

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

RUSSIAN FEDERATION, Situation as of 1 December 2004

General Overview

Preliminary Note: this table is accompanied by an explanatory note

COUNTRY: RUSSIAN FEDERATION	Constitutional provisions	Specific legislation	Criminal Law	Civil and Administrative Law	Other jurisdiction
Norms concerning discrimination in general	Yes.	No.	Yes.	Yes. Labour Code Mass Media Code Public Associations Law Law on Detention of Suspects.	Yes.
Norms concerning racism	Yes.	No.	Yes.	Yes. Labour Code Mass Media Code Public Associations Law Law on Detention of Suspects.	Yes.
Relevant jurisprudence	Yes.	No case law found.	Yes.	Yes.	Yes.

EXPLANATORY NOTE

RUSSIAN FEDERATION / General overview

The Russian Federation has been undergoing a profound political, economic, and social transformation since the collapse of the Soviet Union in 1991. Institutions and democratic practices are evolving but not yet fully developed. The Constitution approved by voters in 1993 provides for a democratic state founded on three branches of government subject to checks and balances: the Presidency and the Government, headed by the Prime Minister; a bi-cameral legislature, or Federal Assembly, consisting of the State Duma and the Federation Council; and the courts.

Although the Russian Federation has taken some positive steps over recent years, the Government's human rights record has continued to be uneven, with reversals and deterioration in some areas, most notably in the conduct of the war in Chechnya.

The Russian Federation has ratified, among other international documents, both International Covenants on Human Rights (and has issued the Declaration foreseen by Art. 41 of the International Covenant on Civil and Political Rights), the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of all Forms of Racial Discrimination, (and has issued the Declaration foreseen by Art. 14), the Convention on the Elimination of all forms of Discrimination against Women, the UNESCO Convention against Discrimination in Education and ILO Convention No. 111 concerning Discrimination in respect of Employment and Occupation.

According to Art. 15(4) of the Constitution, the commonly recognised principles and norms of international law and the international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by domestic law, the rules of the international treaty shall prevail.

Constitutional Law: Russian Federation

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Constitutional provisions	Scope	Relevant jurisprudence	Remarks
Art. 13(5) Establishment and activities of public associations	The establishment and the activities of public associations, whose aims and actions are directed at forcible alteration of the fundamentals of constitutional governance and violation of the integrity of the Russian Federation and at undermining the security of the		

	state, forming armed units, or inciting social, racial, national and religious strife shall be prohibited.	
Art. 19(2) Equality of rights	The State shall guarantee equal rights and liberties regardless of sex, race, nationality, language, origin, property or employment status, residence, attitude to religion, moral 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.	Decision of the Information disputes' chamber from 11.4.1994 http://www.owl.ru/library/019t.htm Decision of the Constitutional Court of Russian Federation from 15.1.1998, No.2-P (Discrimination on the basis of place of residence) Vestnik Konstituzionnogo suda Rossijskoi Federazii No.2, 1998. or http://ks.rfnet.ru/pos/p2_98.html Decision of the Judicial board on civil matters of the Supreme Court of the Russian Federation from 18.6.2001, No. 22-G01-4 "Bjulleten Verchovnogo Suda Rossijskoj Federazii" No. 12, 2001, p.21.
Art. 26 National identity	Everyone shall have the right to determine and state his national identity. No one can be forced to determine and state his national identity. Everyone shall have the right to use his native language and to freely choose the language of his communication, education, training and creative work.	
Art. 29(2) Freedom of speech	Propaganda or campaigns initiating social, racial, national or religious hatred and strife are	

	impermissible. The propaganda of social, racial, national, religious or lingual superiority is forbidden.	
Art. 68(3) Right to one's native language	The Russian Federation shall guarantee all of its people the right to preserve their native language and to create the conditions necessary for its study and development.	

EXPLANATORY NOTE

Russian Federation / Constitutional law

The new Russian Constitution was adopted 12 December 1993. The Constitution grants sweeping powers to the President, allowing him to appoint the Government, while the Parliament is restricted to participation in setting the national agenda and passing the yearly budget.

