

ATTACKS ON JUSTICE – RUSSIAN FEDERATION

Highlights

The absence of the rule of law and the inefficiency of the judicial system continue to be features of the Russian Federation, highlighting previous authorities' lack of will to improve the situation. The judiciary has required extensive reform: action taken since 1991 has resulted today in dramatic achievements, such as a massive increase in budgetary support for the courts, a new code of criminal procedure and measures to enhance the accountability of judges. However, legal structures and mechanisms are still poor. Many judges do not function in an independent manner and corruption and bribery remain rampant. Lawyers continue to be harassed in the exercise of their duties, being identified by the authorities with their clients' cause. Additionally, parliamentary elections in December 2003 and presidential elections in March 2004 have moved the country dangerously close to a one-party system. In Chechnya, the justice system is plagued by corruption, long and arduous procedures and threats against complainants.

BACKGROUND

The new *Duma* (lower house) was elected in **December 2003**. The pro-government party United Russia won 37.57 per cent of the vote (see Central Election Commission of the Russian Federation, <http://www.cikrf.ru/>). Together with its single mandatory deputies and those who joined it after the election, United Russia has a “constitutional” majority and therefore has the power to approve or reject any bill and to propose constitutional amendments without consulting other parties.

In the run-up to the presidential elections in **March 2004**, the government closed down the last independent nationwide TV station, **TVS** (see “Annual Report 2004”, <http://www.ihf-hr.org/>). All other Russian nationwide television channels had been either shut down or taken over by the state by **2002**. Meanwhile, with a growing number of libel suits and criminal libel cases against the media, journalists are forced to practise self-censorship (<http://hrw.org/english/docs/2003/12/31/russia7273.htm>). The most sensitive subjects continue to be the behaviour of federal forces in Chechnya, allegations of corruption against officials and criticism of **President Putin**. (<http://www.cpj.org/protests/03ltrs/Russia21oct03pl.html>).

Vladimir Putin was re-elected in the presidential elections held on **14 March 2004** with 71.31 per cent of the vote. The **Organization for Security and Cooperation in Europe** (OSCE) reported that the presidential election “was generally well administered”, although “essential elements [...] for democratic elections, such as a vibrant political discourse and meaningful pluralism, were lacking” (http://www.osce.org/documents/odihr/2004/03/2283_en.pdf).

The **September 2004 Beslan** hostage crisis (see [Chechnya](#) below) illustrated the problem of the media's lack of freedom and access to information. Nationwide broadcasters failed to reveal the true scale of the crisis; information was withheld and journalists were harassed or even kept in custody – all of which has serious implications for a democracy. Following the hostage crisis, the **Duma** adopted a far-reaching anti-terror plan on **22 September 2004** which broadens the powers of all agencies involved in the fight against terrorism and threatens officials with punishment if they fail to prevent attacks. This anti-terror plan set out the legislation to be introduced for approval in Parliament: according to **Aleksandr Gurov**, the **Duma's** security committee chairman, 40 anti-terror bills are to be considered in the near future. **President Putin** linked Russia's domestic security concerns and its own campaign in **Chechnya** to the global “war” on terrorism – enabling the government to reduce significantly international scrutiny of its human rights record in Chechnya.

The *Criminal Code* was last amended on **25 July 2004** to toughen penalties for terrorism. Terrorist offences now carry sentences of eight to 15 years' imprisonment, while particularly serious acts such as attempts on human life and grave crimes against public security are punishable with 15 to 20 years or life imprisonment. The first reading in the **Duma** of proposed new amendments to the *Criminal Code* which attempt to introduce the life sentence as a principal punishment was scheduled in **October 2004** (see below under [Access to Justice](#)).

A **July 2002** federal law, *On Counteracting Extremist Activities* (http://host.uniroma3.it/progetti/cedir/cedir/Lex-doc/Ru_Ext-2002.pdf), had introduced a range of severe sanctions for activities considered equivalent to terrorism. The law can be used against almost any kind of activity that the authorities consider “undesirable”, such as criticism of official policies by human rights organizations. Civil society in the Russian Federation is ruled by the “dictatorship of the law”, the expression Vladimir Putin uses to describe his concept of “controlled democracy”. The decree *On Extra Measures for Government Support of the Human Rights Protection Movement in the Russian Federation*, signed by the President on **25 September 2004**, provides for the creation of an **International Centre for the Protection of Human Rights** in Russia and the integration of human-rights NGOs, whose representatives will work in consultative bodies. Though this is a positive move whose formal aim is to consolidate civil society, it may be another way for the government to exert more effective control over human rights organizations.

CHECHNYA

The beginning of **President Putin's** second term was the occasion of new triumphant remarks about “normalization” in Chechnya, but no positive changes on the ground occurred

(<http://www.freedomhouse.org/template.cfm?page=47&nit=266&year=2003>).

Numerous further acts of terror committed by Chechen fighters during the period included:

- In **October 2002**, Chechen rebels seized a **Moscow theatre** and held about 800 people hostage. Most of the rebels and around 120 civil hostages were killed when Russian forces stormed the building. As a result of this tragedy, the Russian authorities abandoned all hope of achieving anything through political dialogue, their main goal being to convince public opinion that the Chechnya situation was normalized and under Russian control.

- In **August 2004**, two **passenger aircraft** taking off from Moscow crashed within minutes of each other, killing all 89 passengers and crew. Investigators claimed traces of explosives found in both planes' wreckages were evidence of terror acts.
- In **September 2004**, at least 335 people – most of them children – were killed, and more than 650 wounded, in a three-day siege at a school in **Beslan**, North Ossetia, in which 1,181 people were held hostage. The hostage-takers were demanding the withdrawal of Russian troops from Chechnya. The crisis ended in massive bloodshed after bombs rigged up by the hostage-takers went off in the building and Russian troops moved in. The Russian media blamed the authorities for their unwillingness to end the war in Chechnya, because this blow could lead to inter-ethnic warfare and total destabilization of the whole region (<http://news.bbc.co.uk/1/hi/world/europe/3630366.stm>).

