subsequent legislation that laid out the powers of this court, an effort was made to limit its ability to become entangled in political questions.

The Constitutional Court consists of nineteen judges appointed by the president and confirmed by the upper house of the legislature (the Federation Council). The judges are divided into two panels of nine and ten judges, though they sit in plenary session when issuing advisory opinions and for certain other matters. In terms of their background, they diverge from the judges of the courts of the general jurisdiction and the arbitrazh courts. The judges of the Constitutional Court are drawn from the top ranks of legal scholars and come to the bench only after several decades of working in universities or research institutes.

The Constitutional Court has jurisdiction over four categories of cases. First, the court is charged with abstract review of the constitutionality of federal laws and other normative acts of the executive and legislative organs of power. Such claims may be initiated by the president, by any member of the legislature, by the government, the Supreme Court, the Higher Arbitrazh Court, the lower house of the legislature (the Duma), or by one-fifth of the members of the upper house of the legislature (the Federation Council). Second, the court hears cases involving concrete complaints of violations of constitutional rights by individuals and legal entities. The court also hears questions raising constitutional issues that are referred by the courts of general jurisdiction and the arbitrazh courts. There is no requirement that the complainant exhaust all other remedies before appealing to the Constitutional Court. Third, the court has jurisdiction over disputes between the subjects of the federation. Fourth, the court is required to respond to requests from organs of the executive or legislative branch for interpretations of various aspects of the constitution.

**Arbitrazh Courts**

Economic disputes involving economic entities are within the jurisdiction of the arbitrazh courts. These are the successor to the Soviet institution of state arbitrazh, which was an administrative agency charged with resolving disputes among state-owned enterprises. The legaliza-
tion of private property and the introduction of new legal mechanisms for doing business, such as joint-stock companies and limited liability companies, exposed the limitations of state arbitrazh. In response, in 1991 the arbitrazh courts were created on the foundation of state arbitrazh. The decision makers, known as arbiters, were renamed judges, thereby enhancing their status. As of 2001, there were approximately twenty-five hundred judges within the arbitrazh court system. The arbitrazh courts have jurisdiction over three categories of cases: disputes between legal entities, disputes between legal entities and the state, and bankruptcy.

In their day-to-day operations, arbitrazh courts represent a hybrid of inquisitorial civil law procedures and the more informal norms of arbitration. Although the procedural code, adopted in 1995, calls for litigants to take responsibility for proving their claims, suggesting a move toward a more adversarial system, judges continue to dominate the proceedings. Evidence must be submitted in documentary form, though litigants may provide oral explanations. In the first decade of their existence, the docket of the arbitrazh courts has been dominated by debt-collection cases. Following the amendment of the bankruptcy law in 1998, bankruptcy petitions increased dramatically.

Each subject (or subunit) of the Russian Federation has an arbitrazh court. All cases originate at this trial level. Most cases are heard by a single judge, though exceptions are made for bankruptcy and cases involving the state as a party, which are heard by a three-judge panel.

If either party is dissatisfied with the result at trial, they can appeal. The first level of appeal, known as the appellate instance, is a de novo review, heard by a three-judge panel. The procedural code establishes a strict timetable for processing cases, allowing two months at trial and one month on appeal. The second level of appeal, which is limited to legal error, is to the cassation courts. There are ten cassation courts, organized on a regional basis.

The final and ultimate appeal for any arbitrazh case is to the Higher Arbitrazh Court. In addition to hearing appeals, this court has the right of abstract review and routinely issues interpretations of legislation and administrative regulations that are binding on the arbitrazh courts.

At present, twenty-two judges sit on the Higher Arbitrazh Court.

Private Arbitration

With the consent of the parties, economic disputes may be submitted to private arbitration tribunals. The best known of these tribunals is the International Commercial Arbitration Court, which is located in Moscow and is affiliated with the Chamber of Commerce and Industry of the Russian Federation. There are private arbitration tribunals located in many other Russian cities. They are created and thrive in locales in which the demand for dispute resolution services is high and where specialists are available to serve as arbiters. Those who serve as arbiters tend to be off-duty arbitrazh court judges, professors, or lawyers. Russian law mandates that the state court system enforce the decisions of private arbitration tribunals, if necessary. Russia has ratified the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). In practice, the Russian courts have a mixed record on enforcing arbitration awards, both domestic and foreign.

**STAFFING**

**Legal Education**

Students are admitted to the study of law after completion of secondary education. The popularity of legal education has grown dramatically in the post-Soviet era, and the number of institutions offering programs leading to a law degree has multiplied accordingly. Decisions about admission are based on the results of entry exams and the record in secondary school. Russian legal education is composed of five years of course work. Traditionally, lectures devoted to the codes have been the primary method of instruction, though recent years have brought more emphasis on judicial decisions. Beginning in the fourth year, students can specialize in preparation for careers in criminal or civil law.