The Constitution of the Russian Federation guarantees State protection of human and civil rights and freedoms in the Russian Federation and stipulates that everyone shall have the right to protect his or her rights and freedoms by all means not prohibited by law (Art. 45, paras. 1 and 2), including the right to petition interstate organs concerned with the protection of human rights and liberties when all available internal legal remedies have been exhausted (Art. 46, para. 3). Protection against discrimination and intolerance is one of the designated fields of activity of the representative (legislative) and executive organs of State power of the Russian Federation and of its constituent entities, local government organs and officials and of the whole system of law enforcement agencies (judiciary, prosecution services, militia etc.) within their respective areas of jurisdiction.

The President of the Russian Federation is the guarantor of the Constitution of the Russian Federation and of human and civil rights in the Russian Federation. He may use conciliatory procedures to settle disputes between the organs of State power of the Russian Federation and those of its constituent entities (Art. 80, para. 2, and Art. 85, para. 1 of the Constitution), including disputes concerning discrimination and intolerance.

Among the powers of the Constitutional Court is that of adjudicating, upon request of any state authority, any cases concerning the compatibility of any one of a number of instruments with the Constitution of the Russian Federation. These include: federal laws; normative acts of the President, the Federal Council, the State Duma and the

Government of the Russian Federation; constitutions of republics; charters, laws and other normative acts of subjects of the Russian Federation pertaining to matters within the jurisdiction of the state organs of the Russian Federation or within the joint jurisdiction of federal state organs and state organs of a subject of the Russian Federation. Suspended in 1993, the Constitutional Court again heard cases in 1995, among them a challenge to the constitutionality of the President's decrees regarding the use of federal military forces in the Republic of Chechnya (judgment of 31 July 1995).

Parallel to the rights of individuals contained in the Constitution of the Russian Federation, the constitutions of the Republics, the charters of the Krays, Oblasts, and other constituent entities of the Russian Federation, ordinary (sectoral) legislation also enacts measures against discrimination and racism. These measures include giving special, supplementary rights to peoples, nations, minorities and ethnic groups¹.

The variety of the forms of State (that is regional) and local autonomy contributes to the safeguarding and protection of the rights of peoples and nations, national minorities and ethnic groups, of their human and civil rights and freedoms, of their equality before the law and the courts and ensures equal rights for all citizens regardless of race, nationality, language, attitudes to religion, moral convictions or other circumstances.

Constitutional and legislative norms in force in the Russian Federation guarantee minorities the following rights:

1. the right to use one's native language in the areas of communications, upbringing, education, creative activities and mass media and the related right to preserve, study and develop that language. It is expressly provided that this right may not be affected by the assignment of official status to any particular language at the level of the Federation or of its constituent entities;
2. the right to satisfy economic (material) needs and interests through fiscal subsidies at different levels and the right to set up special assistance and development funds, etc.;
3. the right to national and territorial self government (through the creation of national, territorial, municipal and other entities);
4. the right to national and cultural autonomy as a special form of social cohesion and self-government;
5. the right to participate in social and political life through representation in legislative and executive organs of government, the creation of consultative councils and other consultative bodies under organs of executive power and through other forms of organisation².

According to Art. 71(c) of the Constitution, the jurisdiction of the Russian Federation shall extend to the regulation and protection of the rights and liberties of the human being and citizen and the regulation and protection of the rights of national minorities. According to Art. 72(b), the joint jurisdiction of the Russian Federation and its subject

entities shall extend to "... the protection of the rights and freedoms of man and citizens, the protection of the rights of ethnic minorities [and to] ensuring legality, law and order and public safety..." Inconsistencies between national and federal legislation in respect of discrimination and intolerance have several times been resolved by Constitutional Court.

Article 103, para. 1(e) of the Constitution envisages the creation of an office of the Commissioner for Human Rights as a new institution within the State system. He is expected to contribute to parliamentary monitoring and the provision of extra judicial protection of human rights.

Pursuant to paragraph 2 of Art. 1 of the federal law "On the prosecution service of the Russian Federation", as in force at 17 November 1995, the Prosecution Service of the Russian Federation is responsible for prosecuting in cases of fomentation of national discord and for ensuring the observance of human and civil rights by federal ministries and departments, the representative (legislative) and executive organs of the constituent entities of the Russian Federation, organs of local government, organs of military administration and surveillance organs, as well as administrative bodies and managers of commercial and non-commercial organisations.

