

Soviet-Era 'Objective Truth' Bill Would Imperil Presumption of Innocence

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Alexander Bastrykin, the head of Russia's Investigative Committee

A freshly introduced draft law proposing to redefine the roles of Russian judges has courted controversy among legal circles who fear that if adopted, the measure would endanger the presumption of innocence by blurring the lines between judges and prosecutors.

State Duma Deputy Alexander Remezkov of the ruling United Russia submitted an updated version of a 2014 bill last week calling for the return of "objective truth," a Soviet-era legal concept that emboldened judges to play an active role in eliciting evidence and taking other measures deemed necessary to establish the "objective truth" in criminal cases.

Alexander Bastrykin, the head of Russia's Investigative Committee and a close ally of President Vladimir Putin, played a key role in developing the bill after having expressed his support for the initiative in 2012, Russian media have reported.

Remezkov's draft bill, which the Russian Supreme Court and other state entities contributed to, seeks to modify Russia's version of the adversarial system, a legal system used in common law countries that consists of the prosecution and the defense arguing their positions before an impartial judge or jury.

"The Criminal Procedure Code of the Russian Federation does not [currently] contain requirements about the adoption of all possible measures aimed at finding the objective truth," an explanatory note attached to Remezkov's latest draft read. "The so-called adversarial system is closer to the Anglo-American tradition; it's foreign to the Russian legal tradition."

Under Russian law, judges are passive observers in criminal proceedings, which are fought between defense teams and prosecutors. Remezkov said in a statement that most of Russia's legal community believes the adoption of such a law is long overdue.

But the prospect of expanding judges' rights to such an extent has sparked fears among prominent lawyers that it could violate the Russian constitution, which includes among its guarantees the presumption of innocence — the notion that a person on trial should be considered innocent until proven guilty.

Many countries view the presumption of innocence as a fundamental right in criminal cases. If the prosecution still has reasonable doubt about the guilt of the accused, he or she must be acquitted.

"The adversarial system is one of the greatest accomplishments of the Western and Russian legal cultures," said lawyer Dmitry Kravchenko, who serves as the executive secretary of the Russian Association of Lawyers' committee on constitutional law and state-building. "Straying away from it would not be right. It would violate the principle of the presumption of innocence, which is embedded in our Constitution."

Remezkov has attempted to assuage fears that the presumption of innocence would cease to exist if his bill were adopted, saying in his explanatory note that it would only apply to cases where establishing the "objective truth" seemed impossible.

Renouncing the adversarial system would require a complete overhaul of the Russian legal system, according to Vladimir Tabolin, a law professor at Russia's State University of Management. The social, economic and technical repercussions of changing the role of judges in criminal proceedings would complicate the practical application of Remezkov's proposal.

"Such a system would leave no room for doubt because judges would have to come up with a final, incontestable truth," Tabolin said. "Some would argue that this is impossible. This question has been at the heart of profound philosophical debate."

A History

The adversarial system was introduced in Russia in 1864 amid mass judicial reforms. After the revolution of 1917, jurists began viewing the presumption of innocence as being at odds with the dictatorship of the proletariat, which called for the state's interests to prevail over

those of individuals, legal scholar John Quigley wrote in "The Soviet Conception of the Presumption of Innocence," an article published in the Santa Clara Law Review in 1989.

Courts in the Soviet Union took an active part in seeking evidence against the accused, making it difficult for judges to presume the innocence of the person standing trial. A 1985 survey conducted among 200 Moscow defense lawyers found that 83 percent of them had represented a client in the past year whom they were confident had been innocent, but who was found guilty at trial.

In 1973, although the state maintained priority over individuals in criminal hearings, the Soviet Union ratified the International Covenant on Civil and Political Rights, which recognizes that individuals charged with a criminal offense "shall have the right to be presumed innocent until proven guilty according to law."

The Soviet Constitution of 1977 did not explicitly list the presumption of innocence among its guarantees, but contained other provisions that embodied the notion, such as the right to legal defense and the stipulation that courts were the only entities that could render judgments, Quigley wrote.

Judges retreated to their roles as passive observers in 2002, when Russia adopted the criminal procedure code it still uses today, which features provisions compatible with the adversarial system.

Tipping the Balance

The return of the "objective truth" — a practice reminiscent of the methods used in the Spanish Inquisition, according to Andrei Fedotov, a lecturer at Moscow State University's law faculty — would tip the balance in favor of the prosecution, something high-ranking officials in the Investigative Committee are unlikely to reject.

"The Investigative Committee will not object to this [the 'objective truth'] because it is useful for them to have the courts on their side," Kravchenko said, adding that such legislative proposals hinted at nostalgia for the Soviet Union in certain segments of the population.

Bastrykin, the head of the Investigative Committee, said in a 2012 interview with Rossiiskaya Gazeta that the "objective truth" was an apolitical model that would help ensure judicial fairness.

"Judges are now like hockey referees," he said at a 2013 conference on Russian legal reforms, where he argued for expanding the rights of judges. "They just keep an eye on the rules of the game being played. They are not supposed to pick a side in a judicial proceeding; they are supposed to advocate for the victory of justice."

Bastrykin added that the critics of "objective truth" feared that it was a "relic of the Marxist-Leninist political ideology."

"He [Bastrykin] has the right to speak his mind, but ideas like this do not necessarily transition well into the public sphere," Anatoly Lyskov, a former senator, told The Moscow Times. "This topic needs to be discussed on an expert level. It needs to brew at a theoretical

level before it can be presented to the public. Making provocative statements is not among the Investigative Committee's mandates."

The lawyers interviewed by The Moscow Times were split on whether the bill will be adopted by the Duma. Kravchenko said that the legislative body would not easily renounce the advances of Russia's legal system. Fedotov, of Moscow State University, said he was unprepared to write off the possible return of "objective truth."

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