

THE RUSSIAN FEDERATION

The judiciary required extensive reform. President Putin has announced a commitment to such reforms, but they had yet to be implemented. Many judges did not function independently and corruption and bribery remained rampant.

Following the collapse of the Soviet Union, the Russian Federation gained independence on 24 August 1991 and adopted its Constitution on 12 December 1993. 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 President is the head-of-state. He is elected by direct, popular vote for a term of four years. The President, with the consent of the *Duma*, appoints the Prime Minister. The Prime Minister heads the government.

The legislative power is vested in the Federal Assembly, which comprises two chambers. The lower house, the *Duma*, consists of 450 deputies, 50 per cent of whom are elected in single mandate constituencies, with the remaining half elected from party lists. The Federation Council (upper house) has 178 members. Under the previous system, half of them were the Chief Executives of the regional administrations (many of had been appointed by the President), and the others were the 89 chairpersons of the regional legislatures. However, President Putin successfully pushed for legislation that stripped the regional leaders of their seats in the Federation Council. Each region now sends two representatives to the Federation Council: one nominated by the governor and approved by the regional legislature, and the other elected from among candidates nominated by the Speaker of the regional legislature or one third of the deputies.¹

The *Duma* was newly elected on 19 December 1999. The Inter-regional Movement “Unity”, which had been formed in September to contest the elections on behalf of the Russian government and the Yeltsin presidency, won 24.29 per cent of the vote, thereby securing the largest vote among the competing blocs. Communist Party of the Russian Federation (KPRF) came in second place. Because of the alliance of the “Unity” with the Union of Rightist Forces (SPS), pro-government parties won the majority in the *Duma*. Due to the ongoing war in Chechnya, no elections could be organised there and consequently the one seat in the *Duma* reserved for Chechnya was not filled. On 20 August 2000 a by-election was held to fill that vacant seat. Aslan Aslakhanov, a senior Interior Ministry official, won with 31 per cent of the vote.²

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 adopted by the Assembly. Article 85 gives the President the authority to suspend acts by organs of the executive, 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 if they violate human and civil rights and liberties.

¹ Keesing 6/2000.

² Keesing 8/2000.

On 31 December 1999, President Boris Yeltsin resigned from office in advance of the expiry of his term. In accordance with the Constitution, the Prime Minister, Mr. Vladimir Putin, became acting President. The presidential elections were held on 26 March 2000. Vladimir Putin competed with ten other candidates and won with 52.94 per cent of the vote, thereby making a second round of vote unnecessary.³

The Organisation for Security and Cooperation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) published a report on their election observation. This report noted that "(i)n general, and in spite of episodic events that sometimes tested the system's capacity to uphold principles of fairness and a level playing field, the presidential election was conducted under a constitutional and legislative framework that is consistent with internationally recognised democratic standards (...). The Central Election Commission performed effectively as an independent and professional body that endeavoured to fully implement the electoral legislation on an equal basis. The competence and expertise of election administrators to carry out well-organised and accountable elections is fully institutionalised." Nevertheless, the report also highlighted some shortcomings. It commented that despite a legal framework that provides liberal rules for the formation of political parties and blocs, a strong "party system" had yet to develop. Another matter of concern noted in the report, was the dependence of much of the media on subsidies from the State and regional authorities and the vulnerability of the opposition and independent media to administrative pressure.

The International Election Observation Mission, however, declined to observe polling day activities in the Chechen Republic. In 12 of the 15 districts of the Chechen Republic polling took place. In the final report the OSCR noted that "(S)tandard conditions for pre-election activities, candidate campaigning, opportunities for domestic observation and full transparency of polling and counting processes did not exist."⁴

Vladimir Putin was formally inaugurated as the new Russian President on 7 May 2000. After his inauguration Putin relinquished the post of Prime Minister and formed a new Russian government. He nominated the former First Deputy Prime Minister Mikhail Kasyanov as Russian Prime Minister on 10 May 2000. The Duma confirmed this nomination on 17 May 2000.

