

INFORMATION TO USERS

This manuscript has been reproduced from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps.

ProQuest Information and Learning
300 North Zeeb Road, Ann Arbor, MI 48106-1346 USA
800-521-0600

UMI[®]

Reducing Prison Populations in Russia: Impediments and Prospects

by

Zhanna Akhunzyanova

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfillment of
the requirements for the degree of

Master of Arts

Department of Law
Carleton University
Ottawa, Ontario
April 4, 2005

© 2005, Zhanna Akhunzyanova



Library and
Archives Canada

Bibliothèque et
Archives Canada

Published Heritage
Branch

Direction du
Patrimoine de l'édition

0-494-06753-5

395 Wellington Street
Ottawa ON K1A 0N4
Canada

395, rue Wellington
Ottawa ON K1A 0N4
Canada

Your file *Votre référence*

ISBN:

Our file *Notre référence*

ISBN:

NOTICE:

The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

AVIS:

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protègent cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.


Canada

Abstract

The harsh and punitive nature of Russian criminal policy throughout the 20th century has resulted in catastrophic overcrowding in pretrial detention and prison facilities. As a result, Russia headed the list of the countries with the highest incarceration rate per 100,000 citizens. This has prompted recent reforms of the criminal justice system, which include amendments to criminal legislation and amnesty declarations aimed at reducing prison populations. However, statistical analysis of prison population data demonstrates that although these initiatives increased the outflow of inmates from prisons and pretrial detention facilities, the accusatorial nature of Russian criminal law, coupled with the systemic encouragement of harsh sentences, ensures a steady influx of new suspects and convicts. This effectively negates the original intent of the reduction policy. The pursuit of high crime detection rates and the subsequent application of detention and imprisonment sentences remain the key factors that hamper the process of prison population reduction. The analysis of the modern criminal justice system shows that it is almost impossible to achieve visible results in reduction of the prison population in Russia without pivotal reforms. These reforms must significantly limit the pervasive power of the Procuracy and ensure greater independence of courts. Despite its reforms to date, the state has been unable to draft and implement the necessary changes in criminal justice policy that are required to ensure reduced prison populations in the near or distant future.

Acknowledgements

First of all, I would like to thank my parents who made my academic studies in Canada possible. Their encouragement and support through the course of my graduate studies have been truly invaluable. I am deeply indebted to them for everything they have done to help me accomplish this project on time.

I would also like to thank my co-supervisors from the Department of Law, Professor Alan Hunt and Professor Dawn Moore, for their timely comments and friendly advice. I am especially grateful for the editing support they graciously provided.

A special thank-you goes to Rajiv Prasad for proofreading the text and making valuable comments and suggestions. Sent from above, his help came at the moment when I most of all needed it.

Many thanks go to Andrew Squires, my program administrator and guardian angel, who has probably done for me more than for any other student in this program. I wish to acknowledge my sincere appreciation of his help without which this thesis would not have been completed.

A personal thanks goes out to Colin Campbell, my program-fellow and friend for his moral support and staying in touch with me even when I was thousands of miles away from Canada.

Finally, I would like to thank Pouria who has been by my side throughout the last year of my M.A. Thank you for being there for me in the difficult moments, for your love, support and tremendous patience.

Table of Contents

Chapter 1: Criminal Law Reform in Russia: Background.....	1
Background.....	1
Prison Statistics.....	4
Imprisonment as the Main Penal Sanction.....	6
<i>Perestroika</i> and the Revelation of Prison Conditions.....	11
The Fall of the USSR and Russia's Entry into European Council.....	14
Amendments to Criminal Legislation Aimed at Reduction of Prison Populations.....	19
Conclusion.....	25
Chapter 2: Administration of Criminal Justice in Russia: History and Present	
Introduction.....	30
The History of Criminal Justice in Soviet Russia.....	31
Criminal Justice in Modern Russia:	
• Falsification of Statistical Data.....	41
• Police Torture in Russia.....	44
• Procedural Violations.....	50
• Administration of Criminal Justice in Courts.....	54
Conclusion.....	57
Chapter 3: Failed Reforms.....	61
The Procuracy.....	61
Police.....	68
Judiciary.....	73
Advocacy.....	79
Defendants as Victims of the Criminal Policy.....	84
Conclusion.....	90
Chapter 4: Conclusions and Recommendations.....	92
Bibliography.....	108

CHAPTER I

CRIMINAL LAW REFORM IN RUSSIA: BACKGROUND

This chapter examines the current state of prison population inflation in Russia. Faced with catastrophic overcrowding in pretrial detention and prison facilities and widespread rights violations, the legislative response included amendments to criminal legislation and amnesty declarations aimed at reducing prison populations. I argue that, in spite of legislators' efforts, prison population reform has failed due to the pervasive nature of harsh criminal policies in Russian law. Statistical analysis of historic prison population data from 1917 to the present day demonstrates that amendments to criminal legislation have not had any significant impact on prison populations. Although amnesties increased the outflow of inmates from prisons, the harsh nature of Russian criminal law ensures a steady influx of new suspects (and subsequently convicts) which effectively negates the original policy objectives to this day.

Background

According to the Russian Federation (RF) Ministry of Justice, on January 1, 2003 penal colonies of the Chief Department of Penalty Execution (GUIN) held 720,800 regular prisoners, 10,900 minors in 64 juvenile colonies, and 145,400 persons in 197 pretrial detention facilities (SIZOs). In addition to custodial detainees, GUIN's inspectorates also recorded 641,000 persons serving non-confinement sentences.¹ The Ministry of Justice reported that as a result of the state's new criminal policy, the number of prisoners in penal and juvenile colonies dropped by 87,500, and pretrial detainees

¹ Deyatel'nost' penitentsiarnoi sistemy [Penal System's Activity] (2003) 6 Rossiiskaya yustitsiya [Russian Justice] 77 at 77.

dropped by 134,600 between May 2000 and June 2003. This in turn dropped Russia's incarceration rate per 100,000 citizens by 20%, from 718 to 614 – below the USA rate of 710.² Referring to the general trend of increased prison populations in Great Britain, France and other leading European countries, the RF Ministry of Justice Public Relations Department proclaimed that “the world community considers the achieved results in Russia as a progressive tendency.”³

Such a rapid cut of the number of prisoners within quite a short period of time came as a result of the adoption in 2001 of a new Code of Criminal Procedure⁴ (effective as of July, 2002) and the introduction of amendments⁵ to the existing 1996 Criminal Code of the Russian Federation⁶ (effective as of January 1, 1997) aimed at the humanization of penal provisions of the criminal legislation.

The reduction of the prison population by more than 200,000, which, incidentally, exceeds the aggregate number of prisoners of the United Kingdom, France, and Germany combined,⁷ is quite an achievement. Prior to 2001, Russian prisons held more than one

² Id.

³ Id.

⁴ O vvedenii v deistvie Ugolovno-protsessual'nogo kodeksa Rossiiskoi Federatsii, No. 177-FZ, [On Enactment of the Code of Criminal Procedure of the Russian Federation, Federal Law No. 177-FZ,] Rossiiskaya gazeta (2001) No. 249, <http://www.akdi.ru/gd/PROEKT/079044gd.shtm>. See also: Ugolovno-protsessual'nyi kodeks Rossiiskoi Federatsii, No. 174-FZ, [Code of Criminal Procedure, Federal Law No. 174-FZ,] Rossiiskaya gazeta (2001) No. 249, <http://www.akdi.ru/gd/proekt/084513GD.SHTM>.

⁵ O vnesenii izmenenii i dopolnenii v Ugolovnyi kodeks Rossiiskoi Federatsii, No. 162-FZ, [On Amendments and Modifications to the Criminal Code of the Russian Federation, Federal Law No. 162-FZ,] Rossiiskaya gazeta (2003) No. 3366, <http://www.akdi.ru/gd/PROEKT/091699gd.shtm>.

⁶ Ugolovnyi kodeks Rossiiskoi Federatsii, No. 63-FZ, [Criminal Code of the Russian Federation, Federal Law No. 63-FZ,] Sobranie zakonodatel'stva Rossiiskoi Federatsii, [Collected Legislation of the Russian Federation,] 1996, No. 25, Art. No. 2954, with further amendments and modifications available at <http://www.akdi.ru/PRAVO/kodeks/uk2.htm>; see also: O vnesenii izmenenii i dopolnenii v Ugolovnyi kodeks Rossiiskoi Federatsii, No. 162-FZ, [On Amendments and Modifications to the Criminal Code of the Russian Federation, Federal Law No. 162-FZ,] Rossiiskaya gazeta (2003) No. 3366, <http://www.akdi.ru/gd/PROEKT/091699gd.shtm>.

⁷ V. Abramkin, “Reduction of Russia's Prison Population: Possibilities and Limitations” in T. Lokshina, ed., Situation of Prisoners in Contemporary Russia (Moscow Helsinki Group, 2003), <http://www.mhg.ru/english/IEBFAOC>.

million inmates.⁸ However, it is questionable whether the statistical data provided by the Russian Ministry of Justice is completely accurate since the data on reduction of the prison population does not account for the influx of new suspects, accused,⁹ defendants and convicts who fill up the vacant places in pretrial detention centres and penal colonies. In fact, Russian officials have always tended to put the state of affairs in the most favourable light, concealing flaws and drawbacks of one or other systems. Now that the world community is concerned with the prison and pretrial detention facility conditions in Russia, it is especially necessary to “correct” the statistical data, since the huge number of prisoners in the Russian penitentiaries is associated with an incarceration culture marked by reports of ubiquitous human rights violations. This includes the routine use of torture for the purpose of extracting necessary evidence, information, and confessions of guilt.¹⁰ Therefore, before proclaiming any “progressive tendency” it seems necessary to analyze the quantitative changes in the number of prisoners in Russia between 2001 and 2003 more closely. In spite of the visible reduction of the prison population reported by the Ministry of Justice, the criminal law reforms did not have a significant impact on certain categories of inmates, and the number thereof remains the same. Moreover, an overly harsh state crime control policy has resulted in the number of released convicts being less than or equal to new prisoners entering the system.

⁸ J.D. Weiler, Human Rights in Russia: A Darker Side of Reform (Boulder, Colo.: Lynne Rienner Publishers, 2004) at 40.

⁹ Although the terms “suspect” and “accused” tend to be used interchangeably in western criminal law, in Russian law they refer to separate and distinct conditions. The term “suspect” refers to a person who the police believe is involved in a criminal incident, whereas the term “accused” refers to a person who was formally charged by the state.

¹⁰ See: T. Lokshina, ed., Situation of Prisoners in Contemporary Russia (Moscow Helsinki Group, 2003), <http://www.mhg.ru/english/1E7AF09>.

Prison Statistics

The statistics below, taken from Moscow Helsinki Group web site,¹¹ indicate that between 1993 and 1997 the number of prisoners increased, and between 1997 and 2000 remained at the same level. In 2001 the prison population began to shrink as a result of amendments introduced to the current Criminal Code of the Russian Federation and a new Code of Criminal Procedure put into effect in 2002.

Table 1. Number of Prisoners at GUIN Institutions in 1993-2003¹²

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Total number of prisoners, in thousand persons	772	876	929	1,017	1,052	1,010	1,014	1,060	924	961	877
Number of prisoners in SIZO, in thousand persons	200	234	253	295	285	279	275	282	236	212	145
Number of prisoners per 100,000 of Russia's population	520	590	630	690	710	690	690	730	640	670	600
Number of male prisoners in the 18+ age group per 100 000 males of this age group	1448	1677	1765	1959	2000	1930	1934	2000	1765	-	-
Number of underage prisoners, thousand persons (SIZO + educational [juvenile] colonies)	32.1	36	36.6	40.5	38.2	33.7	34	40	30	30	19
% of underage prisoners in the total number of prisoners	4.3	4.3	3.9	4	3.6	3.3	3.4	3.8	3.2	3.1	2.2
Total number of underage male prisoners per 100,000 persons of the same age group	543	593	587	635	584	502	498	582	567	-	-
Number of persons suffering from tuberculosis	-	-	48	53	71	82	97	91	91	90	98
HIV infected per 1000 prisoners	-	-	0.008	0.013	0.23	1.44	2.3	3.9	16.3	33.6	42.4

Apart from fluctuations in the number of prisoners between 770,000 and a million – which in itself rises concerns about stigmatization almost every fourth male citizen of

¹¹ Moscow Helsinki Group is the oldest among the existing in Russia human rights agency. See: <http://www.mhg.ru/english>.

¹² Abramkin, *supra* note 7.

working age as a criminal (according to 1998 statistics)¹³ – the statistics also indicate another problem in the massive cases of tuberculosis and HIV among prisoners. Taking into consideration that there are 250,000-300,000 convicts released annually, 30,000 of whom are infected with tuberculosis,¹⁴ and the fact that every seventh HIV-infected person in Russia is a prisoner,¹⁵ these statistics look daunting in terms of their negative health effects on Russian society at large.

According to Valerii Abramkin, Director of Centre for Assistance to Criminal Justice Reform, the reason for such a large number of prisoners in Russia lies in the exceptionally repressive criminal policy of the Soviet state, which “had no relation whatsoever with either the criminal situation or the need to provide safety to the population, but was dictated mainly by the needs and capacity of the [prison] camps’ production base.”¹⁶ According to Abramkin, the optimal number of prisoners for Russia would be 350,000-400,000 persons serving their sentences in penal colonies and 80,000 persons kept in SIZOs.¹⁷

Indeed prior to the fall of the Soviet Union, prisoner labour had been used to render a profit to the state treasury. Prison industry was a significant part of the state economy since, in some fields of industry, prisons were exclusive manufacturers.¹⁸ Consequently, the state maintained an ongoing interest in supplying itself with the

¹³ V.F. Abramkin, Tyur'my i kolonii Rossii [Russian Prisons and Colonies] (Moskva: Liga Razum, 1998) at 241.

¹⁴ Abramkin, *supra* note 7.

¹⁵ G. Roshchupkin, “HIV/AIDS Prevention in Prisons in Russia” in T. Lokshina, ed., Situation of Prisoners in Contemporary Russia (Moscow Helsinki Group, 2003), <http://www.mhg.ru/english/1E7AF09>.

¹⁶ Abramkin, *supra* note 7.

¹⁷ *Id.*

¹⁸ N. Christie, Crime Control as Industry: Towards Gulags, Western Style, 3rd ed. (London: Routledge, 2000) at 81.

necessary number of prisoners to use them as cheap labour. A harsh criminal policy and a wide application of imprisonment were the only means to achieve this goal.

Imprisonment as the Main Penal Sanction

Going back through the history of the Russian criminal law, particularly in the application of imprisonment, it becomes evident that the latter was the preferred crime fighting solution. Moreover, crime waves have always initiated changes in Russian criminal legislation and led to increase in punishment. From 1898 through to the late 1920s the penal policy was relatively moderate, as indicated by the per-100,000 rate of the state's population. In spite of fluctuations over these years, the overall prison population rate was relatively low on a per-capita basis. In 1898 the number began at 66, increasing to 140 in 1909. During the Revolution of 1917, the number increased to 140 but dropped back to 67 by 1922, the last year of the old unconsolidated Russia.¹⁹ With the addition of new territories into the newly consolidated USSR and the implementation of the socialist political and economic dogma under the Bolsheviks, the per-capita incarceration rate began to rise as part of the change in the political order in the country and Stalin's rise to power. Unprecedented terror by the state against its own peoples and struggle against class enemies within the population led to the aggravation of the penal policy which manifested itself as an increase in both the quantity of penalties imposed and the brutality thereof. Labour camps of the notorious Gulag²⁰ became the main penitentiaries where convicts served their sentences and were used as a source of cheap labour; capital punishment and prison confinement were put into effect; extra-judicial

¹⁹ V. I. Zoubkova, Ugolovnoe nakazanie i ego sotsial'naya rol': teoriya i praktika [Criminal Punishment and Its Social Role: Theory and Practice] (Moskva: Izdatel'stvo NORMA, 2002) at 148.

²⁰ "Gulag" is the abbreviation of Glavnoe Upravlenie Lagerei (Main Directorate of Prison Camps).

forms of imposition of both penalties and capital punishment were widely used. In 1943 hard labour was introduced for those who cooperated with the German invaders during WWII. It was estimated that from 1921 through 1954 judicial and extra-judicial bodies sentenced 3,777,380 persons for counterrevolutionary crimes, including 642,980 sentenced to capital punishment, 2,369,220 to deprivation of freedom, and 765,180 to exile.²¹ The per-capita rate of prisoners increased rapidly. In 1937 the total number of prisoners constituted 469 persons per 100,000 of citizens. In 1939 it increased to 859, and by 1941 the number reached 1119.²²

The situation did not improve after WWII, as the state's economy required restoration. This meant that the labour camps would need to be filled with new prisoners. New Decrees of the Presidium of the USSR Supreme Soviet "On Criminal Liability for Embezzlement of State and Social Property" as of June 4, 1947 and "On Strengthening the Protection of Personal Ownership of the Citizens" were the bases of revised punitive sanctions that increased liability on conviction to 20-25 years prison terms – sanctions that went beyond the penalties specified in the Criminal Code.²³ These decrees were the most severe manifestation of the state's penal policy. In a country still devastated by war and famine, the Soviet people were made to suffer extreme punishments even for petty crimes which they had to commit to maintain the basics of life for their families.²⁴ Herewith almost any crime provided for in the Criminal Code could be considered as counterrevolutionary. Even more cynical was the fact that the majority of the camp

²¹ V.I. Zoubkova *supra* note 19 at 150.

²² *Ibid.* at 148.

²³ *Ibid.* at 150.

²⁴ Thus, a peasant woman was convicted and sentenced to five years in corrective-labour camps "for stealing ears of rye totaling 850 grams..." The reason she committed this crime was that she was trying to support her invalid seventy-three-year-old mother. However, "[t]he court considered these arguments to be immaterial and upheld the conviction." See: G.M. Ivanova, Labor Camp Socialism: the Gulag in the Soviet Totalitarian System, ed. by D.J. Raleigh (Armonk, N.Y.: M.E. Sharpe, 2000) at 51.

prisoners constituted so-called political prisoners. Thus, in 1947 the number of political prisoners constituted 54.3% of the total number of prisoners.²⁵ Those citizens choosing to remain outside of the USSR were automatically suspected of treason, and consequently assigned similar criminal liability upon their return.²⁶

The conditions for prisoners were kept purposely harsh. Because of the reduction in the food ration and non-compliance with elementary sanitary requirements (which came as result of the shortage of fresh air caused by overcrowding of prison cells) physically healthy people became sick and/or were turned into invalids.²⁷ This, in turn, led to massive outbreaks of tuberculosis, alimentary dystrophy, and pellagra.²⁸ According to some data, the number of deaths in the Gulag camps from January 1, 1934 till December 31, 1953 totaled 1,053,829 persons.²⁹ It still remains unknown whether these figures include prisoners who died while they were being transferred from prisons to labour camps.

Political prisoners, who first were kept in prison and then transferred to camps, were subject to torture. One prisoner suspected of being a member of an anti-Soviet organization described his stay in custody as follows:

Among all the tools of repression the most severe was... that they allowed not more than one hour of sleep a day, or did not allow me to sleep at all. Exhausted by continuous interrogations, the organism needs at least a couple of moments of rest, and sitting on the bed, I would start to doze; then they would overturn the bed and take everything out of the cell, including a stool, bedside table and even a dust bin so that I had nothing to

²⁵ J. Otto Pohl, The Stalinist Penal System: A Statistical History of Soviet Repression and Terror, 1930-1953 (Jefferson, N.C.: McFarland, 1997) at 20.

²⁶ M.S. Grinberg, "Ugolovnoye pravo kak fenomen, nesovmestimy i bespraviyem i proizvolom" [Criminal Law as a Phenomenon, Incompatible with Lawlessness and Arbitrariness] (2003) 9 Gosudarstvo i pravo [State and Law] 46 at 49.

²⁷ Ivanova, supra note 24 at 16.

²⁸ Pohl, supra note 25 at 47.

²⁹ Id.

sit on and doze. I was willing to sleep on a cement floor as if it was a down-bed, but the specially appointed superintendents did not allow me to do so. I was willing to lean against the wall and doze for just a minute, but I was not allowed to do that either. I tried to doze while standing in the middle of the cell, but they would not allow even this. If yelling and the sound of slamming doors failed to wake me, they would pour cold water over my face. Not just once did I fall down on the floor, and this would last for half a year. The severity of such tool of repression is familiar to those who underwent it.

Another form of physical abuse was handcuffs – floutingly called “bracelets”. These handcuffs, with sharp metal angles, were put on my wrists folded behind the back. During the first few hours there was no pain, but 12 hours later it would emerge in shoulders and muscles with a gathering force. I was handcuffed for three months and five days...

A third form of torture was an isolation ward – a basement, remote from the heating system, with a cement floor and wide open windows. There was no difference between the isolation ward and the prison-yard; in winter everything gets frozen just as in the yard (and I was put in the isolation ward in winter only). At the slightest provocation I was put in there 7 times... It was very difficult to sit in the isolation ward: they took away all warm outer garments and left me in underwear only. Apart from a stool there was nothing there: no bed, no couch; they issued me 400 g of bread and two cups of hot water per day. During the first 20-30 minutes in the isolation ward the organism can still resist the cold, but later on this will be torturous...³⁰

Another prisoner of the Stalin’s camps, a famous Soviet actor, recalled the conditions in the Leningrad prison. He was kept in a cell with 20 other prisoners which was meant for only two. “There was a blind installed outside of the window. The sewage basket exhaled stench and sultriness... During the entire year of 1938 we were not taken to a walk... the food was abominable: the author of memoirs was affected by symptoms of scurvy...”³¹ There were beatings, but the prisoners’ complaints remained unnoticed. The remaining 15 hours of their stay in prison the detainees “spent waiting for transportation while standing in a cramped cell. People were sweating; there was a lack

³⁰ Quoted in V. N. Andreyev, *Soderzhaniye pod strazhei v SSSR i Rossii (poryadok i usloviya)* [Keeping in Custody in the USSR and Russia (Terms and Procedures)] (Moskva: Spark, 2000) at 89-90.

³¹ *Ibid.* at 74.

of oxygen. They never took us out to comply with the needs of nature. Those, who could not stand it, wet themselves; the stench was overpowering.”³²

The historical legacy of institutional mistreatment through torture and degrading treatment towards detainees awaiting their trials still has chilling effects on detainees today. Below I will remark that the routine of violating the rights of prisoners, which was common in the era of the Stalinist terror, will again occur several decades later – in the democratic late 1980s and upon the more democratic regime of the modern Russia.

It was not until Stalin’s death and the subsequent amnesty that the number of prisoners began to decline. During the period from January 1, 1953 till April 1, 1954 the prison population dropped from 2,468,524 to 1,360,303, which constituted a 55% fall.³³ By January 1, 1959 the number of prisoners dropped to 948,447.³⁴

In 1960 a new Criminal Code was adopted which was more liberal in its nature. The maximum term of deprivation of freedom was reduced to 15 years. However, in 1961 the Presidium of the USSR Supreme Soviet adopted a Decree “On Strengthening the Struggle Against Especially Dangerous Crimes” which increased the criminal liability for embezzlement, bribery, rape and other types of crimes significantly.³⁵ This was followed by decrees of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR – “On Measures to Strengthen Crime Control” (July 23, 1966) and “On Grave Faults of the Militia’s Activity and Measures for the Further Strengthening Thereof” (November 19, 1968). This, in its turn, resulted in a significant increase in the number of prisoners and a consequent overcrowding of pretrial

³² *Id.*

³³ Pohl, *supra* note 25 at 47.

³⁴ *Id.*

³⁵ A.V. Malko & S.V. Zhil'tsov, *Smertnaya kazn' v Rossii: Istoriya. Politika. Pravo.* [Capital Punishment in Russia: History. Politics. Law] (Moskva: Izdatel'stvo NORMA, 2003) at 179.

detention facilities by two to three times. In total, 278 SIZOs provided for living conditions for 149,151 persons, but they held 167,049 or 112% of stated capacity.³⁶ After the 1967 amnesty the number of detainees kept in pretrial detention centres dropped by 122,095 (by 83% of the total number of places allocated); but in the next decade it grew continually and reached 206,691 persons in 1976.³⁷ By 1984 this figure reached 286,724 persons with the limit of 238,740 prisoners, or 120% of stated capacity.³⁸ The number of prisoners in colonies and prisons was increasing respectively. After the adoption of a new Criminal Code in 1960 (effective 1961) the prison population shrank to 395,600, but by 1966 it grew to 583,600. In 1970 the penitentiaries housed already 816,700 prisoners, but numbers increased into the next decade: 1975 – 896,500, 1979 – 937,200, 1985 – 1,525,600. Only with the beginning of *perestroika* did the number of prisoners begin to drop gradually. In 1986 there were 1,461,800 prisoners, in 1987 – 1,139,400, in 1988 – 860,200, and in 1989 a decline to 761,900.³⁹

Perestroika and the Revelation of Prison Conditions

For a long time the activities and enforcement policies within penitentiaries remained unknown to the public at large. It was not until Gorbachev's rise to power and the beginning of the *glasnost* era that the public learned about the true state of affairs. After numerous reports in the mass media about prison conditions and a post-glasnost temporary reduction of crimes, the percentage of people charged with crimes and held in

³⁶ Andreyev, supra note 30 at 103.

