

Russian Federation

The Russian judiciary remains subject to executive, military and private influence and corruption. The lack of resources is so overwhelming that it prevents the judiciary from working properly. Defence lawyers are increasingly becoming the targets of police harassment.

The Russian Federation consists of 89 territorial units, which include 21 republics, one autonomous region, 49 administrative units, six provinces, ten autonomous districts and the cities of Moscow and St. Petersburg, which have federal status.

The legislative power is vested in the Federal Assembly, which comprises two chambers. The lower house, the Duma, consists of 450 deputies, 50% of whom are elected in single mandate constituencies, with the other 50% being elected by party lists. The Federation Council (upper house) has 178 members, half of whom are the Chief Executives of the regional administrations (many of whom have been appointed by the President), and the others being the 89 chairpersons of the regional legislatures.

The executive consists of an elected President who is the head of state and a government headed by a Prime Minister. The President is elected for a term of four years. The President, with the consent of the Duma, appoints the Prime Minister.

The Constitution provides the President with substantial powers. According to Article 80, the President is the guarantor of the Constitution and of human and civil rights. Article 84 of the Constitution enables the President to introduce draft laws in the Duma and Article 90 empowers the President to issue decrees and executive orders. The Federal Assembly cannot annul these decrees, it can only advise on them. The President may also veto legislation from the Assembly.

Moreover, Article 85 gives the President the right to suspend acts by organs of the executive power, pending the resolution of the issue in court, if such acts contravene the Constitution of the Russian Federation and federal laws, the international obligations of the Russian Federation, or violate human and civil rights and liberties.

The year 1999 was a turbulent year for Russia with the war in Chechnya, bomb explosions in Moscow, the sacking of two governments within 3 months, several attempts to impeach the President and the poor health of President Boris Yeltsin which triggered speculations about his succession.

On 31 December, Boris Yeltsin resigned from office. According to the Constitution, the Prime Minister, Mr. Vladimir Putin, became acting President. Elections were held in March 2000 and Mr. Putin was voted in as President. Mr. Putin has been the driving force behind Russia's military campaign in Chechnya and has reiterated on numerous occasions Russia's commitment to defeating the separatist rebels.

Elections for the Duma took place in December, in addition to elections for the post of mayor of Moscow and elections for regional governors in eight regions. Yury Luzhkov from the Fatherland Party (OVR) was elected mayor of Moscow. The pro-government party, Unity, was the main victor in the elections for the Duma and because of the alliance with the Union of Rightist Forces (SPS), pro-government parties won the majority in the Duma. Because of

the war in Chechnya no elections could be organised there and consequently the one seat in the Duma for Chechnya was not filled.

Chechnya

On 12 March 1992, the Constitution of the Chechen Republic was adopted by the Chechen parliament. The self-proclaimed Chechen Republic is, however, not recognised by Russia or the United Nations. A brutal war erupted in 1994 which ended in 1996 with a peace agreement. According to this accord an agreement on Chechnya's constitutional status was postponed until 2001. When Russia was admitted to the Council of Europe it promised that "those found responsible for human rights violations will be brought to justice - notably in relation to events in Chechnya" (Opinion 193 (1996) on the Russian Federation's request for Membership of the Council of Europe, paragraph 17 vii). Few, if any, of the perpetrators, however, have been brought to justice.

On 12 May 1999, President Yeltsin and the Chechen President, Aslan Maskhadov, signed a peace treaty in which Russia agreed not to use force to settle disputes. This agreement was, nevertheless, broken in September 1999. In August and September several bombs exploded in Russia killing about 300 people. Islamic militants from the Northern Caucasus were blamed for these attacks, it being supposed that they were in revenge for actions of the Russian military in the Northern Caucasus against Islamic militants who were invading Dagastan from Chechnya. Nobody, however, claimed responsibility for the bomb attacks.

After the explosions, several Russian cities launched a campaign against temporary residents who were forced to re-register with the authorities, despite the fact that the Constitutional Court had earlier ruled that these local regulations were unconstitutional. Caucasians were the main target of the authorities and many of them faced expulsion or harassment.