During his first weeks in office Putin began to diminish the power of the elected regional governors in Russia's 89 constituent regions and republics. On 13 May 2000 he issued a decree that formed seven federal districts which largely correspond to Russia's military districts. These districts are the Central, Northwest, North Caucasus, Volga, Ural, Siberian and the Far Eastern Federal district. Putin renamed the North Caucasus federal district by a decree on 23 June 2000 as Southern federal district because it included regions not officially part of the North Caucasus. These districts are headed by presidential envoys who supervise the compliance of the local regions with Russian federal legislation. They are funded by Moscow, so as to prevent any possibility of the regional governors to impede their work.⁵ This new system changed the previous system under which there was one presidential representative in each of the 89 constituent regions beside the more powerful elected regional governors. The seven presidential envoys include only two civilians and senior officers from the military or the security services.

President Putin also pushed through further legislation that curtailed the power of the regional governors. These bills extended the president's power to remove

³ OSCE Final Report on the Presidential Elections.

⁴ OSCE Final Report on the Presidential Elections.

⁵ Kessing 5/2000.

incompetent governors, and the governor's *ex officio* right to seats in the Federation Council was abolished.⁶

On 1 September 2000 President Putin issued a decree which formed the State Council of the Russian Federation. This new body consists of the leaders of the 89 constituent parts of the Russian Federation. The State Council has only consultative power and the participation is voluntary. It advises the President mainly on matters regarding the central administration and the regions.⁷

Chechnya

Chechnya broke away from Russia in 1991 and on 12 March 1992, the Constitution of the Chechen Republic was adopted by the Chechen Parliament. However, the self-proclaimed Chechen Republic is 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.

In September 1999 the war in Chechnya broke out for the second time and Russia's armed forces began bombing the Chechen capital Grozny and moving into Chechnya. In February 2000 federal forces took control of Grozny. On 8 June 2000 President Putin introduced "temporary" direct presidential rule in Chechnya. The Russian President appointed Mufti Akhmed Kadyrov as the interim head of administration in Chechnya, to be supervised by the presidential representative in the Southern federal district. However, frequent violent incidents demonstrated Russia's difficulties to control the Chechen fighters. There were also several reports of Chechen fighters killing pro-Russian Chechens in the Russian administration.⁸

On 19 January 2001 Putin issued a decree which gave more autonomy to the local administration. He appointed Stanislav Ilyasov, former head of the Stavropol krai government, as Chechen Prime Minister and first deputy to Mufti Akhmed Kadyrov.⁹

On 22 January 2001 President Putin issued a decree which transferred control of operations in Chechnya from the Defence Ministry to the Federal Security Service (FSB). He announced that most Defence Ministry and Interior Ministry forces would be withdrawn from the region because there were no longer any large-scale hostilities in Chechnya. On 6 May 2001 the Russian Defence Minister announced the completion of Russian troop withdrawals from Chechnya. At that point only 5,000 of the estimated 80,000 troops stationed in Chechnya had been withdrawn although Putin had announced in January that the majority of forces would be withdrawn.¹⁰

The Russian Presidential representative in the Southern Federal District appointed Beslan Gantemirov, the former mayor of Grozny, to the newly created post of federal inspector on 13 June 2001. This post entails the drafting of a constitution and the preparing of elections for Chechnya.¹¹

The low-level conflict in Chechnya, with frequent clashes continued. Moscow has established shaky control over the territory and says it is making progress in restoring peaceful life though its troops still die almost daily from rebel attacks.

⁶ Keesing 7/2000.

⁷ Keesing 9/2000.

⁸ Keesing 10/2000.

⁹ Keesing 1/2001.

¹⁰ Keesing 5/2001.

¹¹ Keesing 6/2001.

HUMAN RIGHTS BACKGROUND

Mass violations of human rights in Chechnya continued unabated during the period covered in this report. There also continued to be reports throughout the country alleging numerous instances torture and ill-treatment of detainees in police custody and during pre-trial detention. Torture by the police in order to extract confessions was said to be systematic.¹² In addition, prosecutors often use coerced confessions in court and failed to investigate torture allegations promptly and adequately.¹³ Prisons and pre-trial detention centres are severely overcrowded, and there is a lack of adequate food and medical care. As a result, it is reported that more than 10,000 inmates die every year.¹⁴ There are reports of widespread torture and ill-treatment in the Russian armed forces that result in deaths of soldiers and officers.

