Contents

Introduction
Fraser Cameron 2

Tensions Multiply between Russia and Council of Europe: Could the Malaise be Terminal?
Bill Bowring 4

The Rule of Law and Independence of the Judiciary in Russia
Rupert D’Cruz 13

Today’s Russian Judiciary has its Roots in its Soviet Past
Elena Liptser 19

Enhancing the Rule of Law by Strengthening the Legal Profession: Balancing the Scales of Lady Justice
Rahela Dosen 24

ANNEX I
The Penitentiary System of Russia, Elena Liptser Presentation 28

ANNEX II
Federal Map of Prisons in Russia, Elena Liptser Presentation 36
Review 6
Introduction

The sixth issue of the EU-Russia Centre Review is devoted to the rule of law in Russia and comprises four articles by practitioners who have extensive experience of the judicial systems throughout Europe.

The notion of “Rule of Law” is complex and can have many interpretations. It is a challenge for most countries, particularly those that are going through transition, as norms and practices are always difficult to change once they become embedded into the system and people’s mentality. The Council of Europe was set up partly to help European states tackle these issues.

The challenge for Russia is greater than for many countries due to its sheer size and the legacy of historical developments that have marked it, especially in the 20th century. Legal reforms and social changes require a change of societal values that shift from those sustaining a powerful state and a centrally-planned economy, to those guaranteeing pluralism, private property and freedom of expression. In 2004 the President of the Russian Federation Constitutional Court, Dr Valery Zorkin, wrote: “True legal awareness and respect for the law has not yet become integrated into a generally accepted system of values even among many public officers, who frequently believe that interests of the state and those of state-owned enterprises should by definition, prevail over the interests of ordinary citizens or entities with different forms of ownership.” 1 In 2007, during a speech at the Symposium on the Rule of Law held in Moscow by the International Bar Association, he said “In my opinion, we do not have a guaranteed stable and mature democracy yet, nor did we make an irreversible turn towards the rule of law and democracy”.

Similar statements have been made by Russia’s new President, Dmitri Medvedev. Pointing to the importance of the rule of law, he has said: “What kind of equal opportunity and innovative thinking can there be if everybody knows that rights only belong to those with the sharpest teeth, and not those who obey the law?” But will the new President be able to bring about any significant changes when he was intimately involved with the past regime? The rule of law cannot be established by one man, but there is no doubt that the President can give a powerful lead.

1 First published in Russian magazine “Legislation and Economics”, N. 2, 2004
In the first article, Professor Bill Bowring of Birkbeck College, University of London looks at Russia’s membership of the Council of Europe and the impact this has had over the past year by analysing general trends and three recent events: the “defeat” of the Russian candidate for the Presidency of the Parliamentary Assembly of the Council of Europe (PACE), the assessment of a PACE delegation of the Russian Presidential elections and the highly publicised case of Vasily Aleksanyan, an imprisoned former Yukos manager.

The second and third articles are contributions first heard in a debate at the European Parliament in December 2007 where MEPs heard legal practitioners outline and explain their experiences of the Russian legal system. In his article, Mr Rupert D’Cruz, Secretary of the British-Russian Law Association, outlines positive and negative aspects of the legal reforms that have taken place since 1990. He also gives an informed assessment of the impact of the European Court of Human Rights’ judgements against Russia, stating that “most cases in which claimants succeed against public authorities tend to be those in which the issue in dispute is not regarded as ‘political’ but concerns red tape and bureaucratic inefficiency.”

Ms Elena Liptser, a lawyer from the “All-Russia Public Movement for Human Rights”, discusses the dismal state of the Russian judiciary, tracing the various elements and actors within the system. She notes how verdicts are often pre-determined and irreversible, and the bad prison conditions in Russia. She argues that the current inhumane conditions are a “return to the system before the reforms of the 1990s”.

Finally, Ms Rahela Dosen, Director for European Rule of Law Projects at the Council of Bars and Law Societies of Europe, comments on the fragmentation of the European Commission’s funding mechanisms in the field of rule of law assistance to third countries. She explains the importance of involving lawyers in training courses and the role that they can play in furthering the rule of law. There is a widespread impression in the EC and Council of Europe that lawyers are rich and can therefore educate themselves. But this is certainly not true in Russia where most lawyers are poorly paid.

Director
EU-Russia Centre
Tensions Multiply between Russia and Council of Europe: Could the Malaise be Terminal?

By

Professor Bill Bowring
Birkbeck College, University of London

Introduction
This article explores developments since 15 February 2007, when the EU-Russia Centre published my short article (written in late 2006) “Russia’s Relations with the Council of Europe Under Increasing Strain”2. In that article I identified several issues giving grave cause for concern. These were:
• Russia’s continuing failure to abolish the death penalty
• High profile and highly embarrassing cases lost by Russia in the Strasbourg Court
• The YUKOS cases
• Russia’s refusal, alone among the 47 member states of the Council of Europe, to ratify Protocol 14 on the reform of the Court’s procedures

I concluded:

“Russia’s increasingly tense relationship with Strasbourg raises the question whether Russia really wants to remain a member. The answer to this must be affirmative. The European Court of Human Rights is now firmly part of Russia’s law. The decisions of the European Court of Human Rights are treated as binding precedents by the Russian Constitutional Court and other Russian courts... It should be noted that President Putin’s forthright speech in Munich on 12 February 2007 was directed against the USA, and also the OSCE, but not at all against the Council of Europe.3 ... Of course, recent events throw into question Russia’s relations with the EU, all of whose member states are also members of the Council of Europe in good standing. The EU has a special relationship with

---

2 http://www.eu-russiacentre.org/assets/files/15%20Feb%20Bowring%20article%20EU-RC.pdf
3 For Putin’s speech, and question and answer session, see http://president.kremlin.ru/eng/speeches/2007/02/10/0138_type82912_type82914_type82917_type84_779_118135.shtml
Russia, which is now subject to re-negotiation. Russia’s criticism of the Strasburg Court will not help EU-Russia relations.”

Russia has still not abolished the death penalty; it continues to lose significant cases; the YUKOS cases have now reached the stage where one applicant, Platon Lebedev, has won his case on detention, and the case of Mikhail Khodorkovsky has now been communicated to the Russian Government, with an unusually thorough Statement of Facts prepared by the Court and a list of hard-hitting questions for the authorities. Russia has at the time of writing maintained its failure to ratify Protocol 14.

Apart from the general trends, which are not at all encouraging, there are a number of recent events that are worth noting. First, Russia’s unexpected but devastating diplomatic defeat suffered in the elections of the new President of the Parliamentary Assembly of the Council of Europe (PACE). Second, the horrifying case of Aleksanyan v Russia. Third, the unprecedented stand taken by the Council with respect to the elections for President of Russia. 4

Russia and the Strasbourg Court – the most important supplier of cases
Russia continues to hold an unenviable leadership position in at least one respect. In 2006, the European Court of Human Rights delivered 102 judgements against the Russian Federation. The Court received 10,569 new applications (the highest from any one of the Council of Europe’s 47 member states). At the beginning of 2007, there were 19,300 cases against Russia pending before the Court. This represented no less than 21.5 per cent of the total of cases from all of the 47 states which are now members of the Council of Europe. 5

Furthermore, a September 2006 report of the Committee on Legal Affairs and Human Rights (CLAHR) of PACE observed that “after the prompt reactions to the first European Court's judgments, the execution process has slowed down in the adoption of further legislative and other reforms to solve important structural problems ...” This is diplomatic language describing what is essentially a freezing of Russia’s relations with the Court. Such frosty relations between Russia and the Court are simply not

4 These are due to take place on 2 March 2008. See generally http://news.bbc.co.uk/1/hi/world/europe/7243701.stm
sustainable, since at stake is the very authority, and the integrity, of the Strasbourg enforcement mechanism.