The Moscow-based ICJ affiliate, the International Protection Centre, reported numerous cases of police harassment and human rights abuses against persons from the Caucasus throughout the Russian Federation. The Centre said that the entire Chechen population in the Federation was being subjected to harassment and discrimination.

In response to the unrest in the North Caucasus and the bomb explosions, at the end of September 1999 the Russian Government launched a campaign of air strikes, combined with ground attacks, against Chechnya. By November the indiscriminate bombings carried out by the Russian forces in Chechnya had resulted in the death of an undisclosed number of non-combatants, with around 200,000 refugees having fled to neighbouring Ingushetia and many civilians remaining trapped in the battered city of Grozny, the capital of Chechnya.

It became evident that the Russian military was using disproportionate violence against Chechnya, which violated, on a large scale, international human rights and humanitarian law. Various Russian and international non-governmental organisations (NGO's) and journalists reported summary executions of civilians, torture, arbitrary detention, rape and other serious human rights violations. On 6 December 1999, the Russian Government gave the civilian population of Grozny until 11 December 1999 to leave or face death. This ultimatum was criticised severely by the international community. Meanwhile, it was also recognised that the Chechen rebels were also committing serious human rights violations.

Several NGO's, among them Amnesty International, reported on the existence of so-called "filtration camps" in which Chechens whose names were on lists of suspected terrorists, including women and children, were detained and reportedly tortured and ill treated. In the 1994-1996 war between Russian and Chechnya these camps had also existed.

The ICJ, in a press release on 14 October 1999, called upon the government of the Russian Federation to refrain from the use of indiscriminate force against civilians, to bring the actions of its agents into conformity with international standards and to find a peaceful resolution to the conflict. The ICJ condemned the use of force by the Russian army against civilian targets in and around Grozny. The ICJ stated that:

By bombing civilian targets, the Russian army violates the right to life of unarmed civilians. International humanitarian law provides that non-combatants are protected and that there can be no justification whatsoever for the use of force against them. Common Article 3 of the 1949 Geneva Conventions provides that "Persons taking no active part in the hostilities...shall in all circumstances be treated humanely...." Article 3 also expressly prohibits "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture....".

Foreign and Russian journalists who reported on the situation in Chechnya were not allowed to enter the Republic, were monitored in their work and were threatened by the Russian authorities with withdrawal of their accreditation.

The UN High Commissioner for Human Rights, Mrs. Robinson, visited Russia from 11 to 18 June 1999, but was refused access to the northern part of Chechnya which was under the control of Russian troops. Mrs. Robinson had criticised the serious violations of human rights by Russia in several statements. Other international organisations, such as the Organisation for Security and Co-operation in Europe (OSCE) were also denied access to the northern part of Chechnya.

On 13 December, the Secretary-General of the Council of Europe requested the Russian Federation to give an explanation for the human rights violations in the war in Chechnya with regard to Russia's obligations under the European Convention on Human Rights. The request was made in accordance with Article 52 of the Convention.

NGO's were already calling in December 1999 for an independent commission of inquiry to investigate violations of international law by the Russian forces in Chechnya. From 31 March to 4 April 1999 the High Commissioner for Human Rights visited Moscow, Ingushetia, Dagastan and Chechnya and reported on her findings to the 2000 session of the UN Commission on Human Rights. The Commission consequently adopted a resolution on Chechnya calling upon the Russian Federation:

to establish urgently, according to recognized international standards, a national, broad-based and independent commission of inquiry to investigate promptly alleged violations of human rights and breaches of international humanitarian law committed in the Republic of Chechnya in order to establish the truth and identify those responsible, with a view to bringing them to justice and preventing impunity.

The resolution also requested the relevant UN special rapporteurs to undertake missions to Chechnya and the neighbouring republics.