Freedom of the media

The independence and freedom of expression of the media have come under threat. Access to Chechnya was denied to the media. The major media was said to be reluctant to examine or challenge Government policy and activities in Chechnya for fear of.¹⁵

The media conglomerate Media Most was target for its critical reporting. This outlet included the independent television station NTV the radio station *Ekho Moskvy*, the daily newspaper *Sevodnya*, and the weekly news magazine *Itogo*, which had been critical of many government policies, particularly its conduct of the war in Chechnya. They had also criticised the handling of the sinking of the nuclear submarine *Kursk* in August 2000.¹⁶ Media Most was indebted to the state-controlled energy company Gazprom and charges of embezzlement were brought against owner Vladimir Gusinsky. In May 2000 its offices were raided and Gusinsky was arrested, but released for lack of evidence in June 2000. The ongoing prosecution of Gusinsky, the involvement of Mikhail Lesin, the Minister for the Press, Broadcasting, and Mass Media, in the commercial negotiations between Gazprom and Media Most, suggested that the true intentions of the Russian authorities were politically motivated. Although the authorities have denied such motivations, many independent observers believed that the main goal of these actions was to move Media Most under Gazprom control so as to stem critical reporting. This goal was finally achieved in April 2001 when Gazprom took over NTV, the only independent nation wide TV company.¹⁷

Chechnya

Civilian areas were bombed civilians attacked with frequency by Russian armed forces, in clear violation of international humanitarian law. There were reports of extra-judicial executions of hundreds of Chechen civilians and prisoners of war. Journalists and independent monitors were refused access to Chechnya. Chechen rebel fighters targeted members of the Russian-appointed civilian administration and executed Russian soldiers that they captured.¹⁸ Several non-governmental, organisation reported the existence of "filtration camps", in which Chechens suspected of connection with the armed opposition were detained arbitrarily, held without access to relatives or lawyers and reportedly tortured and ill treated. In the 1994-1996 war between Russian and Chechnya such camps been the venue of serious human rights abuses..

¹² Last year's edition of Attacks on Justice and Karinna Moskalenko.

¹³ Last year's edition of Attacks on Justice.

¹⁴ ai report 2001.

¹⁵ hrw report 2001.

¹⁶ Keesing 9/2000.

¹⁷ International Helsinki Federation For Human Rights Report 2001.

¹⁸ ai report 2001.

In February 2001, a mass grave with 51 bodies was discovered in Dachny, an abandoned village close to the main Russian military base in Chechnya. Many of the bodies found were severely mutilated and showed evidence of having been extrajudicially executed and bore unmistakable signs of torture.¹⁹ Of the 19 victims whose corpses were identified by relatives, 16 had reportedly last been seen as Russian federal forces took them into custody. The bodies were dumped among streets in the village and in abandoned cottages over an extended period of time, which provided striking evidence of the practice of forced disappearances, torture, and extrajudicial execution of civilians by Russian federal forces.²⁰

Impunity

Following the first war in Chechnya, the authorities failed to prosecute any of its military personnel for violations of humanitarian law. According to the International Helsinki Federation, Russia's main military procuracy opened and investigated 1,500 criminal cases against Russian soldiers serving in Chechnya. Only 27 were convicted and only six of these convictions involved crimes against the civilian population. Thus far it does not look like the Russian investigations will be any more effective in bringing perpetrators to justice after the second war in Chechnya. Civilian prosecutors charged have no authority to force testimony from Russian military officers and soldiers who may have witnessed the killings.²¹

On 10 July 2001, the European Committee for the Prevention of Torture of the Council of Europe issued a public statement criticised the Russian Federation for failing to cooperate, in investigations into human rights abuses in Chechnya, including by blocking inquiries and preventing publication of the Committee's findings. In a joint statement with several other leading NGOs to the 57th session of the Commission on Human Rights the International Commission of Jurists stated that

Federal authorities in Russia are not committed to a meaningful accountability process. Criminal investigations into abuses by military and police forces in Chechnya have been shoddy, ineffective, and incomplete. The recent trial of a Russian colonel for the murder of a Chechen woman is the exception that shows diligent investigations are possible, but that the political will to follow up on all serious violations has been lacking.

The federal government has not committed the necessary resources to investigations, nor are they empowering the relevant agencies to conduct them. Nowhere is the failure to investigate more obvious than in the mass "grave" at Dachny village, where at least fifty-one bodies were found beginning in January 2001. No autopsies were performed on the corpses, and the authorities have rushed to bury, rather than preserve for the purpose of further investigation, those corpses that have not yet been identified.