The courts - the Constitutional Court of the Russian Federation, general courts and arbitration courts - are required to play a particular role in the protection of the rights of national minorities. The Constitution of the Russian Federation stipulates that human and civil rights shall be guaranteed by law (Art. 18) and that everyone shall be afforded legal protection of his/her rights and freedoms (Art. 46, para. 1).

Among the powers of the Constitutional Court of the Russian Federation, as defined by Art. 125 of the Constitution of the Russian Federation and by Art. 3 of the federal constitutional law "On the Constitutional Court of the Russian Federation", there appears the power to review the constitutionality of any law applied or due to be applied in a specific case in accordance with procedures established by federal law. Review proceedings are initiated by complaints about the violation of constitutional rights and freedoms of citizens or by requests from courts. The Constitutional Court of the Russian Federation also indirectly ensures such protection when examining a wide variety of other matters, for example when verifying the constitutionality of normative acts. This is evidenced by several Constitutional Court decisions, such as those which recognised the right of Cossacks to perform their military service in special Cossack formations and units of the Armed Forces of the Russian Federation (judgment of 15 September 1993) and acknowledged the rights (advantages) of children whose parents were persecuted during the years of totalitarianism. In relation to the Osseto-Ingush conflict, the Constitutional Court declared unconstitutional certain provisions of a resolution of the Supreme Soviet of the North Ossetian RSS concerning the repatriation of persons of Ingush nationality, not to their former places of residence, but to newly built settlements with a compact population of the said persons, the resolution making reference to "public opinion" that cohabitation of citizens of Ossetian and Ingush nationalities is impossible (judgment of 17 September 1993). The Constitutional Court of the Russian Federation declared to be unconstitutional certain restrictions on the electoral rights, in respect of elections to the parliament of the Republic, of citizens of the Russian Federation of Ingush nationality who were forced to leave the Republic of North Ossetia-Alania and were

temporarily living in the Republic of Ingushetia (judgment of 24 November 1995). The Constitutional Court declared unconstitutional several restrictions on human rights adopted on a local (non-federal) level, the Court relying upon Art. 55 of the Constitution according to which human and civil rights and liberties may be restricted by 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 person, or for ensuring the defence of the country and the security of the State.

Several Presidential Decrees aimed at strengthening State control in the field of discrimination have been adopted, such as the Decree of 13 January 1993 "On Measures Strengthening the Control over, Creation and Activities of Public Unions" or the Decree of 23 March 1995 "On Measures for Concerted Action by State Bodies in Combating Fascism and Other Manifestations of Political Extremism". Presidential Decree No. 909, dated 15 June 1996, adopting the concept of State National Policy, stated the urgent need to combat all forms of racial and national discrimination.

Criminal Law: Russian Federation

Preliminary Note: this table is accompanied by an explanatory note

Offence	Source	Scope	Sanction	Relevant jurisprudence
Violation of the equality of citizens.	Criminal Code 1996, Art. 136	Violation of the equality of citizens by creation of direct or indirect advantages or disadvantages for a group of citizens on the basis of race, language, residence, nationality, religion or conscience.	Imprisonment of up to 2 years or a fine.	
Murder	Art.105.2 Criminal Code 1996	Murder on motive of national, racial, religious hatred or enmity or blood feud	Imprisonment for the term of from eight up to twenty years or a death penalty or lifelong imprisonment	25.11.2003 Moscow City Court admitted 6 yo Caren Yakhshibekov on motive of racial enmi http://tolerance.ngo.ru/articles/index.phtml?ac
Deliberate causing of grievous	Art. 111.2. Criminal	Deliberate causing of grievous	Imprisonment for the term of from three up	

bodily harm	Code 1996	bodily harm on motive of national, racial, religious hatred or enmity	to ten years
Torture on motive of national, racial, religious hatred or enmity	Art. 117.2. Criminal Code 1996	Torture on motive of national, racial, religious hatred or enmity	Imprisonment for the term of from three up to seven years
Incitement to hatred based on race, religion or nationality.	Criminal Code 1996, Art. 282	Arousing hatred against segments of the population, or attacking human dignity by insulting, maliciously degrading or defaming segments of the population.	Imprisonment of up to 5 years or a fine.
Hindrance to realization of the right to a freedom of conscience and confession	Criminal Code 1996 Art. 148	Illegal hindrance to activity of the religious organizations or to fulfilment of religious practices	Corrective works for the term of up to one year, or arrest for the term of up to three months or a fine
Incitement to hatred based on race, religion or nationality.	Criminal Code 1996, Art. 282	Arousing hatred against segments of the population, or attacking human dignity by insulting, maliciously degrading or defaming segments of the population.	Imprisonment of from 2 up to 4 years or a fine.