**Lawyers**

Russia has a divided legal profession. The basic choices for graduates of law faculties are: trial lawyer (advokat), in-house lawyer for an enterprise (juriskonsul't), prosecutor (prokuror), and judge (sudy'a). Each group has its own professional organization; there is no umbrella bar association that encompasses all these groups.

The opportunities available to lawyers have expanded in the wake of the Soviet Union. Those interested in working as private attorneys can practice on their own, join law firms, or work in-house for enterprises. During the Soviet era, private law firms were forbidden. Those interested in becoming trial lawyers had to join kollegiya, which were regulated by the Ministry of Justice. The number of advokaty was artificially limited, and admission to a kollegiya often depended on political connections. The primary function of advokaty was to defend those accused of crimes, though citizens had the right to request legal assistance on other matters. The kollegiya still exist in present-day Russia, though they no longer hold a monopoly on the provision of legal services to Russians. Advokaty may choose to join a kollegiya, to join a private law firm, or to create their own firm. The range of specialties is much broader. Although some firms continue to specialize in criminal defense work, a thriving
business-law practice has also begun to develop, particularly in the larger cities.

Another option for lawyers is to work in-house for a specific company. Many Russian enterprises have legal departments staffed by lawyers, known as iuriskonsul'ty. Traditionally, in-house legal departments are dominated by women, which indicates the relatively low status of lawyers within enterprises. As a rule, management relies on the legal staff to provide technical advice about the legality of contracts, but does not seek advice from these in-house lawyers about the prudence of the underlying transaction. Iuriskonsul'ty represent their companies in both the courts of general jurisdiction and arbitrazh courts.

Procuracy
One potent legacy of the Soviet era is the procuracy, which is charged with supervising the operation of law throughout the country. The best known function of this agency is the prosecution of criminal defendants, but its jurisdiction extends to civil law as well. The procuracy is organized on a hierarchical basis, with offices in each of the subjects of the Russian Federation. It is headed by the procurator general, who is appointed by the president for a five-year term, subject to confirmation by the upper house of the legislature (the Federation Council). It is staffed by lawyers who enjoy broad discretion to bring claims in both courts of general jurisdiction and arbitrazh courts when such actions are deemed necessary to protect state and public interests.

Judges
The system of selecting judges has undergone dramatic changes since the Soviet era, when the Communist Party thoroughly dominated this process. The 1993 Constitution provides that judges be appointed by the president. Appointments to the three courts of last resort—the Constitutional Court, the Supreme Court, and the Higher Arbitrazh Court—must be confirmed by the Federation Council. Candidates for the Supreme Court and the Higher Arbitrazh Court tend to be drawn from the ranks of the professional judiciary. By contrast, the judges of the Constitutional Court are drawn from the top ranks of legal scholars and generally come to the bench only after several decades of working in universities or research institutes. All candidates must be at least forty years of age and have at least fifteen years' experience.

Appointments to lower courts are also made by the president, though with considerable input from others. Beginning in 1997, all candidates have had to be endorsed by a judicial qualification commission and confirmed by the regional legislature before having their names submitted to the Supreme Court or the Higher Arbitrazh Court (depending on the nature of the appointment) for approval. Only at that point are the candidates' names forwarded to the president. All candidates for the judiciary must be at least twenty-five years of age. They must also have completed higher legal education and have at least five years' experience. Because the courts are poorly funded and judges are held in relatively low esteem, it has proven difficult to recruit a sufficient number of new judges. As in other civil law systems, the Russian judiciary is structured along a civil service model in which becoming a judge is regarded as a career choice. The typical candidate for the courts of general jurisdiction is a woman who has graduated from a night school or obtained her degree through a correspondence program. The arbitrazh courts tend to recruit from the legal departments of industrial enterprises, because these lawyers have relevant experience.

As of 1992, the law required that all Russian judges be appointed with life tenure, with no mandatory retirement age. Prior to that, judges were appointed for ten-year terms. As those terms have expired, some of these judges have been reappointed with life tenure. Judges can be removed for cause by the judicial qualification commission, though that happens rarely.