¹⁹ hrw Press Release from 10 April 2001 titled "U.N. Resolution on Chechnya Welcomed."

²⁰ hrw "Burying the Evidence: The Botched Investigation into a Mass Grave in Chechnya" released 15 May 2001.

²¹ Article in the Herald Tribune 11 May 2001 titled "Chechen Civilians Doggedly Search for Their Dead."

Russian mechanisms set up to protect human rights

Russia has established several bodies to protect human rights. Although these bodies are weak and lack full independence, they have been increasing their activity.. The Office of the Ombudsman is funded from the federal budget and has 150 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. Oleg Mironov, human rights ombudsman since May 1998, has played an increasing public role and has spoken out against human rights abuses in pre-trial detention and in Chechnya

The Presidential Human Rights Commission investigates complaints and promotes human rights education. This Commission has not played a vital role and only receives limited financial means from the government.

The Office of the Special Representative of the President of the Russian Federation for Ensuring Human and Civil Rights and Freedoms in the Chechen Republic is a nominally independent national commission headed by the former Minister of Justice, Mr. Krasheninnikov. The Office of the Special Representative receives individual complaints and has secured the release of many Chechen detainees in Russian custody. This body has also established a working relationship with the Council of Europe. Three European experts assist in the investigations. Nevertheless, the Special Representative is not empowered to investigate complaints of violations committed by Russian forces.²² The office of the Presidential Representative for Securing and Defending Human Rights and Freedoms in Chechnya, Vladimir Kalamonov, is understaffed, underfunded and the mandate is limited. This body can neither subpoena witnesses nor evidence. It is also not competent to submit evidence to prosecutorial authorities and there is no cooperation with domestic prosecutorial agencies. .²³

INTERNATIONAL HUMAN RIGHTS MECHANISMS

International Obligations

The Russian Federation assumed the membership of the former USSR in the United Nations bodies on 24 December 1991. The Russian Federation has ratified the six main international Treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Council of Europe

On 6 April 2000 the Parliamentary Assembly of the Council of Europe voted to suspend Russia's membership from the Council of Europe unless Russia made substantial progress to end human rights abuses in Chechnya.²⁴ The Committee of Ministers, however, did not follow this recommendation. A majority of the Parliamentary Assembly also voted to withdraw Russia's voting rights. However, on 25 January 2001 the Parliamentary Assembly of the Council of Europe adopted resolution 1241, which reads in pertinent part.²⁵

Despite some recent progress made, the Assembly remains gravely concerned about the human rights situation in the Chechen Republic. It

²² Article in "Human Rights Brief" Center for Human Rights and Humanitarian Law, Volume 8, Issue 2 (Winter 2001).

²³ Keesing 6/2001.

²⁴ Keesing 4/2000.

²⁵ Keesing 1/2001.

nevertheless believes that the Russian parliamentary delegation deserves to be given another chance to prove that it is willing - and able - to influence the situation in the Chechen Republic for the better. The Assembly, having examined the issue, decides to ratify the credentials of the new Russian delegation.

Commission on Human Rights

The Commission on Human Rights in its 56th session in April 2000 adopted the first resolution of the Commission to censure a permanent member of the UN Security Council. This resolution called on the Government, *inter alia*, to establish a national, broad-based and independent commission of inquiry to investigate alleged violations of human rights and breaches of international humanitarian law committed in Chechnya. However, before the 57th session of the Commission in March - April 2001 the Government of the Russian Federation had failed to implement the resolution. In its 57th session the Commission to establish, according to recognised 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 of the Russian Federation in order to establish the truth and identify those responsible, with a view to bringing them to justice and preventing impunity. The resolution also called on the Russian Federation to ensure that both civilian and military prosecutors undertake credible and exhaustive criminal investigations of all violations of international human rights and humanitarian law.