Applicable Law

On 3 February 1999, President Maskhadov declared Shari'a law to be applicable in Chechnya and signed several decrees to bring local legislation in line with it. In addition, the President ordered the drafting of a new Constitution and criminal code based on Shari'a law, but at the time of writing this was not yet completed.

In March 1999 public executions took place in Chechnya, receiving strong condemnation from the Council of Europe's Parliamentary Assembly as the executions were in clear violation of the obligations of membership of the Council of Europe. More such sentences have reportedly taken place in Chechnya since February 1999.

Human Rights Background

The human rights situation remained poor in 1999 with human rights abuses being perpetrated by both sides in the war in Chechnya, particularly attacks on journalists, police torturing with almost impunity and administrative harassment of numerous non-governmental organisations.

Contrary to the opinion of the Russian Ombudsman for Human Rights (see below), freedom of the press was not guaranteed in Russia during 1999. Journalists were harassed and intimidated when they voiced critical views of the government and newspapers were pressured to publish material in accordance with the opinions of politicians. Many internet providers suffered from administrative harassment when they refused to install surveillance hardware.

Anti-Semitism mounted in Russia with several attacks on synagogues and anti-Semitic language being used by politicians. The UN Special Rapporteur on Racism and Racial Discrimination stated in his report to the 1999 UN Commission on Human Rights:

there are strong ties between political elites and the ultra-nationalist movements, which often leads to discrimination against Jews in the public economic sector. More direct attacks on the Jewish community receive little attention, either from the press or the judicial system.

Death Penalty

When it joined the Council of Europe in February 1996, the Russian Federation had to commit to the suspension of all executions, pending the full abolition of the death penalty within three years. On 16 April 1997, Russia signed the sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms which bans capital punishment. However, it was only on 12 February 1999, that the Russian Government issued a formal moratorium on the death penalty, just two weeks before the deadline. At the time of writing the sixth Protocol had not yet been ratified.

On 3 June 1999, President Yeltsin signed a decree that pardoned all prisoners on death row and commuted their death sentence to prison terms ranging from 25 years to life imprisonment. The decision was made on the recommendation of the Presidential Pardons Commissions. The death penalty, however, has not been removed from the Russian Criminal Code.

On 2 February 1999, the Constitutional Court suspended executions in Russia as legislation was about to be introduced which would allow the death penalty to be imposed only after trial by jury. Only nine out of the 89 territorial units have a jury system.

Torture

Torture is forbidden by Article 21 of the Constitution, but has not been defined in the Criminal Code and therefore it is difficult to charge perpetrators. Instead, police can only be accused of "exceeding" granted authority.

Torture by the police in order to extract confessions is systematic in the Russian Federation. In addition, prosecutors often use coerced confessions in court and fail to investigate torture allegations promptly and adequately.

Human Rights Watch, a non-governmental human rights organisation, reported in its 2000 World Report the appalling case of Aleksei Mikheev who was detained on misdemeanour charges, but was subsequently questioned on charges for murder and rape. After being tortured by the police, Mr. Mikheev confessed to the murder and when the police forced him to confess five more murders, he jumped out the window of the interrogation room, breaking his spinal cord. Several days later, the women who Mr. Mikheev supposedly had murdered appeared to be alive. The Prosecutor then obstructed the investigation into Mr. Mikheev's torture allegations.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment provides for the setting up of an international committee empowered to visit all places where persons are deprived of their liberty by a public authority. Russia ratified the Convention on 5 May 1998, which was followed by the first mission of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to Russia, from 16 to 30 November 1998. The CPT's delegation focused its attention on pre-trial detention and the treatment of persons deprived of their liberty by the militia.

The CPT carried out a second mission to Russia from 30 August to 15 September 1999 within the framework of its periodic visits. In accordance with Article 11 of the Convention, the information gathered by the CPT during its visit to the Russian Federation and its consultations with the authorities are confidential. The government can decide to publish the findings but as to date the Russian Government did not make public any document.

Pre-Trial Detention

Defendants often spend much time in pre-trial detention without being allowed to consult a lawyer. Judges can also send back cases several times for investigation which makes the pre-trial detention period even longer. The penal system in general is overloaded, with poor and sometimes life threatening conditions for the prisoners.

