The status of the Procuracy in the Soviet/Russian legal system assumed a central place in legal reform debates during the late 1980s and early 1990s. Historically, the Procuracy enjoyed broad-ranging powers, which had long been criticized by legal reformers. Prior to the enactment of the Russian Constitution in 1993, a new Law on the Procuracy of the Russian Federation was approved in January 1992. It preserved the Procuracy as a unified, centralized institution with extensive prosecutorial and supervisory powers to ensure compliance with laws. The most important substantive change introduced by the 1992 law was eliminating the Procuracy’s supervision of the activities of the courts. With the growing demand for judicial independence, the courts were placed under the Ministry of Justice.

During the process of drafting the 1993 Constitution, the powers of the Procuracy were again challenged by some who felt that as long as the Procuracy dominated the legal system, the courts would never emerge as strong and independent entities. In particular, proposals were floated to limit the Procuracy to prosecuting criminal cases and coordinating anti-crime measures. The 1993 Constitution avoided the issue in Article 129 by deferring the question: “The power, organization of work, and the procedure regulating the activities of the Prosecutor’s Office of the Russian Federation shall be established by federal law.”

Almost immediately after enacting the Constitution, criticism of the Procuracy’s powers resumed, this time focusing on its role in supervising criminal investigations. In 1994, the State Duma authorized creation of a special state agency to conduct criminal investigations, but it failed to provide necessary funding to establish the new organization. In 1995 work began on a revised Law on the Procuracy of the Russian Federation. As in previous debates, the issues that drew the most ardent discussion on both sides related to the Procuracy’s powers of general supervision, supervision over normative acts passed by local and regional authorities, the Procuracy’s role in enforcement of court decisions, and its powers to intervene in civil and commercial cases. This chapter reviews the legal landscape relating to procuratorial powers in these areas since 1993 and concludes that many of the fundamental questions relating to the Procuracy’s powers remain unresolved today.
The Continuing Fight over General Supervision

General supervision, which dates back to 1955, refers to the Procuracy’s responsibility to supervise the legality of administrative officials, agencies, and citizens; demand official documents, records, and information concerning possible violations of laws; and issue protests, representations, and proposals to rectify illegal actions.

When a procurator encounters a ministerial decree or other “normative act”, action, or decision of an executive body that violates established laws, the Procuracy files a protest, citing reasons for the protest and demanding that the illegal act be rescinded or amended. In some cases, the Procuracy has the power to suspend implementation of the act or decision, pending consideration of the protest. If the agency disagrees with the procurator’s position and rejects the protest, the procurator can refer the matter to a procurator at a higher level. Procuratorial protests are successful in reversing illegal administrative actions in more than ninety-six percent of all cases in the first instance.¹

Procuratorial representations are issued when prosecutors encounter numerous acts that they consider to be illegal or improperly handled by administrative officials. Because representations are not issued to a particular party, they do not require compliance or any particular response; rather, they serve merely as a warning to administrative officials. Procuratorial proposals are non-binding suggestions to administrative agencies and officials and are not usually issued in reaction to legal violations.

As the work proceeded on drafting a new constitution, liberal reformers proposed weakening the Procuracy by abolishing its general supervisory powers, among others responsibilities and restricting it to the prosecution of cases in court and coordinating the fight against crime. The newly-appointed Procurator-General Alexei Kazannik mounted a strenuous effort to preserve the Procuracy’s status in various drafts of a new constitution that were circulating in the capital. When the final presidential draft of the constitution appeared to limit the Procuracy’s power to prosecuting criminals, Kazannik lobbied El’tsin and within one day the section delineating the Procuracy’s powers was dropped. Kazannik argued successfully in favor of leaving out any listing of procuratorial powers from Article 129, which in effect meant that the Procuracy would continue to be governed by the 1992 Law on the Procuracy, which reaffirmed the Procuracy’s power of general supervision.²

¹ This figure is based on an analysis of protests during the period 1955-1974; see Gordon B. Smith, The Soviet Procuracy and the Supervision of Administration (Sijthoff & Noordhoff, Alphen aan den Rijn, The Netherlands, 1978), 88.
² This account came from a consultation with Professor Alexander M. Larin, Institute of State and Law, Moscow, 25 November 1993.