

Russian Federation: Decriminalization of Domestic Violence

June 2017



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Russian Federation: Decriminalization of Domestic Violence

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SUMMARY Russia decriminalized nonaggravated battery in July of 2016 and made it an administrative offense punishable by a fine or detention. However, repeated battery and battery committed against close relatives remained punishable under the Criminal Code. Russia amended the Criminal Code once again in February of 2017 and removed the provision regarding assaulting close relatives from the article on nonaggravated battery. As a result, violence committed against family members has also been made an administrative offense. Only repeated instances of battery are now prosecuted as criminal offenses and punishable by criminal law. International and nongovernmental organizations have noted that the failure to adequately protect victims of domestic violence may be incompatible with Russia’s international human rights obligations.

I. Introduction

Russia is one of three countries in Europe and Central Asia that have not enacted laws specifically targeting domestic violence.¹ The Criminal Code of the Russian Federation contains a number of provisions that criminalize the intentional infliction of harm to a person’s health and provide for punishment depending on the severity of the harm.² However, the only legal provision applicable to prosecuting domestic violence appears to be article 116 of the Code.³ Article 116 deals with physical assault, defined as “battery or similar violent actions, which have caused physical pain but have not amounted to light injury”—i.e., have not merely caused temporary harm to a person’s health or the insignificant loss of the general capacity to work.

The true scale of domestic violence in Russia is unknown as the government does not maintain centralized, disaggregated statistics on domestic violence.⁴ However, according to the Russian

¹ *The Duma’s War on Women: Why Russia Is About to Decriminalize Wife-Beating*, THE ECONOMIST (Jan. 28, 2017), <http://www.economist.com/news/europe/21715726-it-fits-traditional-values-lawmakers-say-why-russia-about-decriminalise-wife-beating>, archived at <https://perma.cc/JM9G-VPLU> (click “See the Screenshot View”).

² Ugolovnyi Kodeks Rossiskoi Federatsii [Criminal Code of the Russian Federation] arts. 111–115, Law No. 63-FZ, June 13, 1996, SOBRANIE ZAKONODATELSTVA ROSSIISKOI FEDERATSII [SZRF] 1996, No. 25, Item 2954, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102041891&intelsearch=%F3%E3%EE%EB%EE%E2%ED%FB%E9+%EA%EE%E4%E5%EA%F1> (in Russian), archived at <https://perma.cc/XVE5-8F85>, unofficial English translation available at <http://www.wipo.int/edocs/lexdocs/laws/en/ru/ru080en.pdf>, archived at <https://perma.cc/HSJ4-XTX8>.

³ *Id.* art. 116.

⁴ AMNESTY INTERNATIONAL, RUSSIAN FEDERATION: BRIEFING TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (July 2010), available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AI_RussianFederation46.pdf, archived at <https://perma.cc/V4M5-42DM>.

Ministry of Internal Affairs (police), 40% of violent crimes happen within the family,⁵ and during the first nine months of 2016 (latest data available), 57,000 crimes were registered as battery under article 116 of the Criminal Code.⁶ Reportedly, 36,000 Russian women suffer from beatings by their husbands or partners daily, and 14,000 women and 2,000 children are killed by family members every year.⁷

II. Penalties for Battery before July 2016

Before amendments to the Criminal Code were adopted in July 2016, nonaggravated battery was a crime, punishable by a fine of up to 40,000 rubles (approximately US\$700) or by varied terms of restriction of liberty which could take form of up to a three-month detention or six-month period of mandatory work with reduced income at a place designated by the authorities.⁸

The definition of “aggravated battery” was introduced in 2003. A stricter punishment was prescribed for battery motivated by hooliganism; political, ideological, racial, national, or religious hatred or enmity; or enmity towards a social group. This crime was punishable by a compulsory works term of up to 360 hours, by corrective labor for a term of up to one year, by a restriction of liberty for a term of up to two year, by compulsory labor for a term of up to two years, by an arrest for a term of up to six months, or by deprivation of liberty for a term of up to two years.⁹