Bailiffs
Both judges and litigants have long been dissatisfied with the process for enforcing judgments that are not satisfied voluntarily by the parties. Complaints have persisted that winning at trial was a hollow victory because of the difficulty and sometimes impossibility of collecting on the judgment. The responsibility for assisting in the enforcement of the judgments of the courts of general jurisdiction and the arbitrazh court resides with the bailiff (sudebnye pristavyi) service. This institution was completely reformed in 1998, and it is now within the hierarchy of the Ministry of Justice. The powers of bailiffs to go after the assets of the loser at trial have been clarified and enhanced. The bulk of the requests for assistance directed to the bailiffs are generated by family law disputes—for example, alimony and child support. Only a small percentage of the bailiffs' work revolves around commercial disputes that originate in the arbitrazh courts. Whether the changes made to the bailiff service will have the desired result of making it easier to collect on judgments remains to be seen.

The 1999 reforms assigned a new function to the bailiff service. Bailiffs are now charged with providing security services to the courts. Those working in this branch of the bailiff service carry guns. Violence directed at judges by litigants dissatisfied with the outcome of cases in which they were involved was the impetus for creating armed bailiffs. Neither type of bailiff is required to have completed higher legal education.

Kathryn Hendley
See also Inquisitorial Procedure; Judicial Review; Judicial Selection, Methods of; Legal Professionals—Civil Law Traditions; Soviet System; Trial Courts

References and further reading

RWANDA

GENERAL INFORMATION

Rwanda is located between Uganda in the north, Tanzania in the east, Burundi in the south, and the Congo in the west. It has an area of 26,338 square kilometers and around 7,500,000 inhabitants. Rwandans are divided into three ethnic or social groups that have distinct cultures, languages, and social practices: the Hutu (85 percent), Tutsi (14 percent), and Twa (1 percent). The capital is Kigali. The official languages are Kinyarwanda, French, and English. The latter two are spoken by a small minority of the educated population.

Beginning in 1895, Rwanda was a German protectorate. The peace treaty signed at Versailles in 1919, and particularly a decision of the League of Nations in 1922, brought Rwandan territory under Belgian mandate.

The traditional indigenous administration was carried out by a hereditary king from the Tutsi clan of the Banyiginya, which was overthrown in 1959. A republic was proclaimed in January 1961 and confirmed by referendum in September that year. The Hutu and the Tutsi clashed over ethnic differences. Some of the Tutsi were forced to leave the country and find refuge in neighboring countries.

The refugee issue was never addressed, with the effect that former refugees from the Ugandan army led an armed attack against the government of Rwanda in October 1990. Despite the Arusha peace accords in 1993, the death of President Habyarimana in April 1994 was followed by the genocide of the Tutsi and the massacre of Hutu opponents. This tragedy resulted in the death of more than a million people and a massive exodus of the surviving population to bordering countries.

In November 1994, the UN Security Council created an International Criminal Tribunal for Rwanda to judge the serious violations of international humanitarian rights committed in Rwanda and the neighboring countries between January 1 and December 31, 1994. Presently forty-four people are detained in Arusha and are being prosecuted for genocide and crimes against humanity. The tribunal applies Rwandan law to determine punishment and common law for procedures.

EVOLUTION OF A PLURALIST LEGAL SYSTEM

Legal pluralism is undoubtedly the most striking characteristic of Rwandan law. It originated during the period of Belgian administration and was instituted into law to permit an opening in society toward new rules. The population, which was more than 90 percent rural, continued to apply traditional laws that were better known, better understood, and still capable of governing social interactions. Leadership reverted to the magistrate, whose mission was to develop the traditional law in accordance with new exigencies and mentalities, with respect to universal public order and the laws (Lamy 1960).

Article 4 from the law of October 18, 1908, provided:

The unnaturalized indigenous citizens of [Congo] enjoy civil rights that are recognized by the colonial legislation and by their own customs so long as the latter are not contrary to the legislation nor to public order. (Law of October 18, 1908, from the Belgian Government of the Congo, October 19–20, 1908, 5887–5894. This law was rendered applicable to Ruanda-Urundi by virtue of Article 1 of the law of August 21, 1925, from the Ruanda-Urundi government)

Thus, unlike France, Belgium didn't impose its own civil code in Rwanda; it adopted a colonial code elaborated by an ad hoc commission that was assumed to be better suited to the desires of the local populace. In civil and commercial matters, the ordinance of the colonial administrator of the Congo of May 14, 1886, provided that “when the matter isn't foreseen by a decree, an order or an ordinance already promulgated, the disputes that fall under the purview of the tribunals of [Congo] will be judged according to local customs, general principles of the law and equity” (Bulletin Officiel, 1886, 188). In penal matters, only the imported law could apply, but the customary jurisdictions could try standard offenses and impose sentences of up to a month in penal servitude. Belgian authorities counted on the eventual decline of customary law resulting from sociocultural contacts and evolving practices.