In **March 2003**, a referendum approved a **constitution** establishing Chechnya as an **autonomous republic** within the Russian Federation. In **October** the same year, a presidential poll was held; doubts were expressed by the international community about its legitimacy, as many serious contenders were forced out of the race and no international election monitors were present. The task of the newly elected president, **Akhmat Kadyrov**, was to validate the policy of “Chechenization” – the idea that putting the region in Chechen hands, with a bit of autonomy, could succeed where brute force had failed (http://www.economist.com/displaystory.cfm?story_id=S%27%2984%2ARQ7%27%20P%23D%0A).

Elections for the **Chechen Parliament** were held in **December 2003**, when violence significantly increased: the **9 May 2004** assassination in Grozny of **Kadyrov**, the republic's Kremlin-backed president, has exposed the emptiness of the Russian government's claims of “normalization” and has led to a new cycle of violence and abuse (see “Human Rights Watch 2004”, <http://hrw.org/english/docs/2004/06/16/russia8852.htm>). As widely predicted, Chechen Interior Minister **Alu Alkhanov** was elected on **29 August 2004** to succeed Kadyrov.

Though the human rights situation in Chechnya is to date far from normal, the **Council of Europe's** experts were withdrawn from Chechnya in **April 2003**: according to a spokesman for Russia's **Ministry of Foreign Affairs**, the experts will not be stationed in Chechnya, but will be called on when required by the Russian side. This will have a considerable impact on human rights monitoring in the region, as the Council of Europe was the only international organization with representatives left in Chechnya (See “Council of Europe withdraws from Chechnya”, EHRAC Bulletin: International Human Rights Advocacy, Summer 2004, Issue 1).

JUDICIARY

While judicial reforms have attempted to improve the reputation of courts and the judiciary, judges still remain subject to influence from the executive, military and security forces, especially in high-profile or political cases. Russian lawyer **Dr Sergey Pashin** argues that “despite the liberal character of the reform plan, the main goal of the Putin Government was the strengthening of administrative vertical line by

subjecting the judiciary to the strong influence of the Presidential Administration”. No cases of attacks on judges have been reported to the ICJ/CIJL during the period.

Judicial reforms

President Putin himself has acknowledged that the Russian judiciary is in dire need of reform and in **2001** formed a **presidential working group on judicial reform**, headed by deputy chief of the presidential administration **D. Kozak**. The group met regularly in 2001 and generated proposals on the status of judges, the organization of courts, criminal and civil procedures and the regulation of legal services.

Through new laws or amendments – the *Law on Status of Judges* (**December 2001**) and the *Federal Budget Law* (**2002**) – the government has approved big increases in budgetary support for the courts since December 2001. In spring **2001** the Putin administration announced a **five-year court development programme** which raised annual expenditure from seven to ten billion roubles (US\$230–330 million) to cover initiatives such as extending jury trials from eight regions to the rest of the country, adding new judges to handle pre-trial detention hearings, developing new justice-of-the-peace courts, substantially raising all judges’ salaries, expanding court staff and repairing and computerizing court buildings.

Additionally, in **October 2003**, the **Plenum of the Supreme Court** of the Russian Federation adopted an important **resolution** instructing Russian courts to apply recognized principles and norms of international law as well as international treaties, including human rights documents, in making judicial decisions (<http://www.supcourt.ru/EN/resolution.htm>).

A convention of Russia’s judges, due to take place in **November 2004**, had on its agenda discussion of recent legislative proposals concerning the judiciary, in particular the Federation Council’s proposal to change the procedure for the **appointment of judges to the Supreme Qualifying Judicial Assembly**. Other issues relating to the reform of the judiciary to be discussed included the development and adoption of a **Judiciary Code of Ethics**.

Independence

On **29 September 2004**, the **Federation Council** (upper house) drafted controversial amendments to the Federal Constitutional Law *On the Judicial System* (**1996**) (Article 10); the Federal Law *On the Judicial Department under the Supreme Court of the RF* (**1998**) (Article 8); and the Federal Law *On Bodies of the Judicial Community of the RF* (**2002**) (Articles 29 and 31). The proposed amendments introduce the following innovations:

- the President becomes responsible for appointing the majority of the **Higher Qualification Collegium**, the body responsible for the assessment, examination and removal from office of all Russian judges;
- the Judges’ Congress, which at the moment selects half the members of the Qualification Collegium, will have the power only to recommend potential members to the President;
- the power to remove judges from office will be delegated from the **Higher Collegium** to the **President**;
- the **President** becomes responsible for the appointment of the **head of the Judicial Department**, the body responsible for the technical and financial

support of the judiciary (hitherto this power belonged to the **Chairman of the Supreme Court**).

The amendments clearly undermine the independence of the **Higher Qualification Collegium**, enabling the executive to interfere in its appointments and to take decisions previously taken by the judiciary. Indeed, the independence of the whole judiciary is put in danger, as once the executive directly controls the Collegium, which has to give recommendations on the appointment of every RF judge, it can then control indirectly the appointment of all federation judges. Moreover, only the President would have the power to remove judges from office. The proposed amendments rudely violate the principle of an independent judiciary, enshrined in the *UN Basic Principles of the Independence of the Judiciary*, 1 and 2: far from guaranteeing this independence, or enshrining it in legislation, the state is attacking it. This situation clearly lacks the “fair and public hearing by a competent, independent and impartial tribunal” that is enshrined in Article 14.1 of the *International Covenant of Civil and Political Rights* (ICCPR) and the “fair and public hearing by a competent, independent and impartial tribunal” in Article 6.1 of the *European Convention of Human Rights* (ECHR).

CHECHNYA

The justice system in Chechnya is plagued by corruption and long and arduous procedures as well as by an unclear division between military and civil courts’ jurisdiction (See “UN Commission on Human Rights 60th Session, 15 March to 23 April 2004”, Geneva). Due to the ongoing war, no law enforcement organs functioned in Chechnya until late **2000**, when prosecutors’ officers and internal affairs departments restarted their activities. However, the hostilities are still impeding their operation.