CLAHR went on in February 2007 to analyse in depth the failure of Russia (and other states, especially Turkey) to cooperate with the Court. In an unusual move, PACE passed a further follow-up Resolution on 2 October 2007. This stated, in part:

“Illicit pressure has also been brought to bear on lawyers who defend applicants before the Court and who assist victims of human rights violations in exhausting domestic remedies before applying to the Court. Such pressure has included trumped-up criminal charges, discriminatory tax inspections and threats of prosecution for “abuse of office”. Similar pressure has been brought to bear on NGOs who assist applicants in preparing their cases.

Such acts of intimidation have prevented alleged victims of violations from bringing their applications to the Court, or led them to withdraw their applications. They concern mostly, but not exclusively, applicants from the North Caucasus region of the Russian Federation…”

Such public condemnation of a Council of Europe member state is without precedent.

Professor Leach’s analysis

In late 2007 my colleague Professor Philip Leach, Director of the European Human Rights Advocacy Centre (EHRAC), published his own article entitled “Strasbourg’s oversight of Russia - an increasingly strained relationship”. He focussed on a number of at first sight more technical issues, although all of them are substantial factors in ensuring that Russia maintains its leadership in the statistics noted above:

---

6 See the Report of the CLAHR, PACE, Member states’ duty to co-operate with the European Court of Human Rights, Doc.11183, February 9, 2007; I gave evidence to PACE in the course of preparation of this Report.
7 PACE Resolution 1571 (2007), at http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1571.htm#1
8 I founded EHRAC in 2002 in partnership with Memorial, the leading Russian NGO, and the Bar Human Rights Committee of England and Wales; and with a grant of €1m from the EC’s Human Rights and Democracy Initiative. It now assists the applicants in over 150 cases against Russia at the European Court of Human Rights, and has helped win nearly 30 so far
• the non-enforcement of domestic judicial decisions against the state; ¹⁰
• the extensive and arbitrary quashing of judicial decisions which would otherwise have been final and binding as a result of the nadzor (supervisory review) procedure (this is the Soviet-era “last instance review”, which has been held several times by the Strasbourg Court not to be an effective remedy, and to be in itself a violation of the right to a fair trial); ¹¹
• deficient judicial review over pre-trial detention, resulting in excessive periods of detention and overcrowding;¹² and
• violations arising from abuses by the security forces in Chechnya¹³, including intimidation of Chechen applicants and witnesses¹⁴.
• the specific circumstances arising in the case of Ilascu v Moldova and Russia¹⁵ in which the Court held that Russia was in control of “Transdniestria”, and responsible for human rights violations there. ¹⁶

He suggested that “five developments are critical to a state’s adequate engagement with the implementation of Strasbourg decisions. These are as follows:
• the need for the political will to comply, at the highest level;
• establishing a co-ordinated, inter-ministerial governmental system for responding to European Court judgements;
• introducing measures of parliamentary oversight;
• engaging meaningfully with civil society and other human rights stakeholders and experts;

¹⁰ Non-enforcement of domestic judicial decisions in Russia: general measures to comply with the European Court's judgments (CM/Inf/DH(2006) 19 rev 3, June 4, 2007), para.35.
¹⁴ As to the particular problem of the intimidation of Chechen applicants with pending cases, see also the CLAHR Report of 9 February 2007, above
• legislating to ensure openness and accountability in the implementation process."17

These recommendations were carefully and judiciously crafted, avoiding any suggestion of political comment or criticism. Such suggestions are of the kind most likely to find favour within the Council of Europe machine, and indeed with the Russians themselves. However, the first requirement concerning political will on the part of the Russian authorities is what is quite clearly absent in the present situation. There are now a number of respects in which the relations between Russia and the Council may appear to be terminal.

Russia’s unexpected diplomatic defeat in the elections for President of PACE, despite support from the British Tories

On 21 January 2008 PACE elected as its President the Catalan-Spanish Socialist, Lluís Maria de Puig. It very nearly elected a much more controversial figure. The candidate who almost won was Mikhail Margelov, during the 1980s an instructor at the KGB Academy, according to his official Russian biography.18 He was Putin’s liaison with international media during the 2000 presidential campaign, and since 2001 served as Chairman of the International Affairs Committee of the Federation Council (upper house of parliament). According to Margelov himself, Russia’s Presidential Administration and Ministry of Foreign Affairs had authorised his candidacy for president of PACE.

His near success was achieved by winning over some key conservative figures among PACE leaders.19 These included PACE’s outgoing president Rene van der Linden, a conservative Christian-Democrat (European People’s Party – EPP). The British Conservative Party contingent in the European Democrats’ Group (EDG, an alliance of conservative parties somewhat to the right of EPP) turned out, astonishingly, to be Margelov’s leading backers. In a deal with the British Conservatives, the United Russia (Putin’s party) delegation joined the EDG. David Wilshire, leader of the Conservative

17 Leach (2007) p.651
18 See http://www.vedomosti.ru/newspaper/article.shtml?2008/01/16/139733
19 See the analysis by Vladimir Socor “Two setbacks for the Kremlin at the Council of Europe” Wednesday, January 23, 2008, at http://www.jamestown.org/edm/article.php?article_id=2372741
group, saw to it that Margelov was elected as EDG leader. Under the PACE procedures, the five major political groupings take turns nominating PACE’s president for a three-year term, thus in principle guaranteeing the result in advance. EDG’s turn came in January 2008 and they nominated the “conservative” Margelov well ahead of the deadline, with vocal Conservative support in Strasbourg and tacit acceptance by the Conservative leadership in London.20

This “done deal” was spoiled by the controversy following the Russian parliamentary elections in December. On 10 January 2008 the leaders of the five PACE political groupings met informally. They agreed to modify the rotations arrangements, allowing the Socialists to nominate their candidate on 21 January, and postponing the EDG’s turn to the next rotation. Furthermore, the President’s term would be abridged to a one year, once-renewable term.

The Russian daily "Vremya Novostei" commented on 17 January that "Russia has been cheated out of the chairmanship" of PACE. The report suggested that the change in rules was the result of politically motivated intrigues by Swedish and Estonian legislators, who criticized the conduct of Russia's recent parliamentary elections.21 And on 18 January the daily “Kommersant” stated that Margelov had been traded for Saakashvili – whose invitation to PACE Russia was seeking to prevent.22 In the event, the official Russian response was somewhat muted; however, as noted below, PACE has continued its outspoken commentary on Russian affairs.