Human Rights Committee

On 20 July 2000 the Human Rights Committee (HRC) decided on a communication submitted to it by Mr. Dimitry L. Gridin, under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). The HCR found numerous violations, including that his arrest without a warrant to constitute an unlawful deprivation of liberty the failure by the trial court to control the hostile court atmosphere and pressure created by the public in the court room, which made it impossible for defence counsel to properly cross-examine the witnesses and

THE JUDICIARY

The judiciary of the Russian Federation is governed by chapter seven of the Constitution. Article 120 of the Russian Constitution provides that judges shall be independent and subordinate to the Constitution and the federal law only. However, in reality the Russian judiciary is still subject to executive, military and private influence and corruption. In addition, one of the main concerns is that so far the judges themselves have failed to understand the concept of judicial independence

Court Structure

The judicial system of the Russian Federation consists of the Constitutional Court of the Russian Federation; constitutional courts of the republics and other entities of the Russian Federation; and a four-tiered system of courts of general jurisdiction, which include a Supreme Court, lower ordinary District and Municipal Courts (*rayoniye*) and Regional and City Courts (*oblastniye*). There are also arbitration courts to consider disputes between business entities and arbitration courts to decide on economic disputes brought against the government. Military courts are organised into a special branch of the judiciary, regulated by a special statute. Their jurisdiction may extend to certain civil

cases, a feature for which Russia was criticised in 1995 by the United Nations Human Rights Committee.

The Constitutional Court, which consists of 19 judges nominated by the President and appointed by the Federal Council, reviews the constitutionality of the law applied in a specific case in accordance with procedures established by federal law. 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 may 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 the highest judicial body on civil, criminal and other matters heard by general jurisdiction courts, and is responsible for judicial supervision over the activity of these courts. The Supreme Arbitration Court 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.

The Supreme Court of the Russian Federation has prepared a draft bill on Administrative Courts. The bill proposes the establishment of 21 such courts, adequately resourced and with well paid specialised judges to deal with appeals and complaints by citizens against unlawful actions of government officials; normative acts by ministries and departments; Presidential decrees; Government decisions; acts promulgated by the Chambers of Parliament; and laws of the subjects of the Russian Federation. Furthermore the administrative courts are to consider cases on violations of electoral and some tax laws and disputes between bodies of state power.²⁶

Appointment, Qualification and Tenure of Judges

Article 83 and Article 128 of the Constitution provide 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 of age, must have attained a higher education in law and must have at least five years experience in the legal profession. The Law on the Status of Judges 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 the Collegium approves 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 “people’s assessors”, who maintain all the powers of the

²⁶ www.supcourt.ru.

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 or her 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. A judge may be suspended, *inter alia*, for involvement in criminal activity. A judge may be removed from office for undertaking activities incompatible with his post or for medical reasons. The decision of suspension or removal may be appealed.

State of the Russian judiciary

One of the principal problems confronting the judiciary is the undue influence of the executive on composition of the courts. First, judges are typically appointed when they are very young and almost always after they have served in a public prosecutor's office or in an investigation office of the police. It is extremely rare for one to be appointed as a judge after having worked as a lawyer. Thus, almost all judges come from an organ of the State. A judge that has previously worked as an investigator may be more reluctant to question the quality of the evidence in a case than would a lawyer from the private bar. Secondly, judges must serve an initial period of three years before they may receive life appointment. During the selection procedure after these three years a selection, judges who were compliant with the executive were said to stand the best chance of receiving a life appointment. (See the case below of **Lubov Osipkina**.) However, even after the initial three years judges are under the constant threat of losing their job. As every judge is routinely overloaded with work, it is reportedly a common practise to dispense with unwanted judges by accusing them of unnecessarily delaying cases and working too slowly. (See the case below of **Tatyana Glazkova**.²⁷)

Although the salaries of judges have increased somewhat, they are still inadequate and the lack of sufficient remuneration contributes to the risk of corruption, including bribery. The material conditions within the judiciary are extremely poor and courts must therefore appeal to local authorities for support, even for elementary expenditures such as stationary, heating and photocopies. (According to the Constitution, the federal government is responsible for financing the courts.) Judges are thus extremely vulnerable to improper influence from and the local authorities on whom they may depend. Another serious problem is the excessive workload that encumbers many judges. Due in part to the low wages, many judicial posts remain vacant, contributing to the backlog and long trial delays.