The **Russian Government** reports that efforts are being made to strengthen the Chechen judiciary and the bar through the establishment of a supreme court, municipal and district courts and projects to introduce justices of the peace. However, international organizations continue to state that the judicial system in the Chechen Republic is more than vulnerable.

Only in **March 2003** were **presidents of district courts** directly appointed by the Russian President; they still cannot hear criminal cases in which military or Federal Security Forces (FSB) personnel are implicated. Such cases fall within the jurisdiction of **military courts** even when civilians are involved. Since the **military** and the **FSB** are responsible for all major human rights atrocities, it is clear that any court judgment against the military or FSB would put a judge’s life in danger: the **Council of Europe** declared in its 2003 report that judges in Chechnya refuse to try cases out of fear for their lives (see [http://www.coe.int/t/e/SG/Secretary-General/Information/documents/Numerical/2003/SGINF\(2003\)23E.asp#TopOfPage](http://www.coe.int/t/e/SG/Secretary-General/Information/documents/Numerical/2003/SGINF(2003)23E.asp#TopOfPage)). Moreover, it found that “the lack of judges remains an urgent matter as it affects the smooth functioning of the judiciary, including its new tasks which consist in issuing arrest warrants” (<http://www.coe.int/NewsSearch/Default.asp?p=nwz&id=2271&lmLangue=1>).

Likewise, the **UNHCR** reported in **February 2003** that “as non-ethnic Chechen judges have left Chechnya, judiciary personnel remains too limited in number to

ensure an efficient legal process. Conflicts of jurisdiction between the civilian and military prosecutors' offices have also hampered the processing of individual complaints" (<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ea7bbd34&page=search>).

LEGAL PROFESSION

Lawyers continue to suffer reprisals and harassment from the authorities in the exercise of their duties, and through being identified with their clients or their clients' causes as a result of discharging their functions. Many cases of attacks on lawyers have been reported during the period (see *Cases* below). In the **Chechen Republic**, as with judges, lawyers are afraid of conducting cases against the FSB and the military for fear of reprisals.

On **31 May 2002** a new Federal Law *On Advocacy and the Bar in the Russian Federation* was enacted, re-organizing the legal profession, establishing new rights and duties for lawyers and re-determining relationships between the Bar and the state. The provisions on the guarantee of a lawyer's privilege and right to professional confidentiality remained unchanged.

According to the new law, lawyers are granted investigatory powers and have a right to request information from state bodies (and it is the duty of these bodies to grant such information) concerning a particular case or defendant, and to examine witnesses by their consent and to enlist the services of experts. The most important power is the right to collect materials that may be accepted as evidence by courts. This extension of powers is a big step towards the realization of the principle of adversary process.

It is compulsory for all lawyers to be members of the **Bar**, but they have the right to practise either alone or in association. A further innovation is the duty of lawyers to take out risk insurance: this will come into force on **1 January 2007**.

The new law included a controversial provision: Article 2 establishes that only lawyers are authorized to represent the interests of organizations, governmental and non-governmental bodies in civil and administrative procedures. The only exception is the representation of the interests of organizations by corporate lawyers who are not members of the Bar – i.e. members of these organizations' staff. This virtually establishes a lawyers' monopoly in providing legal services. In this regard, the relevant provisions of both the *Law on Advocacy* and the *Code of Arbitration Procedure* were declared unconstitutional by the **Constitutional Court** in **16 July 2004** (*judgment no. 15-P*).

Cases

Attacks on lawyers

In **November** and **December 2003**, the non-governmental organization **All-Russia Public Movement For Human Rights** denounced the Russian Federation authorities for waging political persecution campaigns against lawyers taking principled positions.

Lawyer **Mikhail Trepashkin**, an expert on the public committee investigating explosions in dwelling houses in Volgodonsk and Moscow, had a weapon planted on him and was then arrested in **October 2003** without a court warrant, just a week before the trial in which he was to represent the interests of victims who had been killed during the explosion on Guryanova street. Trepashkin, a very active campaigner for the truth and against the conviction of innocent people, had evidence that the **Russian secret services** were implicated in the explosions. Earlier, he had been charged with the disclosure of state secrets during an interview with the media concerning the events surrounding the **2002** hostage-taking at Moscow's **Dubrovka theatre**. Trepashkin endured "torture-like conditions" of imprisonment that were improved only after public protest by his defence lawyers. On **11 November 2003**, the **ICJ/CIJL** had requested the Russian authorities to release Trepashkin immediately (http://www.icj.org/news.php3?id_article=3166&lang=en). Moreover, his lawyer had introduced an application to the **ECHR** in **November 2003**, claiming that the norms of the *European Convention of Human Rights* prohibiting inhuman and degrading treatment were being violated; the court decided to give high priority to his case. The **All Russia Conference of Civic Organizations** in late **October 2003** approved **Amnesty International's** appeal to recognize him as a political prisoner (http://www.icj.org/news.php3?id_article=3205&lang=en). On **15 December 2003** the **ICJ** requested the Russian Government to allow international observers to monitor Trepashkin's trial (http://www.icj.org/news.php3?id_article=3203&lang=en), and two days later condemned his trial before a military court in Moscow. Trepashkin received a four-year prison sentence on **19 May 2004** for revealing state secrets and for illegally carrying a pistol in his car.

Ibragim Isayevich Tsurov, a lawyer and a member of the Lawyers' Bar Association of the Chechen Republic, defended a case in the settlement of Khankala, near Grozny, the capital of Chechnya, where the main Russian military base is located. On **26 April 2003** he was pursued by unknown persons in camouflage uniforms (presumably belonging to the Russian military). Forced to leave his car, he was taken away to an unknown location. A criminal case, opened on **18 June 2003**, was investigated by the prosecutor's office of Grozny's Oktyabrskiy. However, no result was achieved and the investigation was suspended despite the fact that Ibragim Tsurov is still missing.