III. Decriminalization of Nonaggravated Battery in July 2016

A bill decriminalizing nonaggravated battery was introduced in 2015 by the Supreme Court of the Russian Federation.¹⁰ According to the explanatory note, the bill’s authors intended for the bill to become part of the broad effort to humanize and liberalize Russian criminal law. In addition to removing nonaggravated battery from the list of criminal offenses, the Supreme Court recommended decriminalizing the threat of murder or serious bodily harm (Criminal Code art. 119), malicious evasion of payment of funds for the maintenance of children or disabled parents (Criminal Code art. 157), and the use of forged documents (Criminal Code art. 327). The authors of the bill estimated that decriminalization of these offenses would result in around 200,000 persons being removed from the scope of the criminal justice system every year.¹¹

⁵ *The Duma’s War on Women*, *supra* note 1.

⁶ Natalya Kozlova, *Ruku Opusti [Leave the Hands]*, ROSSIISKAIA GAZETA (Feb. 9, 2017), <https://rg.ru/2017/02/09/rg-publikuet-zakon-o-dekriminalizacii-domashnego-nasiliia.html>, archived at <https://perma.cc/B7LS-MC5G>.

⁷ *Id.*

⁸ CRIMINAL CODE art. 116.

⁹ Law No. 162-FZ on Amending the Criminal Code of the Russian Federation, Dec. 8, 2003, SZRF 2003, No. 50, Item 4848, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102084534&intelsearch=%D4%E5%E4%E5F0%E0%EB%FC%ED%FB%E9+%E7%E0%EA%EE%ED+%EE%F2+08.12.2003+N+162-%D4%C7> (in Russian), archived at <https://perma.cc/7V53-NUDY>.

¹⁰ Decision of the Plenary Meeting of the Supreme Court of the Russian Federation No. 37 of July 31, 2015, http://www.supcourt.ru/Show_pdf.php?Id=10240 (in Russian), archived at <https://perma.cc/7MZ2-P9NW>.

¹¹ *Id.*

The original text submitted by the Supreme Court did not distinguish between battery within and outside of the family. However, the bill was amended after the first reading in the State Duma (lower house of the Russian legislature) to the effect that battery of “close persons” would not be decriminalized and would remain punishable by article 116 of the Criminal Code, together with aggravated battery. Certain Russian lawmakers later blamed the “feminist lobby” for this amendment.¹²

In July of 2016 the amendments were enacted and nonaggravated battery was decriminalized.¹³ Criminal penalties were retained only for aggravated battery and the battery of “close persons,” defined as close relatives (spouse, parents, children, adoptive parents, adopted children, siblings, grandparents, and grandchildren), guardians, in-laws, and household members.

At the same time nonaggravated battery was classified as an administrative offense punishable by a fine of 5,000 to 30,000 rubles (approximately US\$88 to \$526), an administrative detention of ten to fifteen days, or compulsory works for 60 to 120 hours.¹⁴

The amendments also provided that commission of any form of battery by a person who has already been subjected to an administrative penalty for nonaggravated battery is still a criminal offense punishable by a new article 116.1 of the Criminal Code. This article provides for a fine of up to 40,000 rubles (approximately US\$700) or the amount of the wage, salary, or any other income of the convicted person for a period of three months; compulsory works for a term of up to 240 hours; corrective labor for a term of up to six months; or arrest for a term of up to three months. A person is considered to have been subjected to administrative punishment from the date of entry into legal force of the decision to impose the administrative penalty until the expiration of one year from the date of termination of the enforcement of the decision.¹⁵

IV. Amendments of February 2017

The resulting differences in the treatment of nonaggravated battery committed within the family versus outside of the family were disapproved by conservative groups in Russian society. The

¹² *Domestic Violence Bill: Senator Says NGOs Distort Statistics in Bid for Grants*, RUSSIA TODAY (Feb. 1, 2017), <https://www.rt.com/politics/375943-senator-blames-feminist-lobby-for/>, archived at <https://perma.cc/GAC5-Q3KS>.

