

THE 1993 RUSSIAN LAW ON CITIZENS' APPEALS

Jane Henderson

Centre of European Law, Kings College London

1. Introduction

On 27 April 1993 the Russian Supreme Soviet passed the "Law of the Russian Federation on appealing to a court actions and decisions violating the rights and freedoms of citizens"¹, to go into force on 12 May. The law gave citizens a general right of appeal to a court against maladministration. This brief preface to a translation of the new law is intended to summarize and explain its main features.

1.1 Background History

Abuse of power by state agencies and officials is clearly not a new phenomenon in Russia, and throughout much of the Soviet era there was concern as to how best to deal with the citizens' complaints which resulted from it. There was disagreement between the advocates of judicial control over administrative activities ("administrative justice") and those who favoured control by other means, such as internal review or procuratorial supervision. The debate raged with greater or lesser intensity according to the prevalent political climate.²

By the 1970's, the desirability of a right to appeal to a court was taken more seriously, despite continuing ideological reservations that it smacked of the bourgeois doctrine of separation of powers.³ One article in a recent

1. *Ved.RF* 1993 No.19 item 685. The law also appeared in *Ros. Gaz.* 12 May 1993, and in the Procuracy's monthly journal, *Zakonost'* 1993 No. 8, 52-54
2. See e.g. discussion in Donald D. Barry, "The Development of Soviet Administrative Procedure", in *Soviet Law after Stalin, Part III*, (D.D. Barry, G. Ginsburgs, P.B. Maggs, eds.), No.20(III) *Law in Eastern Europe*, (F.J.M. Feldbrugge, ed), Alphen aan Den Rijn, The Netherlands 1979, 1-24.
3. See Barry *ibid.*, and also Donald D. Barry, "Administrative Justice: the Role of Soviet Courts in Controlling Administrative Acts", in *Soviet Administrative Law: Theory and Practice*, (G. Ginsburgs et al., eds.), No.40 *Law in Eastern Europe*, (F.J.M. Feldbrugge, ed.), Dordrecht, The Netherlands 1989, 63-83, at 66, and Hiroshi Oda, "Judicial Review of Administration in the USSR", in *The Impact of Perestroika on Soviet Law*, (A.J. Schmidt ed.), No.41 *Law in Eastern Europe*, (F.J.M. Feldbrugge, ed.), Dordrecht, The Netherlands 1990, 157-171 at 158.

number of *Gosudarstvo i Pravo* estimated that before 1977 courts considered around thirty different types of administrative cases dealt with under civil procedure.⁴ The right to appeal administrative activities to a court "... took on a constitutional character for the first time in the USSR"⁵ by article 58 (2) of the 1977 Constitution of the USSR which asserted that

Acts of officials committed in violation of law, in excess of authority, which infringe the rights of citizens may be appealed to court in the manner established by law.

However, the "manner established by law" was not enacted until ten years later. The "Law of the USSR on the procedure for appealing to a court the unlawful actions of officials which impinge upon the rights of citizens" was passed by the USSR Supreme Soviet on 30 June 1987⁶ and published two days later.⁷ The passage of the law was not smooth. There was serious controversy about how best to express the right to appeal, whether to state it as a general right ("general clause") with some specific exceptions, or whether to specify a closed list of nominated situations ("enumerative clause"), where appeal to court would be allowed. In the end, the proponents of the general clause won, but not after one of the first documented public disagreements in the USSR Supreme Soviet.⁸ Even then, dissatisfied deputies persuaded the Supreme Soviet to remit the law for further consideration, with the result that it was amended on 20 October 1987⁹, only 4 months after

4. N.Iu. Khamaneva, "Obzhalovanie v sud deistvii i reshenii, narushaiushchikh prava i svobody grazhdan Rossii", *GiP* 1993 No.11, 3-12 at 3. The author cites an article by V. Remnev, "Pravo zhaloby i administrativnaia iustitsiia v SSSR", *SGiP* 1986 No.6, 22-32 and indeed at 30 Remnev asserts "At the present time the courts in the USSR may decide more than 30 categories of appeals, arising out of disputes between citizens, on the one hand, and officials and state agencies on the other". Donald D. Barry in "Administrative Justice and Judicial Review in Soviet Administrative Law", in *Soviet Law after Stalin, Part II: Social Engineering Through Law*, (D.D. Barry, G. Ginsburgs, P.B. Maggs, eds.), No.20(II) *Law in Eastern Europe*, (F.J.M. Feldbrugge, ed.), Alphen aan Den Rijn, The Netherlands 1978, 241-269, at 248ff. discusses the same figure of "about 30 categories of cases" given by V.I. Remnev in an article "Is istorii razvitiia administrativnoi iustitsii v SSSR" in M.M. Boguslavskii et al. (eds.), *Problemy upravleniia i grazhdanskogo prava*, Moscow 1976, 76-77. Barry doubts the tally of 30 categories, which are not listed by Remnev in either work cited.

5. Khamaneva, *op.cit.* note 4, 4.

6. *Ved.SSSR* 1987 No.26 item 388. English translation in Barry, *op.cit.* note 3, 80-83.

7. Comment that there was some surprise at the failure to publish on the day after the law was adopted, J.M. McGregor, "Judicial Review of Administrative Actions in the USSR: Current Developments", *Yearbook on Socialist Legal Systems* 1989, 129-144 at 129.

8. See discussion in *id.*, 138 and Oda, *op.cit.* note 3, 160 ff.

9. *Ved.SSSR* 1987 No.42 item 692.