³⁷ Ibid. at 104.

³⁸ Ibid. at 115.

³⁹ A.S. Mikhlin & R.D. King, "The Russian Prison System: Past, Present and Future" in R. Matthews & P. Francis, eds., Prisons 2000: An International Perspective on the Current State and Future of Imprisonment (Houndmills, Basingstoke, Hampshire: Macmillan; New York: St. Martin's Press, 1996) at 225.

detention (as opposed to those free on bail pending trial) dropped from 48% to 17% between 1983 and 1987. The number of detained and arrested persons decreased from 749,000 in 1986 to 402,000 in 1988.⁴⁰ However, the reduction of the prison population did not affect the conditions of confinement. The Ministry of Finance of the USSR reduced the budgetary allocations for the maintenance of the SIZOs' personnel, which triggered downsizing thereof and resulted in the keeping of detainees in common cells, while entire floors of pretrial detention facilities remained empty.⁴¹ Due to overcrowding the prisoners had to sleep under and amidst the beds, or in shifts.⁴² The food of detainees was as scarce as that of the prisoners of colonies. There were no fruit, milk or dairy products, or eggs available; there was little meat or vegetables; fish, potatoes and breadstuffs prevailed instead.⁴³ The prisoners complained of poor medical services and a shortage of legal material, which is crucial to their rights to defence. The texts of the Criminal Code and the Code of Criminal Procedure were available, but only one copy to each facility, and they would not be handed out to the prisoners.⁴⁴

Finally, in 1987 newspapers published a number of articles which revealed the existence of torture in SIZOs⁴⁵ and the use of people with past records of imprisonment to apply psychological and physical violence against suspects to elicit testimony and/or prepare them for cooperation with investigators.⁴⁶ The media viewed the harsh conditions of pretrial confinement as a deliberate and systemic method of softening up suspects before preliminary interrogation, aiding the modern investigators' ability to compel

⁴⁰ Andreyev, *supra* note 30 at 134-135.

⁴¹ *Ibid.* at 135.

⁴² *Ibid.* at 140.

⁴³ *Id.*

⁴⁴ *Ibid.* at 142-143.

⁴⁵ *Ibid.* at 134.

⁴⁶ Abramkin, *supra* note 13 at 243.

confessions from the suspects or to persuade them to admit guilt.⁴⁷ These processes happened alongside the disclosure of the massive repressions that took place during Stalin's rule. This prompted general comparisons between the Stalin's Gulag system and its use of torture towards the political prisoners to the situation in the modern penitentiaries.

In contrast to 1979, the crime rate in the USSR in 1985 increased by 46%, then shrank for a short period, and began to increase again from 1988.⁴⁸ Each preliminary investigator was prosecuting up to 100 criminal cases simultaneously.⁴⁹ It did not take long for this to increase the length of time required in pretrial investigation and consequently the duration of confinement of the suspects and accused into SIZOs. This caused waves of mass hunger strikes among the prisoners. Their main demands were to shorten the time of trials, improve living conditions and medical services.⁵⁰ This was accompanied by the USSR ratifying the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1985 as well as signing in 1988 Standard Minimum Rules for the Treatment of Prisoners. The situation of degrading treatment of prisoners had certainly existed before; however it was never publicized, since the freedom of speech, envisaged in the 1977 Constitution, was merely proclaimed but did not allow for any criticisms of the state's policy in any of its spheres.⁵¹ Otherwise, the dissidents would face imprisonment or exile.

It was not until 1998, in his report to the State Duma, the lower chamber of the Russian Parliament, that the Ombudsman of the Russian Federation reported tortures,

⁴⁷ Andreyev, *supra* note 30 at 137.

⁴⁸ *Ibid.* at 147.

⁴⁹ *Id.*

⁵⁰ *Ibid.* at 151.

⁵¹ G.B. Smith, *Reforming the Russian Legal System* (Cambridge: Cambridge University Press, 1996) at 82.

beatings, excessive duration of court trials and violation of rights of the persons kept in detention. Imprisonment conditions were described as humiliating lawlessness and absence of guarantees of human rights.⁵²

The Council of Federation, in its turn, responded by adopting a resolution that neither pretrial detention facilities, nor penal colonies provided conditions which met hygienic-sanitary requirements or international standards; there was shortage of medication and food; cardiovascular, infectious and venereal diseases as well as mental disorders were wide-spread; the level of mortality increased.⁵³

The Fall of the USSR and Russia's Entry into European Council

During the existence of the command-and-control system, forced labour rendered a profit to the treasury. Having a huge army of prisoners was the state's most powerful economic advantage. After the collapse of the USSR, when the prisoners' forced labour was no longer permitted in a free-market economy, colonies began to require budget financing.⁵⁴ It is obvious that currently Russia cannot maintain an army of one million prisoners at an appropriate level. This became evident when conditions in the prisons and pretrial detention centres worsened. As it has been mentioned, the decline of the economic situation in the country at the beginning of the 1990s coupled with outdated legislation resulted in mass strikes and hunger strikes in camps and overcrowded cells in SIZOs. These were indicated by familiar shortages of separate beds, scarce nutrition and

⁵² Andreyev, *supra* note 30 at 178.

⁵³ *Id.*

⁵⁴ V. Abramkin, "Nashi idei dolzhny stat' ideyami vlasti" [Our Ideas Must Become the Ideas of the State] (2003) 18 *Dos'ye na tsenzuru* [Index on Censorship] 43 at 47.

infectious diseases. Due to the shortage of space, those affected with tuberculosis were kept together with healthy detainees.⁵⁵

It remains unclear how the government would have responded to the situation of the penitentiaries had Russia not filed an application for admission to the Council of Europe in 1992. This triggered a number of visits by representatives from various international organizations, including the UN and CoE experts.⁵⁶ The conditions of imprisonment at pretrial detention facilities were found inhumane and humiliating.⁵⁷ After his visit to the SIZOs of Moscow and St.-Petersburg, Nigel S. Rodley, the U.N. Special Rapporteur on Torture, recommended a wider use of non-custodial measures of restraint, development of programs aimed at building new pretrial detention facilities if non-custodial measures of restraint did not help solve the problem of overcrowding, reconstruction of the existing pretrial detention centres (with due consideration given to meeting of all main standards of humanity and respect for human dignity), and improvement of nutrition and medical services provided for detainees.⁵⁸

Indeed, beyond solving the immediate problem of scarce food and absence of medical supplies (and occasionally even doctors)⁵⁹ the Russian government faced a no less important object – the reconstruction of pretrial detention facilities, most of which were built before 1917. In 1993 twenty-six out of 174 SIZOs were found to be in a state of failure and inappropriate for housing detainees, and seventy of them required capital

⁵⁵ V. Abramkin, *supra* note 7.

⁵⁶ Andreyev, *supra* note 30 at 162.

⁵⁷ *Ibid.* at 163.

⁵⁸ *Id.*

⁵⁹ Thus, temporary detention wards have no staff medical officers. See: S. Shimovolos, "Medical Services" in T. Lokshina, ed., *Situation of Prisoners in Contemporary Russia* (Moscow Helsinki Group, 2003), <http://www.mhg.ru/english/1EBB5B4>.

repairs.⁶⁰ While the maximum occupancy of all the SIZOs provided for 165,610 occupants, in fact they held 199,923.⁶¹ The Russian government began to develop a program aimed at building new pretrial detention facilities, thus preferring to increase the number of penitentiaries rather than introduce alternatives to custodial restraint. In July 1995 the “Law on the Custody of Persons Suspected of Offences”⁶² came into force, which envisaged the principles provided for in 1993 Constitution of the Russian Federation. It generally recognized international standards and significantly broadened the rights and freedoms of the suspects and defendants. However, a number of its provisions were not to become effective until January 1, 1998. Notably, this included the provisions for detainees regarding a separate bed, compliance with sanitary-hygienic requirements, and the increase of the size of the living space norms to 4 m² per person (the average living space per person for this period was 1,6 m² and in most overcrowded SIZOs and cells – less than 1 m²; more than 90,000 persons had no separate bed).⁶³

However, the budgetary allocations set aside for the implementation of this program constituted only 5.15% of what was needed.⁶⁴ The situation with financing of the existing pretrial detention facilities was not any better. The criminal implementation system did not receive sufficient funding. In 1996 its financial needs were satisfied by only 66%, and then by only 34% in 1997. The Federal Program for Building and Reconstruction of Pretrial Detention Facilities proved to be a failure. By 1996 the amount

⁶⁰ Andreyev, *supra* note 30 at 160.

⁶¹ *Id.*

⁶² O soderzhanii pod strazhei podozrevayemykh i obvinyayemykh v sovershenii prestuplenii, No. 103-FZ, [On the Custody of Persons Suspected of Offences, Federal Law No. 103-FZ] Sobranie zakonodatel'stva Rossiiskoi Federatsii, [Collected Legislation of the Russian Federation,] 1995, No. 29, Art. No. 2759, with further amendments and modifications available at <http://wbasc.duma.gov.ru/ntc/vkart.asp?kl=1195>.

⁶³ Andreyev, *supra* note 30 at 169.

⁶⁴ *Id.*

of budgetary allocations totaled less than 3% of the originally approved amount. This resulted in SIZOs being overcrowded by a factor of one and half, such that 100,000 detainees had no separate bed.⁶⁵ No wonder that throughout the period from 1992 to 1996 the total level of mortality in pretrial detention centres quintupled from 383 deaths in 1993 to 1518 deaths in 1998.⁶⁶

These circumstances were complicated by the rapidly growing crime wave in the country. Whereas in the USSR the number of registered crimes fluctuated between 1.5 million and 2 million annually,⁶⁷ in the new Russian Federation of 1992 there were 2.7 million crimes registered.⁶⁸ This increased steadily in the 1990s such that by 2002 was noted for the first slight fall in the number of crimes to 2.5 million, 924,000 of which remained unsolved.⁶⁹ The reason for such a dramatic and sustained surge is usually attributed to the change of the social order in the country – the decay of the command and administrative system, inept transition to the market economy which resulted in lop-sided economic reforms, collapse of the systems of financial, banking and industrial control, destruction of the legal framework on which the economic activities were based, a fall in currency exchange rates, and an acute polarization of income of the population.⁷⁰ The latter is especially important since, according to experts' estimation, 20% to 40% of acquisitive crimes (mostly thefts) were deemed to be a consequence of poverty.⁷¹ Thus, before *perestroika* the ratio of property differentiation among the population was 1:4; in

⁶⁵ *Ibid.* at 178.

⁶⁶ *Ibid.* at 170.

⁶⁷ In 1989 there were 1.5 million crimes registered in the USSR. See: Zoubkova, *supra* note 19 at 138.

⁶⁸ V.N. Koudryavtsev, *Prestoupnost' i nnavy perekhodnogo obshchestva* [Criminality and Morals of Society in Transition] (Moskva: Gardariki, 2002) at 97.

⁶⁹ *Kratkii analiz sostoyaniya prestoupnosti v Rossii v 2002 godu* [Brief Analysis of the Crime Rate in Russia in 2000] (2003) 5 *Rossiiskaya yustitsiya* [Russian Justice] 74 at 74.

⁷⁰ Koudryavtsev, *supra* note 68 at 98.

⁷¹ *Ibid.* at 102.

1997 it was 1:15, and in 1999 about 1:25 (for comparison, previously in the USSR it was ranged from 1:3 to 1:5).⁷² According to the Federal State Statistics Service in 1990 17% of all crimes were committed by persons who had no stable source of income. By 1996 the number of such crimes reached the 50% mark.⁷³

Apart from thefts, quantity and variety of grave and serious offences increased. Beyond homicide, new types of crimes, previously unknown in the Soviet society, appeared such as trading in prostitution, drug trafficking, trade in arms, racketeering, kidnapping, and hostage taking. These in turn created the necessity to change and improve the criminal legislation. This resulted in legislators emphasizing the elements of retaliation and deterrence in a new criminal code rather than just correctional rehabilitation. The 1996 Criminal Code turned out to be the harshest version ever in terms of criminal sanctions of the entire history of the state since 1917. While capital punishment was retained, life imprisonment was provided for the first time ever. The latter was supported by the opponents of capital punishment and originally intended to be used as an alternative to it.⁷⁴ The longest term of incarceration provided for is 20 years, a significant increase from previous legislation; the 1926 Criminal Code of the Russian Soviet Federated Socialist Republic (RSFSR) imposed a maximum term of 10 years, and the 1960 Criminal Code of the RSFSR later increased it to no more than 15 years. The maximum term for consolidated penalty (i.e. multiple sentences imposed in one judgment) is 25 years, and the maximum comprehensive punishment term (i.e. total sentence time including additional sentences imposed upon a person already serving another sentence) is 30 years. These lengthy prison terms for these types of crimes were

⁷² *Ibid.* at 92.

⁷³ Weiler, *supra* note 8 at 38.

⁷⁴ Russia declared a moratorium on the death penalty in 1996 upon its entry to the Council of Europe.

unknown in previous Soviet criminal legislation, even during the Stalinist era. Although new types of non-custodial punishment were also introduced, such as compulsory works,⁷⁵ limitation of freedom, arrest,⁷⁶ their implementation has been delayed due to lack of funding. Thus, deprivation of freedom remains one of the mostly used types of criminal punishment.⁷⁷ This justifies the conclusion that, in general, the democratization of Russian society did not result in a mitigation of the penal policies, but rather a tightening of them such that the ubiquitous application of imprisonment as a criminal punishment resulted in the growth of the prison population.

Amendments to Criminal Legislation Aimed at Reduction of Prison Populations

During the period of 1997-2000 the number of prisoners stabilized.⁷⁸ At the same time, in 1998, the Russian Federation launched a program for the humanization of criminal law and penal policy in general. This initiative was prompted by Russia's prerequisite obligations aimed at entry into the Council of Europe. A key focus of these changes included transfer of the Criminal Implementation System from the jurisdiction of the Ministry of Internal Affairs to the jurisdiction of the Ministry of Justice.⁷⁹

The first steps were made in 1998 when the Ministry of Justice drafted a law aimed at reducing the prison population by one third. However, the Ministry of Internal

⁷⁵ According to Art. 49 of the Criminal Code, compulsory works consist in the performance of free socially useful works by the convicted person during his/her spare time, and are imposed for a period of 60 up to 240 hours.

⁷⁶ According to Art. 54 of the Criminal Code, arrest consists in the maintenance of a convicted person in conditions of strict isolation from society, and is imposed for a term of one to six months.

⁷⁷ The current criminal legislation contains 215 provisions, which stipulate confinement as a criminal punishment, which far exceeds the number of provisions stipulating other types of punishment. See: L.P. Rasskazov, Lishenie svobody v Rossii: istoki, razvitiye, perspektivy [Deprivation of Freedom in Russia: Origin, Evolution, Perspectives] (Krasnodar: Krasnodarskii yuridicheskii institut MVD Rossii, 1999) at 12.

⁷⁸ Abramkin, supra note 7.

⁷⁹ Andreyev, supra note 30 at 177.

Affairs and the Russian Federation General Procurator's Office opposed this draft and it never reached Parliament.⁸⁰ Nevertheless, in spite of intra-government resistance, the Ministry of Justice succeeded in its later attempts to introduce a bill aimed at reducing the number of prisoners. In May 2000 the bill was adopted at the first reading and on January 17, 2001 the State Duma unanimously adopted, after its third reading, the "Law on Amendments and Modifications to the Criminal Code of the Russian Federation, Code of Criminal Procedure of the RSFSR, Criminal Implementation Code of the Russian Federation and Other Legislative Acts of the Russian Federation."⁸¹ However, under the strong opposition from the General Procurator's Office, concerned about the lenient tone of the legislation, the Council of Federation returned the law to the State Duma. After stormy discussions and work of the conciliatory committee, the law lost most of its crucial provisions aimed at humanizing the penal policy. These provisions involved significant limitations of both the use of pretrial detention and imposed time limits on preliminary investigation custody.⁸² Nevertheless, this law played a large part in reducing the number of inmates during the period of 2001-2003.

As V. Abramkin, Director of Moscow Centre for Prison Reform, points out however, its effects were limited at best – although the law reduced detention centre populations, it did little to reduce the overall number of the overall penal population:

The reduction of prison population will look less impressive if we compare the figures of November 2002 with early 2001 and not with mid-2000 (the latter being the RF Ministry of Justice preferred option). The

⁸⁰ Abramkin, *supra* note 7.

⁸¹ O vnesenii izmenenii i dopolnenii v Uголовnyi kodeks Rossiiskoi Federatsii, Uголовno-protsessual'nyi kodeks RSFSR, Uголовno-ispolnitel'nyi kodeks Rossiiskoi Federatsii i drugie zakonodatel'nye akty Rossiiskoi Federatsii, *supra* note 5.

⁸² A.I. Zoubkov & V.I. Zoubkova, "Problemy reformirovaniya uголовnoi (karatel'noi) politiki na sovremennom etape" [Contemporary Problems of Reforming the Criminal (Penal) Policy] (2002) 5 Zhurnal rossiiskogo prava [Journal of the Russian Law] 23 at 26.

total number of prisoners reduced over this period by 47,000, while the population of correctional colonies for adult convicts saw an increase by 50,000 persons.⁸³

Table 2. The Number of Prisoners at Institutions of GUIN of the RF Ministry of Justice in 2000-2002⁸⁴

	Jan 1, 2000	June 1, 2000	Sept 1, 2000	Dec 1, 2000	Jan 1, 2001	Sept 1, 2001	Jan 1, 2002	July 1, 2002	Nov 1, 2002	Jan 1, 2003
Total prisoners in GUIN institutions, in thousands of persons	1060	1092	948	912	924	991	981	953	891	877
Rated number of prisoners (per 100 000 of Russia's population)	730	750	650	630	640	690	670	640	610	600
Total prisoners in SIZOs, prisons, and PFRSI, ⁸⁵ in thousands	281.7	282.5	226.4	228.5	235.5	244.8	211.9	184.4	140.1	145.4
Number of prisoners in correctional colonies (adult institutions), in thousands	756.4	787.8	703.6	666.1	671	727.3	749.2	759.4	740.6	720.8
Number of prisoners in juvenile colonies (institutions for the underage), in thousands	22	21.7	18	17.4	17.2	18.9	18.6	9	10.6	10.9
				Amnesty-2000, effective between May 28 and November 28, 2000		Federal Law #25 became effective as of March 14, 2001		An amnesty for women and the underage was in effect until May 1, 2002	The new Criminal Procedure Code went into effect on July 1, 2002	Federal Law #133 became effective on October 31, 2002

⁸³ Abramkin, *supra* note 7.

⁸⁴ *Id.*

⁸⁵ PFRSI – a premise, which functions as a pretrial detention center.

Comparing statistics between June 2000 and November 2002, one can note that 2000 was marked by the highest number of prisoners. This means that the 1,092,000-figure is the most advantageous for comparison. The Ministry of Justice used it in its June 2003 report claiming “the progressive tendency” in terms of reduction of the prison population, since a decrease by 200,000 persons released from penitentiaries sounds more positive than the subsequent increase in the number of inmates between January and September 2001. In reality, despite the reduction of prisoners in the SIZOs and juvenile colonies, in 2002 the prison population shrank by only 104,000, not 200,000 as the Ministry of Justice reported.⁸⁶

Along with changes in the legislation aimed at the reduction of the prison population, an amnesty was declared in May 2000 that released 222,000 persons and shortened the sentences of 43,000 others.⁸⁷ This did not have any significant impact on the number of prisoners; by the end of the amnesty the number of persons kept in pretrial detention facilities not only stabilized, but began to grow. The continued increase in the number of prisoners determined the necessity to declare another amnesty for women and the underage, which took place in 2002.⁸⁸

After amendments were introduced into criminal legislation, the number of prisoners kept in SIZOs shrank by 32,000 between September - December 2001, and by another 39,000 within the first six months of 2002. This brought the population of SIZOs to 141,400 prisoners. According to Abramkin, this became possible due to the reduction of terms of detention during the pretrial investigation (effective as of June 2001) and a reduction of terms of detention during the preliminary investigation (effective as of

⁸⁶ Abramkin, *supra* note 7.

⁸⁷ *Id.*

⁸⁸ *Id.*

January 2002). Nevertheless, in the last two months of 2002, the population of pretrial detention facilities began to grow again.⁸⁹ Moreover, according to the latest data, the number of detainees kept in SIZOs on July 1, 2003 constituted 152,036,⁹⁰ an increase by approximately 6,500 inmates.

Also, amendments to the Criminal Code shortened the mandatory minimum term of imprisonment⁹¹ from six to two months as well as substantially widening the possibilities to release convicts on parole. This made it possible for the Chief Department of Penalty Execution to release 130,000 persons from the penal colonies in 2001. This constituted 55% of the total number of freed prisoners.⁹² But neither the amnesties, nor the wider use of parole was sufficient to significantly reduce the number of inmates in the colonies. Abramkin argues that, “Although the influx of people into penitentiaries became thinner after the enactment RF Criminal Procedure Code, this trend manifested itself in a reduced number of prisoners as late as the end of 2002, when after six months of the new Code’s operation this number dropped by 28,400 people.”⁹³

In addition to the introduction of a new Code of Criminal Procedure on July 1, 2002, the amendment to Article 158 (“Theft”) of the Criminal Code⁹⁴ was essential to the

⁸⁹ *Id.*

⁹⁰ Statisticheskiiye danniiye ob ugovovno-ispolnitel’noi systeme Rossii s 1.07.2002 po 1.07.2003 g. [Statistical Data on the Russian Criminal Implementation System for the Period from 1.07.2002 till 1.07.2003] in “Tyur’ma” – internet-prilozheniye k zhurnalu “Dos’ye na tsenzuru” [“Prison” – internet-supplement to the Index on Censorship journal], <http://www.index.org.ru/turma/st/uis030701.htm>.

⁹¹ According to Article 56(2) of the Criminal Code of the Russian Federation the length of imprisonment may range from 2 months to 20 years.

⁹² Abramkin, *supra* note 7.

⁹³ *Id.*

⁹⁴ O vnesenii izmenenii i dopolnenii v Ugolovnyi kodeks Rossiiskoi Federatsii, Ugolovno-protsessual’nyi kodeks Rossiiskoi Federatsii i Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh, No. 133-FZ, [On Amendments and Modifications to the Criminal Code of the Russian Federation, Code of Criminal Procedure of the Russian Federation and Code of Administrative Violations of the Russian Federation, Federal Law No. 133-FZ,] *Parlamentskaya gazeta* (2002) No. 211, <http://www.akdi.ru/gd/proekt/088049GD.SHTM>.

reduction of the prison population since theft is the most widespread offence in Russia.⁹⁵ According to the new provisions of Paragraph 1 in Article 158 the maximum sentence was shortened from three to two years imprisonment; Paragraph 2 shortened the maximum sentence from six to five years imprisonment. Ideally, this should decrease the inflow of people to penitentiaries and increase the outflow of those already convicted.⁹⁶ This is viewed as a source of further reduction of the number of inmates in the colonies, whose sentence length will automatically be reduced.

Still, these amendments to the criminal legislation did not have any substantial impact on the number of underage prisoners. The decrease of inmates in the juvenile colonies by 9,000 persons (50%) was a result of an amnesty for women and the underaged in 2002 rather than from amendments to the criminal legislation. Moreover, by January 2003 the number of minors in juvenile colonies had grown to 11,000 persons, which constituted a 20% increase. By July 2003 the number of juvenile offenders in colonies had already increased to 14,026.⁹⁷ Similarly, the number of minors kept in SIZOs also continued to increase, accounting for 3.9% of the total number of SIZOs' prisoners in October 2001. By October 2002 this nearly doubled to 6.0-6.8%.⁹⁸ The latest figures show that pretrial detention centres (SIZOs) were housing 8,977 minor offenders as of July 2003.⁹⁹

In contrast to 2001, in 2003 the female portion of the prison population declined by only 4,000. This essentially means that neither amendments nor amnesties effected the

⁹⁵ Thus, in 2002 thefts accounted for 36,7% (or 926,800) of the total number of registered offences. See: *Kratkii analiz sostoyaniya prestoupnosti v Rossii v 2002 godu* supra note 69 at 74.