¹³ Law No. 323-FZ, July 3, 2016, SZRF 2016, No. 27 (Part II), Item 4256, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102403665&intelsearch=%D4%E5%E4%E5F0%E0%EB%FC%ED%FB%E9+%E7%E0%EA%EE%ED+%EE%F2+03.07.2016+N+323-%D4%C7> (in Russian), archived at <https://perma.cc/L378-E2KP>.

¹⁴ KODEKS ROSSISKOI FEDERATSII OB ADMINISTRATIVNYKH PRAVONARUSHENIYAKH [CODE OF THE RUSSIAN FEDERATION ON ADMINISTRATIVE OFFENSES] No. 195-FZ, Dec. 30, 2001, SZRF 2002, No. 1 (Part I), Item 1, <http://pravo.gov.ru/proxy/ips/?docbody=&prevDoc=102404552&backlink=1&nd=102074277> (in Russian), archived at <https://perma.cc/9YS6-EK9K>, as amended by Law No. 326-FZ of July 3, 2016, SZRF 2016, No. 27 (Part II), Item 4259, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102404552&intelsearch=03.07.2016+N+326-%D4%C7> (in Russian), archived at <https://perma.cc/B67Z-DUR4>.

¹⁵ *Id.* art. 4.6.

Russian Orthodox Church criticized the law as lacking “moral justification and legal grounds.”¹⁶ Conservatives argued that it was wrong for parents to face a harsher punishment for hitting their child than a neighbor would face.¹⁷ There were also fears that preserving this provision in the Code would allow further government intervention into family life, and provide Russia’s police and judiciary with more power over private matters.¹⁸

In November 2016, a group of State Duma members again introduced a bill aimed at amending article 116 of the Criminal Code. The bill proposed only one amendment, which provided that “battery of close persons that resulted in physical pain but did not inflict harm or other consequences” would be removed from the list of criminal offenses prosecuted under article 116. The bill was approved by the State Duma’s committees and in three plenary readings, and was passed without any changes or amendments on February 1, 2017.¹⁹ The President of the Russian Federation signed the measure into law on February 7, 2017.²⁰ As a result, only aggravated battery,²¹ repeated battery, or battery that results in harm to the victim’s health remain criminally punishable. A spokesperson for the Russian President said, regarding this law, that it would not be appropriate “to identify domestic violence with some insignificant manifestations of abuse.” At the same time, he suggested that a distinction should be made between isolated family relations matters and repeated offenses, emphasizing that criminal liability is still foreseen for repeated battery.²²

V. International Commitments of the Russian Federation

The decriminalization of battery does not appear to constitute an express violation of Russia’s international commitments. However, the existence of customary international law that obligates states to prevent and respond to acts of violence against women and ensure access to justice has

¹⁶ *The Russian Orthodox Church Says a New Ban on Domestic Violence Is an Assault on the Holy Scriptures*, MEDUZA (July 5, 2016), <https://meduza.io/en/news/2016/07/05/the-russian-orthodox-church-says-a-new-ban-on-domestic-violence-is-an-assault-on-the-holy-scriptures>, archived at <https://perma.cc/4M4F-SWQM>.

¹⁷ *The Duma’s War on Women*, *supra* note 1.

¹⁸ Kozlova, *supra* note 6.

¹⁹ Bill No. 26265-7 on Amending Article 116 of the Criminal Code of the Russian Federation (in Regard to Criminal Responsibility for Battery), STATE DUMA OF THE RUSSIAN FEDERATION, LEGISLATIVE HISTORY DATABASE, <http://asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29?OpenAgent&RN=26265-7&02> (in Russian; last visited June 15, 2017), archived at <https://perma.cc/9SYY-9VKB>.

²⁰ Law No. 8-FZ, Feb. 7, 2017, SZRF 2017, No. 7, Item 1027, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102424494&intelsearch=07.02.2017+N+8-%D4%C7> (in Russian), archived at <https://perma.cc/9M2Y-VKLP>.

²¹ For the definition of “aggravated battery,” see discussion in Part II of this report.