The decision of the Supreme Court on 13 September 2000 to dismiss the appeal of the prosecution against the acquittal of **Mr. Aleksandr Nikitin** is a sign of progress of the rule of law and independence of the judiciary in Russia. He had been charged with treason in February 1996. His arrest was part of a pattern of persecution of environmental activists from the Bellona Foundation and the principle of due process had been severely violated.²⁸

²⁷ **Ian:** This whole paragraph is from my interview with Karinna Moskalenko. As I do not have the federal laws that precisely describe who recommends the appointment after the three initial years etc. and she did not give me more information than that I did not include it into the para. on "Appointment of judges...". !!!

²⁸ hrw report 2001.

Proposed Judicial Reforms

President Putin himself acknowledged that the Russian judiciary is in dire need of reform. In his second state of the union address to Parliament on 3 April 2001, he referred to the judiciary as a “political problem” because it violates the rights and interests of Russia’s citizens. He recognised that for many people who are seeking to restore their rights in law, the courts have not been quick, fair, and impartial.²⁹

Legal concerns that were under review in the Russian Federation at the time of writing were the role of the Prosecutor General’s Office, the introduction of jury trials, the status of judges and organisation of the bar.³⁰

Implemented Judicial Changes

The institute of the Justices of the Peace was reestablished in Russia in 2000.³¹ During the year about some 1,000 justices of the peace were appointed in 33 regions throughout the country. These judges handle family law and criminal cases where the maximum sentence is two years.³²

Thus far, jury trials have been introduced in only nine regions. Traditionally, many judges in the Russian Federation have shown some favour towards the prosecution. On average, less than one per cent of defendants are acquitted each year. Proponents of introducing jury trials argue that the acquittal rate of juries is about 20 per cent. They argue furthermore that this would also help combat the corruption and bribery of judges.

By the end of September 2001 the new Code of Criminal Procedure had not been adopted by the *Duma*.

Judiciary in Chechnya

The Special Representative of the President of the Russian Federation on the protection of Human and Civil Rights in the Chechen Republic, Mr. Kalamonov, addressing the 57th session of the Commission on Human Rights on 5 April 2001, outlined a number of steps taken to reassert judicial authority and to create an effective judicial system in the Chechen Republic. He reported that as of March 2001 the Supreme Court (six judges) and 12 district courts (four in Grozny and courts in Groznenskoselsky, Naursky, Nadterechny, Urus-Martanovsky, Gudermessky, Shalinsky, Nozhai-Yurtovsky and Vedensky) were operational in Chechnya, with a total of 24 judges as opposed to 10 district courts and 17 judges previously. He reported that during the entire period of their operation the courts had received 1213 civil cases of which 920 were examined, and 178 criminal cases, of which 29 were examined. One hundred criminal cases were forwarded to the Supreme Court of the Russian Federation for determination of jurisdiction. A service of 132 bailiffs had been established to guarantee the functioning of the courts, the protection of judges and the implementation of court decisions. According to Mr. Kalamonov, the Bar of Chechnya comprises 150 lawyers and is fully operational and providing legal assistance to the population. Offices of the Bar were created in 17 regions of the Republic.

The Memorial Human Rights Center in an appeal to the 57th session of the Commission on Human Rights expressed scepticism about the efficacy of the Chechen

²⁹ Article in International Herald Tribune from 4 April 2001 “Putin Signals Major Drive for New Round of Reforms.”

³⁰ Press release from the Council of Europe from 7 September 2001.

³¹ info from the webpage of the Supreme Court of Russia www.supcourt.ru.

³² US Department of State report 2000.

judiciary, asserting that some of the district courts are not located on the territories of the district themselves, which creates a significant obstacles for the Chechen citizens under present conditions. Memorial also maintained that courts in Chechnya were not working at full capacity and only accepted criminal cases for review for cases for which the punishment does not exceed five years. The more serious crimes were not under the jurisdiction of these courts.

LAWYERS

There are reports by professional associations at local and federal level that defence lawyers have been the target of police harassment, including beatings and arrest, throughout the country. Police were said to intimidate certain defence lawyers and simultaneously to cover up their own criminal activities. (See the cases of defence lawyer **Karina Moskalenko** and **Mikhail Konstantinidiy**.) In respect of a number of cases, investigators denied lawyers access to their clients.