The Aleksanyan case
The new President of PACE, Lluís Maria de Puig, soon showed that he was quite prepared to intervene on questions concerning Russia. On 23 January 2008 he was interviewed on “Radio Ekho Moskvy”, the last remaining broadcaster in Russia not under Government control, and said that he could not exclude the possibility that PACE would find ways to exert pressure on Russia for non-compliance with the orders of the Strasbourg Court in the Aleksanyan case.23

21 http://www.rferl.org/newsline/2008/01/1-RUS/rus-170108.asp
Vasily Aleksanyan is a former vice-president of YUKOS, who was arrested on 6 April 2006 and charged with embezzlement and tax fraud. He is one of 40 former employees of YUKOS and associated companies, including US and UK citizens, who have been arrested, or “sanctioned for arrest” in their absence, in connection with YUKOS and Mikhail Khodorkovsky. He is 36 years of age and was head of the Yukos legal department from 1996, as a defence lawyer was a member of the Lebedev defence team, and was executive vice president of YUKOS from 30 March 2006. Following his arrest he was remanded in custody and in October 2006 was diagnosed as suffering from AIDS.

He lodged an application with the Strasbourg Court, and on 27 November 2007 the Court took the unusual step of ordering “Interim Measures” in his case. The Court ordered the Russian authorities to transfer him to a specialist hospital, and to inform the Court about the treatment he had received so far. The Court usually orders Interim Measures once; in this case, they exceptionally repeated the order on a further three occasions, seeking each time a more precise response from the Russian authorities. According to Mr Aleksanyan’s lawyers, they were evasive in their answers. At that stage, the nature of Mr Aleksanyan’s illness was treated as confidential.

On 28 December 2007 Mr Aleksanyan went public, with an appeal to the Russian and world press. He declared that he was dying of terminal illness, and that the Russian authorities, in the person of the Senior Prosecution Investigator Salavat Karimov, had offered him his freedom in return for giving evidence against Mr Khodorkovsky and Mr Lebedev in the new criminal proceedings brought against them.

Preliminary hearings in his case started on 30 January 2008 at the Simonovskii District Court in Moscow. On 4 February the court allowed a medical commission to examine him. The commission reportedly found that he needed urgent in-patient treatment. On 6 February a judge at the Simonovskii Court decided to halt the hearing because of the poor health of Mr Aleksanyan, but accepted the prosecutor’s request not to release him. According to his lawyers, he is being guarded in hospital by police, who are refusing – contrary to European and international human rights law – to let his lawyers and family

---

24 See the complete list with details at http://www.khodorkovsky.info/timeline/134250.html
see him. Jonas Bernstein has pointed out that “even the Kremlin’s own human rights officials have felt it necessary to speak out... Ella Pamfilova, the head of Putin’s Human Rights Council, called Aleksanyan’s situation ‘simply monstrous’. 26

Finally, on 8 February 2008 Mr Aleksanyan was transferred to a remand prison hospital. However – scandalously – his family and lawyers were not told where he had been moved to. Although his lawyers were subsequently able to find out where he was being treated, neither they nor his relatives have to date been allowed to visit him. On 14 February his lead lawyer, Elena Lvova, announced that the prison authorities had refused to give permission for her to see her client, and told her that this permission must be given by the doctors. But the doctors have no objection, and obstruction comes from the prison and prosecution authorities. 27 As of mid-February, Amnesty International had issued an Urgent Action on the case 28 calling on its members to write to the Russian authorities:

- noting that Vasily Aleksanyan has been transferred to a hospital;
- expressing concern for his health;
- calling on the authorities to comply with the European Court of Human Rights’ ruling that all necessary action should be taken to safeguard the health of Vasily Aleksanyan, and to inform the Court about his treatment;
- urging the authorities, particularly at the pre-trial detention centre No.1 (Matrosskaia Tishina), to provide Vasily Aleksanyan with access to family and lawyers.

**PACE and the Russian Presidential elections**

PACE has continued its outspoken stance with regard to Russia. On 7-8 February 2008 a five-person multi-political pre-electoral delegation 29 visited Moscow. They held exchanges of views with three of the four presidential candidates and the campaign manager of the fourth, as well as with Mr Kasyanov, whose candidacy has been refused. They also met the Chair of the Central Election Commission Vladimir Churov, a

---

29 Andreas Gross (Switzerland, SOC), Nadezhda Mikhaylova (Bulgaria, EPP/CD), Maria Postoico (Moldova, UEL), Andrea Rigoni (Italy, ALDE), and Mevlut Cavusoglu (Turkey, EDG)
representative cross-section of the media and civil society, and members of the
diplomatic corps in Moscow. The delegation was in Russia at the invitation of the
Speaker of the State Duma Boris Gryzlov.

Mr Gryzlov cannot have been pleased by the result of his invitation. At the end of their
visit the delegation declared:

“An election where candidates are confronted with almost insurmountable
difficulties when trying to register risks not qualifying as free. An election where
there is not a level playing field for all contestants can hardly be considered as
fair. Once again, we are witness to the repetition of the flaws seen in the
parliamentary elections held in December 2007. While all concerned receive
equal media coverage in principle, the candidate designated as ‘successor’
enjoys all the benefits of office.”

The delegation said it regretted the absence of ODIHR observers, who normally ensure
the long-term aspect of the observation exercise.30 “In their absence, the work of our
own observers is, as it were, impaired,” the PACE team said. “Finally, the delegation has
every reason to believe that the administration of this election will be highly efficient.
However, there is much more to a good election than mere election administration.” 31

Conclusion

The small number of instances analysed above – and there are many more – amply
demonstrate that relations between Russia, the European Court of Human Rights, PACE,
and the Council of Europe itself can hardly get worse. In her column for the EU-Russia
Centre web-site, Elena Prokhorova refers to Russia’s “hard talk” vis-à-vis Europe’s
democracy and human rights institutions. In her view “…in reality Moscow’s new
thinking has caused unintended effects. It has harmed Russia’s reputation and was
counter-productive from any plausible conception of Russia’s national interests.” 32
This

30 See Press Release “OSCE/ODIHR regrets that restrictions force cancellation of election observation
mission to Russian Federation” at http://www.osce.org/odihr/item_1_29599.html
32 Elena Prokhorova “Russia’s Macho Foreign Policy” 12 February 2008 at http://www.eu-
russiacentre.org/
The Rule of Law and Independence of the Judiciary in Russia

By

Rupert D’Cruz
(Secretary of the British-Russian Law Association
and Barrister in private practice, 10 Old Square)

Introduction
Before dealing with specifics, it is necessary to sound a note of caution about making
generalised statements concerning the Rule of Law and the Independence of the
Judiciary in Russia. Russia is a vast country. That reality inevitably means that the writ of
the executive is felt more powerfully in some regions than others. This in turn means
that some regions have a stronger reputation for judicial independence than others. For
example, whilst the Moscow and St. Petersburg judges are highly qualified from a
professional standpoint, they are also commonly regarded as the most susceptible to
political influence, while in other Russian regions, the ‘fusion’ of executive and judicial
authority is not so pronounced. Therefore it should not be assumed that any of the
issues referred to below applies in any uniform across Russia, although they do
nevertheless, represent recognised trends.