Stanislav Markelov, a Moscow lawyer, participated in some high-profile cases connected with the armed conflict in the Chechen Republic. On **16 April 2004** he was attacked in the metro by a group of young people, severely beaten and left unconscious. While he was unconscious his professional identity card and papers relating to various cases disappeared from his briefcase. On **18 April 2004** the local **Department of Internal affairs** refused to take any action on his behalf. Only after he had applied to the **Moscow City Department of Internal Affairs** was a criminal investigation into the robbery opened on **26 April 2004** (case file no 11545), and on **30 April 2004** Markelov was granted victim status. Nevertheless, the investigation was suspended later as no persons had been found to be prosecuted.

Rafael Usmanov, a human rights lawyer from Magadan, is still detained in a prison-like mental health facility in St Petersburg: in **2000**, Usmanov ran as a candidate for governor of the Magadan region. During the election campaign he disclosed negative facts from the biography of **V. Tsvetkov**, the then current governor and candidate for a new term. Unable to win the court proceedings initiated against Tsvetkov, the

authorities pressured the court to declare Usmanov insane, sending him to a specialized mental health facility with intensive care in St Petersburg, where he is still under powerful medication. From **May 2003**, no defence lawyers were allowed to see Usmanov. His lawyer, **Yurij Shadrin**, had been allowed to visit him just twice, on **8 December 2002** and in **May 2003**. Usmanov has issued a warrant entitling Shadrin to defend his interests in Russia. However, it did not give a right to appeal to international institutions such as the ECHR or the Council of Europe. In order to correct this deficiency, Shadrin applied to the hospital, but his request was declined unlawfully, following which he was not allowed to see his client. An appeal against the refusal of the hospital to transmit the documents went to court in St Petersburg, and a hearing was set for **29 May 2003**. However, for no clear reason (but allegedly following executive pressure), the court refused to start proceedings and gave all the documents back. Usmanov is still in hospital, which makes any meetings between him and his lawyers very difficult if not impossible.

The case of **Sergei Brovchenko**, human rights lawyer, has been ongoing since the spring of **1997**, when members of the secret service planted 4.5 grams of cocaine on him. After a court decision that was overturned due to the absence of any evidence to convict him, the case was returned on appeal to a district court for a new judicial scrutiny, where he was again judged guilty. On **January 2004** he was released after nearly seven years of imprisonment, as the court changed the punishment from imprisonment to “recognizance not to leave”. However, a final decision is still pending, since the prosecution protested against his release. The authorities are putting considerable pressure upon the court to avoid an acquittal. The persecution of Brovchenko is used by the secret services as an example to intimidate other lawyers.

The defence lawyers for **Yukos**, the second largest Russian oil company, **Olga Artyukhova**, **Anton Drel**, **Vyacheslav Patskov**, **Evgeny Baru** and **Yuri Schmidt** were subjected to illicit searches and detention, as well as other provocations, by being identified with their client’s cause. In **October 2003** public prosecutors had repeatedly tried to interrogate lawyer Drel, defence counsel for Yukos top managers **Lebedev** and **Khodorkovsky** about information that became known to him in connection with the defence of his client. His office was unlawfully searched in his absence on **9 October 2003** by members of the **General Prosecution Service’s** investigative team: several files concerning Mr Drel’s cases were confiscated, as well as computers and other personal files.

In **October 2003**, lawyer **Vyacheslav Patskov** was summoned by the police, ostensibly in connection with the interrogation of his client held in a pre-trial detention centre, but really to investigate the lawyer himself. Only after the intervention of Patskov’s colleagues was he allowed to leave the General Prosecutor’s Office building after seven hours of illegal detention.

On **11 November 2003**, Ms **Olga Artyukhova**, representing Mr **Mikhail Khodorkovsky**, founder of the **Yukos Oil Corporation**, visited her client at the Matrosskaya Tishina remand centre. Upon her departure from that centre, she was searched by prison officials and two documents were taken from her files concerning Mr Khodorkovsky’s case, containing legal analysis and the planned defence strategy for the case. Ms Artyukhova subsequently lodged a complaint at the **Ministry of Justice** detailing the search and confiscation of documents. On **22 December 2003**,

the **Ministry of Justice** requested the **Chamber of Advocates of Moscow** to revoke Ms Artyukhova's licence to practice law on the grounds that she had "discredited the honour and dignity of a lawyer" (Article 17, paragraph 5 of the *Federal Law on the Practice of Advocacy*). As the Chamber of Advocates failed to act, on **19 March 2004** the Ministry of Justice requested the **Presensky District Court** of Moscow to disbar Ms Artyukhova pursuant to the law. On **26 October 2004** the court adjourned the hearing of the case.

On **4 December 2003** a prison officer conducted a search and confiscated a number of documents pertaining to **Mr Lebedev's** defence counsel **Evgeny Baru** after he visited his client at the pre-trial detention centre. Among the documents confiscated were Mr Lebedev's instructions to his defence team. The search lasted over two hours. The other defence counsel for Lebedev, **Yuri Schmidt**, was also illegally searched by prison officers in **March 2004**.

In a letter addressed to **President Putin** on **11 June 2004**, the **ICJ/CIJL** condemned the confiscation of documents from Ms Artyukhova and Mr Baru and the potential disbarment of Ms Artyukhova. The ICJ/CIJL urged the Russian Government to ensure that disbarment proceedings are terminated and to allow lawyers to discharge their professional duties (http://www.icj.org/news.php3?id_article=3400&lang=en). Earlier, in a letter to **President Putin** in **November 2003**, the **ICJ/CIJL** had urged the Russian Government to stop harassing Mr **Khodorkovsky's** lawyer (http://www.icj.org/news.php3?id_article=3171&lang=en).