PROSECUTORS

Prosecutors are extremely influential in the criminal procedure system and judges are said frequently to refer cases for additional investigation when no guilt is proven, rather than face confrontation with a prosecutor. 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 on for many months and suspects can be in pre-trial detention for longer than the official sentence they would receive if convicted immediately. Prosecutors can extend the period of criminal investigation to six months in complex cases and until 18 months in exceptional cases. The court system is overloaded and as a result suspects may be held in pre-trial detention even longer.

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. Ms. Loktionova was removed from the Kray Arbitration Court. She lost her final appeal to the Supreme Court, which upheld the decision of the lower court on 23 August 2000.³³

Sergey Pashin {former judge in the Moscow City Court}: On 11 October 2000, the Moscow Qualification Board of Federal Judges made the decision to dismiss Sergey Pashin ostensibly for infractions of professional etiquette.³⁴ The official pretext of this decision was a complaint by D. Krasnov, Chair of the Kaluga Regional Court, with the Moscow City Court. Sergey Pashin had written an expert opinion upon the request of a human rights activists in which he questioned the legality of Dmitry Neverovsky's conviction for draft evasion. Dmitry Neverovsky had refused to serve in the Russian army during the war in Chechnya because he is a pacifist. In November 1999 he had been sentenced to two year's imprisonment by the Obninsk City Court and was released in April 2000 after his conviction was overturned on appeal by the Kaluga Regional

³³ www.russian-news.com.

³⁴ US Department of State report 2000.

Court.³⁵ Mr. Pashin said the court had violated procedural laws and had disregarded Neverovsky's right to do civilian service as an alternative to entering the army. His second offence was that he took part in a phone-in programme on Ekho Moskvyy radio station and gave a caller who was asking for help his office phone number over the air. Krasnov's opinion was that Pashin's actions undermined judicial authority and were incompatible with the status of a judge.³⁶

Observers have commented that Sergey Pashin was dismissed for political purposes as punishment for his outspoken views, his independence and for a famous *obiter dictum*, in which he revealed that Moscow judges work at the command of the City Mayor and that the Moscow Qualification Board often ignores gross violations committed by judges and at the same time in other cases annihilate a judge for the most trivial reasons.³⁷ The Supreme Court annulled the dismissal in 2001. Shortly thereafter Sergey Pashin resigned voluntarily from his office.³⁸

Tatyana Glazkova {former federal judge in Pavlovsky Posad}: Ms. Glazkova was dismissed by the regional collegium of judges in May 1999 "for actions disgracing the honour and dignity of a judge and damaging the authority of judicial authority." Ms. Glazkova and 13 other judges dismissed on similar grounds appealed the dismissal to the Constitutional Court. The Constitutional Court decided that their cases were within the purview of the collegium. Ms. Glazkova also wrote to President Putin, but her letter was not answered. Subsequently, Ms. Glazkova complained to the European Court of Human Rights, claiming that her right to a fair trial was violated because she did not get a fair hearing and that her right to respect for private and family life was breached because her good name and reputation was ruined. At the time of writing no date had been set for the hearing of the case.

She was dismissed for allegedly unnecessarily delaying certain cases and failing to follow appropriate procedures on others but she has contended that her removal was in fact a reprisal for exercising her independence. Ms. Glazkova accuses the Chief Justice, Sergei Generalov, of illegally intervening in cases on the request of local lawyers and of ensuring that some of her rulings were overridden by a higher court. She maintained that after she protested the release from custody of a vandal she had convicted, without his paying the 16,000 rubles (\$ 571) damages, the Chief Justice intentionally assigned her with the toughest cases so that she could be accused of working too slowly. This rationale for dismissing judges overloaded with work is reportedly to be a common tactic.³⁹

Karinna Moskalenko {Moscow defence lawyer}: On 28 March 2000, defence lawyer Karinna Moskalenko suffered assaults by members of Moscow's Organised Crime Unit while trying to assist a client who had been illegally detained by the Unit at a residence. Her complaint to the Moscow City Procurator was rejected at the end of April 2000.⁴⁰ Mrs. Moskalenko then complained to the Moscow District Court. The Moscow District Court, however, refused to hear her case without the formal decision of the Moscow City Procurator that her claim was rejected. The Moscow City Procurator asserted, that it did not have the decision to reject her complaint and that this piece of paper is now probably at the Procurator General's office. Thereafter she submitted all her papers from the Moscow City Procurator rejecting her initial complaint to the Moscow

³⁵ ai report 2001.