The Positives
As is widely appreciated, there has been substantial legal reform in Russian since the
early 1990s. Much has been positive and encouraging from the point of view of a strong
Rule of Law. Other reforms (in particular some of the more recent ones) have not. In
addition to formal reforms, one also has to factor into account the ‘reality on the
ground’ when assessing the condition of the Rule of Law and Judicial Independence. It is
here that most of the areas of particular concern arise.

Let me start with the positives as I see them. Here is a list:
The introduction of jury trials for serious offences (with consequential increases in the rate of acquittals, although the impact of this is reduced by the prosecution’s right of appeal which is often successful).

- The expansion of judicial power over areas such as pre-trial detention, arrest warrants, searches and seizures and the corresponding reduction in the power of the Procuracy.
- The requirement that a suspect be brought before a judge within 48 hours of arrest.
- The provision of extra protection for judges.
- The establishment of a Judicial Training Academy.
- The efforts that have been made to inform judges of the provisions and relevance of international law.
- The Presidential Programme for Financing the Courts which allocated a budget of 45 billion roubles for the period 2002-2006 to improving court buildings, the computerisation of courts, increasing court staff and increasing the salaries of judges (although these still remain relatively low – the highest being in the region of $3,000 per month).

Increasing judges’ salaries is (for obvious reasons) a particularly important tool in creating an environment which encourages judicial independence. The low level of salaries (improved though this has been) has led to large numbers of judicial vacancies (the last estimate being in the region of 6,000) which have proved difficult to fill.

The ability of many judges is impressive. Before the right judge it is certainly possible for an individual to win a case against the authorities. Often this arises in cases in which European Convention rights are relied on. The knowledge that a case may end up in Strasbourg if not correctly dealt with does have a chastening effect. The trick is often to persuade the court that the claimant has a strong case that is likely to succeed if pursued to Strasbourg and that is not in the interest of the State authority for this to happen. Although the court’s motivation in such cases can rightly be said to be one of enlightened self interest rather than exercises of judicial independence as such, the very fact that international law has this effect is a positive factor.

The cases in which claimants succeed against public authorities, tend to be those in which the issue in dispute is not regarded as ‘political’ per se but concern simple red tape and bureaucratic inefficiency: typical examples being cases involving pensions or...
tax cases (although even here ministries are often instructed to appeal to the end to force people to work to recover their awarded. Litigation is a relatively inexpensive business in Russia, so there is less concern about the costs of running a meritless case).

Perhaps the most encouraging point is that Russians go to court in substantially larger numbers now than was previously the case. That ‘market force’ factor is, in itself, a telling point.

**Negatives**
There are, however, a number of areas of obvious concern in relation to the Rule of Law and Judicial Independence.

In criminal cases there remains an unhealthy proximity between prosecutors and judges. There is a widespread view that the courts are often merely the judicial arm (and an extension) of the Prosecutor General's office.

Judges mostly come from prosecutors' profession. It is almost impossible for an advocate to become a judge. There is a continued perception amongst judges that their principle function is to act as the defender of State interests. This is evidenced by the substantial disparity in acquittal rates between cases involving juries and cases involving only judges. Although it is true to say that disparities also exist in other countries (including the UK) they are nothing like as stark.

There can be little doubt that in cases where major economic or political interests are at stake the courts of all levels tend to be politically subservient. If anything this trend has grown in recent years. The most pronounced and extreme example is the internationally renowned cases involving Yukos and Mikhail Khodorkovsky where ‘total State influence’ over the judicial process is widely perceived to have occurred. It extended not just to the Defendants themselves but also to their lawyers who were subject to disciplinary proceedings at the behest of the Prosecutors Office on spurious grounds, although the local Chamber of Advocates which oversaw the process commendably proved its own independence by rejecting the charges brought after a thorough investigation. In 2005 the English Court rejected applications for the extradition of two Yukos employees
(Dmitri Maruev and Natalia Chernysheva) to face charges of conspiracy to commit fraud on the grounds that, in its view, a fair trial of them was unlikely to take place because of their political opinions and those associated with them.

Of course the position should not be oversimplified; the pertinent question is where the political influence is coming from: if for example it is only on the local level, there may be opportunities to ‘trump’ that influence by appealing to a higher court and to wider political interests. However in such situations the law tends to be a secondary consideration to achieving the ‘politically correct’ decision. There is a Russian saying for this: “закон как дышло, куда повернешь, туда и вышло” (“the law is like a rudder, whichever way you turn it, that’s the way it goes”).

Political Interference in the judicial appointments procedure has, if anything, worsened under laws brought into force in the wake of the Beslan siege, allegedly for "counter-terrorism" purposes. The executive wields considerable power through the Judicial Qualification Collegia. The Collegia is intended to be a body of judicial self governance which controls the appointments, promotions and dismissals of judges. The executive wields considerable influence in the appointments to the Collegia which is used to keep judges in check.

On international economic and business matters there seems to be an understanding within the authorities that decisions must be based on the law, rather than on the influence of politically exposed individuals that may be implicated.

However, in other (domestic) commercial affairs, corruption is certainly a continuing problem and has been publicly acknowledged as such and condemned by the Chairman of the Constitutional Court, Valerii Zorkin.

Perhaps more alarming issue is the increasing tendency of late to use law enforcement agencies to settle private disputes. The enforcement of court judgments is frequently slow and ineffective and many still choose the short-cut route of paying prosecutors, FSB or regulatory ministries to harass, fine, shut down or detain their competitors on spurious grounds.
As previously mentioned, regional factors certainly come into play. The reliability of decisions in domestic disputes will depend on the actual court (its location, reputation etc) and on the ‘influence’ of each party. If they are balanced then it is most likely that the judge will make his decision according to the law. If influence is skewed one way or another the result will often result in a ruling in favour of the strongest.

However this is a very broad generalisation, which I have already cautioned against, and it is important to recognise that there are many judges who reject this approach and who have highly commendable reputations for independence. How long they stay in post is, perhaps, another matter. Those who display overt independence can (and often do) quickly find themselves marginalised or, if they cause real trouble, purged completely from the system, most obviously through dismissal by the Judicial Qualification Collegia.

A well known example of this is the case of former Judge Sergei Pashin. Mr Pashin was a prominent proponent of progressive legal reform for many years. He was dismissed by the Moscow Qualification Collegia in October 2000 for revealing his office telephone number during the course of a radio programme and for writing a critical analysis of a court case in a nearby jurisdiction. Mr Pashin claims (and many believe) that the real reason for his dismissal was his refusal to rule against a conscript who sought recognition of his constitutional right to do alternative service instead of joining the military and for his acquittal rate. One in every ten cases compared to the national acquittal rate of one in 200.

A further case which received widespread publicity was the case of Judge Kudeshkina of the Moscow City Court. She claimed to have been pressured by the Public Prosecutor and the chairperson of the Moscow City Court to decide in the prosecutor’s favour in the trial of an Interior Ministry Investigator. She states that when she refused to do so the case was transferred by the Chairperson to another judge. Judge Kudeshkina herself was dismissed in May 2003 for violating the rules of courtroom conduct and discrediting the judiciary after her public criticism of the chairperson’s conduct. The chair of the Moscow City Collegia which considered the disciplinary charges against her was a judge of the Moscow City Court, and therefore subject to the authority of that same chairperson and Judge Kudeshkina’s appeal against that decision was to that same Moscow City Court, and was unsuccessful.
Recent anecdotal experiences
The recent experiences of Professor Bill Bowring are another example of some progress within the judicial system. Professor Bowring was deported from Russia during one of his many formal visits there and banned from returning to the country for a period of five years. However, the encouraging point is that he succeeded in his claim before the administrative courts in having that decision overturned because the judge that dealt with his case was entirely impartial and independent.