⁹⁶ Abramkin, supra note 7.

⁹⁷ *Statisticheskiye danniyе ob ugovovno-ispolnitel'noi systeme Rossii s 1.07.2002 po 1.07.2003 g.*, supra note 90.

⁹⁸ Abramkin, supra note 7.

⁹⁹ Id.

reduction of the female prisoners. At the beginning of 2003 the female penal colonies held 50,000 persons. Most of them remain overcrowded.¹⁰⁰

Conclusion

Obviously, the reduction of the prison population by approximately 20% within quite a short period of time (2001-2003) was a solid step towards the reform of the criminal law. Although in July 2003 there were still more than 866,000 prisoners in penitentiaries.¹⁰¹ It would be hardly possible to reduce such a huge number of prisoners within a day, a month, or a year, since this enormous number of convicts was a result of decades of harsh Soviet penal policy. According to some data, the number of convicts during the last 30 years of the Soviet regime (from 1961 until 1991) constituted 27.5 million persons, while during the previous 30 years there had been 45-50 million convicts. This means there were approximately 70 million convicts during sixty years.¹⁰²

As we have seen, the fall of the Soviet Union, the change of political order, and the transition to market economy triggered a new type of crime wave to which the state has responded with even more drastic measures and the adoption of the harshest criminal code to exist since 1917. In spite of the fact that the 1997 Criminal Code provides for new types of punishments and alternatives to confinement, imprisonment remains the most widely used type of penal sanction. Thus, 2.5% of the Russian male population of working age were incarcerated in 1998. In total, every fourth male citizen of Russia has

¹⁰⁰ Id.

¹⁰¹ Statisticheskiye danniyе ob ugovovno-ispolnitel'noi systeme Rossii s 1.07.2002 po 1.07.2003 g., supra note 89.

¹⁰² Zoubkova, supra note 18 at 163.

been behind bars at least once.¹⁰³ Since 1991 the Russian penitentiaries have held 680,000 prisoners; by 2000-2001 this number exceeded one million.¹⁰⁴ These figures raise concern since this brought Russia to the top of the list of countries in terms of the incarceration rate per 100,000 citizens. Moreover, with the development of market economy, the poor quality of goods produced by forced labour became less attractive and uncompetitive. With the subsequent reduction in the market for forced labour goods and the income it generated, the state could no longer maintain such a large number of prisoners (i.e. workforce). The inevitable cuts in budgetary allocations for prisons resulted in the deterioration of the conditions of imprisonment in both penal colonies and pretrial detention facilities. The latter became a notorious source of human rights violations, disease, and the object of criticisms from international organizations, human rights proponents, and the public at large. This prompted Russian legislators to ponder over the necessity of reforming their criminal law and criminal punishment policies. After long debates and strong resistance from law enforcement agencies, the current Criminal Code was amended in 2001 so as to soften the criminal penalties for some offences, which made it possible to reduce the number of prisoners in penitentiaries.

The two amnesties declared did not have a substantial effect on reducing the prison population, particularly for those kept in SIZOs. The reason for this phenomenon was, and continues to be, the consistent practice of the Russian law enforcement officials imposing custody as a measure of restraint, even though there are many other non-custodial measures stipulated by the criminal procedure legislation, which include written

¹⁰³ Abramkin, *supra* note 13 at 231.

¹⁰⁴ Abramkin, *supra* note 54 at 43-44.

undertaking not to leave the city, youth supervision, bail, and house arrest.¹⁰⁵ The law enforcement officials tend to explain this as a guarantee that the suspect or accused will have fewer chances to flee from prosecution.¹⁰⁶ The constant influx of convicts into penitentiaries results from the prejudicial character of the Russian system of justice. In delivering a verdict, the judge quite often relies on the length of the defendant's actual stay in pretrial custody (as determined by the procurator) as an indication of the extent of the accused's guilt.¹⁰⁷ It is therefore often simple to predict the outcome of the trial and type of punishment the judge will impose. This ensures that the plank beds will not remain empty.

But the most intriguing feature of the reform of the criminal justice system in Russia appears in the legislators' inconsistency in correcting the state's penal policy. The adoption in December 2001 of a new Code of Criminal Procedure effectively reversed the reduction initiatives outlined in the amendments of the previous legislation. Beforehand, the February 2001 (old) Code of Criminal Procedure of the Russian Soviet Federated Socialist Republic contained amendments and modifications that provided for time limits for keeping accused, suspects, and defendants in detention. But nine months later, upon the introduction of the December 2001 Code of Criminal Procedure (which went into effect in July 2002), these amendments were abolished. According to new provisions, the terms of detention during the pretrial investigation could be extended up to 18 months.¹⁰⁸ Given that pretrial investigation is followed by trial itself, the detainees

¹⁰⁵ Article 98 of the RF Code of Criminal Procedure.

¹⁰⁶ Zoubkova, *supra* note 19 at 159.

¹⁰⁷ Zoubkov & Zoubkova, *supra* note 82 at 30.

¹⁰⁸ In accordance with Art. 109 of the RF Code of Criminal Procedure, the term of keeping in custody upon crime investigation may not exceed 2 months. However, upon failure to accomplish the investigation within 2 months, this term can be extended to 6, 12 and 18 months, depending on the gravity of offence and

will most likely spend years in custody while awaiting the outcome of the court hearings. This means that pretrial detention facilities will be filling up as fast as they did before, and that the legislature's attempts to humanize the penal policy will be brought to naught.

This brings up the question of whether any humanization of the criminal law did in fact take place. Did the criminal law innovations have a positive impact if the population of SIZOs continued (and continues) to grow? Were there any substantial and feasible shifts towards softening criminal punishment? Will this in fact result in a measurable reduction of the prison population? What are the flaws in the on-going reform? Which other factors contribute to the inquisitorial nature of the Russian system of justice? Where do their roots lie? Will the reduction of the maximum imprisonment sentences for certain categories of crimes affect the number of persons convicted and incarcerated? Or is it necessary to change the pretrial investigation procedure and the professional mentality of the law enforcement officials? Will anything change in the Russian system of justice following the transition of the Criminal Implementation System from the Ministry of Internal Affairs to the Ministry of Justice? Perhaps, the transition of the Criminal Implementation System under the jurisdiction of the Ministry of Justice was not so much dictated by the actual necessity, but rather by political motives which derive from Russia's obligations after its entry to the Council of Europe?

In the next chapter (two) I give a comprehensive analysis of the pretrial investigation procedure as it has been formed since the rise of the Soviet state and will identify the flaws and the abuses which continue to exist in the modern system of justice. It appears that, in spite of changes introduced into criminal legislation and attempts to

complexity of the criminal case. Article 162 stipulates the same terms applicable to preliminary investigation of a criminal case.

humanize criminal law, the modern system of criminal law does not differ dramatically from its predecessor.

Chapter three will seek to explain why it is that the modern Russian criminal justice system continues, despite its attempts at reform, to reproduce the deficiencies of its Soviet predecessor. Chapter four will address the question of what needs to be done to overcome impediments to the reforms of the Russian criminal justice system.

CHAPTER 2

ADMINISTRATION OF CRIMINAL JUSTICE IN RUSSIA: HISTORY AND PRESENT

Introduction

As shown in the previous chapter, the prison population in Russia dropped by 20 percent between 2000 and 2002, mainly as a result of declared amnesties, amendments to the existing Criminal Code, and the enactment of a new Code of Criminal Procedure. Although these reforms were initiated by the Russian Federation Ministry of Justice, which has been exercising jurisdiction over the Criminal Implementation System since 1998, neither the amnesties nor the new criminal legislation had any significant effect on the overall prison population. For example, while the number of female prisoners was reduced by 4,000, the female colonies remained overcrowded. Nor did the situation improve for minor offenders, whose number had already started to grow.

Who controls prison population numbers and why does the influx of new convicts continue to rise and, as I argue, will continue to rise under the current policy? The answer to the first question is quite obvious when we trace all the stages of the criminal process, wherein representatives of all legal professions participate, including the police, investigators, procurators, judges, and defence attorneys. The second question requires a historical analysis of criminal justice administration in Soviet Russia, especially during its Stalinist period, when statistical data became the main criteria for the assessment of the legal agencies' activity. These criteria excluded "failures" during the pretrial investigation (weak cases thrown out by the court), "unjustified convictions" (cases reversed on appeal), and "unjustified arrests" (detention of persons who would be found not guilty at trial). Since performance assessments of individual legal officials was based

on statistics, the pursuit of the “proper” statistical data became a determining factor in the disposition of cases as legal officials attempted to shoehorn statistically acceptable outcomes to charges and judgments, regardless of the actual circumstances and evidence at trial. Investigators were sending almost every criminal case they had initiated to court whether or not there was enough evidence to support an accusation of guilt. Judges tried to avoid acquittals, and procurators (prosecutors) were appealing any conviction they thought was either unjustifiably mild or too harsh. The bureaucratic and accusatorial legal principles of the Stalin-era still remained ingrained even into the turn of the 21st century. The broad application of judgments of conviction, and subsequent imprisonments fueled further prison population inflation. This became one of the biggest concerns in modern Russia, prompting the legislators to pursue measures aimed at the reduction of the number of prisoners. Drawing a parallel between the patterns of criminal justice administration in Stalinist Russia and the modern state, I show that the situation has not improved since the 1930s. Taking into consideration that the modern justice system has meagerly evolved from its predecessor, retaining all the major flaws and vices of the previous era, it is impossible to achieve significant results in the reduction of the prison population without first alleviating those flaws and vices.

The History of Criminal Justice in Soviet Russia

The process of control over the prison population emerged as a result of bureaucratization of criminal justice under Stalin, which according to Peter H. Solomon

Jr., “developed to a degree unusual in the history of criminal justice worldwide.”¹⁰⁹ No other state authorities “relied so heavily upon statistical indicators in assessing the performance of individual legal officials as did the chiefs of the legal agencies in the USSR of the late Stalin and post-Stalin years.”¹¹⁰ The state’s statistics-based policy, which required the legal agencies to prove their effectiveness in numbers, effectively resulted in markedly different view of the main goals of criminal justice officials. Beyond simply prosecuting perpetrators and punishing them in accordance with the law, the over-riding practical goal was oriented towards compliance with the statistical targets stipulated by the higher authorities in order to demonstrate appropriate performance of their duties.

The Revolution of 1917 abolished the Tsarist regime and proclaimed sovereignty of the people. This allowed the lower classes to actively participate in the socio-political life of the country both directly and through voting. Poorly educated people who joined the Bolshevik Party gained access to previously inaccessible professions and official positions. Legal agencies, whose staffs were often replaced by people who did not have any legal background, were no exception. Moreover, according to the Bolsheviks, only amateur representatives of the lower classes, not professional lawyers, could be relied upon, and “would have the “revolutionary consciousness” to exercise discretion in the interests of the rulers who claimed to represent the toilers.”¹¹¹ Practicing professional lawyers of the time belonged mostly to the upper class and obtained their education in tsarist Russia. It was little wonder that the new proletariat-oriented political bosses did

¹⁰⁹ P.H. Solomon, Jr., “The Bureaucratization of Criminal Justice under Stalin” in P.H. Solomon, Jr., ed., Reforming Justice in Russia, 1864-1996: Power, Culture, and the Limits of Legal Order (Armonk, N.Y.: M.E. Sharpe, 1997) at 228.

¹¹⁰ Ibid.

¹¹¹ Ibid. at 229.

not trust them. Therefore, people of humble origin were recruited even if they were completely uneducated. Certainly, not all amateurs were successful in their positions as legal officials. While “weaker performers” were released from their duties, others were promoted.¹¹²

During the first years of the Bolshevik’s regime legal agencies were decentralized. Legal agencies below the republic level did not exist. Local authorities recruited and appointed most legal officials, and were also the arbiters of their professional careers. Further, local authorities controlled the budgets of the local courts and Procuracy.¹¹³ Central agencies could not exercise full control over the local legal agencies, nor could they force them to follow central directives, in spite of the fact that it was the central agencies which were held responsible for the local legal agencies’ performance and gathered information containing statistical data reflecting the activity of their subordinates. Thus, while the Russian Commissariat of Justice centrally controlled the “stability of sentences” within courts throughout the country (i.e. the number of convictions which were not changed or reversed on appeal), the Procuracy of the city of Moscow supervised the performance of its local investigators, particularly with a view towards the length of pretrial investigations and rates of case completion. In the beginning, the statistical indicators already played a major role for the political officials¹¹⁴ and not so much to the assessment of the performance of individual legal officials, but this would change fairly quickly.

¹¹² *Ibid.* at 230.

¹¹³ The Procuracy is a state organ charged with supervising the observance of law. According to F.J.M. Feldbrugge, “[i]t was viewed in the Soviet law as the fourth branch of government”. See: F.J.M. Feldbrugge, Russian Law: The End of the Soviet System and the Role of Law (Dordrecht: M. Nijhoff, 1993) at 205.

¹¹⁴ Solomon, Jr., *supra* note 109 at 230.

The centralization of the legal agencies and the professionalism of the legal officials was established in the second half of the 1930s right after a report criticizing the level of performance of uneducated legal officials was prepared for the Soviet Control Commission. The Central Committee called for an expansion of legal education among current and potential legal officials, the introduction of ranks and differential levels of salary based on the number of years of work experience, and uniforms for judges and procurators. Career advancement was also expected to depend on the evaluation of performance of the individual legal officials.¹¹⁵

To appoint legal officials with legal education turned out to be not so easy due to the Great Purge, which occurred in 1937-1938 and resulted in a large number of judges and procurators being purged.¹¹⁶ As such, local authorities continued recruiting uneducated people and put them through short courses of law to fill in the gaps in their legal education. However, the outbreak of World War II postponed the process of mass education of the legal officials, so the system of rank division among procurators was not implemented until 1943.¹¹⁷

The adoption of 1936 Constitution combined with the simultaneous processes of the centralization of the system of justice and the rapid education of new and existing legal officials manifested itself in the restructuring of the legal agencies. From that moment on, republic procuracies were subordinated to the “All-Union Procuracy” (AUP) which appointed procurators for the regions and the republics. The All-Union Procuracy enjoyed the responsibility for the appointment of procurators for cities and districts, while

¹¹⁵ *Ibid.* at 231.

¹¹⁶ In reality, “purging” generally involved mass executions of various political and counterrevolutionary classes of officials and workers whose position, influence and/or authority might be threatening to the new Stalinist order.

¹¹⁷ Solomon, Jr., *supra* note 109 at 232.

the appointment of assistant procurators and lower level investigators within the cities and districts remained the prerogative of local republic procuracy officials, who were in turn required to inform the AUP. Similarly, as AUP officials made decisions on promotions of procurators, no procurator or investigator above the district or city level could be dismissed without the Procurator General's approval. The republic commissariats, being a part of the USSR Commissariat of Justice, exercised direct control over the regional justice administrations and appointed their chiefs. Thus, appointments to any position within the Procuracy or agencies which supervised the administration of justice were made by the central authorities and were subject to a scrupulous control. Moreover, as of June 1939 the USSR Commissariat of Justice required its republic subordinates to obtain preliminary approval of the All-Union Procuracy before implementing any of their directives.¹¹⁸

The process of centralization of the legal agencies increased the importance of the role of statistical indicators since they were the only means of control the superior agencies could rely on. However, they were unable to control the performance of individual officials. This was important, since the promotion of the lower legal officials lay exclusively within the power of the superior legal officials, who in turn began to rely heavily on the statistical indicators of the performance of individual subordinates.¹¹⁹

“Avoiding mistakes in investigation and trials and having decisions overturned” as well as “efficiency and fast tempos of work” served as the main criteria for the evaluation of their performance. The procurators were judged on the number of appearances in court where they undertook public prosecutions. Both procurators and

¹¹⁸ *Id.*

¹¹⁹ *Ibid.* at 232-233.

investigators were judged by the number of cases resulting in convictions, not by cases returned for supplementary investigation or by acquittals due to insufficient evidence. Investigators were held responsible if the case was stopped at the stage of preliminary investigation such that it hindered its time to trial. Thus, they tended to send all cases to court, including those that would inevitably be abandoned or dismissed. Judges themselves were assessed on the basis of the number of their decisions that were not changed or overturned on appeal.¹²⁰

Statistical data gradually became the basis of the relationship between central and local legal officials. Demands for statistical reports as well as visits from the central Procuracy became so frequent that legal officials became largely preoccupied with the quantitative rather than qualitative indicators of their work.

The blind reliance on statistical data as the basis of performance and policy evaluation only became more important in Russian bureaucratic methodology in the post-war period. After World War II, the Party's Central Committee issued a resolution in 1946 which required that all legal officials who did not have a higher legal education were required to obtain such within four to five years.¹²¹ Many people working in legal roles had not completed their high-school equivalent education, let alone any university level legal education. Most legal officials complied with this directive without leaving their positions as investigators, procurators, or judges, and obtained the required education either at evening schools or by correspondence. The quality of such education remained poor in comparison to lawyers and advocates who attended law schools on a

¹²⁰ *Ibid.* at 233.

¹²¹ *Ibid.* at 234.

full-time basis. Nonetheless, as a result of this reform the number of judges who had legal background increased from 21.4 percent in 1948 to 57.6 percent in 1951.¹²²

Having a professional education virtually guaranteed long-term employment and motivated legal officials to pursue and develop their careers. To secure promotions, legal officials had to comply with statistical requirements set by the central bureaucracy. Therefore, judges, procurators, and investigators tried to meet the standards imposed on them by their superiors. However, the rigid reliance on these statistical standards tended to serve “bureaucratic and political convenience more than the interests of fairness.”¹²³

Between 1948 and 1951 the chiefs of the legal agencies launched a campaign against groundless prosecutions, convictions, and arrests, which could end either in acquittals or verdicts being overturned on appeal. At the Second All-Union Conference of Leading Procuracy Officials Deputy Procurator General Konstantin Mokichev announced that, “in the country of victorious socialism legality is the basic factor of state power,” and “in such a country there must be no place for unfounded prosecutions. With all decisiveness we must eliminate these cases.”¹²⁴ When speaking about unfounded prosecutions and convictions, Mokichev’s statement was not meant as a caution against inept and unfair prosecution emphasizing the necessity to exercise more care and legal diligence when investigating the crimes. To the contrary, it was meant as a directive to legal officials to ensure that all initiated criminal cases headed to court were prepared meticulously enough to secure a guilty verdict which would not be overturned on appeal.

¹²² *Ibid.* at 235.

¹²³ *Id.*

¹²⁴ Quoted in Solomon, Jr., *supra* note 109 at 236.

In the wake of this directive there was no room for acquittal judgments. The RSFSR Minister of Justice I. Basavin went even further. His further directive to judges, suggested that:

1. with each instance of an acquittal or a return to supplementary investigation in a case that had been investigated by the district procuracy, the *judge (sic!)* is to inform the regional procuracy office for a ‘determination of responsibility’;
2. in each instance of an acquittal or quashing of a conviction on appeal, the regional court inform the regional justice administration, so that it could take ‘appropriate measures’, including, when necessary, a review of the trial judge’s conduct by a disciplinary college of the Ministry of Justice;
3. the justice administration and regional courts conduct studies of groundless prosecutions and convictions and together with the procuracy hold meetings to plan further measures.¹²⁵

Basavin’s directive implied that compliance was the personal responsibility of legal officials. If the case ended in acquittal, it was the mistake of the investigator and the procurator for sending a weak case to court. If a guilty verdict was reversed on appeal, it was the initial judge’s error. The consequences of such failures included personal accountability of those at fault, ranging from disciplinary action, withholding of benefits/rewards, or termination of employment.¹²⁶

Subsequent to Basavin’s directive, the USSR Ministry of Justice instructed republic ministers of justice to direct lower trial court judges “to inform regional procuracy offices about every case reaching trial from the district procuracy that is either stopped at a preparatory stage or ends in an acquittal” and indicating exactly which

¹²⁵ Quoted in *ibid.* at 236-237.

¹²⁶ *Ibid.* at 237.

officials in the police and procuracy had composed the accusation and which had confirmed it.”¹²⁷

In April 1949 Procurator General Safonov issued a secret directive under which republic procuracies were required to intervene in any case where the defendant was found not guilty or the case was stopped. If, according to the regional procurator, the rendering a verdict of not guilty was justified, the republican procuracy had to find the legal officials at fault (investigators or assistant procurators) and apply disciplinary sanctions against them for bringing a weak case to trial. If an acquittal was deemed unjustified, the regional procurator was obliged to refer the case to the department of supervision of the courts in the regional procuracy so that an appeal could be launched. The judge who rendered this decision as well as any procurator who failed to appeal it were to be held to account. Chiefs of the regional procuracies who supervised the courts kept records of the stopped cases and those where the defendant was found not guilty.¹²⁸ These practices resulted in a dramatic drop in the number of acquittals between 1948 and 1951. Before the 1917 Revolution, acquittals constituted one third of all cases. By 1948, courts acquitted only ten percent of the accused.¹²⁹ In 1951, in the city of Smolensk, the rate of acquittals was as low as 2.7 percent.¹³⁰

The party bosses had a vested interest in the courts' activities since they were ultimately responsible for the work of the justice agencies. Therefore, they supported procurators who were concerned with the number of acquittals by curtailing judges' social benefits and privileges, or by firing them outright if they exonerated too many

¹²⁷ *Id.*

¹²⁸ *Ibid.* at 238.

¹²⁹ *Id.*

¹³⁰ *Ibid.* at 239.

defendants. In spite of these controls, investigators could not always guarantee that cases sent to trial would inevitably end in a guilty verdict. Unwilling to suffer punishments for high acquittal statistics, judges began to adapt to the existing situation when cases appeared foredoomed to failure. They either sent the case to supplementary investigation so that the Procuracy could drop the case quietly, or rendered a guilty verdict with a sentence equal to the time the convict had spent in pretrial detention facilities awaiting the trial (i.e. time served).¹³¹

This outcome was undesirable for the investigators since it statistically reflected poor performance of their duties, for which they were personally and administratively responsible. Nevertheless, this did not restrain the USSR Procuracy from selecting the “best” investigators to encourage their colleagues throughout the country. Some investigators reported rates of case return reduced to zero, which meant that their cases were never referred for supplementary investigation.¹³²

Procurators were also subject to statistical assessment. In case of an acquittal or a guilty verdict with a non-confinement sentence, the procurator could be held accountable for unjustified arrest (i.e. for choosing arrest as a measure of restraint). This motivated the procurators to develop a solid case in order to exclude the possibility of an acquittal or supplementary investigation.¹³³

Judges too were involved in this vicious circle since their performance was also controlled by the Procuracy, which could appeal any decision it found either unjustifiably mild or too harsh. It was a double-edged sword as both tough and mild sentences could be changed by a higher court. Since it was difficult to find a golden mean, judges

¹³¹ *Ibid.* at 240.

¹³² *Ibid.* at 240-241.

¹³³ *Ibid.* at 241.

preferred to impose harsher penalties rather than risk sanctions from higher authorities or accusations of taking bribes. Just as the USSR Procuracy chose the best investigators, the USSR Ministry of Justice also marked out “best judges” whose decisions remained unchanged on appeal.¹³⁴

Criminal Justice in Modern Russia

Falsification of Statistical Data

The practice of avoidance of acquittals continued in the 1960s and 1970s. Moreover, it survived the collapse of the USSR and moved to the 21st century. I will omit the history of criminal justice in late Soviet Russia (as there were no significant changes in proportions between guilty verdicts and acquittals), and will instead give an example illustrating how legal officials are still preoccupied with statistical indicators.

According to an assistant procurator from one Russian region, the Russian police routinely and egregiously falsify statistical data. This reason behind this phenomenon is that investigators are still assessed according to crime detection rate statistics because internal affairs departments’ chiefs are primarily concerned with the stability of these rates. Police are reprimanded by the superior officials for having too many “cold cases.”¹³⁵ The more cases solved, the more cases sent to court. Accordingly, higher case volumes make it less likely one might cite the legal agencies for poor performance of their functions. Thus individual legal officials, especially the chiefs, are more likely to get promotions and/or social privileges.

¹³⁴ *Id.*

¹³⁵ V. Samoilenko, “Iskazhyonnaya statistika” [Falsified Statistics] (2001) 3 *Zakonnost* [Legitimateness] 22 at 22.

