

A Year of Zeros? Legal Responses to the COVID-19 Pandemic in Russia

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As the end of the year 2020 approached, the Vice-President of the French *Conseil d'État* Bruno Lasserre [commented](#) on one line of the case-law that appeared in the pandemic year: urgent application judges had to [decide](#) on the legality of rules found in press-releases and interviews by first deciphering legal rules and their hierarchy from those texts. This reflected exactly my experience as a practitioner in 2020 Russia: advising a client having weighed whether a blog of the Speaker of the Moscow City Duma carried more authority than a televised interview of the Moscow Mayor.

It did not necessarily have to be that way. Russia faced the beginning of the pandemic with relevant legislation in force, which will be described first below. Then I will elaborate on how the existing laws, were not applied by the executive which made ways around the legislation. The results of legislative reforms and executive action include ever more curbed human rights, and a rushed constitutional reform entrenching Putin's rule. Little hope remains for a practitioner in the field of public law, but I will finally attempt to show that the "zeroisation" has not yet been total.

A Brief Overview of Russian Emergency Legislation

Article 56 of the 1993 Russian Constitution allows restrictions on human rights to be enacted in a state of emergency (*chrezvychaynoe polozenie*) in order to ensure citizens' safety and to protect the constitutional order. The state of emergency is declared by the President and his decree has to be approved within 48 hours by the Council of the Federation, the upper chamber of the Parliament. The 2001 State of Emergency Organic Act gives effect to the constitutional provisions and lists the rights which are restricted and to which extent. Importantly, in state of emergency the existing civilian administration is replaced by military administration, though parliament continues to operate.

The 2001 State of Emergency Organic Act was a product of [careful drafting and long political deliberation](#), so however severe the limitations on rights may be (e.g. police may detain those in violation of curfew for up to 30 days without any court order), they have the restrictions and the procedures in the state of emergency have the benefit of being clearly defined. Despite the [calls](#) to introduce the state of emergency, the 2001 Act was never invoked, not least because its provisions carried certainty.

The 1994 Emergency Situations Act was intended to deal with the natural and man-made disasters. However serious the damage may be, disaster usually concern a limited territory: an earthquake or a natural gas explosion on the island of Sakhalin

does not affect Novosibirsk or Oryol. So regional governors and even mayors were given powers to declare situations of emergency (*chrezvychaynaya situatsiya*), as opposed to state of emergency, and to mobilise police and Emercom units. The 1994 Act did not allow for enacting limitations on human rights except for barring access inside the designated perimeters. This restriction appeared relevant: it is arguably reasonable that the emergency services in charge, for example, of clearing earthquake debris and looking for survivors and bodies deny access to the site to strangers.

The most relevant to epidemics and pandemics, however, was the 1999 Sanitary and Epidemiological Well-Being Act. Its article 41 provided for a regime of quarantine which could be enacted by the executive on advice of a regional or the federal Chief Sanitary Physician (at the federal level s/he is an *ex officio* deputy Minister of Health). While quarantine allowed to close borders, the regime was otherwise designed to quarantine specific buildings, like schools or kindergartens.

All three pieces of legislation had in common not only the possibility to limit human rights, but other features as well. All three provided for compensation to be paid for the damage to individuals, even if lawfully caused. The compensation was capped at token levels: for example, the [regulations](#) adopted under the 1994 Emergency Situations Act provided for only 10,000-ruble (approx. EUR120) payments for everything other than death and destruction of property.

Since January 2020 the Russian Government was busy preparing a constitutional reform the contents of which was not immediately clear. Announced in the [State of the Nation address](#), it would redistribute some insignificant powers between the legislature and the executive, repeal the primacy of international law but not quite, introduce God somewhere among the rules governing federalism, and provide for the annual increase of old-age pension, a principle already well-established in the legislation which, ironically or not, also provides for a gradual increase in the retirement age since 2018. The jewel in the constitutional reformers' crown was presented to the public considerably later, on 10 March 2020, when the State Duma deputy Valentina Tereshkova, first woman in space in 1965, [proposed](#) to allow Vladimir Putin to run in 2024 for the first presidential term. His fourth term as President, running since 2018, would be considered "term zero" according to her hastily adopted amendment, hence "zeroisation".