²² *Kremlin Commented on Decriminalization of Domestic Violence*, LENTA.RU (Jan. 25, 2017), <https://lenta.ru/news/2017/01/25/violence2/> (in Russian; translated by author), archived at <https://perma.cc/PY83-H5AD>.

been recognized by the UN Committee on the Elimination of Discrimination Against Women²³ and the European Court of Human Rights.²⁴

The Secretary General of the Council of Europe noted that “reducing battery within the family from a criminal to an administrative offense, with weaker sanctions for offenders, would be a clear sign of regression within the Russian Federation and would strike a blow to global efforts to eradicate domestic violence.”²⁵ He noted that Russia is bound by the European Social Charter, which requires States Parties to protect children against violence.

Russia is among only four out of forty-seven Member States of the Council of Europe who have neither signed nor ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence,²⁶ which criminalizes all acts of physical, sexual, or psychological violence within the family and between former or current spouses and partners.

According to Human Rights Watch (HRW), the February 2017 amendment was “dangerous and incompatible with Russia’s international human rights obligations.”²⁷ The failure to adequately protect victims of domestic violence and ensure access to justice violates Russia’s international human rights obligations, HRW said.²⁸ Russia is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which prohibits violence against women, whether public or in private, and establishes such violence as a form of discrimination. In a 2015 review of Russia, the CEDAW Committee noted “the high prevalence of violence against women” and criticized the absence of legislation to prevent and address violence against women, including domestic violence.²⁹ Russia is also a party to the Convention on the Rights of the Child, which prohibits violence against children, including in the family. In a 2014 review of Russia, the UN Committee on the Rights of the Child urged Russia to prioritize the elimination

²³ *A.T. v. Hungary*, CEDAW Comm., No. 2/2003, U.N. Doc. CEDAW/C/32/D/2/2003 (2005), <http://www.un.org/womenwatch/daw/cedaw/protocol/decisions-views/CEDAW%20Decision%20on%20AT%20vs%20Hungary%20English.pdf>, archived at <https://perma.cc/NF5U-V44E>.

²⁴ Lee Hasselbacher, *State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, and International Legal Minimums of Protection*, 8 NW. J. INT’L HUM. RTS. 192, ¶ 8 (2010), <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1098&context=njihr>, archived at <https://perma.cc/5LXR-JB8X>.

²⁵ Press Release, Council of Europe, Russia: Decriminalising Domestic Violence Would Be a Clear Sign of Regression, Says Secretary General Jagland (Jan. 16, 2017), <http://www.coe.int/en/web/istanbul-convention/-/russia-decriminalising-domestic-violence-would-be-a-clear-sign-of-regression-says-secretary-general-jagland>, archived at <https://perma.cc/7BL9-2MRK>.

²⁶ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Council of Europe Treaty Series No. 210, <https://rm.coe.int/168008482e>, archived at <https://perma.cc/YZ6B-Y3G4>.

²⁷ *Russia: Bill to Decriminalize Domestic Violence: Parliament Should Reject Measure that Harms Families*, HRW (Jan. 23, 2017), <https://www.hrw.org/news/2017/01/23/russia-bill-decriminalize-domestic-violence>, archived at <https://perma.cc/ZE78-AWLT>.

²⁸ *Id.*

²⁹ CEDAW, Concluding Observations on the Eighth Periodic Report of the Russian Federation, U.N. Doc. CEDAW/CO/RUS/8 (Nov. 20, 2015), available at http://www.hr-dp.org/files/2016/08/04/Committee_on_the_Elimination_of_Discrimination_against_Women_Concluding_Observations_on_the_Eighth_Periodic_Report_of_the_Russian_Federation.pdf, archived at <https://perma.cc/DVQ9-94W6>.

of all forms of violence against children and prohibit all forms of corporal punishment, including in the home.³⁰

³⁰ UN Committee on the Rights of the Child, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of the Russian Federation, U.N. Doc. CRC/C/RUS/CO/4-5 (Jan. 31, 2014), *available at* http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/RUS/CRC_C_RUS_CO_4-5_16305_E.pdf, *archived at* <https://perma.cc/PVG4-DS8Y>.