According to Samoilenko, this behaviour pattern becomes more evident if we compare the statistical data on criminal cases sent by legal agencies to courts to the statistical data for the similar cases that have already been tried in court. These data are different from each other. If, in city X, ten residential burglaries were committed, the police accordingly initiated ten criminal cases. Since these are considered serious offences, and the offenders have not been found yet, this statistically decreases the immediate rate of crime detection in the city. To improve this rate it is necessary to solve at least half of these crimes. This is where the tampering starts. If in the process of a burglary a lock is broken, the investigator, after having proved the identity of the offender, will register two crimes: burglary (or theft committed by illegal entry into a home, premises, or any other storehouse as defined in the Criminal Code) *and* willful destruction or damage of another person's property (locks, doors, windows, etc.) which are stipulated in different provisions of the Criminal Code. Thus, there are two solved crimes entered in the registry instead of just one. The investigator knows perfectly well that the destruction of the locks is just a means of entry into the house and does not require an additional charge. In court the criminal offender who has committed a theft in this manner will be found guilty under one Criminal Code provision, but will be acquitted under the other one.¹³⁶ The statistical report however will reflect two solved crimes, instead of one. Given that the residential burglary is the most frequent crime in Russia, the number of such manipulations has a significant impact on rates of crime detection.

Illegal acquisition or storage of narcotic drugs is another common example. When an offender acquires a small amount of drugs for personal use and brings them home, the investigator will often qualify the actions of the accused as illegal transportation of drugs

¹³⁶ *Id.*

on a large scale. The investigator knows that, according to Plenum of the Supreme Court of Russia, illegal possession of narcotic drugs or psychotropic substances on a small scale cannot be qualified as illegal transportation when the drugs have been acquired for personal use. However, the investigator deliberately ignores the Supreme Court's clarification of the Criminal Code provision about scale and registers two crimes instead of one, the latter being a grave offence¹³⁷ which will likely guarantee the offender a lengthy imprisonment on conviction.

In support of his scenarios, Samoilenko supplies statistical data from his region. In 1999, Georghievsk city court rendered 967 convictions for criminal cases, of which 150 charges were withdrawn. The latter means that the defendants were found not guilty of some sections of Criminal Code they were charged under.¹³⁸ Samoilenko refers to only one region and one court where investigators blatantly perform their duties negligently and falsify statistical indicators to artificially raise the rate of crime detection. It is more likely than not that many such falsifications are practiced throughout other regions of the country. The Moscow Centre for Prison Reform refers to a copy of an internal letter from the deputy head of the department of internal affairs of one of the Moscow districts that states "every district militia officer must solve no fewer than two serious crimes per year and no fewer than sixteen crimes under certain articles of the criminal code, record 800 administrative violations, and keep an eye on no fewer than two released prisoners." Since local police chiefs can be easily fired for failing to meet the crime detection statistical rates,

¹³⁷ *Id.*

¹³⁸ *Ibid.* at 23.

they consequently establish a “reign of terror” – by pressuring officers through their pocket books – at their precincts. They assign police officers the number of crimes they must solve and if they fail, police chiefs have sufficient means to make the lives of these police officers extremely difficult, including by threats to their income or indeed their livelihood.¹³⁹

Another important negative consequence of trying to meet the statistical expectations of their superiors is that police are reluctant to register crimes they believe will be difficult or impossible to solve, such as rape and family violence.¹⁴⁰

Police Torture in Russia

Although it is impossible to solve all recorded crimes, rates of crime detection still remain the main assessment criteria for the performance of investigators. However, manipulating statistical data or artificially inflating the rates of crime detection using the above described “techniques” is not sufficient, since as mentioned in the previous chapter, the crime rate in Russia remains high. To speed up the process of preliminary investigation and force the suspect to admit his/her guilt, the police routinely use torture.¹⁴¹ Some sources estimate that up to 50 percent of all criminal suspects in Russia may be subjected to torture. One former judge, in her interview with Human Rights Watch – which published a report on police torture in Russia – said that up to 80 percent of criminal suspects might be tortured during the investigation process. Moreover, most police officers believe that it is impossible to solve a crime without using torture.¹⁴²

¹³⁹ Confessions at any Cost: Police Torture in Russia (Human Rights Watch, 1999), <http://www.hrw.org/reports/1999/russia/>.

¹⁴⁰ *Id.*

¹⁴¹ Commonly reported methods include imposition of suffocating gas masks, beatings and use of electric shock. See: V.F. Abramkin, *Tyur'my i kolonii Rossii* [Russian Prisons and Colonies] (Moskva: Liga Razum, 1998) at 243.

¹⁴² *Id.*

The fact that the courts render guilty verdicts based on forced confessions raises concerns since this goes against the principle of presumption of innocence proclaimed in the Russian Constitution. Under torture some people are forced to confess to a crime they did not commit. Acknowledging its routine use, the Human Rights Representative of the Russian Federation cited one example as follows:

The head of the detective squad of the Katav-Ivanovsk Municipal Section of Internal Affairs of Cheliabinsk Oblast, K. – together with R. and T., detectives in the unit – extracted a confession from the detainee K. that he had murdered the woman with whom he was living. They secured the confession by kicking him numerous times, then handcuffing him to the back of the chair and twisting his arms, causing him severe pain. They also stuffed a rag in his mouth, obstructing his breathing. Unable to endure the physical suffering, the victim confessed to a crime he had not committed...¹⁴³

Beyond the violations of human and legal rights, torture often causes serious bodily injuries for Russian suspects:

D., an operations officer of the detective squad of the Vichuga Municipal Section of Internal Affairs of Ivanovo Oblast, together with a policeman not connected with the investigation, demanded that citizen U. admit that he had stolen a tape recorder, punching the victim in the face numerous times and beating his head and body with a stick. Then, knocking citizen U. over, they continued to kick and punch him, as a result of which the victim suffered numerous hemorrhages and broke his nose...¹⁴⁴

Perhaps the most alarming reality is that some accused die from torture and ill treatment:

¹⁴³ Violations of Human Rights by Personnel of the Ministry of Internal Affairs and the Criminal Justice System of the Ministry of Justice of the Russian Federation. Special Report of the Human Rights Representative of the Russian Federation for 2000 (2001) 39 (6) Russian Politics and Law 34 at 41.

¹⁴⁴ Id.

O. – a section inspector in Abakan Raion, Krasnoyarsk Krai, and assistant to V., duty officer of the Raion Section of Internal Affairs – employed such brutal violence against citizen S. while investigating a crime that S. died...¹⁴⁵

Apart from beatings, other common methods of torture include the use of electric shock and asphyxiation.¹⁴⁶ Electric shock is used more often since it almost does not leave marks, making it difficult to prove later that the suspect was subjected to torture. An electric cranking machine is often attached to the suspect's ears, or the suspect is tied to a steel bed with handcuffs and the current is conducted through it. The latter method of torture is known as the "Crucifixion."¹⁴⁷ When torturing by asphyxiation, the police put a gas mask or a plastic bag over the suspect's head and then cut the oxygen supply. Hurried respiration and the absence of air supply cause loss of consciousness. After reviving the victim police officers force the suspect to write a confession. In the event of a refusal, they repeat the torture.

Apart from physical torture, police also use psychological abuse and threats. Threats to the suspect's family are the most effective, since isolated from everyone else, the torture victim (i.e. the accused) cannot control the situation outside of the police station and be sure that his/her family members remain safe.¹⁴⁸

It is virtually impossible to prove the use of torture, as there are usually no witnesses and often there are no obvious markings left on the body. Medical evidence becomes the only proof that can support the victim's torture claim. Legal officials recognize only the conclusions of experts from state-run forensic medical evidence

¹⁴⁵ Id.

¹⁴⁶ See: J.D. Weiler, Human Rights in Russia: A Darker Side of Reform (Boulder, Colo.: Lynne Rienner Publishers, 2004) at 41; Confessions at any Cost: Police Torture in Russia, supra note 139.

¹⁴⁷ Abramkin, supra note 141 at 243.

¹⁴⁸ Confessions at any Cost: Police Torture in Russia, supra note 139.

centres as persuasive. Neither the victim of torture nor his/her defence counsel can approach a forensic expert since forensic examinations are normally carried out on the order of authorized legal officials as part of a criminal investigation. Either the investigator or the judge may order such examination upon the victim's or his/her attorney's motion, but this normally does not happen. Investigators generally refuse to initiate criminal cases against fellow police officers who use violence or torture, referring to a lack of evidence as an excuse. Without a criminal case initiated against the torturers, the medical examination (which would provide sufficient evidence) cannot be carried out.¹⁴⁹

The victims of torture who have been released also face a problem when seeking evidence of ill treatment. Medical experts perform the thorough examination reluctantly and do not wish to issue medical documents to confirm the use of torture. The reason lies in their unwillingness to give explanations to a procurator or to testify in court. Like most people in Russia, medical professionals try to avoid any contact with the police, who can force them to change their medical reports.¹⁵⁰

Unfortunately, police officers are very seldom held accountable for using torture against suspects, except for occasional instances when a torture case captures the headlines, usually due to the death of a suspect. Criminal cases against the police torturers are rarely initiated. According to Human Rights Watch, the torturers escape punishments because of the "strong corporate solidarity in the police force" as well as "intimidation of the victims themselves."¹⁵¹ If they do file a complaint, torture victims' attorneys usually face lengthy delays in the process of investigation. Preliminary inquiries

¹⁴⁹ Id.

¹⁵⁰ Id.

¹⁵¹ Id.

made upon the victim's request are generally superficial and informal. Moreover, they are performed by legal officials with even less authority than an investigator in a criminal case and therefore cannot subpoena the alleged perpetrators or witnesses, nor can they order a forensic examination of the complainant. Thus, the investigative process surrounding police (state) torture is weighted against the victim, assuring that any meaningful or truthful revelations are rare and/or inconsequential to the perpetrators and the system as a whole.¹⁵²

Further, one former police officer states, "the procuracy does not question the alleged torturers themselves but sends the complaint on to the chief of the appropriate police precinct with instructions to look into it and reply in writing."¹⁵³ The Procuracy questions the alleged torturers only if the complainant submits evidence of torture or ill treatment. To hamper the process of seeking the truth, the assistant procurators either "lose" documents confirming the torture or refuse to question the witnesses who saw the clear signs of abuse on the complainant's body.

The chances that the police officers would use torture would be lower if the interrogation were conducted in the presence of the victim's attorney. However, according to Human Rights Watch, none of the fifty torture victims they interviewed had an attorney acting in their interest present at interrogations regarding allegations of torture or ill treatment. The fact is that the police deliberately deprive the suspect of his/her right to an attorney during the first hours after detention. This undoubtedly violates Article 48 of the Constitution, which guarantees the right to a defence attorney from the moment of arrest. Should this right be granted, the police officers usually call in

¹⁵² Id.

¹⁵³ Id.

“friendly” lawyers who just ignore signs of torture. Moreover, after the confession is made, the interrogators demand that the suspect voluntarily refuse the assistance of a defence attorney by confirming this on a written form.¹⁵⁴

Unable to bear torture and desperately wanting to end the pain and suffering, even innocent people will confess to a crime they did not commit and will sign a statement of guilt long before the court renders a guilty verdict. According to one torture victim:

Under that kind of torture, you're no longer contemplating the possibility of suicide, you're desperately trying to find an object to kill yourself with.¹⁵⁵

Human Rights Watch representatives have mentioned several cases of suicide by victims, who have jumped out of the window unable to bear the torture, resulting in either death or disability.¹⁵⁶

The use of torture-induced confessions – which usually form the bases of most criminal cases – not only violates basic conceptions of human rights, it also violates provisions of formal Russian criminal procedure. When the court renders a guilty verdict based on forced confessions alone and ignores the fact that there is no other evidence which proves the defendant’s guilt beyond a reasonable doubt, it effectively contravenes the principle of presumption of innocence provided for in the Russian Constitution. Seventy percent of all complaints sent to the state’s official Human Rights Representative

¹⁵⁴ Id.

¹⁵⁵ Id.

¹⁵⁶ Id.

were filed by convicts who believed that the court rendered an unjust verdict because the complainant was subjected to physical or psychological violence.¹⁵⁷

Procedural Violations

Apart from using torture, the police abuse their powers when they make arrests and violate both law and morality when taking in custody innocent people with the purpose of coercing confessions.

In accordance with Russian legislation, police can detain an individual in the several situations. Article 11(2) of the “Law on Militia”¹⁵⁸ allows police officers to detain an individual for up to three hours to prove his/her identity if the police officers have sufficient grounds to suspect that the person in question has committed either a criminal or administrative offence. According to Article 122 of the old Code of Criminal Procedure, police were allowed under certain circumstances to detain a criminal suspect for up to three days without a procurator’s authorization for arrest, but were required to inform the Procuracy within twenty-four hours from the moment of such a detention. The procurator was then expected to issue a warrant for arrest or discharge the suspect from custody within forty-eight hours. This Code of Criminal Procedure provision contravened Article 22(2) of the Constitution, which provides for arrests to be reported within twenty-four hours to the court, not the Procuracy, and a court’s judgment to be

¹⁵⁷ Violations of Human Rights by Personnel of the Ministry of Internal Affairs and the Criminal Justice System of the Ministry of Justice of the Russian Federation. Special Report of the Human Rights Representative of the Russian Federation for 2000, *supra* note 143.

¹⁵⁸ Zakon Rossiiskoi Federatsii o militsii No. 1026-1, [On Militia, Law of the Russian Federation No. 1026-1,] *Sobranie zakonodatel'stva Rossiiskoi Federatsii*, [Collected Legislation of the Russian Federation,] 1999, No. 14, Art. No. 1666, with further amendments and modifications available at <http://www.consultant.ru/online/popular/1026-1/>.

sought to justify the arrest.¹⁵⁹ This conflict in legal procedure remained unchanged between 1993 and 2002 until a new Code of Criminal Procedure was adopted and enacted. Nowadays, the suspect is to appear before a court within twenty-four hours from the moment of detention.

The moment of arrest or detention is very crucial. The first twenty-four hours of detention are counted down from the moment the “detention protocol”¹⁶⁰ paperwork is completed, and only afterwards the police will bring the suspect before court. However, in practice, police officers wait to complete the detention protocol long after they detain the suspect,¹⁶¹ usually after an interrogation which may involve the use of torture. Thus, the police first coerce the necessary confessions or evidence, and then conveniently include them in the detention protocol afterwards. Leaving the detention protocol until later also helps the police if, for some reason, a detainee must be released due to lack of evidence, an obvious error, or a credible complaint from the detainee. This way an incorrect record will not appear on file; no protocol = no arrest = no records of misconduct. Consider the following, fairly common example of this practice:

In June 2001, in Krasnoyarsk, local policemen detained and took to the police station Mr. B., a student. He was told that he was suspected of having wounded a policeman a few days before. Mr. B. would not acknowledge this, and was beaten up by the police officers. Mr. B.’s friends, students of law, came to the police station and became witnesses to the beating. After more than 24 hours of detention, Mr. B. was released. He promptly filed a complaint with the prosecutor’s office, asking that the wrongdoers be held responsible. In the course of investigation, it was discovered that no protocol of his detention as a criminal suspect had been made [*sic*]. To conceal the circumstances of the detention, policemen

¹⁵⁹ Confessions at any Cost: Police Torture in Russia, *supra* note 139.

¹⁶⁰ Similar to the creation and processing of an arrest record.

¹⁶¹ J. Kahn, “Russian Compliance with Articles Five and Six of the European Convention of Human Rights as a Barometer of Legal Reform and Human Rights in Russia” (2002) 35 (3) University of Michigan Journal of Law Reform 641 at 669.

made out a set of documents about having detained Mr. B for minor hooliganism. This set of materials was filed with a court of law. However, the judge terminated the case as the documents clearly contained erasures and corrections, and witnesses confirmed Mr. B.'s alibi. A criminal case was initiated on the grounds of the forged protocol. However, the period of investigation had been extended several times over several months, with no result. In a meeting with representatives of the police, the victim was told that "there is an understanding with the prosecutors about dropping the case; the only thing we want from you is that you do not appeal this decision." Six months down the road, the case was terminated.¹⁶²

To make sure that they have enough time to manipulate the detainee to extract a confession of guilt, police use detention based on administrative charges even if they know that the person in question is a criminal suspect. Administrative detention can be extended up to 15 days, and can be granted by courts in the absence of the detainee. The police request the judge to sentence the detained person to 15 days imprisonment on charges such as public drunkenness or insulting a police officer. According to Human Rights Watch representatives, police take advantage of such methods of detention, as this gives them more time to compel confessions on more serious, criminal offences:

On March 5, 1998, Sergei Samsonov was approached on the street in Sergiev Posad (Moscow province) by two policemen who asked him to come with them to the police station as "their boss wanted to ask him some questions." They held him at the station overnight and took him to court the next day, when he was sentenced to ten days of detention for petty hooliganism. After ten days, during which he was allegedly tortured, he was taken to the IVS [temporary detention ward] on suspicion of murder.¹⁶³

Just like criminal suspects, detainees incarcerated on administrative charges are usually deprived of their right to defence counsel, which contradicts both criminal and

¹⁶² S. Shimovolos, "Register" in T. Lokshina, ed., Situation of Prisoners in Contemporary Russia (Moscow Helsinki Group, 2003), <http://www.mhg.ru/english/1E7C36D>.

¹⁶³ Confessions at any Cost: Police Torture in Russia, supra note 139.

administrative codes, according to which offenders have the right to a lawyer. Interrogators use a variety of methods to deprive the detainees of legal assistance. They do not inform the administrative offenders of their right to defence counsel whether or not the detainees know to request one. Even if they do know about their rights, requests to call in an attorney are ignored. More often, police officers attempt to legalize the absence of a lawyer by forcing the detainees to sign a document stating they “voluntarily” refuse legal assistance.¹⁶⁴

Quite often, police practice detention either late in the evening or during the weekend, when it is difficult to find a lawyer. Very few Russian families retain a permanent advocate they can call any time. Detention on Friday afternoon is very common. This lowers the chances that the detainee’s family members will be able to find a defence attorney who will immediately be ready to represent his/her new client’s interests.¹⁶⁵ It is likely that by Monday morning the detainee will no longer need the defence attorney (although she/he will certainly need legal assistance afterwards) as the police would have already extracted the necessary evidence from their victim.

There is another interesting fact that works to the advantage of the police: Article 96(4) of the new Code of Criminal Procedure provides for an exception to the general rule according to which the detainee’s family members must be notified of the detention no later than 12 hours after the detention. This legal provision stipulates that, if it is in the interest of the preliminary investigation, upon the procurator’s authorization the detainee’s family members need not be notified. Zoubkov and Zoubkova view this legislative innovation as “legal mayhem.” When an individual has been arrested, his/her

¹⁶⁴ Id.

¹⁶⁵ Id.

family members will usually report them as missing. According to the existing rules however, the police open a file only ten days after a person has disappeared.¹⁶⁶ This further jeopardizes the detainee's right to legal assistance. Since police usually do not willingly grant this constitutional right to counsel, or do everything to avoid the presence of a lawyer at interrogations during the preliminary stages of investigation, the only people the detainee can rely are family or friends, who have no way of knowing with certainty what has happened to their loved one, and whether or not she/he needs their help.

Administration of Criminal Justice in Courts

The self-serving motivation of the Russian police to keep arrest (i.e. crime detection) statistics high has manifested itself as a negative impact on courts. Fear of losing their jobs, perks and other benefits forced the judges to avoid acquittals in sentencing.¹⁶⁷ In the absence of sufficient evidence of a defendant's guilt, judges would send the case to supplementary investigation, thus avoiding both acquittals and personal responsibility.

¹⁶⁶ A.I. Zoubkov & V.I. Zoubkova, "Problemy reformirovaniya ugolovnoi (karatel'noi) politiki na sovremennom etape" [Contemporary Problems of Reforming the Criminal (Penal) Policy] (2002) 5 Zhurnal rossiiskogo prava [Journal of the Russian Law] 23 at 28-29.

¹⁶⁷ Thus, according to the Russian Federation Supreme Court's administrative arm, the conviction rate in criminal cases heard by judges is about 99 percent. *The Washington Post* reports that in some courts "there simply are no acquittals. In 2003 and nine months of 2004, two district courts in Moscow that heard a total of 4,428 criminal cases had no acquittals, according to court records... In the regional court in the southern Russian city of Krasnodar, no one has been acquitted in the last 10 years in cases heard by judges..." See: P. Finn, "Fear Rules in Russia's Courtrooms. Judges Who Acquit Forced Off Bench" (2005) Feb. 27 *The Washington Post*, page A01, also available at <http://www.washingtonpost.com/wp-dyn/articles/A56441-2005Feb26.html?referrer>.

Several years have passed since the 1992 “Law on the Status of Judges”¹⁶⁸ and the 1996 “Law on the Judicial System”¹⁶⁹ were adopted. The former proclaimed the independence of the judiciary and the latter put to an end the dependency of courts of general jurisdiction on the Ministry of Justice. However, the situation has not changed significantly since then. Courts are still heavily dependent on local authorities and legal agencies. In spite of the fact that the Russian Constitution requires that the courts be financed exclusively from the federal budget, the actual budgetary allocations are not sufficient. Thus, courts receive additional funding from local budgets both for the maintenance of the courts and social benefits for the judges themselves, such as apartments and other perks.¹⁷⁰ However, just as in Soviet times, to enjoy these privileges judges must comply with the directives and orders of their superiors who are in charge of the distribution of those benefits. Court chairmen pressure the judges to avoid lengthy trials and demand that they deliver severe sentences. The judge who renders too many acquittals or imposes unjustifiably mild sentences will be assigned very few cases, and by the end of the year will be subjected to criticisms for low annual rates.¹⁷¹

In addition, judges still depend on the Procuracy and the police. Thus, if a judge delivers a decision which does not meet the expectations of the Procuracy, the procurator in the case will often appeal all decisions of this judge as a form of revenge. Judges who

¹⁶⁸ Zakon Rossiiskoi Federatsii o statuse sudei v Rossiiskoi Federatsii, No. 3132-1, [On the Status of Judges in the Russian Federation, Law of the Russian Federation No. 3132-1,] Sobranie zakonodatel'stva Rossiiskoi Federatsii, [Collected Legislation of the Russian Federation,] 1992, No. 30, Art. No. 1792, <http://www.supcourt.ru/law01.html>.

¹⁶⁹ O sudebnoi sisteme Rossiiskoi Federatsii, No. 1-FKZ, [On the Judicial System of the Russian Federation, Federal Constitutional Law No. 1-FKZ,] Sobranie zakonodatel'stva Rossiiskoi Federatsii, [Collected Legislation of the Russian Federation,] 1997, No. 1, Art. No. 1, with further amendments and modifications available at <http://www.supcourt.ru/index.php?Key1=English%20version&Key2=English%20version&Value2=http://www.supcourt.ru/en/index.htm> (English version).

¹⁷⁰ V. Coulloudon, “Putin’s Anticorruption Reforms” in D.R. Herspring, ed., Putin’s Russia: Past Imperfect, Future Uncertain (Lanham: Rowman & Littlefield, 2002) at 95.

¹⁷¹ Confessions at any Cost: Police Torture in Russia, supra note 139.

refuse to meet the expectations of the Procuracy and the court chairmen may be fired.¹⁷² As a result, the rate of acquittals in Russia remains extremely low, at approximately one percent of all cases tried in court. Judges themselves admit that the number of cases not investigated thoroughly (but still sent to court) and which could consequently result in acquittal significantly exceeds this figure. Pressure put on judges by the legal agencies is increased by scrutiny from federal and local authorities, as well as the mass media, who expect judges to avoid acquittals. Therefore, judges prefer to deliver guilty verdicts as it is “easier procedurally and less risky” since, as it was decades earlier, a judge runs a risk of being suspected of taking bribes if she/he issues too many acquittals.¹⁷³

Also, every time a judge renders an acquittal, the Procuracy examines it meticulously to find any inconsistency that might give it reason for an appeal or review.¹⁷⁴ In 1997, the Supreme Court overturned 33.1% of all acquittals, but overturned only 2.5% of guilty verdicts.¹⁷⁵ The situation in criminal justice remains exactly the same as in the past, when Soviet judges had to render guilty verdicts to avoid personal responsibility and having their acquittals overturned by a higher court.

Until 1999, judges could send cases to supplementary investigation due to lack of evidence, often as a way to relieve themselves of responsibility for issuing an acquittal. The situation changed in 1999 when a Constitutional Court's decision “found provisions allowing judges to send cases back for further investigation to violate the presumption of innocence and several other constitutional guarantees.”¹⁷⁶ From that moment on, judges

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Thus, procurators appeal even acquittals by jury trial. Overturned by the Supreme Court, cases are sent back for retrial with another jury. In some cases, procurators obtain a guilty verdict after two or three acquittals. See: Finn, *supra* note 166.