³⁶ International Helsinki Federation For Human Rights Report 2001.

³⁷ Moscow Helsinki Federation group from IHFHR Report 2001.

³⁸ According to Mrs. Karinna Moskalenko - she did not have more precise information.

³⁹ Article from Washington Post 6 May 2001 by Judith Ingram.

⁴⁰ US Department of State report 2000.

District Court. In September 2001 Mrs. Moskalenko was still waiting for the opening of her case at the Moscow District Court.⁴¹

Mikhail Konstantinidiy { Public Defender in Novorossiysk }: Mr. Konstantinidiy was arrested on 30 September 2000 for “illegal entrepreneurial activity”. However, it is alleged that the arrest was undertaken in retaliation for Konstantinidiy’s professional successes against an oil company and a local politician.⁴²

Yury Skuratov {Prosecutor-General}: Mr. Yury Skuratov’s investigations into high-level corruption in Russia had come close to implicating associates of former President Yeltsin. He had resigned in February 1999 under pressure from the presidential administration, allegedly because he had discovered a corruption scandal that involved the head of the Presidential Administration Office, Mr. Borodin, and the Swiss construction company Mabetex, which had carried out reconstruction work in the Kremlin. The Federation Council, however, refused his resignation.

On 2 April 1999, Mr. Skuratov was suspended by decree by Boris Yeltsin pending charges in an allegedly fabricated sex scandal and, consequently, submitted again his resignation, which was again refused by the Federation Council. Mr. Skuratov, however, remained suspended. On 13 October 1999, 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 1999 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. On 19 April 2000 the Federation Council approved President Putin’s recommendation that the suspended Prosecutor General should be removed from office. Mr. Skuratov was a candidate in the presidential election in March 2000 and alleged that President Putin had been involved in some of the cases of corruption which he had investigated.⁴³

Mr. Borodin was arrested on 17 January 2001 under an international arrest warrant issued by Swiss authorities in January 2000 on charges of money laundering. On 11 May 2001 the Russian Prosecutor General’s office confirmed that it had dropped the criminal case against Yury Skuratov.⁴⁴

Victor Malischenko {lawyer, human rights activist, and head of the Nigny Novgorod division of the International Protection Center, the Russian Affiliate of the ICJ}: During the past four years, Mr. Malischenko has been arrested several times by the local police. Each time the Regional Court ruled that he had been arrested on unfounded grounds. The Regional Court ordered his release in each instance and awarded compensation. When the local police attempted to arrest him yet another time on, he refused to cooperate. On 26 June 2001 Mr. Malischenko was sentenced by the Dzerdzinski District Court to a one-year sentence in a low security penitentiary institution on the charge of resisting arrest. At the time of writing Victor Malischenko was being held in a detention center although the current sentence only provides for low security penitentiary institution. He appealed the decision. In September 2001 his appeal was pending.

The International Protection Center alleges that the reason behind Mr. Malischenko’s continuous arrests and harassment is the disapproval by the local authorities and the police department of his human rights activities. Victor Malischenko’s

⁴¹ Information from Mrs. Karinna Moskalenko.

⁴² US Department of State report 2000.

⁴³ Keesing 4/2000.

⁴⁴ Keesing 5/2001.

sentence includes a two-year ban from any human rights activity. Russian Legislation, however, does not provide for such a sentence. The previous harassment and the nature of his sentence appear to substantiate these allegations.⁴⁵

Lubov Osipkina {former judge of the Olgograd Regional Court }: Mrs. Osipkina served the initial three years as a judge in the Olgograd Regional Court without any irregularities. After this period, she was recommended by the members of the Olgograd Region Board for life appointment. However, the Presidential Commission did not recommend her and she was dismissed for no apparent reason. Her inquiries as to the reason for her dismissal went answered. Her husband is a famous Russian lawyer, who had been criminally convicted, allegedly for political reasons, and he is still appealing his sentence. Ms. Osipkina publicly stated that his conviction had been a judicial mistake and that the Supreme Court should review his case.⁴⁶

⁴⁵ Information obtained from meeting with Mrs. Karinna Moskalenko at the Triennial.

⁴⁶ Information from Karinna Moskalenko.