In October 2007, a representative of Amnesty International was detained in Russia on charges of visa violations. Last month she succeeded in her court challenge against the administrative fine that was imposed on her. This is her own observation of the judge who presided over her case: “She was really great, pointed out several times that all my papers were in perfect order and that I had respected Russian law while the Federal Migration Service had tried to ignore it.”

Summary
In conclusion, clearly there are a number of areas of concern regarding the Rule of Law and the independence of the judiciary in Russia. The recent trend has not been encouraging. If anything, the direction appears to be backward rather than forward. However, the picture is not entirely negative and, in my view, continuing constructive dialogue is called for.
Today's Russian Judiciary has its Roots in its Soviet Past

By

Elena Liptser
All-Russia Public Movement for Human Rights
And Lawyer in private practice, Liptser, Stavitskaya and Partners

As in any state, the Russian system of justice comprises a number of elements and follows a recognisable path, from arrest to imprisonment. What is alarming however is the fact that there is an all too frequent pattern in the verdicts of the cases brought to justice. The common stereotype in Russia (but also a growing reality) is that anyone who is arrested will be put in prison, serve time there before his trial, and his verdict will be “guilty as charged” in 99.6% of all cases. It can be claimed that in the 2000s the system has effectively returned to its state before the reforms of the ‘90s. The elements of justice and their organisational characteristics are examined more closely below.

A modern Russian judge
Judges in Russia are very likely to be former employees of the prosecutor's office. They will almost never be defence attorneys, as there is an unwritten rule that prevents any defence attorney from a developing career as a judge. Their salary of around €3,000 per month is paid by the state. Besides this, they are offered a number of benefits, such as an apartment provided free of charge by the city or regional authorities and an annual paid for month-long holiday. New judges must go through a probation period for a period of three years, after which they have a position for life. However, that authority can be suspended or discontinued by the ‘Judges Qualification’ committee at any time.

A modern Russian investigator or an employee of the prosecutor's office
Salaries, benefits, and work conditions are comparable to those in Western Europe and the USA. However, according to many human rights activists’ reports, corruption is still a characteristic of those working within the system. The prosecutor and investigators bear no responsibility for their actions. If, as a result of mistakes or omissions in an investigative process, a person is falsely accused, deprived of his freedom, or abused, the prosecutor's employee does not carry any responsibility for those mistakes or omissions. It is the state that is responsible for such mistakes, which for a victim means that no one is ever held responsible.
A modern Russian defence attorney
This profession is becoming less and less popular in Russia. In the ‘90s and the beginning of the 2000s, the vast majority of law graduates would become corporate lawyers or practicing defence attorneys. This trend has now changed dramatically with approximately eight out of ten graduates joining the ranks of the various and numerous state law enforcement agencies, according to some Russian educational NGOs. The rights of lawyers, although formally protected by a special law covering defence attorneys and their legal work, are abused on a daily basis by illegal actions of the prosecution authorities. Lawyers are frequently subjected to strip-searches when they visit their clients in pre-trial detention centres of prison colonies, forced to pass privileged legal documents to security guards within the prison for photocopying (otherwise they are not allowed to see their client), their offices are raided by investigators as a part of ‘evidence gathering exercise’ and confidential documents are taken away. In practice there is no such thing as client-attorney confidentiality. Even documents inside attorneys’ briefcases and offices are not safe from seizure by the authorities.

Citizens in trouble – Arrests and Pre-detention: the accusatory nature of the Russian courts
More than 30,000 people are arrested in Russia every month, according to V. Semenyuk, deputy head of the Federal Penitentiary Service. 33
In 2006 the courts granted:
- 249,478 petitions for detention in custody, 91% of all such applications from law enforcement agencies;
- and 209,686 petitions for prolonging detention in custody, 98% of all such applications;34
- 78,000 people were freed from the courtroom on a variety of grounds. 35

Unlike in Western democracies, there is no presumption of innocence in Russia. The evident bias of the courts towards conviction is claimed by many human rights activists to be the most important reason - setting aside socio-economic causes – for the recent rise in the numbers of those imprisoned. Another is the readiness of judges to approve

33 RIA Novosti: www.rian.ru
34 The judicial department of the Russian Federation Supreme Court, www.cdep.ru
35 interview with Yury Kalinin in the daily Rossiskaya gazeta, № 4512, 8 November 2007
requests from the prosecutor's office and investigative bodies to use custody as a measure of restraint for suspects and defendants. Once detained by the police, the FSB or one of the other numerous Russian law enforcement agencies, a suspect can expect court approval of his arrest in almost 100% of cases. Furthermore, bail is almost never granted. The suspect is then kept in pre-trial detention isolation (or prison), sometimes for weeks without access to his lawyer. In order to visit his client at a pre-trial detention centre, a lawyer must first obtain permission from an investigator – permission that is rarely given. Although this is against the law, it is a common practice for investigators to ignore such requests in order to put more pressure on a suspect.

A modern Russian trial
Once the trial starts, a guilty verdict is almost guaranteed, and the best hope for the accused can only be that he gets ‘conditional’ punishment, either because he has already served a long term awaiting trial, or his lawyer was sufficiently skilful to re-qualify the indictment and gain a reduced sentence for a less serious crime than that which he was put on trial for. According to the judicial department of the Russian Federation Supreme Court, 910,000 people were convicted in 2006 (a 3.5% rise on the previous year) while 8,700 were acquitted (less than 1% of sentences passed).

Trial by jury is not widespread in Russia and the number of cases tried before a jury remains very small. In January 2007, trial by jury was available in 20 of the Russian Federation’s 85 regions. Despite its restricted use, 21% of the total cases tried before a jury in 2006 resulted in acquittal, compared to 1% of the cases tried before a panel of judges.

Imprisonment
The trial over, prisoners will be transferred to one of Russia's 450 prison camps, whose population at 1 January 2008 was 883,200 people according to official data from the Russian Federal Service for Execution of Punishment. This figure represents the third largest number of prisoners in the world, after the US and China. Furthermore, the Prison Index demonstrates that the number of prisoners per 100,000 in Russia (628)

36 www.cdep.ru
is only exceeded by the United States and French Guyana, (in most EU countries the index does not exceed 100). The huge number of detainees is also a result of the rare use of alternatives to imprisonment (finances, public work etc.) by the Russian system.

The types of correction facilities in Russia are: colony settlements, correctional colonies (general-regime, strict-regime, and special regime), jails, medical correctional facilities, investigation ‘insulators’ and educational (juvenile) colonies. The conditions vary according to the type of establishment and other factors, but human rights activists are increasingly concerned about horrific examples of death and injury in prisons and regularly draw them to the attention of the authorities.