The police are allowed, by presidential decree, to detain a person suspected for organised crime for up to 10 days without official charges. Investigations often drag for many months and suspects can be in pre-trial detention for longer than their official sentence. Prosecutors can extend the period of criminal investigation to 6 months in complex cases and even until

18 months in exceptional cases. The court system is overloaded and as a result suspects can be in pre-trial detention even longer.

Aleksandr Nikitin

In last year's edition of *Attacks on Justice* the case of Aleksandr Nikitin, a retired naval officer and environmental activist of the Bellona Foundation, was described. Mr. Nikitin was arrested and charged with treason under Article 64 of the Russian Criminal Code. The UN Working Group on Arbitrary Detention took up the case because the principle of due process had been severely violated, and the arrest was part of a pattern of persecution of environmental activists from the Bellona Foundation. The European Union, the Council of Europe and the OSCE had also expressed concern about the trial of Mr. Nikitin.

The government maintained that Mr. Nikitin was not charged with treason in relation to environmental issues, but rather in relation to state secrets. On 29 December, Mr. Nikitin was cleared of treason after he had been in prison for 10 months and under house arrest almost 3 years.

Visit by Human Rights Ombudsman to the ICJ

The Russian Federation complied with the Council of Europe's obligation to create a human rights ombudsman when the Duma passed a law in 1997 providing for such an institution. The post, however, remained open until May 1998 when Oleg Mironov, a Communist Party deputy for the Duma who was not known for any human rights work, was appointed.

On 16 December 1999, Mr. Mironov met with the ICJ and the CIJL in Geneva. The Ombudsman stated that his office receives 2,000 complaints per month. The subject of the complaints are the following: 31% of the complaints are civil law problems such as housing, 30% of the complaints are criminal law problems such as unlawful detention and failure to sue when rights are violated, 15% of the complaints are labour law problems and in particular non-payment of salaries, 3% of the complaints are complaints from the military and their families, and the remainder of the complaints come from refugees and internally displaced persons.

The Office of the Ombudsman is funded from the federal budget and has 115 staff. The Ombudsman may initiate civil and criminal action, ask the Duma to investigate violations of human rights and send reports to the President and the Prime Minister

With regard to prison visits, the Ombudsman is said to visit regularly mental clinics, orphanages and refugee camps. The Ombudsman acknowledged that pre-trial conditions are very poor mainly because the pre-trial detention centres are overcrowded. Prison conditions are supposedly much better, but food and medication shortages exist, due to the bad economic situation.

When questioned about his actions with regard to the war in Chechnya, the Ombudsman refused to accept that the Russian forces commit serious human rights violations. He only stressed that the rebels commit human rights violations in Chechnya.

The Judiciary

Although the Constitution provides for an independent judiciary, in practice it has encountered difficulties securing its independence. While formal supervision of the courts is assigned to the Supreme Court of Justice, executive organs play an important role in relation to the judiciary and the judiciary remains subject to executive, military and private influence and corruption.

The tradition of the Soviet era, which regarded the judiciary as an administrative function, continues to prevail. Reforms in the 1990's have focused on strengthening the independence of the Russian judiciary. However, the system continued to permit significant political influence through the appointment of judges due to the lack of resources allocated to the judiciary. In addition, the judges themselves have as yet failed to understand the concept of judicial independence.

A 1996 law separated the courts from the Ministry of Justice and placed them within a separate part of the Judicial Department. The Ministry of Justice previously exercised extensive control over the judiciary. In the 1998 and 1999 budgets, this department was funded independently from the Ministry.

Court Structure

The Russian judicial system comprises courts of general jurisdiction, which include a Supreme Court and lower ordinary District and Municipal Courts (rayoniye) from which decisions are appealed to the Regional and City Courts (oblastniye). There are also arbitration courts that consider disputes between business entities and arbitration courts that decide on economic disputes brought against the government.