Attacks on human rights defenders providing legal aid

On 15 March 2003, **Imran Ezhev**, head of the **Russian-Chechen Friendship Society's International Centre (RCFS)** in the Northern Caucasus and local Moscow **Helsinki Group** representative, was kidnapped in Chechnya by unidentified individuals. Among its activities, **RCFS** participates in litigation and lobbies for the release of forcefully detained persons. After appeals from several international organizations, Ezhev was released three days later. He was probably targeted due to his political activities in this region. On **29 January 2004** Ezhev was again detained after visiting the Satsira IDP tent camp and reportedly beaten by Ingush police. He was released the next day when the **head of the Presidential Human Rights Commission** personally intervened. Other RCFS staff members have also faced harassment, persecution or have even been killed due to their human rights protection activities: **Artur Akhmatkhanov** disappeared on **4 August 2003** after being taken away by Russian soldiers; and **Aslan Davletukaev** was detained by federal forces on **9 January 2004**. His body, bearing traces of torture and mutilation, was found a week later by a reconnaissance unit of the Russian army.

In **November 2003**, tax police conducted an audit on **Otkrytaja Rossia**, of **Mikhail Khodorkovsky's** foundation, which supports various civic initiatives. This attack was clearly related to the political harassment of Mr Khodorkovsky, head of the Yukos oil company (see [Attacks on Lawyers](#) above)

In **June 2004** **Nikolay Girenko**, a spokesman for **Ethnic Minority Rights**, one of the principal anti-racist organizations in St Petersburg, was shot through the doors of his home. He acted as a legal expert in cases against fascist groups in Russia,

particularly in the case against **Yuri Samodurov**. His murderer still has not been identified.

PROSECUTORS

The situation of judicial actors in the **Chechen Republic** is still worrying. Public prosecutors are unable there to investigate unlawful actions of the military and security services, and are put under pressure by security forces as well as by rebel formations. In this context, the **UN Committee against Torture** had already found in **May 2002** that “the dual system of jurisdiction in Chechnya involving both military and civilian prosecutors and courts leads to long and unacceptable delay in registering cases [...]. [I]t is impossible for the civil prosecutor to question military personnel and carry out investigations at military sites in order to collect the evidence required to oblige the military prosecutor’s office to take up the case.” ([http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.28.4.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.28.4.En?Opendocument)).

Cases

In the afternoon of **11 March 2004** an unidentified masked group kidnapped **Rashid Ozdoyev**, assistant to the **Prosecutor of the Republic of Ingushetia** dealing with the supervision of **FSB** (Federal Security Forces) activities. According to the independent website www.ingushetiya.ru, Ozdoyev was arrested by officers from the FSB department in Ingushetia on **12 March 2004** (<http://www.ingushetiya.ru/news/3352.html>). According to the local media, the Ingushetia FSB was dissatisfied with Mr Ozdoyev’s activity, which consisted of numerous inquiries into the allegedly unlawful actions of FSB officers, and this was the reason for his kidnapping. A criminal investigation was opened on **15 March** only after the urgent pleas of Ozdoyev’s father, the famous political figure **Boris Ozdoyev**. However, no results have been achieved to date and Ozdoyev is still “disappeared”.

ACCESS TO JUSTICE

The period has been characterized by a set of legal reforms attempting to reinforce fair trial and due-process rights and witness protection. Issues of concern remain “spy mania”, the lack of access to justice in Chechnya for victims of human rights abuses or their family members and the use of federal legislation where no court approval is needed to suspend the activities of an organization suspected of extremism.

The **May 2002** *Federal Law On Advocacy and the Bar in the Russian Federation* establishes a duty for lawyers to render legal assistance free of charge in a number of situations. Moreover, prosecutors, investigating bodies and courts must provide legal protection for an accused person in criminal proceedings. A lawyer’s services in such situations are to be paid for by the state.

Jury trial system

The **jury trial system** was reintroduced in the course of previous (**1992–93**) judicial reforms. However, it has been impeded ever since by budgetary constraints, technical and administrative problems and finally the legacy of the Soviet mentality (see East

European Constitutional Review,
http://www.law.nyu.edu/eecr/vol11num1_2/features/dline.html). This system was originally introduced in only eight regions, but from **1 January 2004** jury trials are functioning in all but one of the 89 regions. It should be available in **Chechnya** from **1 January 2007**.

In **July 2004** the **Duma** passed the *Law on Jurors in Federal Courts of General Jurisdiction* which is already being partially applied. The law establishes the procedure for jury trial, sets juror eligibility criteria and lists the categories of courts where criminal cases can be heard before a jury: they are the **Russian Federation Supreme Court, courts of the regions of the federation and district military courts**. A new procedure for compiling lists of potential jurors has been introduced: these lists must be completed within three months from the date of the law coming into force.

Legal reforms

Amendments to the Criminal Code

In **December 2003**, about 260 drastic changes were made to the *Criminal Code*, affecting the very concept of crime, guilt and punishment (for the whole text, see <http://law.rambler.ru/library/norubs/9575/index.html>). The most significant amendment was the introduction of a definition of torture: “infliction of physical and moral suffering aimed at coercing an individual into giving evidence or committing other acts against his will, as a punishment and for other purposes”. Although the new amendments strengthened protection against torture, they still have not met Russia’s international obligations under the *UN Convention against Torture*. The article fails to mention the involvement of officials in the act of torture, which is vital to the internationally established definition of torture (see Moscow Helsinki Group report at <http://www.mhg.ru/english/2F7698B>). Other changes include broadening the right to self-defence, revising the notion of repeated crime, abandoning the penalty of property confiscation, reducing the minimum term of imprisonment and limiting the grounds for juvenile imprisonment. A new set of proposed amendments to the *Criminal Code* had its first reading in the **Duma** in **October 2004**, and attempts to introduce the life sentence not just as a replacement for the death penalty, but also as a punishment for especially grave crimes against life and public safety. Such crimes include terrorism, soliciting acts of terrorism, financing terrorism, hostage-taking and hijacking aircraft.

Amendments to the Code of Criminal Procedure

On **22 November 2001** a new *Code of Criminal Procedure* was adopted by the **Duma** and was last amended in **April 2004** (<http://law.rambler.ru/library/norubs/10979/index.html>). Its most important goals are the further development of the adversary principle in court proceedings, the reduction of terms of criminal procedure and the expansion of court jurisdiction in the sphere of human rights. The constitutional principle of the presumption of innocence is newly asserted.