As many European countries were entering Covid-19 lockdowns, on 17 March 2020 Vladimir Putin [announced](#) an all-Russian vote on the constitutional draft. Chapter 9 of the 1993 Constitution governing constitutional amendments did not allow or provide for such vote or referendum of any kind, but the date was set for 22 April, ironically or not, the 150th anniversary of Vladimir Lenin.

The need to obtain a popular acclamation for the "zeroisation" of Mr Putin's presidential terms delayed the initial response at the federal level. On 25 March 2020, when it was no longer possible for the federal authorities not to act, a presidential decree [declared](#) a week of "non-working days" (*nerabochie dni*) at the employers' expense until 3 April; "non-working days" were later extended by the President until 12 May. These presidential decrees caused multiple controversies:

civil, labour, procedural and all other legislation only distinguished between “working days” (*rabochie dni*) and “days off” (*vykhodnye dni*). The decrees created a lot of confusion, for example, as to how time-limits were to be counted, and the Supreme Court’s [public explanations](#) were ambiguous.

While federal response to the pandemic was delayed, regional authorities started acting on their own. The informal leader was the Moscow Mayor who already on 5 March first [introduced](#) controls like self-isolation for international arrivals and for those over 65. Moscow Mayor referred to a provision in the 1994 Emergency Situations Act on “high alert preceding a situation of emergency”, designed to allow authorities to act when they receive information on a forthcoming earthquake, e.g. to mobilise the law-enforcement, but not restrict rights. “High alert” also did not require any compensatory payments be dispensed by the authorities.

Moscow Mayor’s decree of 5 March was then [amended or completely re-written on no less than 15 occasions](#), imposing a regime of lockdown, closing schools and universities, prohibiting all kinds of public events, and introducing, between 15 April and 9 June, a system of electronic permits to move around the city. This was made possible because of an amendment to the 1994 Emergency Situations Act allowing regional governors to restrict human rights during “high alert”. All regional governors followed the Mayor of Moscow introducing different kinds of restrictions, their regulations never having been coordinated one with another. Getting from Vologda to Voronezh, a 1000km ride, would require conforming to 8 different sets of regional regulations.

The Federal Cabinet would take action by ordinances (*rasporyazhenie*) which did not require publication and had been designed to be individual acts, rather than by decrees (*postanovlenie*) of general application that would require publication. The Cabinet [closed the Russian land borders](#) under the 1999 legislative provisions on quarantine, but the mandatory advice of the Chief Sanitary Physician was never made public. While the airports were not closed entirely, all international flights were suspended *sine die* by a press-release of *Rosaviatsiya*, the civil aviation authority; no ordinances or regulations have ever been enacted. Because the border-related ordinances of the Federal Cabinet were first enacted and only then made public, a lot of travellers on arrival faced requirements unknown to them on departure. The first version of the ordinance was also so restrictive that only Russian nationals could enter, [even permanent residents with family members in Russia were turned at border checkpoints](#). It took the Cabinet a week to amend the ordinance, but this time the provisions favourable to individuals did not start to apply before the publication which took another couple of days (meaning two additional nights of sleep in an international zone of airports for many).

Russian authorities’ response to the Covid-19 pandemic was characterised by initial denial in the hope to proceed with the constitutional “zeroisation” of Putin’s presidential terms. Otherwise, they tried to balance the need to enact restrictions to combat the spread of the virus with the need to avoid any compensatory payments to the population, at least those payments that were provided for in the legislation as a matter of right. As a matter of discretion, some public money was distributed, e.g., parents [were paid](#) just under EUR 200 per minor child, the self-employed received

the taxes they paid in 2019 and the like. For the most part, though, the Russians were not offered financial incentive to stay at home, they went to work relatively early and so did the virus.