Genocide	Art.357 Criminal Code 1996	The actions directed on full or partial destruction of national, ethnic, racial or religious group by murder of members of this group, causing them of grievous bodily harm, violent hindrance to procreation, compulsory transfer of children, violent resettlement or other creation of the vital conditions designed for physical destruction of members of this group	Imprisonment for the term of from twelve up to twenty years or a death penalty or a long-life imprisonment.	
Mass media and dissemination of racist material.	Mass Media Code 1992, Art. 4.2	Prohibits the dissemination of any information aimed at initiation of national or racial intolerance and also prohibits registration of	According to Art. 59 of the Mass Media Code 1992, any breach of Art. 4 is a criminal offence.	Decision of the Timirjazevsky intermunicipal July 2002 http://tolerance.ngo.ru/articles/index.phtml?ac On 8 August 2002, the Cheremushkinsky inter satisfied the claim of the Ministry of Press for owner” to which it had been earlier given four edition.

mass media undertakings if their bylaws contain any provisions favouring racial intolerance or discrimination.

Inadmissibility of abuse of the rights of the journalist

Art. 51 of the Law on Mass Media

It is forbidden to use the right of the journalist on distribution of the information with the purpose to discredit the citizen or separate categories of citizens extremely on the basis of a sex, age, racial or a national identity, language, the attitude to

Decision No. 26 (109) from 19 December 1999 Chamber. In this decision the Chamber has convicted the magazine "Megapolis Express" for having disseminated separate categories of citizens on the basis of race. <http://www.internews.ru/books/court/court9.htm>

religion, a residence and occupation, and also in connection with their political convictions.

EXPLANATORY NOTE

RUSSIAN FEDERATION / CRIMINAL LAW

A special role is attributed to the Information Disputes Chamber attached to the President of the Russian Federation. It is entitled to consider all disputes connected with the dissemination of information. In March 1995, it considered a request from the State Duma concerning a television programme entitled, "Newspaper stories: Fascism in Russia". The State Duma pointed out that the interviews with fascist leaders in the programme themselves constituted an offence in that they spread fascist ideas on television. The Chamber decided that the programme was just and fair and was aimed at showing the truth about racism. The Chamber noted that the existing legislation in the Russian Federation is sufficient to combat national intolerance and discrimination, but that greater efforts need to be made to ensure universal compliance. Several cases are pending before this Chamber.

Civil and Administrative Law: Russian Federation

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Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
Public Associations Law 1995, Art. 23	Prohibits registration of public associations the goals, activities or statutes of which involve racial or national intolerance.		On 10 October 2002, the Omsk regional court has satisfied the claim of the public prosecutor for closing a public regional Association « Russian national unity »	
Law on Detention of Suspects 1995, Art. 6	Protects detained suspects from discrimination on the basis of their origin or race.			

Law on freedom of conscience and religion organizations, 1995. Art.3	Freedom of conscience		Decision of the Board of Appeal of the Supreme Court of Russian Federation from 15.5.2003, http://www.supcourt.ru/news_/pr/2003-06-27-11-44-21.htm	
Law About guarantees of the rights of small aboriginal populations of the Russian Federation. 30.4.99 FZ-82	The right to delegate their representatives to Councils of Representatives of small aboriginal populations at local administrations and institutions of the Governments of Member States of Russian Federation.		Resolution of the Judicial board on civil matters of the Supreme Court of Russian Federation from 13.8.2002. Federal Legislation was not taken into account at definition in the statutory act of the subject of the Russian Federation of the age qualification for participation of citizens in assembly on election of the authorized representatives of aboriginal small populations of the North. http://www.supcourt.ru/ http://sud.park.ru	
Labour Code 2001, Art. 3 Interdiction of discrimination	Nobody can be limited in labour rights and freedom or to receive any advantage irrespective of a sex, races, colors of skin, a nationality, language, an origin, property, social and official position, age, a residence, the attitude to religion, political convictions, belonging or non-belonging to public associations, and also from other	Art. 363 according to Federal Laws		The means of protection against discrimination at all stages of labour relations are provided.