The most substantial innovation of the code is the review of the powers of prosecutors and judges. **Judges** have acquired greater importance under this new code: they must review the detention of all suspects within 48 hours of their arrest, and they are

obliged to free them if they find no lawful and essential grounds for keeping them in custody.

During the new code's first three months of application, the courts released 3,000 suspects – 1,000 more than for the whole year in **2001**. Orders for custody and seizure of property can be granted only by judges; hitherto such orders were granted by prosecutors.

The code guarantees confidentiality between lawyers and their clients. The testimony of an accused person received in the course of preliminary investigation will not be considered by the court as admissible evidence if this testimony was given in the absence of a lawyer. Reportedly however, equality between defence and prosecution is still lacking and the norms of the *European Convention on Protection of Human Rights and Fundamental Freedoms* continue to be violated.

New Code of Civil Procedure

On **14 November 2002** a new *Code of Civil Procedure* was signed by the Russian President (<http://law.rambler.ru/library/norubs/18502/index.html>). The code, which came into force on **1 February 2003**, introduces changes to procedures covering such matters as the grounds on which cases can be reviewed or appealed, the burden of proof, the rights and obligations of witnesses and the conduct of forensic examinations. The code limits the circumstances in which a prosecutor may interfere in proceedings to those where the defence of rights, freedoms and the legal interests of third parties and the interests of the Russian Federation, its constituent and municipal entities are involved.

New Arbitration Procedure Code

The new *Russian Federation Arbitration Procedure Code* came into effect on **1 September 2002** – containing a large number of new provisions (<http://law.rambler.ru/library/norubs/10890/index.html>). The aim of the code is to align the Russian judicial system with world standards. It creates further procedural guarantees and improves the position of parties in judicial processes, who now have a better chance of prompt and efficient protection for their rights and interests in court. The code makes justice more available and expedient.

In a **July 2004** ruling (see above under Legal Profession) the **Constitutional Court** declared unconstitutional the provisions of the code relating to the advocates' monopoly in representing companies before the courts.

Witness protection law

On **20 August 2004** President Putin signed a new *Federal Law On Government Protection of Crime Victims, Witnesses, and Other People Involved in Criminal Judicial Proceedings*, which was due to come into force on **1 January 2005**. The law sets up appropriate conditions for administering justice and combating crime and entitles witnesses to a range of protective measures including temporary or permanent relocation, change of identity and plastic surgery.

Law on Counteracting Extremist Activities

According to the **July 2002** *Federal Law On Counteracting Extremist Activities* (see above under Background) any existing organization that is involved in extremist

activities may be closed down or, if it is not registered with the authorities, banned by a court on the recommendation of a **prosecutor** or the **Ministry of Justice**. A suspension decision takes effect immediately but may be appealed against, although it may take months before court proceedings actually begin. In addition, the grounds on which organizations may be closed down or banned without any prior notification are vague and may well be interpreted to include legitimate protest or other protected conduct. It is of particular concern that no court approval is needed to suspend the activities of an organization suspected of extremism. Thus neither the provisions on liquidation/banning nor suspension incorporate adequate safeguards. New amendments to this law are proposed and the first reading was scheduled to take place in the Duma in **November 2004** in order to change the rules of general jurisdiction: when regular armed forces act in a counter-terrorist operation they will be totally guided by military law. All disputes arising between the “terrorists” and federal armed forces will be tried in the Russian Federation’s Military Prosecution Offices.

Cases

Six cases originating from the **Chechen conflict** were declared admissible by the **European Court of Human Rights (ECHR)** in **January 2003**. These cases concern torture, extra-judicial executions and the indiscriminate bombing of Chechen civilians by federal forces during **1999** and **2000** (<http://www.echr.coe.int/Eng/Press/2003/jan/Decisiononadmissibility6Chechenapplicationseng.htm>). The first hearing took place on **14 October 2004**. The harassment of applicants to the **ECHR** has become a serious problem in recent years: applicants risk extra-judicial execution or becoming one of an increasing number of “disappearances”. In **May 2003**, **Zura Bitiyeva**, an applicant to the court, was extra-judicially executed with her family in her home by Russian security forces (www.fidh.org/article.php3?id_article=1086; <http://www.memo.ru/eng/memhrc/texts/kalinkov.shtml>). In **mid-2002**, an applicant was detained by Russian forces in front of witnesses and has since “disappeared”, and in five other cases applicants have received death threats against themselves and their relatives and demands to withdraw their ECHR applications (<http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/F1393002E0AEAC0CC1256CD10056C347>). According to the NGO **Memorial**, as of **November 2004**, 18 applicants from Chechnya had been killed, “disappeared” or had received threats from Russian authorities.

During **2003**, Russian authorities continued their efforts to prosecute individuals accused of espionage (the cases of **Igor Sutyagin** and **Valentin Danilov** – see “IHF Annual Report 2004”, www.ihf-hr.org; also http://www.economist.com/displaystory.cfm?story_id=S%27%2980%29P1%5F%25%21%20%20Q%0A). Human rights organizations have expressed deep concern, signalling intolerable violations of international fair trial standards, discrediting the Supreme Court and the rule of law in Russia.