¹⁷⁵ Confessions at any Cost: Police Torture in Russia, *supra* note 138.

¹⁷⁶ *Id.*

were no longer obliged to return cases for supplementary investigation if there was not enough evidence to render a guilty verdict. This is viewed as a significant achievement. Critics however, fear that the Constitutional Court's decision "is likely to make convictions without sufficient evidence even more frequent," although the judges would most probably sentence those convicted to the same length of imprisonment that they had already spent in detention while awaiting trial. As a former judge told in an interview to Human Rights Watch representatives, "this is acceptable for everyone... [the] procurator is satisfied because he has achieved another conviction, the defendant walks free out of the court room, and the judge successfully avoided issuing an acquittal or sending the case for further investigation."¹⁷⁷

Conclusion

In this chapter I have attempted to address the question of who controls the numbers in the prison population in Russia and how they do this. The historical analysis has shown that it was the process of the bureaucratization of criminal justice under Stalin in the 1930s that caused a rapid rise of incarceration. Centralized and "efficient" structuring of the legal agencies required permanent control by superiors over their subordinates. At the start of the process statistical indicators served as the main criteria for the assessment of legal agencies activity. Later, superior officials became preoccupied with the assessment of individual legal officials. Fearing they might lose their jobs and willing to meet the expectations of their chiefs by maintaining high rates of crime detection, investigators and procurators focused their efforts on putting as many people in the prisoner's dock as possible, no matter how "weak" the cases were. The main object of

¹⁷⁷ Id.

judges was to convict the defendant, since issuing an acquittal could result in disciplinary sanctions or the decision being overturned on an appeal filed by the Procuracy. The Procuracy itself had a vested interest in the judges delivering guilty verdicts since procurators were subject to criticisms for “unfounded arrests” if higher courts found the acquittals justified. Using the judges as scapegoats, procurators appealed convictions that seemed too mild or too severe. This could cause problems for the trial judge should his/her decision be overturned by a higher court.

This practice has survived up to present, notwithstanding the fact that the old Soviet legislation was gradually replaced by the new one, which is supposedly based on the principles of humanism and compliance with the international law provisions.¹⁷⁸ The number of acquittals, which does not approach even 1% of all cases, speaks for itself. Moreover, methods used by the police that contribute to more guilty verdicts raise concerns. To increase the rates of crime detection, they manipulate the statistical data. To shorten the length of preliminary investigation police officers routinely use torture to coerce confessions of guilt. Further, fabricated criminal cases are used against innocent people, which increases the number of potential convicts. To provide the courts with more accused, the police violate the criminal procedure legislation and arrest criminal suspects on the basis of administrative charges that allow the police to detain the suspect long enough to extract the necessary confessions, and subsequently improve their performance statistics.

¹⁷⁸ Article 15(4) of the Russian Constitution proclaims that: Universally acknowledged principles and standards of international treaties of the Russian Federation shall be a part of its legal system. Should an international treaty of the Russian Federation establish rules other than those established by law, the rules of the international treaty shall be applied. See: G.B. Smith, Reforming the Russian Legal System (Cambridge: Cambridge University Press, 1996) at 242.

Judges, being dependent on their superiors, the court chairmen who are concerned with the lengths of trials and reducing the number of acquittals, are forced to render guilty verdicts based primarily on coerced confessions of guilt, which jeopardizes practical validity of the principle of the presumption of innocence. To avoid the repercussions from the Procuracy, judges render guilty verdicts even when there is not enough evidence to prove the defendant's guilt, but then sentence the accused to an imprisonment term that equals the time she/he has already spent in detention while awaiting the trial. In this way the judges are able to mete out statistically acceptable justice, and at the same time, attempt to provide some vague and ad-hoc semblance of fairness in process.

Thus, it is evident that the modern system of criminal justice does not differ significantly in practice from its predecessor which had originated in the 1930s. As shown in the previous chapter, the current method of justice administration has led to an inflated prison population that exceeded one million detainees at the beginning of the 21st century, putting Russia on top of the list of all countries in terms of the incarceration rate per 100,000 inhabitants. Unable to deal with the high prison population legacy of the older Soviet system, the Russian Ministry of Justice had to take measures to reduce the numbers, but the underlying methods of administration of justice have not changed.

How then might Russia achieve better and more visible results? Amnesties and new criminal legislation have helped reduce the number of prisoners by 20 percent, but there is no guarantee that this figure will remain unchanged nor increase by the same 20 percent in a few years. As long as justice continues to be administered the way it is administered today, it is unlikely there will be any significant reductions in the number of

prisoners. Peoples' fates lay in the hands of legal officials who remain preoccupied with their careers, and who seem to have forgotten their original, socially responsible mission. Sticking to accusatorial principles, they contribute to the increase in the number of convicts, and consequently, to the further growth of the prison population since imprisonment remains the mostly wide used form of penal sanction. This suggests that amnesties and amendments to the criminal legislation have not been sufficient due to the bureaucratic legacy of the Soviet system. The next chapter will explore possible reasons why the Russian criminal justice system has failed – and will continue to fail – to escape its Soviet-era legacy.

3 CHAPTER

FAILED REFORMS

In the previous chapter I attempted to find the answer to the question: who controls the prison population numbers in Russia. After analyzing the performance of the law enforcement and judicial agencies involved (police, procurators, and judges), it becomes obvious that if the quantitative rates of crime detection and convictions remain the main criteria for the assessment of the performance of both the agencies and the individual officials running them (as opposed to adherence to the principle of presumption of innocence), the prison population is unlikely to decline in the near future.

By analyzing early post-glasnost era reforms aimed at the Procuracy, advocates, and the court system, I will try to explain why Russian criminal justice has failed to escape the bureaucratic legacy of the Soviet system. As a result, the number of convictions – and consequently prisoners – remains high.

The Procuracy

As shown in the previous chapter, the main obstacle to reforms aimed at the reduction of the prison population is the Procuracy itself, which has preserved its essence and structure since Stalinist times. The Procuracy's extensive powers effectively silence any serious notion of an independent judiciary in Russia today. These same courts and judges are the ones who make the final decisions that determine the number of convicts and prisoners.

The institution of the Procuracy was established by Peter the Great in 1722 and then abolished by the Bolsheviks in 1917 immediately after the Revolution. Soon

afterwards however it resumed its existence in 1922 to serve “as the “eyes of the State” to ensure full and complete cooperation of officialdom in executing the policies of the state.”¹⁷⁹ The Procuracy manifested extensive powers:

[T]he procurator was involved at every stage in the criminal process. The arrest of a suspect and the search for evidence required his written authorization. In Soviet criminal procedure, the prosecution of cases proceeded through two stages, preliminary investigation and trial, and the procurator participated in both... Also falling within the realm of procuratorial action were the review or appeal of criminal cases, the supervision of prisons, prisoner complaints, parole, and the release of prisoners; supervision of the actions of the police and secret police; supervision of juvenile commissions; supervision of the courts. Finally, and the most important, the procuracy assumed responsibility for supervising the legality of the activities of all government bodies, enterprises, public organizations, and officials. [The] latter function ... is referred to as general supervision.¹⁸⁰

Under Stalin, the Procuracy supervised the processes of industrialization and collectivization, serving as a lever of state power. It enabled mass repression by issuing arrest warrants for the detention of political criminals¹⁸¹ and securing the implementation of punishment, be it imprisonment or the death penalty.¹⁸²

Under Khrushchev, Stalin’s policy of mass terror, – including the Procuracy – was revealed and subjected to criticisms. Nonetheless, the Procuracy’s powers were retained, and some of them (such as centralized state general supervision of virtually any and all matters) were even broadened. It retained its key role in the process of administration of criminal justice. With the jurisdiction (or state mandated duty) to

¹⁷⁹ G.B. Smith, “The Struggle over the Procuracy” in P.H. Solomon, Jr., ed., Reforming Criminal Justice in Russia, 1864-1996: Power, Culture, and the Limits of Legal Order (Armonk, N.Y.: M.E. Sharpe, 1997) at 348-350.

¹⁸⁰ Ibid. at 350.

¹⁸¹ Ibid. at 350-351.

¹⁸² G.B. Smith, Reforming the Russian Legal System (Cambridge: Cambridge University Press, 1996) at 106.

supervise court activities, the procurators could appeal any judgments, including and especially acquittals, even though their number did not exceed one percent of all judicial decisions through the 1970s. Moreover, judges were accountable directly to the procurators, which subordinated them to the Procuracy.¹⁸³

In contrast to Khrushchev's times, when the Procuracy at least held the pretext of representing and defending the rights and interests of citizens by processing their complaints against public agencies and individual officials, under Brezhnev the Procuracy was first and foremost concerned with protection of the state's interests, primarily in economics. "During the later Brezhnev years procurators resumed their "micromanagement" of enterprises, factories, and farms to ensure fulfillment of production plans and delivery schedules." By the time of Brezhnev's death, in 1982 "the Procuracy had become greatly feared by Soviet citizens as an organization of state-sponsored coercion closely linked to the KGB." Remaining a powerful lever of the authoritarian regime, the Procuracy performed arrests, investigation and criminal prosecution of dissidents.¹⁸⁴

By the end of 1970s, the Procuracy "employed more than 18,000 lawyers or some 12-13 percent of the legal profession. In addition, the Procuracy directly supervised another 18,000 criminal investigators, comprising over 14 percent of the legal profession." Moreover, the profession of procurator was deemed so prestigious that upon graduation, only the top law school students were recommended to positions within the

¹⁸³ Smith, *supra* note 179 at 351.

¹⁸⁴ Smith, *supra* note 182 at 108.

procuracies. The rest had to pursue lesser careers as juriconsults (solicitors), advocates, or judges.¹⁸⁵

Mikhail Gorbachev was the first head of the state to attempt to limit the powers of the Procuracy. This became especially necessary upon revelations of the truth about the use of torture by the police and Procuracy during preliminary investigations for the purpose of coercing confessions of guilt, and their routine invention of non-existing criminal cases and convictions of innocent people. Gorbachev's attempted to limit the Procuracy's criminal prosecution and general supervision powers concerning the legality of the activities of governmental and non-governmental organizations. He also tried to shift criminal investigation powers to an independent agency under the supervision of the Ministry of Internal Affairs. These initiatives were interrupted by the attempted coup d'etat of August 1991, which led to the collapse of the USSR.¹⁸⁶

A plan to reform the Procuracy was adopted by the authors drafting the constitution for a new Russia. They envisaged limiting the Procuracy's powers to criminal prosecution in courts only. General supervision of legality was to be delegated to a newly instituted office of People's Ombudsman, while investigatory powers were to be referred to a special supervisory body. To eliminate courts' dependence on the Procuracy, the draft constitution included a provision with which the Supreme Court of the Russian Republic would be responsible for supervision of the courts. This idea was supported by the Justice Minister, who claimed that:

[T]he Procuracy as a higher supervisory body of state power was a uniquely Soviet institution, a "sacred cow" created by Stalin... He denounced procuratorial supervision of the performance of the courts as a

¹⁸⁵ *Ibid.* at 108-109.

¹⁸⁶ *Ibid.* at 109-115.

“legal atavism” and general supervision as a “totalitarian snoop.” He argued that the only proper role of the Procuracy is to prosecute criminal cases in court. Limiting the role of the Procuracy, would, in his view, strengthen the court system and bring the Republic’s legal system into closer conformity with established European norms and legal experience.¹⁸⁷

Before the constitution could be adopted, a new law on the Procuracy was enacted in 1992 that limited the Procuracy's powers over the courts, which were transferred to the Supreme Court. However, the procurators retained the right “to investigate citizens’ requests and grievances arising from court decisions as long as those cases are not under appeal or otherwise currently under court consideration”¹⁸⁸ as well as the right to appeal from the unlawful or unfounded court decisions. In practical terms, this preserved some sort of control for the Procuracy over the courts. If a procurator disagreed with the outcome of a case, she/he could easily find grounds to appeal the decision. Although pretrial detention was now the prerogative of a specifically established investigatory body, the Procuracy retained the right to supervise the legality of the activities of governmental and non-governmental organizations. Beyond these few shifts of responsibility, the Procuracy retained all of its previous powers, including general supervision of the activities of administrative, governmental agencies and officials.¹⁸⁹

In the meantime, the draft constitution of 1993 provided for the limitation of the Procuracy’s powers to only criminal prosecutions in courts. The Procuracy itself, the Ministry of Internal Affairs, and the Ministry for Security (former KGB) all objected to this provision. They argued in favour of preserving the Procuracy’s wider existing powers, citing “the unstable political situation, the incipient market, the upsurge in crime

¹⁸⁷ *Ibid.* at 118-119.

¹⁸⁸ *Ibid.* at 120.

¹⁸⁹ *Ibid.* at 120-121.

and the aggravation of relations between nationalities” which came as a result of the fall of the USSR. All claimed that “only the prosecutor’s office [could] be a reliable guarantor of law and order and legality.”¹⁹⁰ In addition the Procuracy and the Ministry of Internal Affairs insisted the Procuracy retain general supervision powers over the legality of the activities of governmental and non-governmental agencies. Otherwise the burden of filing requests and grievances would fall on citizens themselves, and the process would become more complicated and costly. (Normally it was the procurator’s duty to file complaints on behalf of citizens.) Further, both institutions argued there were not enough judges in the country, and that the younger judges lacked experience. The Deputy Procurator-General stated that it would take fifteen to twenty years before the court system starts working effectively.¹⁹¹

In the end, the provisions limiting the Procuracy’s powers to prosecute criminals in courts were dropped from the final draft of the Constitution. This meant that the Procuracy effectively continued to be governed by the 1992 “Law on the Procuracy,”¹⁹² since the 1993 Constitution introduced only minor changes affecting the Procuracy.¹⁹³ As a result, the Procuracy preserved its central role in the legal system even though it lost the right to investigate crimes and supervise courts. Procurators maintained their influence on the judges, as the law stipulates the grounds on which the procurator can appeal a court decision she/he considers unfounded or unlawful.

¹⁹⁰ *Ibid.* at 124.

¹⁹¹ *Ibid.* at 122.

¹⁹² O prokurature Rossiiskoi Federatsii, No. 168-FZ, [On the Procuracy of the Russian Federation, Federal Law No. 168-FZ,] Sobranie zakonodatel’sтва Rossiiskoi Federatsii, [Collected Legislation of the Russian Federation,] 1995, No. 47, Art. No. 4472, with further amendments and modifications available at http://www.genproc.gov.ru/ru/about/basis/index.shtml?show_item=7.

¹⁹³ Smith, *supra* note 182 at 125.

Not surprisingly, the “Law on the Procuracy,” adopted in 1992 in the times of national emergency, socio-economic chaos, and rampant criminality, is still in force. The Procuracy has been, and remains still, the main lever of state power. It retains its role as “the eyes of the state” to ensure full and complete cooperation of officialdom in executing the policies of the state. In Soviet Russia, procurators were members of the Communist Party, and the chief procurator (the Procurator-General) sat on the Central Committee of the CPSU,¹⁹⁴ which allowed the ruling elite to have a direct influence on the Procuracy.¹⁹⁵ Today, while the practical role of the Communist Party has been abolished, the state has found other means of subordinating and using “politically sensitive and influential agencies, such as ... the procuracy, the FSB, and the regular police.”¹⁹⁶ The government still shows signs of “the growth of horizontal “old comrade” networks inside the President’s vertical power structure,” the so-called “uniformed bureaucrats” who have backgrounds in the military, the Interior Ministry, the Federal Security Service (FSB), or other special agencies.”¹⁹⁷ In particular, President Vladimir Putin, ex-KGB agent, has appointed officials from these backgrounds as heads of the seven federal districts Russia has recently been divided into. Their main task is “to oversee the activities of the bureaucracy and report to the president’s office on any regional noncompliance with the constitution or the law.”¹⁹⁸

This suggests the state is not interested in limiting the Procuracy’s powers. If the state were, it would have done so a long time ago. The only significant change which

¹⁹⁴ CPSU – the Communist Party of the Soviet Union.

¹⁹⁵ Smith, *supra* note 182 at 109.

¹⁹⁶ T.J. Colton & M. McFaul, “Russian Democracy Under Putin” (2003) 50 (4) *Problems of Post-Communism* 12 at 15.

¹⁹⁷ P.K. Baev, “The Evolution of Putin’s Regime: Inner Circles and Outer Walls” (2004) 51(6) *Problems of Post-Communism* 3 at 4.

¹⁹⁸ Colton & McFaul, *supra* note 196 at 15.

limited the powers of the prosecutors involved the right to issue arrest warrants. A constitutional provision, which grants this right to the courts, has finally been implemented. As mentioned in the previous chapter, the provision of the old Code of Criminal Procedure which granted this right to procurators remained in force long after the adoption of the 1993 Constitution. That provision of the criminal legislation was enforced in spite of the fact that it contravened the Constitution until 2002, when the new Code of Criminal Procedure came into effect. One can only guess at how long this conflict of laws would have remained unsolved had Russia not abided by obligations to the European Convention of Human Rights.¹⁹⁹ That said, there was no great enthusiasm among the judges to resolve the conflict since; they complained that, pragmatically, “judicially-supervised detention would require a doubling of judges in the system” and “[n]either set of officials ... [have] the education, experience, or mentality for such an abrupt change.”²⁰⁰

Police

Thus, the Procuracy continues to play a central role in the Russian legal system. However, as shown in the previous chapter, the police also contribute to the growth of the pretrial detention centre populations, and, upon a guilty verdict with a sentence of imprisonment, to the increase of the inmates in prisons and colonies. It is little wonder since the Russian police are used by the state power to fight crime. As Kahn has noted:

Criminal justice systems the world over have a strange feature, and Russia’s system is no exception. The official on the lowest rung of the

¹⁹⁹ J.D. Kahn, “Russia’s “Dictatorship of Law” and the European Court of Human Rights” (2004) 1 Review of Central and East European Law 1 at 9.

²⁰⁰ Id.

ladder – the police officer on the street – is first to make the most crucial and difficult decisions: to arrest, to search, to interrogate, to shoot. Most command-and-control systems work on the opposite principle: generals think, soldiers act.²⁰¹

Indeed, crime control plays an essential part in political campaigns, starting with the President himself, who used criminal jargon when making a statement about the Chechen bandits: “If need be, [we] will chase [them] into their own outhouses and wipe them out while they sit on their toilets.”²⁰² His sentiment reflects the attachment of current leaders to traditional attitudes towards the implementation of force in the Soviet totalitarian regime. The police are thus subject to pressure from the top-echelon administrators and forced to demonstrate high rates of crime detection.²⁰³ The absence of public control over police activity allows them to use illegal methods to solve crimes – which include torture, invention of cases and falsification of the statistical data – to achieve desirable rates. One former police officer told the Human Rights Watch:

[I]f you came to work, you have to produce. [If] you deliver no results, you, as a specialist, did not succeed. But by what means you give the result, doesn't interest anyone. You have your crime solving rates, you don't have “hangers” [crimes that remain unsolved for a long time] – that suits everyone. It's desirable, of course, that there aren't too many complaints against you.²⁰⁴

²⁰¹ *Ibid.* at 10.

²⁰² V. Shlapentokh, “Putin’s First Year in Office: The New Regime’s Uniqueness in Russian History” (2001) 34 *Communist and Post-Communist Studies* 371 at 385.

²⁰³ Although the crime rate in Russia remains quite low in comparison to some developed countries. Thus, in 2001 the crime rate in Great Britain was 9,814 per 100,000 citizens, in Germany – 7,736, while in Russia – 2,039. See: Ya. Gilinskii, “Ugolovnaya politika Rossiiskoi Federatsii: To be or not to be?” [Criminal Policy of the Russian Federation: To be or not to be?] (2003) 18 *Dos'ye na tsenzuru* [Index on Censorship] 31 at 35.

²⁰⁴ Confessions at any Cost: Police Torture in Russia (Human Rights Watch, 1999), <http://www.hrw.org/reports/1999/russia/>.

Utterly negative police attitudes towards suspects and accused, and the use of torture and impermissible methods of treatment reduced the level of trust conferred by the population at large, who not only consider the police work ineffective, but fear the police and prefer to avoid any contact with them.²⁰⁵ Victims of crime tend not to report to the police unless the crime is serious.²⁰⁶ This reluctance actually works to the benefit of the police. According to one journalist writing about the Russian police, “if all crimes ... would be registered, crime-solving statistics would fall to around 14 percent, and ... rates would fall further if all confessions that were [extracted] under torture were excluded.”²⁰⁷

High staff turnover in the modern Russian police force also raises serious concerns regarding the quality of public safety. Attracted by higher salaries in private enterprises, police officers do not stay long in the governmental service. According to the Ministry of Internal Affairs, 1.2 million police officers (or 80% of the total number of employees) have left their jobs since the beginning of the 1990s. About half of police detectives work less than three years, and the number of who are considered suitably experienced does not exceed 5 percent. As one of the former police detective commented:

The continuity has stopped, [so has] the normal transfer of experience. Before, in criminal investigation, there were gray-haired men with twenty years of experience and in the first two or three years you weren't even allowed to come close to something serious.... Now, a detective who has worked for three years is considered senior.²⁰⁸

²⁰⁵ According to a nationwide survey published in March 2005 by the Levada Center in Moscow, 71 percent of respondents said they did not trust the police at all while 2 percent thought the police act within the law. In a separate poll conducted by the Public Opinion Foundation in March 2005, 41 percent of Russian respondents said they lived in fear of police violence. See: P. Finn, “For Russians, Police Rampage Fuels Fear” (2005) Mar. 27 *The Washington Post*, page A01, also available at <http://www.washingtonpost.com/wp-dyn/articles/A4009-2005Mar26.html?sub=AR>.

²⁰⁶ M. Galeotti, “Russian Police Reform: Centralisation, Paramilitarisation and Modernisation” (2003) 19 (70) *Crime and Justice International* 17 at 18.

²⁰⁷ Confessions at any Cost: Police Torture in Russia, *supra* note 204.

²⁰⁸ *Id.*

This tendency may evidence a negligent attitude towards, and poorer professional quality in the performance of their duties. The number of investigators who have a university degree in law constitutes only 34 percent of the total number of investigators,²⁰⁹ which resembles the figures of the 1920-30s, when the Soviet system of criminal justice was at an early stage of its formation and the number of uneducated legal officials significantly exceeded the number of those who had a law degree. Lack of experience and professional skills can also affect the quality of crime investigation. Moreover, young detectives are likely to be subjected to influence from the senior and more experienced colleagues regarding the methods of work with suspects and the accused, namely regarding the deliberate use of torture, cruel treatment, falsification of statistical data, and invention of non-existing crimes.

The Procuracy also faces a problem with the staff turnover as younger and inexperienced procurators, such as 4th/5th year law school students, get appointed as deputy procurators right out of school. One of the procurators told the Human Rights Watch:

When I started working, in order for an investigator to be put on a case of premeditated murder under aggravating circumstances, you needed to be a senior investigator with five years experience. Now, children, practically, start to work and are immediately put on several contract killings, and they investigate as they see fit.²¹⁰

This raises another concern: the system of legal education in modern Russia has not yet been reformed since the fall of the USSR, and despite significant changes in legislation since that time. In Russian law schools, faculty still read lectures and do not

²⁰⁹ Id.

²¹⁰ Id.

conduct seminars – a legacy of the Soviet system of education under which prospective specialists received the necessary practical information about the administration of the law, but critical and analytical skills were not emphasized. In contrast to US law schools, Russian students do not have to be prepared for each class; instead, they simply write down everything the course instructor says, since this is all they need to know to both pass the exam and practice in the field. The system of evaluation cumulates in an oral and highly subjective final examination.²¹¹

Further, the development in Russia of market economic relations after the fall of the USSR increased the demand for lawyers, making the legal profession extremely popular. The number of those who wished to pursue a career in law skyrocketed. Since the number of existing law schools did not meet market demands, law departments quickly opened up even in other institutions, including technical and agricultural universities. This casts doubts on the quality of legal education at many schools, where some law courses are taught by non-lawyers and/or people with little or no legal scholarship.²¹² At a conference of deans of law faculties and schools in November 2000, it was recognized that there is still an absence of a concise and clear policy on legal education.²¹³

²¹¹ J.M. Burman, “The Role of Clinical Legal Education in Developing the Rule of Law in Russia” (2002) 2 (1) Wyoming Law Review 89 at 102-103.

²¹² Ibid. at 103-104.

²¹³ Ibid. at 109.