Thou Shalt Be Fined, But Manually

The “high alert” regime resulted in the multiple restrictions on freedom of movement and freedom of assembly. Initially intended to last just a few days, at of January 2021 it has effectively lasted for 10 months and still covers virtually the whole country. Applications for judicial review of gubernatorial decrees were brought in many regions, but whatever the applicants’ submissions were the judges dismissed all of them. They rather stereotypically referred to the amended 1994 Emergency Situations Act to say that if enacting restrictions on rights was allowed, all restrictions were legitimate. Only a judge of the Sverdlovsk Regional Court in Yekaterinburg [added a somewhat creative explanation](#) having said that if he had to remedy real and tangible violations of the applicants’ rights he would have granted the application, but he was faced with a claim brought by those who just refused to stay at home for the public good. Appeals were heard and dismissed by the newly created appeal courts, the judges of which can now be removed by the President and the Council of the Federation under the 2020 constitutional amendments. In the final days of 2020 the Constitutional Court, also weakened by the reform it had itself [validated](#) (its judges can now also be dismissed and they were reduced from 19 to 11), [upheld](#) the *regional* restrictions on the freedom of movement which it would unconditionally strike down for the preceding quarter of a century.

The anti-Covid-19 response by the Russian regional governors included a total ban on “mass events”, which covered both concerts and demonstrations. Mass marches in Khabarovsk protesting against the removal of the elected governor were tolerated because of the police’s inability to disperse tens of thousands of protestors, but elsewhere even solo demonstrators were treated as organisers of “mass events”, fined and imprisoned. Justifying the fines and arrests of protesters, Russian Ministry of Justice issued a [press-release](#) saying that all Russian measures were in conformity with what EU democracies were doing. The press-release blatantly disregarded multiple court decisions in Europe upholding the freedom of assembly even in the times of pandemic, leaving open the question as to whether the Ministry itself complied with the Russian fake news ban.

Probably because the authorities themselves were not entirely sincere throughout the pandemic, the enforcement of the fake news legislation fared somewhat differently. New administrative and criminal offences were introduced in April 2020 to fine and imprison those who disseminated “fake news” about the pandemic, however ironic it seemed in the situation where the authorities themselves denied emergency. Convictions [were entered](#) for social media posts questioning the authorities’ response to the pandemic and to the deficit of protective gear in hospitals. However, in approximately two thirds of the cases the charges [were dropped](#), even if on formal grounds.

During the pandemic the Moscow City authorities experimented with IT-surveillance. Those under quarantine and self-isolation (e.g., those who suffered from Covid-19 and their family members) [were forced](#) to install a “Social Monitoring” application on their cell phones and to send selfies in home interior within 5 minutes of random requests by the app. Failure to send a selfie was regarded as a breach of self-isolation or quarantine and resulted in an automatically imposed fine of 5,000 rubles (approx. EUR 58). Hundreds of such fines were appealed and [quashed](#) on the grounds that the federal legislation did not itself allow automatic imposition of fines in public health cases and also did not allow the regions to expand the recourse to automatically imposed fines.

Tiny possibilities to challenge the new restrictive measures, like automated “Social Monitoring” fines and fake news charges, left by the courts were almost entirely forgotten when in the final days of 2020 the State Duma hastily adopted new legislation extending the notions of “foreign agent” individuals and the Ministry of Justice [designated](#) first five individual “foreign agents” under the existing legislation. Among them are a former Soviet dissident, a modern artist, and three journalists. Several new groups, this time [those working with HIV-positive persons](#) and [with victims of domestic violence](#), were added to the NGO “foreign agent” register.

Russian Government comes out of the pandemic year strengthened in its unchallenged authority. The constitutional reform ensures that the President is not replaced for over another decade. Authorities have shown that they were ready to sacrifice lives in order to keep the coffers closed. The pandemic became a convenient reason to prohibit assemblies, enhance surveillance, prosecution for speech on social media and for independent not-for-profit activity. It will so continue [until it is no more](#).