LEGAL REFORMS DURING THE PERIOD

22 November 2001: *New Code of Criminal Procedure* adopted by state Duma; last amended in April 2004.

- December 2001:** *Law on Status of Judges.*
- 2002:** *Federal Budget Law.*
- 31 May 2002:** *Law On Advocacy and the Bar in the Russian Federation* enacted.
- July 2002:** Federal law *On Counteracting Extremist Activities*, introducing severe penalties for terrorist activities, signed by President.
- September 2002:** New *Russian Federation Arbitration Procedure Code* came into force.
- 1 February 2003:** New *Code of Civil Procedure* came into force.
- March 2003:** Referendum approved constitution establishing Chechnya as an autonomous republic within the Russian Federation.
- December 2003:** Major changes made to the *Criminal Code*, including new definition of torture.
- 25 July 2004:** *Criminal Code* amended to toughen penalties for terrorism.
- 28 July 2004:** Amendment to **2002** law *On Countering Money Laundering and Financing of Terrorism* signed by President.
- July 2004:** Duma passed *Law on Jurors in Federal Courts of General Jurisdiction.*
- 20 August 2004:** New *Federal Law On Government Protection of Crime Victims, Witnesses, and Other People Involved in Criminal Judicial Proceedings* signed by President.
- 29 Sep 2004:** Proposed amendments to federal laws *On the Judicial System, On the Judicial Department under the Supreme Court of the RF* and *On Bodies of the Judicial Community of the RF (2002).*

General Country information

a. Legal system overview

1. Rule of law and independence of the judiciary

The Russian Constitution meets international standards in its provisions for human and civil rights. Article 1 defines the country as a “democratic, federative, rule of law state with a republican form of government”. Article 46 guarantees judicial protection and affirms the individual’s right to appeal to international bodies. In **1998**, Russia ratified the *European Convention on Human Rights*, giving its citizens a right of appeal before the **European Court of Human Rights** in Strasbourg.

The **Russian Parliament** remains weak in relation to the presidency and the government. The balance of legislative and executive power shifted even further in favour of the presidential administration from **2002**, when **President Putin** successfully marginalized the political Left and consolidated the centre into a pro-presidential majority.

The **judicial branch** in Russia is even weaker than the legislative branch. The *constitution* gives the **President** unusually strong powers, including the right to appoint senior members of the judicial and executive branches. **Presidential decrees** may be appealed against to the **Constitutional Court**; however, the court does not have a right to select issues on its own initiative (<http://www.freedomhouse.org/template.cfm?page=47&nit=266&year=2003>).

The judiciary is governed by Chapter 7 of the Constitution: Article 120 provides that judges shall be independent and subordinate only to the Constitution and federal law. However, in reality the judiciary is still subject to executive, military and private influence and corruption. One of the main concerns is that judges themselves do not understand the concept of judicial independence.

2. Sources of law

The **Constitutional Court** lacks the power to enforce its decisions. Its jurisprudence constitutes a source of law, and is relied upon by courts of common jurisdiction and commercial courts.

3. Legal publicity and judicial transparency

The judgments and decisions of district and regional courts are currently not published (regardless of the fact that rulings are pronounced publicly). Only parties to proceedings and their legal representatives are able to get copies of judgments.

b. The judiciary

1. Judicial structure

The judicial system of the Russian Federation consists of the **Constitutional Court** of the Russian Federation; **constitutional** (statutory) **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 regional** (*oblastniye*) and **city courts**, **district** (*rayonniye*) and **municipal courts** and **justices of the peace**. The latter are **regional**, not federal, judges; their appointments and the organization of their functions are regulated by **regional authorities**. There are also **arbitration courts** to consider disputes between business entities.

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 specific cases 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 authorized to rule on violations of constitutional rights, to hear individual applications against the application of a law in a particular case, 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 **Supreme Court** is the highest judicial body on civil, criminal and other matters heard by courts of general jurisdiction, and is responsible for judicial supervision over their activity. The **High Commercial Court** is the highest judicial body resolving economic disputes considered by commercial courts. It also exercises judicial supervision over their activities in line with federal legal procedures.

2. Special courts

On **22 November 2000** the state **Duma** gave a first reading to the constitutional *Law on Federal Administrative Courts* and the accompanying amendments to the *Federal Constitutional Law on the Judicial System in the Russian Federation*. New specialized courts of general jurisdiction were supposed to be established in Russia: 21 **district administrative courts** (the government suggested cutting their number down to ten) and a few hundred **inter-district administrative courts**. Simultaneously **Administrative Judicial Assemblies** were to be formed in the Supreme Court and in regional courts. Cases associated with appeals against decisions, actions (or inaction) by state bodies and also election disputes and cases related to discontinuing the activity of public associations are to be handed over to these courts (<http://russiatoday.strana.ru/en/politics/state/jud/3631.html>). To date, however, the bill is still on hold, and reportedly no commission is working on it.

3. Military tribunals

Military courts are organized into a special branch of the judiciary, regulated by a special statute or law. Military courts consist of three levels: **garrison courts** (courts of first instance), **courts of military circuits** (appeal courts and courts of first instance) and the **Military Chamber of the Supreme Court**. Their jurisdiction may extend to certain civil cases, a feature for which Russia was criticized in **1995** by the **United Nations Human Rights Committee** and is still criticized by non-governmental organizations (see http://www.icj.org/news.php3?id_article=3205&lang=en) Although their independence is formally proclaimed by Article 5 of the *Federal Law on Military Courts*, military courts' activities and the status of military judges may be regulated by an unlimited number of laws pertaining to the Russian armed forces, as is implied

by Article 2 of the *Federal Law Legislation of the Russian Federation on Military Courts*, which has a non-exhaustive list of laws regulating the performance of courts-martial on the territory of Russia.

4. Judicial council

According to the *Federal Law of 14 March 2002*, the **Higher Qualification Collegium** is in charge of the discipline, independence and supervision of the judiciary. The **Collegium** is composed of judges elected by congresses of judges at district, regional and federal levels.

5. Enforcement of decisions

In the past, government authorities refused to implement court decisions, including orders to register certain religious groups and organizations. The position of **bailiff**, introduced in **1998**, was a great step towards the proper execution of courts' decisions, despite the fact that the execution of a final decision is still a difficult task for the party who wins a case.

c. Judicial actors

c.1. Judges

1. Independence and impartiality

The RF law *On the Status of Judges* provides that the federal judges shall be initially appointed for three years; only upon completion of this term can a judge hold office indefinitely. In practice this means that during their first years of office judges are absolutely powerless.