Judiciary

In the Soviet era courts were officially independent and the judges abided by law. In practice, courts were little more than “an extension of executive power”²¹⁴ since “the state did nothing to insulate or immunize its judges from pressures to administer the law in a prejudiced or particular manner.”²¹⁵ According to Todd Foglesong, “the goal of the [Communist] Party was ... to systematically expose courts and judges to the desires and wishes of political forces,” with the Communist Party being “the leading conductor.”²¹⁶

This situation began to change after Gorbachev came to power. Adopted in 1989, the USSR “Law on the Status of Judges” prohibited the dismissal or disciplinary sanctions of judges whose decisions were overturned on appeal by a higher court. This was undoubtedly a significant achievement, taking into consideration the malpractice of the past. The procedure of criminal prosecution against judges who committed an offence also underwent some changes. The right of criminal prosecution was vested with the Procurator-General instead of local procurators, who exercised this power beforehand. These changes contributed to the new independence of judges from local authorities.²¹⁷

The collapse of the USSR in 1991 was followed by new proposals to reform the court system in order to ensure greater independence of judges. Opponents of these proposals were the same as always: the Procuracy, the Ministry of Internal Affairs, and the Ministry of Justice, since each of these institutions would inevitably lose control over

²¹⁴ E. Huskey, “Russian Judicial Reform After Communism” in P.H. Solomon, Jr., ed., Reforming Criminal Justice in Russia, 1864-1996: Power, Culture, and the Limits of Legal Order (Armonk, N.Y.: M.E. Sharpe, 1997) at 326.

²¹⁵ T. Foglesong, “The Reform of Criminal Justice and Evolution of Judicial Dependence in Late Soviet Russia” in P.H. Solomon, Jr., ed., Reforming Criminal Justice in Russia, 1864-1996: Power, Culture, and the Limits of Legal Order (Armonk, N.Y.: M.E. Sharpe, 1997) at 285.

²¹⁶ Ibid. at 286.

²¹⁷ Smith, supra note 182 at 144-145.

the courts, especially the Ministry of Justice which was a direct patron of the courts.²¹⁸ For the Procuracy, granting more powers to courts would mean the loss by the procurators of some of their powers and the limitation thereof to criminal prosecution only. The Ministry of Internal Affairs feared that greater independence of courts from the executive branch of state power would result in an inflated number of acquittals, which in turn would bring to naught all efforts of the police aimed at crime fighting. To avoid this perceived outcome, the Ministry of Internal Affairs used drastic measures and collated statistical data to create a “black list” of 111 judges predisposed to rendering mild convictions and acquittals.²¹⁹

The reform was primarily aimed at the centralization of courts and guaranteeing them greater financial independence from the local authorities. The latter had practically subordinated the courts by providing judges with social benefits, such as apartments and perks.²²⁰ As was mentioned in the previous chapter, the Constitution of the Russian Federation stipulates that the courts must be funded from the federal budget. In practice, however, since the federal government did not allocate enough funding, local authorities filled the gap, thus allowing them to exercise authority over the courts by determining what perks judges would receive. The Constitution created a new provision according to which, from now onwards, the appointment of judges lies within the powers of the President.²²¹ Heads of republics did not attempt to conceal their dissatisfaction with this

²¹⁸ Foglesong, *supra* note 215 at 328.

²¹⁹ *Ibid.* at 329.

²²⁰ *Ibid.* at 332.

²²¹ According to Art. 128 of the RF Constitution, the President nominates the members of the Constitutional, Supreme and Supreme Arbitration Courts of the Russian Federation, who are then appointed by the Council of Federation (upper Parliament Chamber), and appoints the remaining federal judges directly.

novel practice since it significantly limited their ability to appoint judges who would comply with their demands.²²²

Judicial reform is still in process. The 1992 “Law on the Status of Judges” has been recently amended with the aim of improving the quality of the judges’ performance and expanding the independence of courts.²²³ However, according to Yegorov, none of the proposed goals of these amendments has yet been achieved.²²⁴ Moreover, it appears that judges have lost some of the guarantees of their independent status.

According to the law, the selection of candidates for judiciary positions is performed on a competitive basis. However, it is remarkable that candidates for criminal, civil, and arbitration courts²²⁵ all take the same examination, and the system of evaluation is based on a simple “pass” or “fail” grade. Even if a candidate passes the examination, this casts a shadow on the depth of his/her knowledge. The grading does not reflect the candidate’s proficiency in a specific area of law, and as a consequence, the chances that an accused person might be incorrectly convicted or sentenced as a result of a judicial error is increased. To improve the quality of the judges’ performance, Yegorov suggests that the promotion of the already appointed judges should be carried out on a competitive merit basis by conducting an examination, instead of the usually automatic promotion of those who have been performing the duties of a judge for a certain period of time. The authors of the amendments to the “Law on the Status of Judges” have failed to consider

²²² Foglesong, *supra* note 215 at 336.

²²³ O vnesenii izmenenii i dopolnenii v Zakon Rossiiskoi Federatsii o statuse sudei v Rossiiskoi Federatsii, No. 169-FZ, [On Amendments and Modifications to the Law of the Russian Federation on the Status of Judges in the Russian Federation, Federal Law No. 169-FZ,] Rossiiskaya gazeta, (2001) No. 247, <http://www.akdi.ru/gd/PROEKT/086592gd.shtm>.

²²⁴ S. Yegorov, “Reforma bez kontseptsii” [Reform Without a Conception] (2003) 18 Dos’ye na tsenzuru [Index on Censorship] 53-56.

²²⁵ Arbitration courts in Russia resolve commercial disputes, including disputes involving foreign companies and foreign entrepreneurs.

this option, which is an indication of the incompleteness of reform attempts regarding the improvement in the quality of the judges' performance.

Judicial independence became more vulnerable after the amendment of the "Law on the Status of Judges." Although there was a repeal of a provision allowing for termination of judge's powers in case of "committing of an action disgracing conscience and dignity of a judge or belittling the authority of the judicial power" – a clause widely used to get rid of an unwanted judge – another provision was enacted which provides for the disciplinary liability of judges.²²⁶ According to this stipulation, a judge could be charged with disciplinary responsibility for having committed a disciplinable offence (which could include breach of the "On the Status of Judges" law or the code of judicial ethics). Disciplinary action could entail early termination of powers. This provision can be used against judges who do not comply with the demands of court chairmen, undermining the independence of judges completely.

Legislators also repealed a provision from the "Law on the Status of Judges" under which judges could not be charged with administrative or disciplinary responsibility. Moreover, a new legal provision was introduced into the law making it possible to break in to the habitation or office of a judge who is only suspected in a criminal case and investigate his/her personal or official means of transportation, wiretap, personally examination or search of a judge, and search or seize his/her correspondence and property. Previously, all investigative measures against the judges were prohibited unless a criminal case had actually been initiated. Finally, a judge who has been charged with a crime or detained, and whose powers have been terminated on these grounds, can

²²⁶ Yegorov, *supra* note 224 at 55.

no longer appeal the decision about early termination of powers to the Highest Qualification Collegium of Judges²²⁷ or the Supreme Court.

In this vein, it is necessary to mention a new “Law on the Organs of the Judiciary”²²⁸ adopted in 2002, as it is essential to illustrating how these “organs”²²⁹ function in appointment and dismissal of judges, as well as approval of the code of judicial ethics. This law was explicitly developed to disadvantage judges as it provides for a procedure for the termination of judges’ powers that allows the court chairmen to fire a judge who does not meet their expectations, according to Sergey Pashin, the initiator of the court reform in the early 1990s. This procedure itself is governed by a regulation issued by the Highest Qualification Collegium of Judges, rather than by a law passed by Parliament. The 2002 law makes no provisions in terms of the right of a dismissed judge to a legal counsel to represent him/her when appealing a decision about dismissal, nor is there any right to challenge the judges who might have a vested interest in his/her dismissal. Finally, the dismissed judge does not have the right to speak in his/her own defence before the qualification collegium, which makes him/her a powerless victim. The fact that the judge cannot file a complaint against the dismissal to the Highest Qualification Collegium, but has to appeal to the regional court instead, jeopardizes

²²⁷ The Highest Qualification Collegium of Judges consists of 29 federal judges of different levels elected for a term of four years and participates in appointment and dismissal of chairmen, deputy chairmen and judges of the RF Supreme Court and the RF Supreme Arbitration Court; imposition of disciplinary sanctions, formal evaluation of the federal courts chairmen and deputy chairmen (excluding district courts) as well as judges of the RF Supreme Court and the RF Supreme Arbitration Court (Article 17 of the Law on the Organs of the Judiciary of the Russian Federation).

²²⁸ *Ob organakh sudeiskogo soobshchestva v Rossiiskoi Federatsii*, No. 30-FZ, [On the Organs of the Judiciary in the Russian Federation, Federal Law No. 30-FZ.] *Rossiiskaya gazeta* (2002) No. 048, <http://www.akdi.ru/gd/PROEKT/078858gd.shtm>.

²²⁹ The organs of the Russian judiciary include the All-Russian Conference of Judges, conferences of judges of the RF constituent entities courts, the Council of Judges of the Russian Federation, councils of judges of the RF constituent entities courts, the Highest Qualification Collegium of Judges of the Russian Federation, qualification collegia of judges of the RF constituent entities courts, and are formed to express the interests of judges as representatives of judicial authority (Art. 3 of the Law on the Organs of the Judiciary of the Russian Federation).

his/her chances of being restored to the old post, as the regional court chairman will likely be the initiator of the dismissal.²³⁰ It seems highly irregular for judges themselves to enact a set of legal procedures on termination of judge that eliminates any opportunity for meaningful pleas or arguments for the defendant. It is almost comical that such procedures would be sanctioned by legislation in a newly democratic Constitutional state. This contradiction in logic is a telling signal that the ability of state actors to exercise arbitrary power and control over institutions, procedures, and citizens remains a high priority in modern Russian society. The rule of law remains just another rule to be broken.

Furthermore, the “Law on the Organs of the Judiciary” does not provide a procedure for the nomination of candidates for elections to these organs. In Yegorov’s opinion, this allows the already existing organs to develop this procedure themselves, which in turn, encourages both self-reproduction of the currently existing organs in the same manner they function today and the stagnation of reforms.²³¹

The analysis of the amendments to the court legislation reveals the unwillingness of the state to grant judges greater independence, and makes it unrealistic to view the judiciary as an effective and separate branch of state power, independent of the legislative and executive branches. The gradual limitation of judges’ independence allows the state to achieve its primary objective: to exercise control over the courts and use them as a tool in statistics-driven crime fighting. However, as a result, the judges remain puppets in the hands of the procurators, and the number of acquittals does not decrease, allowing the prison population to continue its growth. One cannot but agree with Sergey Pashin who

²³⁰ S. Pashin, “Flyuger sudebnoi reformy” [The Weathercock of the Judicial Reform] 2003 (18) *Dos’ye na tsenzuru* [Index on Censorship] 23 at 29.

²³¹ Yegorov, *supra* note 224 at 56.

notes that current reform of the court system “has changed its direction; the democratic vector turned out to be a bureaucratic weathercock.”²³²

Advocacy

As mentioned in the previous chapter, defence attorneys are the only players in the criminal process whose primary obligation is to prove their clients’ innocence and avoid conviction. In Soviet times the defence attorney did not have the same rights as the procurators since the criminal legislation did not provide legal assistance to the suspects at the stage of preliminary investigation.²³³ Thus, the state did not provide its citizens with adequate protection of their rights. Given that confessions of guilt are commonly coerced during preliminary investigation right after detention, access to legal assistance and the presence of a defence attorney become crucial for the protection of the rights of the suspect – rights that Soviet citizens were deprived of historically. The situation changed after the new Code of Criminal Procedure of 2002 was adopted, according to which a suspect is entitled to legal assistance from the moment of detention as a right guaranteed by the Constitution. However, even today, the institution of advocacy in Russia is far from being perfect, and bears features attributable to its Soviet predecessor.

It is necessary to mention that the Bolsheviks viewed lawyers as evil, and upon coming to power in 1917 they disbanded the advocacy, although it was revived later.²³⁴ Until 1989 advocates were not represented by any professional organization, but were controlled by the state since the supervision of advocacy activity lay within the powers of

²³² Pashin, *supra* note 230 at 30.

²³³ Smith, *supra* note 179 at 352.

²³⁴ M. Kogan, “Maloimushchiye grazhdane obrecheny na bezzashchitnost’” [Poor Citizens are Doomed to Remain Unprotected] (2003) 18 *Dos’ye na tsenzuru* [Index on Censorship] 112 at 112.

the Ministry of Justice. It was not until *perestroika* that the advocates began to claim “the right to be self-governing profession, free of the ministry’s control and supervision.”²³⁵ These claims were achieved only in 2002 when a new law, “On Legal Assistance and Advocacy in the Russian Federation,”²³⁶ was adopted. However, the advocates did not achieve full independence because the Ministry of Justice retained its right to govern the advocacy’s activity (although the authors of the law claimed that this is only an interim measure).²³⁷ Formally the law proclaims the advocacy as a professional non-governmental association of advocates, which operates on the principles of independence and self-government. The state guarantees the independence of the advocates and undertakes the financing of services rendered by advocates who are appointed to assist citizens who cannot pay for legal assistance, as stipulated by law.

However, some advocates say that this law has not achieved the provision of legal assistance to those who need it but cannot pay. Instead they claim it functions to regulate the structure and activity of advocacy to the benefit of the state since legal assistance is mentioned only in passing within the law as part of a justification of the state’s authority to govern advocacy.²³⁸ The state is obliged to pay for the services of a defence attorney free of charge to suspects and accused in a criminal case who cannot afford to hire an advocate. The fees are supposed to be paid from budgetary allocations. At the same time, according to the law, part of these fees should be paid by the local advocates’ chamber.²³⁹ In practice, the advocates’ chambers almost always have to pay additional fees to their

²³⁵ Smith, *supra* note 182 at 151.

²³⁶ Ob advokatskoi deyatel’nosti i advokature v Rossiiskoi Federatsii, No. 63-FZ, [On Legal Assistance and Advocacy in the Russian Federation, Federal Law No. 63-FZ,] Rossiiskaya gazeta (2002) No. 100, at <http://www.akdi.ru/gd/PROEKT/088160gd.shtml>.

²³⁷ Kogan, *supra* note 234 at 114.

²³⁸ *Id.*

²³⁹ Similar to a bar association.

colleagues who are appointed by the police or Procuracy to represent the interests of the poor since the honorarium paid by the state is not sufficient.²⁴⁰ According to Mark Kogan, member of the Moscow City Advocates' Chamber, this is how the state deceives the poor to whom it guarantees professional competent legal assistance.²⁴¹ He clarifies that this does not mean that the advocates who perform legal aid are incompetent, but rather that the state creates conditions in which the advocates cannot perform their duties at an appropriate level. An advocate may conduct several cases simultaneously, and having more than one hearing a day is not rare. Sometimes it is practically impossible to prepare the case in a proper manner, especially when the advocate receives the order to represent his/her client's interests in court just before the hearing itself. This may make it impossible to even meet the client and arrange the case beforehand. Given that during the court hearings the defendant sits in the prisoner's dock, communication with the client becomes more difficult for the advocate. The procurator here is obviously in a more advantageous position.

Another common issue with legal aid is that a suspect may be represented by one advocate during interrogation at the preliminary investigation, then by another upon the filing charges, and yet a third advocate may appear on his/her behalf in court. The rotation of defence attorneys throughout the process impedes the ability of the client and lawyer to build trust and confidence between the advocates and their clients, which is essential to an effective defence. In the absence of adequate preparation time, limited budget, and a stacked state opposition, how can the defence be effective if the advocate has nothing to offer except to plead in court for leniency? The outcomes in these cases

²⁴⁰ Today such honorarium constitutes 50-100 rubles (US\$1.8-3.5). See: Kogan, *supra* note 234 at 117.

²⁴¹ *Id.*

are quite predictable, and it should come as little surprise that the number of convictions in Russia remains much higher than the number of acquittals. Given the history of state encouragement of prosecutions and questionable convictions, the law as it is structured now, under which the state funds advocates who render free legal assistance, exists only for appearances and barest compliance of the national legislation to international standards.²⁴² In practical terms, citizens who appear in the prisoner's dock remain effectively unprotected against the state and its representatives, the procurators, who are keen to use all means at their disposal to fulfill their professional duties and meet the expectations of their bosses in proving beyond reasonable doubt that the person in question is guilty. The judges, in turn, preferring not to contradict the findings and powers of the Procuracy, meet their expectations and render the "expected" verdicts.

Since the Ministry of Justice retains control over the advocates, it casts a long shadow over the legal aid process, contaminating their independence in practicing their professional obligations. According to the law, advocates can lose their professional status if they commit an act which discredits the honour and dignity, or belittles the authority of advocacy. Such vague language in the law, in Kogan's opinion, allows for the expulsion of any unwanted advocate from the advocates' chamber at the discretion of the Ministry of Justice. Should the council of the advocates' chamber disagree with a decision to dismiss a particular advocate, the Ministry of Justice can go to court and litigate the case for expulsion. In case of a conflict between an advocate and a judge, which might be the cause of a dismissal recommendation, the outcome of the ministerial petition is fully predictable – the judges invariably win.²⁴³

²⁴² *Ibid.* at 118.

²⁴³ *Ibid.* at 116.

The new Code of Criminal Procedure also erodes the rights of a suspect, accused, or defendant to legal assistance by representatives of public organizations from acting or making submissions on behalf of the accused in the criminal process, a reversal from the old Code of Criminal Procedure regulations. These social defenders were often company or trade union representatives who were not lawyers, but were recognized by the court as being able to represent the special or context-specific interests of the accused in the absence of or in addition to the defence lawyer. Now, non-advocate defence counsel may participate in the criminal defence process only if the defendant is represented by an advocate who is a recognized member of an advocates' chamber. Babushkin believes that "the absence of the social defenders means it is much more difficult for the accused to rebut the charges or question the assumptions and wrong-doings of the police and Procuracy."²⁴⁴ Despite its noble and progressive proclamations about improving the quality of legal assistance, the state has in fact made defendants in criminal cases more vulnerable and practically powerless against the law enforcement bodies whose activities have become even less transparent.

Advocates play a vital part in criminal procedures by providing defendants with their constitutional right to legal assistance. The attempt by the state to reform the institution of advocacy and bring it in line with international standards has resulted in a declarative law that is supposed to guarantee the independence of advocates. In practice, these declarations are not implemented in the real world. It remains, thus, imperfect legislation that fails the most vulnerable participants in the criminal process, the ordinary citizen defendants. One cannot seriously speak about criminal justice reform when the

²⁴⁴ A. Babushkin, "Zashchitnik kak ugolovno-protsessual'naya dekoratsiya" [Defence Counsel as a Criminal Procedure Decoration] (2003) 18 *Dos'ye na tsenzuru* [Index on Censorship] 120 at 124.

purported benefits of legislation work to the further detriment of suspects and their advocates. Russia's attempts to conform its legislation to international standards have resulted in rights that are formulated but not implemented. In this sense, the irony of the situation resembles the 1936 Constitution that recognized human rights as the highest of values while millions of the Soviet citizens were subjected to purges or were used by the state as cheap labour.

Defendants as Victims of the Criminal Policy

As mentioned previously, courts do not remain fully independent from the Procuracy, since the procurators are likely exercise their powers to find grounds to appeal the court decision if they deem a sentence too mild or if they deem an acquittal inappropriate. In fact, an acquittal is always undesired for the procurators since these court decisions automatically nullify all their efforts spent on collecting evidence and preparing the case. Criminal defendants become the victims of perpetual adversaries – judges and procurators. The procurator who acts on behalf of the state has one single intention – to prove the guilt of the defendant and seek an adequate punishment. Judges, usually unwilling to disagree with the determinations made by the Procuracy, deliver decisions the procurators expect. The notion of adequacy in the Russian justice system has as much to do with statistical imperatives, avoidance of sanctions from superiors, and deference to a historical legacy that subordinated individual rights to state interests rather as much, or more than, idyllic western notions of the importance of truth, rights, justice.

The fact that most of the judges are former procurators, police officers or investigators raises concerns they are prejudiced at trial and perpetuate the inquisitorial

character of the criminal policy, which undermines Article 123(3) of the Constitution which prescribes that judicial proceedings are to be conducted on the basis of adversary procedure and equality of the parties.²⁴⁵ Reforms in criminal justice began only a few years ago and came about as a result of democratization in the 1980s and the subsequent fall of the USSR. Nonetheless, as Kahn stresses, “[a]lthough ideology-driven normative prescriptions have largely been eradicated from the Russian criminal justice system, both Soviet-era personnel and habits continue to affect the system.”²⁴⁶ The Russian judges “still in the grips of old thinking, Soviet-era personnel”²⁴⁷ are “ultimately survivors, not reformers.”²⁴⁸ Taking into consideration the conservative nature of those who administer justice, radical change in the number of acquittals is unlikely to happen.

Furthermore, the fact is that the arrest of suspects remains one of the most widely used measures of restraint. Arrest and detention have an impact on the outcome of the case and the type of punishment administered in the event of a guilty verdict. In his special report for 2000, the Human Rights Representative of the Russian Federation noted:

Traditionally, the state’s attitude towards the detention of those charged with a crime has been “It’s better to keep them in.” It is easier for an investigator to talk to someone under detention and to obtain a confession or needed evidence; the detainees’ chances of using the law in their own defense are very limited. The expediency of keeping a person in custody is justified by the argument that the person cannot evade the court and the investigation.²⁴⁹

²⁴⁵ V. Coulloudon, “Putin’s Anticorruption Reforms” in D.R. Herspring, ed., *Putin’s Russia: Past Imperfect, Future Uncertain* (Lanham: Rowman & Littlefield, 2002) at 95.

²⁴⁶ J. Kahn, “Russian Compliance with Articles Five and Six of the European Convention of Human Rights as a Barometer of Legal Reform and Human Rights in Russia” (2002) 35 (3) *University of Michigan Journal of Law Reform* 641 at 663.

²⁴⁷ *Ibid.* at 664.

²⁴⁸ Burman, *supra* note 211 at 101.

²⁴⁹ Violations of Human Rights by Personnel of the Ministry of Internal Affairs and the Criminal Justice System of the Ministry of Justice of the Russian Federation. Special Report of the Human Rights Representative of the Russian Federation for 2000, (2001) 39 (6) *Russian Politics and Law* 34 at 45.

In practice, this plays a determinative role during the rendering of a decision and increases the likelihood of a guilty verdict.²⁵⁰ As discussed earlier, even if there is not enough evidence in a case, judges will still render a guilty verdict against the suspect and then render a sentence of prison confinement equal to the term the convict has already spent in detention while awaiting trial. Even though the convicted person will be released right in the courtroom, the court records a guilty verdict, which was the main objective of the procurator. Although the defendant is free, one should not forget the consequences that a guilty verdict incurs for the new convict and his/her family. Stigmatization as a criminal will inevitably affect his/her career and social relations.

In discussing the use of arrest as the main measure of restraint used by the Russian police and Procuracy, it is necessary to mention that pretrial detention inmates spend months and even years awaiting trial, even though the court may find them not guilty. Considering the poor conditions of current detention centres, the state essentially punishes its citizens before the court finds them guilty. Analysis of statistical data shows that between 1961 and 1991, 44.5 million people were charged, but only 27.4 million were found guilty. Thus, 26.5% had been subjected to an unnecessary arrest.²⁵¹ Every fourth suspect accused of a criminal offence ended up being released after the dismissal of the case or a not-guilty verdict. As Zoubkov puts it, "it looks like all of them have been arrested just in case."²⁵² Every suspect who might otherwise have been subjected to a non-custodial measure of restraint is yet another person filling already overcrowded pretrial detention centres, putting their health and lives in jeopardy.

²⁵⁰ Kahn, *supra* note 246 at 666.

²⁵¹ A.I. Zoubkov & V.I. Zoubkova, "Problemy reformirovaniya ugolovnoi (karatel'noi) politiki na sovremennom etape" [Contemporary Problems of Reforming the Criminal (Penal) Policy] (2002) 5 Zhurnal Rossiiskogo prava [Journal of the Russian Law] 23 at 26-27.