Military courts are organised into a special branch of the judiciary. They are regulated by a special statute and were criticised in 1995 by the United Nations Human Rights Committee with regard to their jurisdiction over civil cases.

Article 125 of the Constitution provides for a Constitutional Court which consists of 19 judges. The judges are nominated by the President and then appointed by the Federal Council. The Constitutional Court of the Russian Federation reviews the constitutionality of the law applied in a specific case in accordance with procedures established by federal law. It interprets the Constitution of the Russian Federation and rules on requests of the Federation Council, in compliance with established procedures, when charging the President of the Russian Federation with state treason or other grave crimes.

The 1993 Constitution empowers the Constitutional Court to arbitrate disputes between the executive and legislative branches and between Moscow and the regional and local government. The court is also authorised to rule on violations of constitutional rights, to examine appeals from various bodies and to participate in impeachment proceedings against the President. The July 1994 Law on the Constitutional Court prohibits the court from examining cases on its own initiative and limits the scope of the issues the court can hear. The Constitutional Court has assumed an active role in the judicial system since it was re-established in early 1995 following its suspension by President Yeltsin in October 1993 (see Attacks on Justice 1996).

The Supreme Court is established by Article 126 of the Constitution. The Supreme Court is the highest judicial body on civil, criminal and other matters heard by general jurisdiction

courts, and has judicial supervision over their activity in line with federal procedural forms. It can also offer explanations on judicial practice. The Supreme Arbitration Court is regulated by Article 127 of the Constitution. It is the highest judicial body resolving economic disputes and other cases considered by arbitration courts, it also carries out judicial supervision over their activities in line with federal legal procedures and offers explanations of judicial practice.

Appointment, Qualification and Tenure

Article 83 and Article 128 of the Constitution state that judges of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation are appointed by the Federation Council following nomination by the President of the Russian Federation. Judges of other federal courts are appointed by the President of the Russian Federation in accordance with procedures established by federal law.

According to Article 119 of the Constitution a judge must be at least 25 years old, must have a higher education in law and must have at least five years experience in the legal profession. The federal law may establish additional requirements for judges in the courts of the Russian Federation.

The Law on the Status of Judges then requires a judicial candidate to take a qualifying examination administered by the Examination Commission, which is composed of executive appointees who are approved by the Qualifying Collegium of Judges. The Qualifying Collegium is charged with reviewing applications of candidates for posts in federal courts; if they approve a candidate, the President reviews the application for final approval or rejection. The President thus has the power to veto candidates selected by the Qualifying Collegium.

Judges of the Supreme Court are required to have ten years of experience and are selected directly by the President of the Russian Federation. The Federation Council then confirms the nomination.

Courts of first instance in civil and criminal matters consist of one professional judge and two so-called "people's assessors", who have all the powers of the professional judge. They are elected for a term of two years and they cannot be called for more than two weeks during the year.

Discipline

The Qualifying Collegia are in charge of the discipline and supervision of the judiciary. The Qualifying Collegia are composed of judges elected by the Congresses of Judges at the district, regional and federal levels. The Constitution establishes that a judge may not have his powers terminated or suspended except under procedures and on grounds established by federal law. Articles 13 and 14 of the Law on the Status of Judges establish the conditions for the suspension of a judge, as well as the grounds for removal.

Article 13 of the Law on the Status of Judges establishes that a judge may be suspended for involvement in criminal activity, undertaking activities incompatible with his post or for medical reasons. Suspensions may be appealed.

Resources

Due to low judicial salaries many judicial posts remain vacant, and in addition trigger corruption (see *Attacks on Justice 1998*). In 1998, the Supreme Court successfully challenged the budget cuts of 26% before the Constitutional Court, but courts did not, however, receive full funding.

According to the Constitution, the federal government should finance the courts. However, due to budget cuts, the courts are often dependent on funding from local governments, which increases the risk of improper political influence. The lack of resources is so overwhelming that it prevents the judiciary from working properly. There are reports of courts functioning without telephone, electricity and other vital services. Some courts cannot even send orders to witnesses to attend trials because of a lack of envelopes and stamps, etc.