Russian laws provide a number of guarantees as to the financial independence of judges, in particular by paying their salaries from the federal budget. But full federal funding is not automatic. In Moscow, judges are granted additional allowances from the municipal budget, thus making them dependent on the city authorities. In accordance with the law *On the Status of Judges*, local authorities are obliged to provide judges with accommodation, reimbursed from the federal budget. Yet this reimbursement does not always happen, making judges' well-being directly dependent on local authorities and putting in doubt their independence from the executive.

Material conditions within the judiciary are extremely poor and courts must therefore appeal to local authorities for support, even for elementary expenditures such as stationery, 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 the local authorities on whom they may depend.

2. Internal independence

The distribution of cases in Russian courts is of particular concern with regard to the principle of judicial impartiality. The distribution is decided by the chairperson and depends solely on his or her discretion. There is no choosing by lots, waiting lists or other conditions of random selection. The absence of distribution rules leads to the

existence of so-called “sponsored cases”. Judges are influenced internally as well as externally, especially in political cases.

3. Qualifications, appointment and training

Articles 83 and 128 of the Constitution provide for the judges of the **Constitutional Court**, the **Supreme Court** and the **Supreme Arbitration Court** of the Russian Federation to be appointed by the **Federation Council** following nomination by the **President**. Judges of other federal courts are appointed by the **President** in accordance with procedures established by federal law. **Justices of the peace** are either appointed by Russian regions’ legislative bodies or elected by the people in a judicial constituency. **Judges of constitutional (statutory) courts** in the regions are usually appointed by the relevant Russian Federation legislatures.

According to Article 119 of the Constitution a judge must be at least 25 years of age, must have attained a higher degree in law and must have at least five years’ experience in the legal profession. The *Law on the Status of Judges* requires a candidate for the office of federal judge to take a qualifying examination administered by the **Examination Commission**, which is composed of executive appointees approved by the judges’ **Qualification Collegium**. The **Qualification Collegium** is charged with reviewing applications 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.

Judges of the Supreme Court, who must have ten years of experience, 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 either one or three professional judges.

Judges are typically appointed when they are young and almost always after they have served in a public prosecutor’s office or in a police investigation office. It is extremely rare for a judge to be appointed after working as a lawyer. Thus almost all judges come from a state body.

Judicial training was mandated and strengthened after the **Academy of Justice** under the Supreme Court, with responsibility for training of judges, began operating in the regions.

4. Security of tenure

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. With the exception of justices of the peace and constitutional (statutory) judges in the regions, judges must serve an initial period of three years before they can be appointed for life. Judges who comply with the executive are said to stand the best chance of receiving permanent appointment. However, even after the initial three years judges are under a constant threat of losing their jobs. As every judge is routinely overloaded with work, it is reportedly a common practice to dispense with unwanted judges by accusing them of unnecessarily delaying cases and working too slowly.

5. Discipline, suspension and removal

The **Qualification Collegium** of Judges began publishing information concerning cases in which it has removed judges from office for malfeasance in **2002** and has continued this practice, thereby adding some degree of transparency to the judicial discipline system.

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 for, among other things, involvement in criminal activity, and may be removed from office for undertaking activities incompatible with his/her post or for medical reasons. The decision for suspension or removal may be appealed against.

8. Accountability and corruption

Although the salaries of judges have increased somewhat, they are still inadequate and the lack of adequate remuneration contributes to the risk of corruption, including bribery.

c.2. The legal profession

1. Independence

The federal law *On Advocacy and the Bar in the Russian Federation* guarantees a lawyer's privilege and right to confidentiality.

2. Duties and responsibilities

Lawyers are granted not only defence but also investigatory powers. A lawyer has the right to request information from state bodies concerning a particular case or defendant, to examine witnesses with their consent, to enlist the services of experts and, most importantly, to collect materials that may be accepted as evidence by the courts. A lawyer is obliged to take out risk insurance (effective from **1 January 2007**).

3. Professional associations

A lawyer has the right either to practise alone or to participate in any form of advocates' associations. However, it is compulsory for all advocates to be members of the Bar to defend criminal cases.

c.3. Prosecutors

1. Independence

Article 5 of the Federal Statute *On Procuracy* states that any action of any person, public body or mass media entity intended to interfere with the functions of prosecutors shall be punishable.

2. Role in criminal proceedings

Prosecutors are extremely influential in the criminal procedure system: judges are said frequently to convict when guilt is not 100 per cent proven, rather than face confrontation with a prosecutor.

Investigations often drag on for many months and suspects can spend longer in pre-trial detention than the sentence they would receive if convicted immediately. Prosecutors can extend the period of criminal investigation to six months in complex

cases and to 12 months in exceptional cases. In the most exceptional cases the period of investigation can be extended personally by Prosecutor General or his/her deputies. The court system is overloaded.

d. Access to justice

1. Access to justice

Formally, the *Criminal Procedure Code (2001)* provides an opportunity to appeal against court action in the same manner as the *Civil Procedure Code (2002)* provides court access for complaints over actions that violate constitutional rights. In practice, both lawyers and non-professionals point out that there is no effective access to court. It is virtually impossible to get an appointment with a judge to file a civil suit. At the same time, documents mailed to courts are often lost. Court offices' behaviour with regard to civil cases is the subject of numerous complaints. Inappropriate court office management and clerks' treatment of individuals hinder access to justice even further.

2. Fair trial

The latest legislation (the **2002 Code on Civil Procedure** and the federal law *On Advocacy and the Bar*) sets out the adversary principle. However, there are various obstacles to a full realization of the right to fair trial. The distribution of cases in Russian courts, which depends solely on the discretion of the court's chairperson, neglects the principle of fair trial and leads to the existence of so-called "sponsored cases". Judges are not always impartial.

3. Legal aid

The **May 2002** federal law *On Advocacy and the Bar in the Russian Federation* establishes a duty for lawyers to render legal assistance free of charge in a number of situations. Moreover, prosecutors, investigating bodies and courts must provide legal protection for an accused person in criminal proceedings. A lawyer's services in such situations are not free of charge, but are to be paid for by the state.