²⁵² *Id.*

Before the new Code of Criminal Procedure was adopted, it was the procurator who had the exclusive right to issue warrants for arrest. In 2001 this right was transferred to the judges. This change is viewed as a victory for court reform, as the experts expect this provision will help reduce the number of pretrial detention centres inmates. Statistics show that the number of detainees has declined by almost half ²⁵³ as decisions about pretrial detention are now performed openly with the suspect personally present. Indeed, if we compare the numbers, 36,000 people were arrested in two months of 2002; in the year before this was equal to the number of people arrested in just one month. However, examining this 2 month period more closely reveals that in the first month 13,000 were arrested, but the second month saw an increase to 23,000 people arrested. Thus, the statistics reveal two trends, depending on how they are read: although the number of arrests may be decreasing overall, there still appears to be significant variance and potential for increase in the arrest numbers each month. If the number of arrest warrants issued by courts continues to grow monthly, then it is too early to speak about a significant reduction of detainees since their number will increase, although at a slower pace than it did in the years before.²⁵⁴

Along with detention, judges have a choice between bail and house arrest. The choice lies within the powers of the judge. For instance, judge can order the suspect to remain in his/her dwelling after a specific time of the day and oblige the police to exercise control over the arrested. However, as Sergey Pashin points out, judges are

²⁵³ See: S.M. Zoubarev, "Novoe v ugovnom i ugovno-ispolnitel'nom zakonodatel'stve: nekotorye aspekty gumanizatsii karatel'noi politiki" [New Provisions in the Penal and Criminal Implementation Legislation: Some Aspects of the Humanization of the Penal Policy] (2004) 4 Zhurnal rossiiskogo prava [Journal of the Russian Law] 26 at 29.

²⁵⁴ G. Tselms, "Arest po sudu" [Arrest Following the Court Order] (2003) 18 Dos'ye na tsenzuru [Index on Censorship] 79 at 79-80.

perfectly aware of the police's capabilities, and they know that the police cannot send an officer to the house of each suspect to watch him/her around the clock. The budgetary allocations for electronic bracelets widely used in Europe and North America²⁵⁵ are not sufficient. Thus, the discretionary privileges of a judge may be proclaimed, but cannot be realistically implemented.²⁵⁶ In this respect, it is questionable what is more expedient: the use of electronic devices or spending money to build new or renovate old pretrial detention facilities. The problem should be referred to the federal government, which controls the federal budget.

The fact that the judges prefer pretrial detention to non-custodial measures can be explained by their fear of being held responsible if the suspect or accused evades the court and investigation. If a suspect has been given a non-custodial remand pending trial, and the Procuracy insists there is a risk to "lose" the suspect, the judge can quietly switch the non-confinement measure into detention. In the opposite case, if the detention warrant was issued in contradiction to the criminal procedure law, the judge can quietly cancel the decision without being held responsible for an unjustified arrest, no matter how long the accused spent in detention.²⁵⁷

As noted in the first chapter, imprisonment has always been the most widely used penal sanction in Russia. The current 1997 Criminal Code provides for ten types of criminal punishments: fines; deprivation of the right to hold specified offices or to engage in specified activities; deprivation of a special and/or military rank or honorary title,

²⁵⁵ In fact, while this technology has not yet been applied in Russia, the US criminal justice system started to use electronic devices to monitor the offenders in 1984. See: J.D. Ballard, "Intermediate Sanctions and Electronic Monitoring: History, Innovations and Considerations for the Field" in M.D. Schwartz & L.F. Travis III, eds., Corrections: An Issues Approach, 4th ed., (Cincinnati: Anderson Publishing Co., 1997) at 283-290.

²⁵⁶ Tselms, supra note 254 at 81.

²⁵⁷ Ibid. at 81-82.

professional status/rank, or government decorations; compulsory works;²⁵⁸ corrective labour;²⁵⁹ restriction in military service; limitation of freedom;²⁶⁰ arrest;²⁶¹ service in a disciplinary military unit; deprivation of liberty for a definite period; deprivation of liberty for life; and capital punishment.²⁶² Some of these punishments existed in the previous criminal code, but many – such as compulsory works, limitation of freedom, and arrest (as a penal sanction) – were introduced for the first time in the modern version. Most of these sanctions are not used by courts today, as there are no facilities available for their implementation. For instance, the use of arrest as a criminal sanction (not as a measure of restraint) would require the building of at least 140 arrest houses,²⁶³ an investment of money which the government does not have. Upon the adoption of the Criminal Code, the legislators postponed the introduction of arrest, compulsory works and limitation of freedom until the necessary facilities were created, but no later than 2001. However, in 2001 it became evident that these sanctions could not yet be implemented. As a result the introduction of the new sanctions of compulsory works was postponed until 2004, limitation of freedom until 2005 and arrest until 2006.²⁶⁴

The postponement of these criminal sanctions results in the high rates of guilty verdicts and subsequent imprisonment, even in cases when imprisonment could be

²⁵⁸ Similar to community service works.

²⁵⁹ Corrective labour is served at the convicted person's place of work while she/he experiences deductions for the benefit of the state made from his/her monthly earnings within the limits from five to twenty percent (Article 50 of the Criminal Code).

²⁶⁰ According to Article 53 of the Criminal Code limitation of freedom consists of the maintenance of a convicted person, who has attained 18 years of age by the time of adjudication, in a special institution without isolation from the society during the supervision over him/her.

²⁶¹ Arrest is understood as a confinement of the convict in a strict isolation from the society for the term from one to up to six months in a special arrest house (Article 54 of the Criminal Code).

²⁶² Article 44 of the Criminal Code.

²⁶³ Arrest house is a premise which functions for implementation of arrest as a penal sanction (as opposed to arrest as a measure of restraint during preliminary investigation and court hearings).

²⁶⁴ V. Sergeeva, "Alternatives to Imprisonment in the Russian Federation" in T. Lokshina, ed., Situation of Prisoners in Contemporary Russia (Moscow Helsinki Group, 2003), <http://www.mhg.ru/english/IF10ADA>.

replaced by non-custodial sanctions.²⁶⁵ For instance, Article 50 of the Criminal Code stipulates that if a person sentenced to corrective labour maliciously shirks the serving of his/her punishment, a court may replace the remaining part of the term of corrective labour with a penalty in the form of limitation of freedom, arrest, or deprivation of liberty. Since there exist no facilities for implementation of arrest or limitation of freedom, the courts have no other choice except sentencing the convict to imprisonment.²⁶⁶ As a result we face continuing inflation of the prison population.

Conclusion

As mentioned in the first chapter, the size of the prison population in Russia correlates with the state's harsh criminal policy. Public appeals to fight crime, a popular rallying point in political campaigns, are taken literally by the Ministry of Internal Affairs. Encouraged by the state and in the absence of public control, the law enforcement agencies strive to increase the rates of crime detection by all means at their disposal, both legal and illegal, as the careers of their officials depend on their performance.

The Procuracy remains the central hub of the Russian legal system. It is a powerful machine, vested with extensive authorities. Having established the Procuracy as a faithful guardian of the legal order for so long, the state is unlikely to abandon its services and utility in the near future, given the help it provides in the exercise of control over the judiciary. The unwillingness of the state to grant the courts greater independence

²⁶⁵ In fact, the proportion of non-confinement penal sanctions has a tendency to go down. Thus, in 1997, the fines were applied to 79,800 persons (7.9% of all convicts), while in 2001 to 73,200 persons (5.9%). In 1997, 69,600 people were sentenced to compulsory works (6.9% of non-confinement sentences), in 2001 – already 61,100 persons (5%). See: *id.*

²⁶⁶ *Id.*

manifests itself in hollow “reforms” aimed at greater subjugation of judges, who, for fear of losing their jobs, render the decisions expected by the Procuracy.

Having declared in its constitution the right of the suspect and accused to competent legal assistance, the Russian state in fact does not secure such assistance. In failing to do so, the state assists the law enforcement agencies in convicting as many offenders as possible within the shortest period of time. Furthermore, having provided for a wide spectrum of criminal sanctions, most of which do not involve confinement, the state does not allocate funds for their implementation, preferring to use the old, time-tested method of punishment by imprisonment. This policy, which is based on fiscal negligence and a punitive legal legacy, contradicts amendments recently introduced to the criminal legislation aimed at the reduction of the prison population. As such, one cannot help but ponder over the true intentions of the state with the regard to prisoners. The current reforms are, most probably, involuntary measures adopted in order to satisfy Russia’s international obligations, non-compliance with which would likely damage Russia’s image and economic prospects in the international arena.

Hence, it becomes evident that it is almost impossible to achieve visible results in reduction of the prison population in Russia without pivotal reforms in its criminal justice system. These reforms must significantly limit the powers of the Procuracy and ensure greater independence of courts.

4 CHAPTER

CONCLUSIONS AND RECOMMENDATIONS

This thesis established that those suspected and accused of criminal offences have become victims of state criminal policies which are traditionally based on the implementation of statistical rate and punishment-oriented directives. The widespread application of detention as a measure of restraint and imprisonment as the preferred penal sanction led to the overcrowding of pretrial detention and prison facilities. As a result, Russia headed the list of the countries with the highest incarceration rate per 100,000 citizens. This necessitated reforms of the criminal justice system which met strong resistance from the Procuracy and the Ministry of Internal Affairs. As a consequence, the Russian criminal justice system has retained the key features of its Soviet predecessor, especially in the functioning of the Procuracy. The Procuracy remains the main obstacle to reform since the scope of its powers and roles essentially remain unaltered. Although some of its powers have been curtailed with recent legislative initiatives, it continues to play a key role in the Russian legal system. The courts, officially proclaimed independent, in practice remain dependent on both the Procuracy and the local authorities.

The pursuit of high crime detection rates and widespread implementation of detention and imprisonment remain the key factors that hamper the process of prison population reduction. Substantial improvements (reductions) in prison population numbers will not be achieved until there is sufficient political will to implement workable non-confinement measures of restraint and punishment. Furthermore, without public control over the police and consequential accountability for their actions, the ubiquitous

violation of the rights of suspects and accused will only continue. Police practices that are commonplace today, such as the use of torture for the purpose of extracting confessions, which are then uncritically accepted by courts as the basis for convictions and further imprisonment, cannot be eliminated without a clear and enforceable set of rules and regulations that truly protect rights. Under the existing regime, the Procuracy continues to both “protect” the rights and freedoms of suspects and accused while, at the same time, it maintains a vested interest in pursuing and succeeding at public prosecutions against them. Eliminating legacy institutional conflicts of interest must be a core element of any criminal justice reform strategy.

The fact that most of the judges working today are former procurators only furthers the culture of accusatorial bias that has become notorious in the Russian criminal justice system. Over the decades, it has shaped the mentality of the legal officials, and this will not change suddenly. As former procurators, judges maintain friendly relations with their colleagues performing the functions of the public prosecutors, as they were probably working at the same procurator’s office or even attending the same law school. In most cases, this sense of familiarity and loyalty can inhibit judges from objectively rendering decisions. Another negative impact of this practice is that, as of 2002, upon the procurator’s request, it is the judge who decides which measure of restraint to apply to a suspect or accused. Friendly relationships and an unwillingness of the judge to be in conflict with the procuracy make it more likely that the procurator’s request to detain the suspect will be honoured based on factors other than the merits of the actual circumstances in question.

The defects in the legislation regarding the courts and advocates, which essentially undermine their independence from state, allow the Procuracy to remain the most powerful party in the criminal process; the party that pursues conviction and punishment of the defendant, normally through imprisonment. By encouraging vigorous (and legislatively advantaged) public prosecutions and harsh incarcerative sentences upon individual law breakers, the state achieves its goal of punishing criminals, but on the other hand, it brings to naught the efforts of the Ministry of Justice's efforts to reduce the prison population. Thus, neither the amnesties nor the amendments to the criminal legislation suffice. As practice has shown, the number of prisoners continues to grow. The roots of this situation lie in the legacy attitude and interests of the Soviet criminal justice system towards individuals and their subordinate relationship to the state; and attitude which still cries out for pivotal reforms. In this chapter I will attempt to answer the question, what can be done to overcome the defects in the administration of the Russian criminal justice?

It is obvious that all institutions that participate in the administration of criminal justice need reforming. The police are an executive agency that initiates the criminal process by arresting and interrogating individuals suspected of having committed crimes. Every suspect is a potential crime detection statistic. In the absence of public control and accountability, the police, who are known to exercise unprecedented violations of the rights of the suspects and accused, have incentive to feed the punitively-oriented and statistics-based reward system that dominates criminal justice administration. Thus, it is critically important that the procedures used by the police in the performance of their

duties become more transparent. The first step in this direction has been made already: the State Duma has adopted in the first reading the draft law “On Public Control over Ensuring Human Rights in Places of Confinement and Assistance of Public Associations in Their Activities.”²⁶⁷ This law is aimed at ensuring that the rights of inmates in prisons and pretrial detention facilities are overseen and defended by public controllers, who are generally representatives of human rights organizations.²⁶⁸ The adoption and implementation of this law is very important since it will become the first legislative act aimed specifically at eliminating the lack of transparency in penitentiaries and violations of the criminal procedure.

Nevertheless, taking into consideration the fact that suspects are often exposed to torture in the first hours of detention, which can easily escape notice of the public controllers, it is also necessary to change the procedure for filing complaints against police officers who use torture. As mentioned in the second chapter, the complaints by victims of torture are one of the administrative methods considered by the Procuracy, and function (ideally) to ensure the protection of rights of suspects and accused against violations by the legal agencies and individual officials, including police officers and investigators. However, the interests of the Procuracy tend to coincide with those of the police, since the Procuracy undertakes public prosecution in court and investigates certain categories of crimes. As a result, the same legal agency that prosecutes a criminal may also have to consider his/her complaint against illegal treatment and torture during the

²⁶⁷ Ob obshchestvennom kontrole za obespecheniyem prav cheloveka v mestakh prinuditel'nogo soderzhaniya i o sodeistvii obshchestvennykh ob'yedinenii ikh deyatelnosti, proyekt federal'nogo zakona No. 11807-3 [On Public Control over Ensuring Human Rights in Places of Confinement and Assistance of Public Associations in Their Activities, Federal Law draft No. 11807-3], <http://www.akdi.ru/GD/proekt/089079GD.SHTM>.

²⁶⁸ Article 5 of the draft law.

preliminary investigation. It is apparent that the conflict of interest in the Procuracy's procedural structure will inevitably exclude a positive outcome in favour of the torture victim. Thus, it is crucial that the powers to hear and consider complaints of torture victims be assigned to the courts instead of within the Procuracy. This way the complainants could lodge a complaint through their defence attorneys and avoid any contaminating influences from the investigators or the Procuracy. This will help facilitate a faster and fairer process of considering complaints of torture victims before the traces of torture disappear from the victim's body.

Also, courts must actively consider the gravity of each criminal offence accusation as a factor in determining the type of pretrial restraint to be imposed, instead of blanket detention of all suspects. As mentioned above, before the new Code of Criminal Procedure was adopted, the procurators used detention widely as the main measure of restraint. Legal officials explain the frequent use of arrest as a measure necessary to prevent evasion by the suspects or accused from the court or investigation. Arrest also simplifies the work of the police and investigators, since the suspect is confined and available at any time for interrogations. Bearing in mind the overcrowding and inhuman conditions in the pretrial detention facilities, it is clear that an individual who has not yet been found guilty of a crime and nor convicted by a court effectively suffers a punishment imposed by the state in advance of any proof.

The state must allocate sufficient funding to provide the law enforcement agencies with facilities and technologies necessary to implement non-confinement measures of restraint. These include a written undertaking not to leave the city, house arrest, youth

supervision and bail.²⁶⁹ In the previous chapter I mentioned the use of electronic devices of surveillance, such as electronic bracelets. It is more expedient for the state to use such types of surveillance over persons under investigation instead of building new facilities or reconstructing the existing pretrial detention centres. Taking into account the current tempos of prison population growth, some critics say that at least ten new penitentiaries will be needed annually.²⁷⁰ No country can afford to house as many convicts as Russia does currently. Without some parity between the number of people incarcerated and appropriate levels of material and financial support, it is little surprise that the conditions for Russian prisoners are scarce and dehumanizing. Thus, alternatives to detention must be found and implemented on a wider scale.

Overpopulation of pretrial detention facilities is marked by malnutrition, poor hygiene, and a lack of ventilation, which contributes to the high incidence of tuberculosis among the prisoners. Wider use of non-custodial measures of restraint and a decline in the number of detainees could help solve the problem of tuberculosis. It is necessary to clear pretrial detention centres of unnecessary prisoners whose crimes do not warrant imprisonment. This would help increase the size of the living space norms and allow the pretrial detention facilities personnel to separate healthy detainees from those affected with tuberculosis, preventing further spread of this infectious disease.

This might also reduce the pressure put on the judges when they render a decision. As noted earlier, the use of arrest by the police and Procuracy becomes a crucial factor in delivering a judgment, increasing the likelihood of a guilty verdict and imprisonment.

²⁶⁹ Article 98 of the Code of Criminal Procedure of the Russian Federation.

²⁷⁰ A.I. Zoubkov & V.I. Zoubkova, "Problemy reformirovaniya ugolovnoi (karatel'noi) politiki na sovremennom etape" [Contemporary Problems of Reforming the Criminal (Penal) Policy] (2002) 5 Zhurnal rossiiskogo prava [Journal of the Russian Law] 23 at 27.

Judges often impose a penalty instinctively, assuming that since the defendant was put under arrest, he/she likely does constitute a social danger to the society. A wider use of non-custodial measures of restraint could eradicate the negative attitudes of judges towards detainees and even encourage a wider application of non-confinement penal sanctions in cases where a defendant's guilt was proved beyond a reasonable doubt in court, but the crime is not a grave threat to public security.

At this point it is crucial to mention the necessity of a wider application of non-custodial penal sanctions. In Chapter 1, I mentioned that alternatives to imprisonment could include community service works, corrective labour, limitation of freedom in addition to arrest. These other options are not currently applied by the courts due to lack of facilities or their real-world effectiveness. As a result, the system of punishments stipulated in the Criminal Code does not work to its full potential. For example, the application of corrective labour is not always appropriate – since it is essentially a fine in the form of deductions from the convicted person's salary, it is ineffective if the offender has no employment. The imposition of a fine can also be inappropriate as about one fourth of the Russian population live below the poverty line.²⁷¹ Consequently, after taking into consideration the financial circumstances of the defendant, the courts are forced to impose imprisonment, which not only contributes to the increase of the prison population, but is also unfair if the crime is minor. Premises for arrest houses and correctional centres need to be built in order to enforce arrest and limitation of freedom. However, the state is

²⁷¹ Alternative NGO Report on Observance of the International Covenant on Economic, Social and Cultural Rights. Submitted to the Attention of the UN Committee on Economic, Social and Cultural Rights within the framework of its examination of the Russia's Fourth Periodic Report on implementation of ICESCR (Moscow: Moscow Helsinki Group, 2003), <http://www.mhg.ru/english/2F7855A>.

unable to allocate the funding from the federal budget which postpones the application of these two types of criminal punishments for an uncertain time.

Although the construction of new arrest houses remains an unrealistic proposition, the implementation of the limitation of freedom is quite feasible. I cannot disagree with S. Zoubarev, who suggests that Russia should learn from the experience in Kazakhstan, where the limitation of freedom includes the imposition on the convict of specific obligations which restrict his/her freedom.²⁷² However, in contrast to the Russian Criminal Code, the limitation of freedom in Kazakhstan is implemented under the supervision of a “penalty execution inspectorate,” similar to a parole office in the West. This allows the convict to remain in and contribute to his/her community without isolation from the society. The obligations imposed by the court on the convict may include the prohibition from changing his/her place of residence, changing employment or study status without prior notification to the penalty execution inspectorate, prohibition to attend specific places, or to leave for other areas without the prior consent of the inspectorate. The Kazakh court can also oblige the defendant to undergo treatments for alcoholism, drug addiction, substance abuse, or sexually transmitted diseases. In cases of malicious evasion of non-confinement measures, the court may reconsider and impose imprisonment. According to Zoubarev, non-confinement measures are a workable alternative to imprisonment. They also allow the state to save costs in comparison to imprisonment. A system of electronic devices could be used to supervise individuals

²⁷² S.M. Zoubarev, “Novoe v ugovnom i ugovno-ispolnitel’nom zakonodatel’sve: nekotorye aspekty gumanizatsii karatel’noi politiki” [New Provisions in the Penal and Criminal Implementation Legislation: Some Aspects of the Humanization of the Penal Policy] (2004) 4 Zhurnal rossiiskogo prava [Journal of the Russian Law] 26 at 32-33.

sentenced to limitation of freedom. Although this requires capital expenditure, it would still incur less costs for the state than if it built special incarceration premises.

Wider use of non-confinement penal sanctions is crucial since it not only helps decrease the number of prisoners, but also minimizes the negative social consequences of imprisonment, namely stigmatization of the prisoner as a criminal. Undoubtedly corrective labour (garnishment), community service works, fines, arrest and non-custodial limitations of freedom also incur negative consequences for the convict. Serving the sentence outside of prison does not hide the fact that the individual is the object of criminal punishment. But it is a well-known fact that prison changes the individual more significantly, and not necessarily for the better. The longer the sentence of imprisonment, the more the convict changes. Living among professional criminals and recidivists, a first-time offender must learn to act like them in order to survive the harsh social and physical conditions of prison society.²⁷³ The absence of a state program for re-socialization of citizens released from the penitentiaries, lack of family support, and the inability to find employment after release prompts many of former prisoners to commit new crimes.²⁷⁴ In failing to launch a re-socialization (re-integration) program for newly released convicts, the state implicitly maintains the level of recidivism.²⁷⁵ As such, the state ensures a constant number of penitentiary inmates, since the repetition of crime is an aggravating circumstance and incurs a harsher penalty upon re-conviction in court. The penalty for a reconvicted person is more likely to involve imprisonment, rather than a non-confinement measure. Therefore, the development of a program of re-socialization

²⁷³ L.W. Woodward, "A Prisoner to the Zimbardo Experiment" in M.D. Schwartz & L.F Travis III, eds., Corrections: An Issues Approach, 4th ed., (Cincinnati: Anderson Publishing Co., 1997) at 139-141.

²⁷⁴ Id.

²⁷⁵ P. G. Zimbardo, "Pathology of Imprisonment" in M.D. Schwartz & L.F Travis III, eds., Corrections: An Issues Approach, 4th ed., (Cincinnati: Anderson Publishing Co., 1997) at 137.

for individuals released from penal institutions is a crucial step towards the reduction of the prison population.

Because of the shortages of judges, the enlargement of the judiciary occurs through hiring of the former procurators, police officers and investigators. This promotes an ongoing accusatorial bias in the criminal justice system, which is inquisitorial by nature in Russia. The judge is actively involved in the inquisition process, as opposed to the more passive role of the judge as a neutral arbiter in the courts in the common law countries. The Russian judge does not only make the final decision in the case, but actively participates in the trial, interrogating the parties and calling for evidence. Taking this into account, it is necessary to eradicate the practice of appointment of the former procurators, investigators and police officers to judicial positions. This will help implement the principle of presumption of innocence, which simply cannot work if the judge is a former procurator or an investigator whose main duties involved the prosecution of criminals or investigation of crimes. Their former roles imbue the judges with a biased attitude towards the defendant, which predisposes a view of the individual as a criminal, regardless of the details of the case.

It is also essential to improve the system of judicial qualifications and examinations. Today judges only have to pass an examination once when they are appointed to a judicial position. Since the system of Russian legislation has not yet become stable, and changes or amendments take place quite often – including changes in procedural legislation – judicial examinations should be conducted more frequently, especially upon the promotion of judges. This would help improve the professional skills and qualifications of the judges. This is very important, since it is the judges who decide

the fate of thousands of people, and contribute to the enlargement of the prison population by delivering guilty verdicts with sentences that continue to send convicts to already overcrowded penitentiaries.

The selection process for police officers and procurators is no less important than that of the judges. The Russian state must be careful not repeat the practice of its Soviet predecessor in the 1920-30s, when the state appointed individuals who did not have a legal education, or any education at all, to law enforcement agencies. It is unacceptable to employ people who do not have a law degree as investigators, who in practice are supposed to be trained professionals whose duties involve investigation of crimes. Although the involvement of specialists with a law background does not necessarily preclude abusiveness, it is more likely to promote a more professional approach on the part of investigators to their duties, and reduce the number of poorly investigated cases being sent to court. Reducing the quantity of shaky cases presented in court could also reduce the subsequent problem of judges rendering guilty verdicts based on the little and sometimes insufficient evidence put before them.