The number of complaints and appeals from prisoners has risen in the past few years. This is acknowledged not only by human rights organisations but also by the Russian Federation Ombudsman, the prosecutor’s office and the Federal Penitentiary System. In 2006:

- The prosecutor’s office received 40,000 complaints from prisoners. Only 6% of them were upheld. 38
- The Russian Ombudsman Vladimir Lukin received about 3,000 appeals. He considered that 50% of them demanded his intervention. Only in 123 cases, however, were violations of human rights officially documented. 39
- The Federal Penitentiary Service received 340,000 complaints about conditions of custody and unlawful behaviour by the administration. However, according to the head of the Federal Penitentiary Service, after investigation by his organisation and the prosecutor’s office, only 0.3% of complaints were confirmed. 40

The Ombudsman states, in his annual report that most complaints by prisoners are justified, but the Federal Penitentiary Service does not want to subject them to serious examination. It is typical for prisoners who have appealed to the Ombudsman to greet his representative, on the latter’s arrival in the camp or prison, with a letter withdrawing

38 From a statement by a department head of the RF Prosecutor’s General Office, S. Kudenev, during a meeting with human rights commissioners for the Russian regions. Interfax, 6 April 2007
their complaints. Officially, the complaint is then considered “not confirmed”. However, it is evident that the prison administration has put pressure on the prisoner. There have also been incidents of wilful obstruction by the penal institutions’ administration when the Ombudsman and his representatives try to carry out their investigation.

Each year, fewer and fewer prisoners get a positive response to their petitions for a pardon (the number has decreased from 7,386 to ten in the last six years). Under President Putin, the Presidential Pardons Commission was dissolved and the primary selection of suitable cases was entrusted to pardons commissions in the regions, where about 5% of petitions for pardon were granted. Amnesty is regularly granted to prisoners, although the number has been dramatically reduced in the past few years.

**Conclusion**

Many factors contribute to a lack of independence in the way the decisions are taken by judges in modern Russian courts. The way that an individual is treated once he is caught up in the machine of Russian justice, is far from humane, as well-documented evidence shows. The Russian judicial system does not have a single element that seeks to rehabilitate or convert criminals, and appears to have no interest in returning them to the society as reformed people. The system is concentrated on severe punishment, with little or no public control over state repression. This image of abuse is so widespread it is telling that 59% of respondents to an October 2007 poll by the Yuri Levada Analytical Center on the observance of human rights in Russia believed that torture is used in Russia to browbeat suspects into admitting their guilt.

* The author would like to extend special thanks to the Foundation «In defence of the rights of prisoners» (http://www.zashita-zk.org/9F33175) who helped tremendously in developing this article and provided all the recent data and facts.

---

Enhancing the Rule of Law by Strengthening the Legal Profession: Balancing the Scales of Lady Justice

By

Rahela Dosen

Director, European Rule of Law Projects,
Council of Bars and Law Societies of Europe

Introduction
Since the fall of the Iron Curtain, European institutions have supported the countries of South Eastern and in Eastern Europe (SEEE) on their road to democracy. In that light, they have invested a large amount in rule of law geared activities aimed at judges, public prosecutors, the police and officials of various Ministries. In the view of the Council of Bars and Law Societies of Europe (CCBE)42, one professional group with an essential role in facilitating the rule of law in society does not get the p attention it deserves: lawyers. Without well trained and independent lawyers, the legal system, and therefore the rule of law cannot function properly. It is in that context that the CCBE’s recently launched ‘European Rule of Law Projects’ pleads for further action by the European institutions in order to support the empowerment of independent self-regulating organisations of lawyers – i.e. Bars - in SEEE.

Why lawyers?
Professional organisations of lawyers lay down the ethical codes which lawyers must follow, the regulations of their qualification, the provision of their continuing training. They discipline lawyers, as well as protect their independence, and their professional integrity. Together with the judiciary - and, in criminal procedures, public prosecutors - lawyers are part of the administration of justice. They advise or represent the interests of citizens, and they defend them in criminal proceedings when much is at stake. By bringing certain provisions of national or international law to the attention of a judge, lawyers contribute to the correct application of the law by the judiciary, as a counterbalance to the public prosecutor’s charges. Lawyers are, in short, responsible for

---

42 The Council of Bars and Law Societies of Europe (CCBE) represents the Bars and Law Societies of the European Union and the European Economic Area - and through them, more than 700,000 European lawyers. In addition, it has six Observer Members from South Eastern and Eastern Europe.
a substantive share of one of the two scales of Lady Justice. Well informed, independent lawyers with integrity are essential to realising the rule of law in society.

Bearing in mind the heritage of communism in the countries of SEE, the oft-heard argument that lawyers are rich enough to provide for their own training is not applicable, and is even beside the point here. It is assistance from outside that is wanted and needed in the transition period. In this context, it may not come as a big surprise that the Russian Federal Chamber of Lawyers has developed the concept of a ‘Single Legal and Rule of Law Space of the EU and the Russian Federation’ and that it has approached the CCBE to support them in their work towards the realisation of it.

**European institutions and the rule of law in SEE**

Besides the American Bar Association’s Central and East European Law Initiative (ABA CEELI), the European Commission (EC) and the Council of Europe (CoE) are the most significant players in the rule of law field in Europe. In addition, the EC finances and runs a vast number of rule of law geared activities, aimed at both the state administration - judiciary, public prosecution, police and various Ministries - and civil society organisations. The activities are run by a variety of Directorates General (DG): DG Justice, Freedom and Security, DG Enlargement and EuropeAid in conjunction with DG External Relations, DG Competition as well as DG Taxation and Customs Union; each DG has different programmes. In addition to thematic instruments to finance activities, the EC also has instruments with a geographic scope.

The risk of this rather scattered approach to the rule of law is that it will impede the coordination and cohesiveness of activities. In order to ensure effectiveness and efficiency, both are needed, whereas co-ordination between the many DGs – comparable to Ministries on the national level – is an enormous task. In addition, the accessibility of information for outsiders on rule of law activities suffers, which can lead to overlap or duplication of activities by others, where activities need to be complementary and co-ordinated. By using thematic grouping or by channelling the activities through a clearing house, clarity for all parties involved would be enhanced, which would, in turn, contribute to efficiency in the rule of law field in general.

The CoE has also conducted a wide range of rule of law activities in Eastern Europe, either at the request of beneficiary governments, or through joint programmes with the
EC. Due to its intergovernmental structure, many CoE activities are focused on the judiciary, while fewer activities are aimed at lawyers and Bars - as governments do not always request assistance in that field.

In 2002, the CoE Committee of Ministers adopted a Resolution establishing the European Commission for the Efficiency of Justice (CEPEJ), which is “...aimed at (a) improving the efficiency and the functioning of the justice system of member states, with a view to ensuring that everyone within their jurisdiction can enforce their legal rights effectively, thereby generating increased confidence of the citizens in the justice system and (b) to enable a better implementation of the international legal instruments of the Council of Europe concerning efficiency and fairness of justice”\textsuperscript{43}. In that context, the Ministers have formulated recommendations for judges and public prosecutors as well as for lawyers\textsuperscript{44}. As a consequence, two consultative councils have been created: one for judges and one for public prosecutors. The creation of a third consultative council for lawyers could contribute to the aims set forward in the Resolution and Recommendations. This has not yet been undertaken.