Lawyers

According to Dmitriy Baranov, Vice-President of the Association of Lawyers of Russia, defence lawyers are increasingly becoming the targets of police harassment. This is confirmed by other professional associations and applies for the whole of the Russian Federation.

NGO's have reported that in many cases investigators deny access to lawyers. In addition, if defendants have to rely on court-appointed public defenders the quality of the service provided is often poor.

In March, the Supreme Court ruled that defence attorneys are allowed to appeal the actions of the Procuracy and investigative officials to a court and declared Articles 218 and 220 of the Criminal Procedure Code unconstitutional. These articles had allowed appeals during pre-trial detention only to a supervising procuracy, not a court.

Prosecutors are extremely powerful in the criminal procedure system and judges are said to tend to refer cases for additional investigation when no guilt is proven rather than face confrontation with a prosecutor. In April 1999, the Constitutional Court ruled that several provisions of the Criminal Procedure Code that allow judges to return criminal cases for further investigation are unconstitutional.

Cases

Tatyana Loktionova (Chair of the Primorskiy kray Arbitration Court): In July Ms. Loktionova announced that the governor of Primorskiy kray, Mr. Yevgeniy Nazdratenko, had been interfering in the court's activities and that consequently, she and her colleagues feared for their safety. Mr. Nazdratenko had apparently blamed the court for causing enterprises in the region to go bankrupt and damaging the economy, and launched an investigation into the functioning of the Arbitration Court for illegal conduct.

Vasiliy Rakovich (human rights lawyer and Chairperson of Krasnodar Regional Association for Human Rights): In last year's edition of *Attacks on Justice* it was mentioned that Mr. Rakovich was attacked and severely beaten on 23 October 1998.

At that time Mr. Rakovich was appearing as defence council in the trial of Vasiliy Chaikin, a human rights activist, before the City Court of Stanitsa Leingradskaya, in the Krasnodar region. It is suspected that the attacks were linked to the Chaikin case as Mr. Rakovich had called for a criminal case to be opened into allegations that witnesses' testimonies were obtained under duress by the Chief Investigator, Mr. Tsaturyan. The Leningradsky District Department of Internal Affairs has opened a criminal investigation into the attack on Mr. Rakovich, but at the time of writing no progress was known.

In March 1999, Mr. Rakovich was detained for 3 days on a charge of "disrespect for the court".

Yury Skuratov (Prosecutor-General): Mr. Skuratov resigned on 2 February 1999, officially for health reasons. On 17 March, the Federation Council, however, refused the resignation in a vote. It then became clear that Mr. Skuratov was pressured to resign from his post by the presidential administration. Allegedly the Prosecutor-General was forced to resign because he had discovered a corruption scandal that involved the head of the Presidential Administration Office, Mr. Borodin, and the Swiss construction company Mabetex that had carried out reconstruction work in the Kremlin.

On 23 February, Mr. Skuratov began an official investigation into the allegations of corruption regarding Mabetex and Mr. Borodin. Swiss prosecutors revealed in July that a criminal investigation was launched against Mr. Borodin on corruption charges.

In April, Mr. Berezovsky, a tycoon with strong ties to the Russian presidential entourage, was arrested in a money laundering scandal. Mr. Skuratov was apparently preparing a case against him.

On 2 April, Mr. Skuratov was suspended by decree by Boris Yeltsin pending charges in a sex scandal and, consequently, submitted again his resignation, which was again refused by the Federation Council in a vote. Mr. Skuratov, however, remained suspended. On 13 October, the Federation Council refused for the third time to accept Mr. Skuratov's resignation.

The Federation Council then put the case before the Constitutional Court and on 1 December the court ruled that the President had the right to suspend Mr. Skuratov pending charges in a sex scandal. The court, however, also ruled that Mr. Yeltsin could not overrule the Federation Council in its decision not to accept the resignation of Mr. Skuratov.