Unfortunately, as mentioned earlier in this paper, the professions of judges, procurators and investigators have become less prestigious because of their low salaries.²⁷⁶ Poor pay increases corruption and dereliction of duties. It is common today for most legal professionals to prefer to work for private enterprises that offer high salaries. Therefore, the government should review the levels of wages of legal officials as part of an effort to raise the respectability and prestige of public service, which might reduce the problem of the staff turnover. More prestige of the judicial profession may

²⁷⁶ Thus, in 2002 a monthly salary of a judge was approximately US\$150. See: V. Coulloudon, "Putin's Anticorruption Reforms" in D.R. Herspring, ed., Putin's Russia: Past Imperfect, Future Uncertain (Lanham: Rowman & Littlefield, 2002) at 95.

help to engage and recruit more specialists with a law degree. Currently, there is a lack of sufficient qualified personnel in the judicial profession, which results in the heavy workload of judges. This contributes to the longer terms of detention for defendants, and forces the court chairmen to pressure the judges to rule on cases as quickly as possible, compromising their objectivity for the sake of speed in delivering decisions. Recruiting specialists with a proper legal education and a minimum five years experience (as is the prerequisite necessary to become a justice of the peace) is needed to expand the judiciary and cut heavy caseloads of the federal judges at a district level.

Another task the Russian government should give priority to is increasing the budget allocations for funding to the courts aimed at eliminating their financial dependency on local authorities. This would eliminate the pressure put on the judges by the heads of local administrations, which effectively contradicts the constitutional principle of separation of powers and independence of the judiciary from the executive power. Another step towards facilitating greater independence for judges should include amendments to the “Law on the Status of Judges” that tighten or eliminate its vague provisions that still allow for the dismissal of any judge who fails to meet the demands of the Procuracy or of the chairman of the respective court. The procedures for the termination of judges’ powers must be governed by a federal law enacted by Parliament instead of current regulations determined by the Highest Qualification Collegium of Judges.

The recently adopted “Law on the Organs of the Judiciary” also needs to be amended. As discussed earlier, the law does not prescribe rights to judges whose powers have been terminated regarding legal counsel to represent them when appealing a

decision about dismissal, or to challenge the judges who might be interested in the dismissal of the judge in question. Nor does the law contain any provision which guarantees a dismissed judge the right to speak in his/her own defence before the qualification collegium. This results in a predisposition of bias on the part of judges who sit on the collegium towards the judge in question, and deprives the dismissed judge of a fair chance to establish the truth. These provisions must be amended in favour of the weakest party, the dismissed judges, and guarantee them an impartial process regarding the termination of their judicial powers. This becomes especially important if a dismissed judge is affected by the provision that stipulates disciplinary liability for a misbehaviour. Misbehaviour might involve refusal to follow the orders of the court chairman or delivering unwanted judgments. In such cases, which occur often, there is clearly a need to eliminate or reduce the applicability of such a provision in order to preclude its regular misuse by court chairmen to get rid of judges unwilling to comply with their demands. In order to further minimize the potential for arbitrary dismissal and conflicts of interest or bias in the appeal process, the dismissed judge should be able to make his/her appeal to the Highest Qualification Collegium of Judges, rather than the regional court that initiated his/her dismissal, since this court's objectivity is doubtful.

Finally, it is crucial to provide poor or financially incapable citizens with access to competent and substantive legal assistance. Although the state has recently set prison population reduction as one of its policy targets, it must first create real conditions for the implementation of the constitutional right of its citizens to legal assistance, instead of merely proclaiming such, if it wants to stem the entry of new and "unqualified" prisoners to the system. To achieve this objective, the government should increase the funding for

state-appointed legal counsel to criminal defendants who cannot afford to pay. This might also incentivize a more serious attitude of lawyers towards their duties, notwithstanding the financial circumstances of their clients.

Criminal defence advocacy should be removed from the supervisory powers of the Ministry of Justice and be granted a status of an independent self-governing organization. The Ministry of Justice's current ability to seek the dismissal of such advocates undermines any sense of state independence of the advocacy. Until the advocacy itself has substantive controls over the professional activity of its members – whose main duty is to render legal services to the most vulnerable participants of the criminal process (suspects, accused, and defendants) and whose duty includes confronting state officials (investigators, procurators, and judges) – the unequal status between defence counselors and procurators will continue to exist. In the absence of parity in the legal power and recognition of defence and prosecutorial counsel, the accusatorial nature of the Russian criminal justice can only continue in perpetuity, which thus hampers the practical reduction of the prison population.

Today one can hardly speak about Russia as a democratic and rule of law-based state until at least some substantive policy reforms are implemented that can eliminate inherent legacy flaws of the modern criminal justice system. However, as of this writing, I do not yet perceive any tangible preconditions for their realization. Most of the policy reforms I have mentioned will require gross financial expenditure and fundamental cultural shifts in perceptions about the social objectives of criminal law. Russia is a state which currently proclaims itself as democratic and has reluctantly recognized

international standards of human rights as the highest of values. At the same time it continues to retain the features of its authoritarian past, without formal or practical separation of powers between branches. This is especially important for the judiciary, which requires real separation from the influences of the legislative and executive branches if it is to fulfill democratic functional objectives of truth and justice in outcomes. Thin excuses about budgetary shortfalls offered by the Russian government make one seriously doubt the state's willingness to solve the problem of overpopulation of penitentiaries. It is inappropriate to seek and rely only on help from international organizations, since their contribution cannot practically extend beyond medical assistance in fighting tuberculosis and HIV, widely spread in pretrial and prison facilities. The issues surrounding prison population reform are, first and foremost, a matter of internal Russian politics.

Russian authorities must search for solutions to national problems on their own. They must set their own vision and priorities regarding the nature and quality of Russian democratic citizenship. They may appeal to the world community for input on how to create and implement this vision, but they must develop the will and actual implementation on their own. Criminal law and prison population reforms are a subset of this larger domestic agenda. The state has to develop its own viable program of reduction of prison populations, which currently does not exist. In order to do this, it must generate a new sense of objectives for the criminal legal and punishment system, and work to create policies and practices that serve these aims. These solutions must be feasible and cannot simply be limited to bringing national criminal legislation in line with international standards. Nor is it sufficient to simply declare amnesties in order to empty

current populations if the current system is predisposed to refilling prisons just as quickly, if not quicker. As part of this overall effort, it is important to note that until judges are granted full independence to render objective and appropriate sentences that fit the crimes in question and can be accommodated by the state's actual resources, it is too early to speak about significant results in the decrease in numbers of prisoners in Russia.

BIBLIOGRAPHY

Abramkin, V., "Nashi idei dolzhny stat' ideyami vlasti" [Our Ideas Must Become the Ideas of the State] (2003) 18 Dos'ye na tsenzuru [Index on Censorship] 43.

Abramkin, V., "Reduction of Russia's Prison Population: Possibilities and Limitations" in T. Lokshina, ed., Situation of Prisoners in Contemporary Russia (Moscow Helsinki Group, 2003), <http://www.mhg.ru/english/1EBFA0C> (date accessed: December 13, 2004).

Abramkin, V.F., Tyur'my i kolonii Rossii [Russian Prisons and Colonies] (Moskva: Liga Razum, 1998).

Alternative NGO Report on Observance of the International Covenant on Economic, Social and Cultural Rights. Submitted to the Attention of the UN Committee on Economic, Social and Cultural Rights within the framework of its examination of the Russia's Fourth Periodic Report on implementation of ICESCR (Moscow: Moscow Helsinki Group, 2003), <http://www.mhg.ru/english/2F7855A> (date accessed: March 18, 2005).

Andreyev, V.N., Soderzhaniye pod strazhei v SSSR i Rossii (poryadok i usloviya) [Keeping in Custody in the USSR and Russia (Terms and Procedures)] (Moskva: Spark, 2000).

Babushkin, A., "Zashchitnik kak ugolovno-protsessual'naya dekoratsiya" [Defence Counsel as a Criminal Procedure Decoration] (2003) 18 Dos'ye na tsenzuru [Index on Censorship] 120.

Baev, P.K., "The Evolution of Putin's Regime: Inner Circles and Outer Walls" (2004) 51(6) Problems of Post-Communism 3.

Ballard, J.D., "Intermediate Sanctions and Electronic Monitoring: History, Innovations and Considerations for the Field" in M.D. Schwartz & L.F. Travis III, eds., Corrections: An Issues Approach, 4th ed., (Cincinnati: Anderson Publishing Co., 1997).

Burman, J.M., "The Role of Clinical Legal Education in Developing the Rule of Law in Russia" (2002) 2 (1) Wyoming Law Review 89.

Christie, N., Crime Control as Industry: Towards Gulags, Western Style, 3rd ed. (London: Routledge, 2000).

Colton, T.J. & M. McFaul, "Russian Democracy Under Putin" (2003) 50 (4) Problems of Post-Communism 12.

Confessions at any Cost: Police Torture in Russia (Human Rights Watch, 1999), <http://www.hrw.org/reports/1999/russia/> (date accessed: January 2, 2005).

Coulloudon, V., "Putin's Anticorruption Reforms" in D.R. Herspring, ed., Putin's Russia: Past Imperfect, Future Uncertain (Lanham: Rowman & Littlefield, 2002).

Deyatel'nost' penitentsiarnoi sistemy [Penal System's Activity] (2003) 6 Rossiiskaya yustitsiya [Russian Justice] 77.

Feldbrugge, F.J.M., Russian Law: The End of the Soviet System and the Role of Law (Dordrecht: M. Nijhoff, 1993).

Finn, P., "For Russians, Police Rampage Fuels Fear" (2005) Mar. 27 The Washington Post, page A01, also available at <http://www.washingtonpost.com/wp-dyn/articles/A4009-2005Mar26.html?sub=AR> (date accessed: March 29, 2005).

Finn, P., "Fear Rules in Russia's Courtrooms. Judges Who Acquit Forced Off Bench" (2005) Feb. 27 The Washington Post, page A01, also available at <http://www.washingtonpost.com/wp-dyn/articles/A56441-2005Feb26.html?referrer> (date accessed: March 1, 2005).

Foglesong, T., "The Reform of Criminal Justice and Evolution of Judicial Dependence in Late Soviet Russia" in P.H. Solomon, Jr., ed., Reforming Criminal Justice in Russia, 1864-1996: Power, Culture, and the Limits of Legal Order (Armonk, N.Y.: M.E. Sharpe, 1997).

Galeotti, M., "Russian Police Reform: Centralisation, Paramilitarisation and Modernisation" (2003) 19 (70) Crime and Justice International 17.

Gilinskii, Ya., "Ugolovnaya politika Rossiiskoi Federatsii: To be or not to be?" [Criminal Policy of the Russian Federation: To be or not to be?] (2003) 18 Dos'ye na tsenzuru [Index on Censorship] 31.

Grinberg, M.S., "Ugolovnoye pravo kak fenomen, nesovmestimi s bespraviyem i proizvolom" [Criminal Law as a Phenomenon, Incompatible with Lawlessness and Arbitrariness] (2003) 9 Gosudarstvo i pravo [State and Law] 46.

Huskey, E., "Russian Judicial Reform After Communism" in P.H. Solomon, Jr., ed., Reforming Criminal Justice in Russia, 1864-1996: Power, Culture, and the Limits of Legal Order (Armonk, N.Y.: M.E. Sharpe, 1997).

Ivanova, G.M., Labor Camp Socialism: the Gulag in the Soviet Totalitarian System, ed. by D.J. Raleigh (Armonk, N.Y.: M.E. Sharpe, 2000).

Kahn, J.D., "Russia's "Dictatorship of Law" and the European Court of Human Rights" (2004) 1 Review of Central and East European Law 1.

Kahn, J., "Russian Compliance with Articles Five and Six of the European Convention of Human Rights as a Barometer of Legal Reform and Human Rights in Russia" (2002) 35 (3) *University of Michigan Journal of Law Reform* 641.

Kogan, M., "Maloimushchiye grazhdane obrecheny na bezzashchitnost'" [Poor Citizens are Doomed to Remain Unprotected] (2003) 18 *Dos'ye na tsenzuru* [Index on Censorship] 112.

Koudryavtsev, V.N., Prestoupnost' i nrayy perekhodnogo obshchestva [Criminality and Morals of Society in Transition] (Moskva: Gardariki, 2002).

Kratkii analiz sostoyaniya prestoupnosti v Rossii v 2002 godu [Brief Analysis of the Crime Rate in Russia in 2000] (2003) 5 *Rossiiskaya yustitsiya* [Russian Justice] 74.

Malko, A.V. & S.V. Zhil'tsov, Smertnaya kazn' v Rossii: Istoriya. Politika. Pravo. [Capital Punishment in Russia: History. Politics. Law] (Moskva: Izdatel'stvo NORMA, 2003).

Mikhlin, A.S. & R.D. King, "The Russian Prison System: Past, Present and Future" in R. Matthews & P. Francis, eds., Prisons 2000: An International Perspective on the Current State and Future of Imprisonment (Houndmills, Basingstoke, Hampshire: Macmillan; New York: St. Martin's Press, 1996).

Pashin, S., "Flyuger sudebnoi reformy" [The Weathercock of the Judicial Reform] 2003 (18) *Dos'ye na tsenzuru* [Index on Censorship] 23.

Pohl, J. Otto, The Stalinist Penal System: A Statistical History of Soviet Repression and Terror, 1930-1953 (Jefferson, N.C.: McFarland, 1997).

Rasskazov, L.P., Lishenie svobody v Rossii: istoki, razvitiye, perspektivy [Deprivation of Freedom in Russia: Origin, Evolution, Perspectives] (Krasnodar: Krasnodarskii yuridicheskii institut MVD Rossii, 1999).

Roshchupkin, G., "HIV/AIDS Prevention in Prisons in Russia" in T. Lokshina, ed., Situation of Prisoners in Contemporary Russia (Moscow Helsinki Group, 2003), <http://www.mhg.ru/english/1E7AF09> (date accessed: December 13, 2005).

Samoilenko, V., "Iskazhyonnaya statistika" [Falsified Statistics] (2001) 3 *Zakonnost* [Legitimateness] 22.

Sergeeva, V., "Alternatives to Imprisonment in the Russian Federation" in T. Lokshina, ed., Situation of Prisoners in Contemporary Russia (Moscow Helsinki Group, 2003), <http://www.mhg.ru/english/1F10ADA> (date accessed: December 13, 2004).

Shimovolos, S., "Medical Services" in T. Lokshina, ed., Situation of Prisoners in Contemporary Russia (Moscow Helsinki Group, 2003), <http://www.mhg.ru/english/1EBB5B4> (date accessed: December 13, 2004).

Shimovolos, S., "Register" in T. Lokshina, ed., Situation of Prisoners in Contemporary Russia (Moscow Helsinki Group, 2003), <http://www.mhg.ru/english/1E7C36D> (date accessed: December 13, 2004).

Shlapentokh, V., "Putin's First Year in Office: The New Regime's Uniqueness in Russian History" (2001) 34 *Communist and Post-Communist Studies* 371.

Smith, G.B., Reforming the Russian Legal System (Cambridge: Cambridge University Press, 1996).

Smith, G.B., "The Struggle over the Procuracy" in P.H. Solomon, Jr., ed., Reforming Criminal Justice in Russia, 1864-1996: Power, Culture, and the Limits of Legal Order (Armonk, N.Y.: M.E. Sharpe, 1997).

Solomon, P.H., Jr., "The Bureaucratization of Criminal Justice under Stalin" in P.H. Solomon, Jr., ed., Reforming Justice in Russia, 1864-1996: Power, Culture, and the Limits of Legal Order (Armonk, N.Y.: M.E. Sharpe, 1997).

Statisticheskiye danniyе ob ugolovno-ispolnitel'noi systeme Rossii s 1.07.2002 po 1.07.2003 g. [Statistical Data on the Russian Criminal Implementation System for the Period from 1.07.2002 till 1.07.2003] in "Tyur'ma" – internet-prilozheniye k zhurnalu "Dos'ye na tsenzuru" ["Prison" – internet-supplement to the Index on Censorship journal], <http://www.index.org.ru/turma/st/uis030701.htm> (date accessed: January 10, 2005).

Tselms, G., "Arest po sudu" [Arrest Following the Court Order] (2003) 18 *Dos'ye na tsenzuru* [Index on Censorship] 79.

Violations of Human Rights by Personnel of the Ministry of Internal Affairs and the Criminal Justice System of the Ministry of Justice of the Russian Federation. Special Report of the Human Rights Representative of the Russian Federation for 2000 (2001) 39 (6) *Russian Politics and Law* 34.

Weiler, J.D., Human Rights in Russia: A Darker Side of Reform (Boulder, Colo.: Lynne Rienner Publishers, 2004).

Woodward, L.W., "A Prisoner to the Zimbardo Experiment" in M.D. Schwartz & L.F. Travis III, eds., Corrections: An Issues Approach, 4th ed., (Cincinnati: Anderson Publishing Co., 1997).

Yegorov, S., "Reforma bez kontseptsii" [Reform Without a Conception] (2003) 18 *Dos'ye na tsenzuru* [Index on Censorship] 53.

Zimbardo, P.G., "Pathology of Imprisonment" in M.D. Schwartz & L.F. Travis III, eds., Corrections: An Issues Approach, 4th ed., (Cincinnati: Anderson Publishing Co., 1997).

Zoubarev, S.M., "Novoe v ugovnom i ugovno-ispolnitel'nom zakonodatel'stve: nekotorye aspekty gumanizatsii karatel'noi politiki" [New Provisions in the Penal and Criminal Implementation Legislation: Some Aspects of the Humanization of the Penal Policy] (2004) 4 Zhurnal rossiiskogo prava [Journal of the Russian Law] 26.

Zoubkov, A.I. & V.I. Zoubkova, "Problemy reformirovaniya ugovnoi (karatel'noi) politiki na sovremennom etape" [Contemporary Problems of Reforming the Criminal (Penal) Policy] (2002) 5 Zhurnal rossiiskogo prava [Journal of the Russian Law] 23.

Zoubkova, V.I., Ugovnoe nakazanie i ego sotsial'naya rol': teoriya i praktika [Criminal Punishment and Its Social Role: Theory and Practice] (Moskva: Izdatel'stvo NORMA, 2002).

LEGISLATION

Ob advokatskoi deyatel'nosti i advokature v Rossiiskoi Federatsii, No. 63-FZ, [On Legal Assistance and Advocacy in the Russian Federation, Federal Law No. 63-FZ,] Rossiiskaya gazeta (2002) No. 100, at <http://www.akdi.ru/gd/PROEKT/088160gd.shtm> (date accessed: March 14, 2005).

Ob obshchestvennom kontrole za obespecheniyem prav cheloveka v mestakh prinuditel'nogo soderzhaniya I o sodeistvii obshchestvennykh ob'yedinenii ikh deyatel'nosti, proyekt federal'nogo zakona No. 11807-3 [On Public Control over Ensuring Human Rights in Places of Confinement and Assistance of Public Associations in Their Activities, Federal Law draft No. 11807-3], <http://www.akdi.ru/GD/proekt/089079GD.SHTM> (date accessed: March 18, 2005).

Ob organakh sudeiskogo soobshchestva v Rossiiskoi Federatsii, No. 30-FZ, [On the Organs of the Judiciary in the Russian Federation, Federal Law No. 30-FZ,] Rossiiskaya gazeta (2002) No. 048, <http://www.akdi.ru/gd/PROEKT/078858gd.shtm> (date accessed: March 14, 2005).

O prokurature Rossiiskoi Federatsii, No. 168-FZ, [On the Procuracy of the Russian Federation, Federal Law No. 168-FZ,] Sobranie zakonodatel'stva Rossiiskoi Federatsii, [Collected Legislation of the Russian Federation,] 1995, No. 47, Art. No. 4472, with further amendments and modifications available at http://www.genproc.gov.ru/ru/about/basis/index.shtml?show_item=7 (date accessed: March 27, 2005).

O soderzhanii pod strazhei podozrevayemykh i obvinyayemykh v sovershenii prestuplenii, No. 103-FZ, [On the Custody of Persons Suspected of Offences, Federal Law No. 103-FZ] Sobranie zakonodatel'stva Rossiiskoi Federatsii, [Collected Legislation of the Russian Federation,] 1995, No. 29, Art. No. 2759, with further amendments and

modifications available at <http://wbase.duma.gov.ru/ntc/vkart.asp?kl=1195> (date accessed: December 23, 2004).

O sudebnoi sisteme Rossiiskoi Federatsii, No. 1-FKZ, [On the Judicial System of the Russian Federation, Federal Constitutional Law No. 1-FKZ,] Sobranie zakonodatel'stva Rossiiskoi Federatsii, [Collected Legislation of the Russian Federation,] 1997, No. 1, Art. No. 1, with further amendments and modifications available at <http://www.supcourt.ru/index.php?Key1=English%20version&Key2=English%20version&Value2=http://www.supcourt.ru/en/index.htm> (date accessed: March 27, 2005).

O vnesenii izmenenii i dopolnenii v Ugolovnyi kodeks Rossiiskoi Federatsii, No. 162-FZ, [On Amendments and Modifications to the Criminal Code of the Russian Federation, Federal Law No. 162-FZ,] Rossiiskaya gazeta (2003) No. 3366, <http://www.akdi.ru/gd/PROEKT/091699gd.shtm> (date accessed: December 23, 2004).

O vnesenii izmenenii i dopolnenii v Ugolovnyi kodeks Rossiiskoi Federatsii, Ugolovno-protsessual'nyi kodeks Rossiiskoi Federatsii i Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh, No. 133-FZ, [On Amendments and Modifications to the Criminal Code of the Russian Federation, Code of Criminal Procedure of the Russian Federation and Code of Administrative Violations of the Russian Federation, Federal Law No. 133-FZ,] Parlamentskaya gazeta (2002) No. 21, <http://www.akdi.ru/gd/proekt/088049GD.SHTM> (date accessed: December 23, 2004).

O vnesenii izmenenii i dopolnenii v Ugolovnyi kodeks Rossiiskoi Federatsii, Ugolovno-protsessual'nyi kodeks RSFSR, Ugolovno-ispolnitel'nyi kodeks Rossiiskoi Federatsii i drugiye zakonodatel'nye akty Rossiiskoi Federatsii, No. 25-FZ, [On Amendments and Modifications to the Criminal Code of the Russian Federation, Code of Criminal Procedure of the RSFSR, Criminal Implementation Code of the Russian Federation and Other Legislative Acts of the Russian Federation, Federal Law No. 25-FZ,] Rossiiskaya gazeta (2001) No. 052, <http://www.akdi.ru/gd/PROEKT/083630gd.shtm> (date accessed: December 23, 2004).

O vnesenii izmenenii i dopolnenii v Zakon Rossiiskoi Federatsii o statuse sudei v Rossiiskoi Federatsii, No. 169-FZ, [On Amendments and Modifications to the Law of the Russian Federation on the Status of Judges in the Russian Federation, Federal Law No. 169-FZ,] Rossiiskaya gazeta, (2001) No. 247, <http://www.akdi.ru/gd/PROEKT/086592gd.shtm> (date accessed: March 14, 2005).

O vvedenii v deistvie Ugolovno-protsessual'nogo kodeksa Rossiiskoi Federatsii, No. 177-FZ, [On Enactment of the Code of Criminal Procedure of the Russian Federation, Federal Law No. 177-FZ,] Rossiiskaya gazeta (2001) No. 249, <http://www.akdi.ru/gd/PROEKT/079044gd.shtm> (date accessed: March 14, 2005).

Ugolovno-protsessual'nyi kodeks Rossiiskoi Federatsii, No. 174-FZ, [Code of Criminal Procedure, Federal Law No. 174-FZ,] Rossiiskaya gazeta (2001) No. 249, <http://www.akdi.ru/gd/proekt/084513GD.SHTM> (date accessed: March 14, 2005).

Ugolovnyi kodeks Rossiiskoi Federatsii, No. 63-FZ, [Criminal Code of the Russian Federation, Federal Law No. 63-FZ,] Sobranie zakonodatel'stva Rossiiskoi Federatsii, [Collected Legislation of the Russian Federation,] 1996, No. 25, Art. No. 2954, with further amendments and modifications available at <http://www.akdi.ru/PRAVO/kodeks/uk2.htm> (date accessed: December 23, 2004).

Zakon Rossiiskoi Federatsii o militsii, No. 1026-1, [On Militia, Law of the Russian Federation No. 1026-1,] Sobranie zakonodatel'stva Rossiiskoi Federatsii, [Collected Legislation of the Russian Federation,] 1999, No. 14, Art. No. 1666, with further amendments and modifications available at <http://www.consultant.ru/online/popular/1026-1/> (date accessed: March 26, 2005).

Zakon Rossiiskoi Federatsii o statuse sudei v Rossiiskoi Federatsii, No. 3132-1, [On the Status of Judges in the Russian Federation, Law of the Russian Federation No. 3132-1,] Sobranie zakonodatel'stva Rossiiskoi Federatsii, [Collected Legislation of the Russian Federation,] 1992, No. 30, Art. No. 1792, <http://www.supcourt.ru/law01.html> (date accessed: March 26, 2005).