There seems to be a tradition at policy level of the European institutions not to involve lawyers in rule of law assistance programmes that are aimed either at the public sector, or civil society organisations. The training of lawyers appears to be seen as an issue of the profession, and not as being in the interest of society. Recently, some changes have been noticed: the EC has announced a few legal aid programmes in Eastern Europe, and some time ago, a programme for civil society organisations was published which applies to the strengthening of the professional organisations of lawyers. The CCBE welcomes these developments, and is of the opinion that more such initiatives are needed.

**Conclusion and recommendations**

Both the EC and the CoE have invested considerably in rule of law geared activities since the fall of the Iron Curtain. The EC runs its rule of law activities from numerous DGs, which endangers coherence of activities and the efficiency of resources. Various programmes exist for public institutions and – to a lesser extent – for civil society

\textsuperscript{43} Council of Europe Committee of Ministers Resolution Res (2002)12 establishing the European Commission for the efficiency of justice (CEPEJ),

\textsuperscript{44} Recommendation (2000)21 on the Freedom of the exercise profession of lawyer
organisations. Most of the programmes focus on the judiciary and public prosecutors, and much less is done towards strengthening Bars and training lawyers. Bearing in mind the public interest of well trained, independent lawyers who demonstrate integrity, more programmes should be aimed at lawyers, especially Bars which are responsible for the regulation of the legal profession. This aspect is essential in achieving properly functioning legal systems, and thus the realisation of the Etat de droit, (this is especially the case given the heritage of communism in the target area).

Representing the Bars and Law Societies of Europe, the CCBE has launched its ‘European Rule of Law Projects’ with the aim of creating a financed programme for strengthening Bars and the legal profession in the emerging democracies on the eastern borders of the EU. In this role, the CCBE would be happy to take its responsibility in the issues mentioned above, and assist the European institutions in their work towards realising the rule of law in SEE.
ANNEX I

The Penitentiary System of Russia

Presentation by Ms Elena Liptser,

6 December 2007, European Parliament, Brussels
Prison population in Russia

- Russia has the third largest number of prisoners in the world, after the USA and China.
- Since 2004 there has been an absolute increase of 123,300 in the number of prisoners detained in Russia.
- These figures and the Prison Index show Russia reverting to the status quo of 2000, at the beginning of the country’s reforms.

Changing prison population

- Today there are 886,361 prisoners in Russia (01.11.2007*)

Table 1. Numbers held in Russian penitentiary institutions, '000s

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>925.1</td>
</tr>
<tr>
<td>2001</td>
<td>980.2</td>
</tr>
<tr>
<td>2002</td>
<td>877.4</td>
</tr>
<tr>
<td>2003</td>
<td>847</td>
</tr>
<tr>
<td>2004</td>
<td>763.1</td>
</tr>
<tr>
<td>2005</td>
<td>823.5</td>
</tr>
<tr>
<td>2006</td>
<td>872</td>
</tr>
<tr>
<td>2007</td>
<td>886.4</td>
</tr>
</tbody>
</table>

Prison population in Russia

- The number of prisoners in Russia is roughly equivalent to the population of the following European cities —

<table>
<thead>
<tr>
<th>City</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valencia</td>
<td>740,000</td>
</tr>
<tr>
<td>Amsterdam</td>
<td>750,000</td>
</tr>
<tr>
<td>Zurich</td>
<td>790,000</td>
</tr>
<tr>
<td>Manchester</td>
<td>950,000</td>
</tr>
<tr>
<td>Cologne</td>
<td>960,000</td>
</tr>
<tr>
<td>Brussels</td>
<td>960,000</td>
</tr>
<tr>
<td>Marseilles</td>
<td>1,000,000</td>
</tr>
</tbody>
</table>

Spain       
Holland    
Switzerland 
UK         
Germany    
Belgium    
France

The Prison Index
(prisoners per 100,000 people)

**EU Countries:**
- In most EU countries the index does not exceed 100 per 100,000 (the EU average is 90).

**RUSSIA:**
- 628 individuals per 100,000 population, only exceeded by the USA and French Guiana.

**USA:**
- 750 individuals per 100,000 population, the highest in the world.

Reasons for the increasing prison population

Most rights activists in Russia agree – setting aside socio-economic causes – that the rise in numbers of those imprisoned, in decreasing order of importance, is due to:

- The established bias of Russian courts towards conviction,
- The rare use of alternatives to imprisonment (fines, public work etc.),
- The readiness of judges to approve requests from the prosecutor’s office and investigative bodies to impose custody as a measure of restraint for suspects and defendants,
- The authorities’ lack of compassion. Lately there has been a disturbing decline in the number of pardoned and amnesty prisoners,
- Trial by jury has not become widespread, and the number of cases tried before a jury remains very small.

The accusatory nature of Russian Courts

- 910,000 people* were found guilty in 2006. The number of those convicted, as compared with 2005, increased by 3.5%.
- 8,700 people* were acquitted in 2006. This was less than 1% of sentences passed.

* The judicial department of the Russian Federation Supreme Court, www.cdep.ru
Jury trials

As of 1 January 2007 trial by jury was available in only 20 of the Russian Federation’s 85 Regions.

In 2006 trials heard by a jury had the following outcome:

- 607 criminal cases resulted in convictions,
- 1,079 persons were found guilty,
- 227 persons were acquitted, or 21% of the total.
- This may be compared to trials before a panel of judges where acquittals accounted for less than 1% of verdicts.

* The judicial department of the Russian Federation Supreme Court, www.cdep.ru

Arrests in Russia

- More than 30,000 people are arrested in Russia every month *. 
- In 2006 the courts granted:
  - 249,478 petitions for detention in custody, 91% of all such applications from law enforcement agencies;
  - 209,686 petitions for prolonging detention in custody, 98% of all such applications **;
- While 78,000 persons *** were freed from the courtroom on a variety of grounds ***,
  - i.e. those, whom it was not deemed necessary to keep in custody.

** The judicial department of the Russian Federation Supreme Court, www.cdep.ru
*** From an interview with Yuri Gubin in the daily Rossiskaya gazeta, 09/4512, 8 November 2007.
Pardon

Each year fewer and fewer prisoners get a positive response to their petitions for pardon. Under Vladimir Putin the Presidential Pardons Commission was dissolved, and primary selection of suitable cases was entrusted to pardons commissions in the regions.

- The number pardoned for criminal offences in the last six years has decreased more than 700 times*.
- About 5% of petitions for pardon are granted, on average, in the Regions.

In 2006 the Vologda Region commission supported five petitions out of 80; the Sverdlovsk Region commission supported four out of 117 **.