	circumstances which have been not connected to business qualities of the worker			
Law on Political Parties. Adopted on 21.6.01. FZ-95 Art. 9. restriction on creation and activity of political parties	Creation and activity of political parties are forbidden, if the purposes or actions of the party are directed on incitement of social, racial, national or religious hostility. Creation of political parties is not supposed on the basis of a professional, racial, national or religious belonging.			
Law from 25 July 2002. 114-FZ About Counteraction of extremist activity	Determines legal basis and means of the counteraction. Definition of the extremist's activity: incitement of racial, national or religious enmity, and also social enmity, connected to violence or appeals over violence; humiliation of national dignity; realization of	Liquidation of corresponding public, religious or another association and/or interdiction of its activity and/or closing of the corresponding mass-media.	On 10 October 2002, the Omsk regional court has satisfied the claim of the public prosecutor for closing a public regional Association « Russian national unity » on the ground of contradiction with the Law on Public associations and the Law about counteraction of extremist's activity	This Law might also be considered as the first special legislation in this area.

mass disorders, hooligan actions and acts of vandalism on motives of ideological, political, racial, national or religious hatred or enmity, and also on motives of hatred or enmity concerning any social group; propagation of exclusiveness, the superiority or inferiority of citizens on the basis of their attitude to religion, a social, racial, national, religious or language belonging

Law About the basic guarantees of suffrages and rights on participation in a referendum of citizens of the Russian Federation on 12 June 2002. 67-FZ

Art.4.2 Any Citizen of the Russian Federation has the right to elect, to be elected, to participate in a referendum irrespective of sex, race, nationality, language, an origin, property and official position, a residence, the attitude to religion, convictions, belonging to

Definition of Judicial board on civil cases of the Supreme Court of the Russian Federation from 18.6.2001 No. 22-G01-4 (above-mentioned)

	public associations, and also other circumstances.			
The Order of the State Office of Public Prosecutor of the Russian Federation on amplification of public prosecutor's supervision of observance of legality at the sanction of applications, messages and other information on the accomplished and prepared crimes (from 10 January 1999 No. 3).	Providing duly check of legality of the sanction of materials about public, including in mass media, appeals to excitation national, racial or religious hostility. At carrying out of this work to not be limited to consideration acting in bodies of the Office of Public Prosecutor of materials, constantly to analyze the maintenance of information programs of radio and TV, various publications, and also production of unregistered mass media, without the announcement of the target data or after the decision on the termination of their activity			

EXPLANATORY NOTE

RUSSIAN FEDERATION / CIVIL AND ADMINISTRATIVE LAW

Several newspaper editors or owners have been prosecuted for publishing unlawful matter according to Art. 4 of the Mass Media Code (1992), e.g. the publisher and owner of the journal "*Ruskije vedomosti*", V.I. Korchagin in Moscow and the publisher of the journal "*Nacionalist*", J.A. Beljajev in St. Petersburg.

Note

¹ The federal law "On general principles governing the organisation of local authorities in the Russian Federation" envisages the creation of national and local territorial autonomy as a specific structure of local self-government, conditioned by the existence of compact settlements of national groups or communities or indigenous (aboriginal) nationalities within the territory of the autonomous municipal entity, with due regard to historical and other local traditions. Moreover, such a municipal entity of a national nature is empowered to provide a range of advantages to the indigenous population, in particular as concerns the use of national languages, the naming of populated areas and the development of external economic cooperation and fraternal relations.

Note

² For more detail, please refer to the report written by Judge Nikolai Vitruk for the UniDem Seminar held in Lausanne on 25-27 April 1996 and entitled "Federalism, Autonomy and the Rights of National Minorities - the Present Situation in Russia", published in: *Local Self-Government, Territorial Integrity and Protection of Minorities* (Zürich 1996), pp. 247- 266.