The numbers pardoned in Russia:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>7386</td>
</tr>
<tr>
<td>2001</td>
<td>194</td>
</tr>
<tr>
<td>2002</td>
<td>73</td>
</tr>
<tr>
<td>2003</td>
<td>152</td>
</tr>
<tr>
<td>2004</td>
<td>17</td>
</tr>
<tr>
<td>2006</td>
<td>10</td>
</tr>
</tbody>
</table>

* The Centre for Criminal Justice Reform (Russia), www.пardon.ru
** Ministry of Justice data, Vedomosti daily, 12 January 2007, №3 (1777), www.vedomosti.ru

Amnesty

- 1992 379,000 prisoners were amnestied.
- 1994 Amnesty to mark the adoption of the new Constitution. 23,000 left places of detention.
- 1995 Amnesty to mark the 50th anniversary of Victory in the Second World War. 68,500 were freed.
- 1997 35,000 prisoners were amnestied.
- 1999 Amnesty granted to 24,000 prisoners.
- 2000 Amnesty to mark the 55th anniversary of Victory in the Second World War. 206,000 were freed.
- 2001 10,000 juvenile offenders and 14,000 women were freed.
- 2005 Amnesty to mark the 60th anniversary of Victory in the Second World War. 217 veterans were amnestied*.
- 2006 Amnesty to mark the centenary of the State Duma. About 2,500 people left penal institutions **.

* Kommersant Daily, № 66 (3397), 14 April 2006.
** Trasne weekly magazine, № 18 (479), 15 May 2006.
Incarceration: conditions and diseases

- Prisoners are held in:
  - 766 penal colonies,
  - 216 pre-trial detention centres,
  - 7 prisons,
  - 160 premises functioning as pre-trial detention centres,
  - 62 juvenile correctional facilities.

- A prisoner’s daily nutrition costs 56 roubles (about 1.5 euros) **.

- 90% of prisoners suffer from one disease or another ***.

- 35% of prisoners (314,000) have seriously contagious illnesses — 40,000 prisoners have an active form of TB; 32,000 have HIV.

---

Complaints and appeals

The number of complaints from penal institutions has risen. This is acknowledged by human rights organizations, the Russian Federation Ombudsman, the prosecutor’s office and the Federal Penitentiary Service.

In 2006, for instance,

- The prosecutor’s office received 40,000 complaints from prisoners. Only 6% of them were confirmed *.

- The Russian Ombudsman Vladimir Lukin received about 3,000 appeals. He considered that 50% of them demanded his intervention. Only in 123 cases, however, were violations of human rights officially documented**.

- The Federal Penitentiary Service received 340,000 complaints about conditions of custody and unlawful behaviour by the administration. However, according to the head of the Federal Penitentiary Service, after investigation by his organisation and the prosecutor’s office only 0.3% of complaints were confirmed ***

---

** From an interview with Yury Kalinin, head of the FPR, Radio Echo Moskvy, 29 October 2007, www.echo.ru
Public Opinion:
“Are human rights observed in Russia?”

From 19 to 23 October 2007 the Yury Levada Analytical Centre conducted a representative sample poll, by age and occupation. 1,600 adults from across Russia were contacted *.

- 72% think human rights are violated in Russia,
- 40% believe political prisoners exist in Russia,
- 59% think torture is used in Russia to browbeat suspects into admitting their guilt.

* The website of the Yury Levada Analytical Centre (Russia), www.levada.ru

Prisoners’ complaints: how they are ignored

As the Ombudsman states, in his annual report, most complaints by prisoners are justified but the Federal Penitentiary Service does not want to subject them to serious examination.

It is typical for prisoners who have appealed to the Ombudsman to greet his representative, on the latter’s arrival in the camp or prison, with a letter withdrawing their complaints. Officially, the complaint is then considered “not confirmed”.

However, it is quite evident that the prison administration have put pressure on the prisoner. There have also been incidents of wilful obstruction by the penal institution’s administration when the Ombudsman and his representatives try to carry out their investigation.
ANNEX II

Federal Map of Prisons in Russia

Presentation by Ms Elena Liptser,

6 December 2007, European Parliament, Brussels
Types of correctional facilities

Correctional facilities shall be correctional colonies, educative (e.g. juvenile) colonies, jails, medical correctional facilities. Investigative isolators shall include the functions of correctional facilities with respect to convicts who have been left at them for carrying out service work at the facility, as well as with respect to persons sentenced to a term not to exceed six months who have been left at investigative isolators with their permission. Art. 74 para 1 Correctional Code of the RF

Correctional colonies are intended for the serving by convicts who have attained the age of majority of deprivation of liberty. They shall be subdivided into colonies-settlements, general-regime correctional colonies, strict-regime correctional colonies, special-regime correctional colonies. Isolated sectors with various types of regime may be created at one correctional colony. Art. 74 para 2 Correctional Code of the RF

Colony-settlement

Persons sentenced to deprivation of liberty for crimes committed through negligence, deliberate crimes of not-large and medium gravity, as well as convicts transferred from general-regime and strict-regime correctional colonies on the basis and in the order established by law shall serve punishment in colonies-settlements. Art. 74 para 3 Correctional Code of the RF

General-regime correctional colony

This is a type of correctional colonies in which men convicted of deliberate crimes, other than those for whom the serving of punishment in strict- or special-regime correctional colonies or in jails is prescribed, as well as women convicted of deliberate crimes, other than those convicted in the event of an especially dangerous repeat offence, shall serve punishment. Art. 74 para 4 Correctional Code of the RF

Strict-regime correctional colony

Men convicted for the first time to deprivation of liberty for the commission of especially grave crimes, in the event of a repeat offence and a dangerous repeat offence, if the convict had earlier served deprivation of liberty, shall serve punishment in strict-regime correctional colonies. Art. 74 para 5 Correctional Code of the RF

Special-regime correctional colony

Convicted men in the event of an especially dangerous repeat offence, those sentenced to deprivation of liberty for life, as well as convicts for whom the death penalty in the order of pardon has been replaced by deprivation of liberty for a certain term or deprivation of liberty for life shall serve punishment in special-regime correctional colonies. Art. 74 para 6 Correctional Code of the RF

Jail

Persons sentenced to deprivation of liberty for a term in excess of five years for the commission of especially grave crimes, in the event of an especially dangerous repeat offence, as well as convicts who are malicious violators of the established order for the serving of punishment, transferred from correctional colonies shall serve punishment in jails. Art. 74 para 7 Correctional Code of the RF

Medical correctional facilities and medical facilities

Convicts suffering from an active form of tuberculosis, alcoholism and drug addiction shall be held and undergo outpatient medical treatment in medical-correctional institutions. Medical facilities (hospitals, polyclinics, psychiatric and tuberculosis hospitals) and medical units shall be organized for the provision of medical services to convicts. Art. 74 para 8, Art. 101 para 2 Correctional Code of the RF.

Investigation isolator

An investigation isolator is penitentiary establishment which the following categories of prisoners are in: 1. under investigation — being on the trial and expecting trials, 2. condemned — expecting execution, 3. detained, expecting extradition to another country, 4. condemned, left for work on economic service

Educative (e.g. juvenile) colony

Serving punishment in educative colonies shall be minors sentenced to deprivation of liberty, as well as convicts left in educative colonies prior to the attainment by them of an age of 21 years. Isolated sectors functioning as general-regime correctional colonies may be created at educative colonies for holding convicts who have attained the age of 18 years during the time of serving punishment. The order for the creation of the indicated sectors shall be determined by the Ministry of Justice of the Russian Federation. Art. 74 para 9 Correctional Code of the RF.
Visit the EU-Russia Centre at
www.eu-russiacentre.org

Contact us:
Rue du Luxembourg 22-24 – 1000 Brussels, Belgium
Tel: +32 (0) 2 761 66 81
Fax: +32 (0) 2 213 13 63
info@eu-russiacentre.org