

Corruption in the justice system analysed in a Human Rights perspective

A case study of the Russian Federation

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Abstract

This thesis investigates the relationship between corruption in the Russian justice system and human rights violations. The hypothesis is that such corruption increases human rights abuses. Both law enforcement and the judiciary are included since they are equally important for human rights implementation. The thesis relies on international human rights instruments as the legal framework, focusing on civil and political rights. The link between corruption and human rights violations is conceptualized in a twofold manner. The first type of link is internal, meaning that they are conceptually linked, and that an act of corruption constitutes a human rights violation in and of itself. The second type of link is external, and causal in character, meaning that corruption causes human rights violations. One example of the internal links may be police officers who arbitrarily detain people as an act of extortion. Arbitrary detention constitutes a violation of the right to liberty and security of person. The causal link is demonstrated by the connection between experience with police corruption and distrust in the justice system. As a result of distrust ethnic minorities who face ethnic violence frequently abstain from filing complaints to the police. This means that ethnic minorities may suffer violations of non-discrimination provisions, in particular relating to the right to equality before the law.

Acknowledgements

The process of writing this thesis has been interesting and at times very challenging. I knew from the beginning that corruption is a difficult research area – the concept can be difficult to grasp and data can be hard to find. Because of the time frame I never intended to conduct any surveys or interview myself. At times, however, I regretted this decision, since it forced me to rely on others for research material. I must say that the turn out on requests for information was not as high as I had hoped for, but I very much appreciate the responses I got. I would like to extend a special thanks to my external supervisor, Åse Grødeland, for her inspiring, supportive and constructive feedback. I would also like to thank Inna Sangadzhieva at the Norwegian Helsinki Committee for providing me with data and for taking the time to discuss my thesis. I would also like to thank my boyfriend Thomas, Christine, and friends and colleagues at the Masters program for their support. Finally, I would like to thank my supervisors, Maria Lundberg and Tore Lindholm, without whom this project would never have been possible. None of the above is, however, responsible for any gross errors of judgment in this thesis.

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1 Introduction

1.1 Problem statement and research questions

In this thesis I will explore corruption in the Russian justice system and its consequences for the realization of human rights. By “justice system” I mean the judiciary and the law enforcement agencies, excluding detention facilities. My hypothesis is that corruption in the Russian justice system increases human rights abuses.

The main research questions are: (1) How is corruption manifested in the Russian judiciary and law enforcement agencies? (2) Do these corruption activities affect the realization of human rights? If so, which rights are affected? (3) How are the principles of the rule of law and judicial independence relevant for the realization of human rights? (4) Are the principles of the rule of law and judicial independence affected by corruption?

Not all corruption in the justice system causes human rights violations and all human rights violations are definitely not caused by corruption. But certain types of corruption are certainly linked to human rights violations. This thesis takes a closer look at the relationship between the two and identifies its characteristics. I will use the word “link” on the relationship between corruption and human rights, independently of the character of this relationship.

Research within the human rights field is often concerned with exploring the legal content of specific rights. With a focus not exclusively on the law per se but also on the implementation of ratified human rights instruments, I feel the urge to look behind human rights violations to explore why they occur. To ensure effective implementation of human rights there is a need to understand and acknowledge the reasons for non-compliance.

Particularly devastating are the effects of corruption occurring in the justice system, in effect nullifying the guarantee for human rights expected in a consolidated democracy. Not only does corruption affect the realization of rights, it also affects the basic guarantee to provide legal remedies for those whose convention rights are violated. That corruption has negative effects on the human rights situation in a country is neither a surprising nor a controversial statement. But the fact that little has been written specifically on the topic is an indication that this topic warrants investigation.

I will include both the law enforcement agencies and the judicial system in my research, since I consider these agencies equally important from a human rights perspective. Both are key institutions for the implementation of human rights. The law enforcement agencies are vested with the power of physical ground level enforcement, while the courts provide for legal security. In Russia there is a general understanding that both these systems are fairly corrupt. According to INDEM¹ in 2005 US\$ 209.5 million would be spent “to obtain justice in law-court.”² \$368 million is spent on bribes to the traffic police alone.³ As stated by Holly Cartner from Human Rights Watch; “Corruption is ruining the Russian economy, but many people don't realize that it causes human rights abuse. To ignore these connections is to just miss the boat on the current crisis in Russia.”⁴

The literature that has been presented on the relationship between corruption and human rights is mostly concerned with corruption as an impediment to economic growth and efficiency and hence affecting economic and social rights.⁵ I will rather focus on the realization of civil and political rights, and the necessity of the rule of law and judicial independence for human rights implementation. It is also a fact that the agencies most concerned with human rights rarely talk about corruption, and the agencies dealing with corruption and anti-corruption measures are even less explicit about human rights. According to Nihal Jayawickrama a repressive government is more likely to be corrupt as

¹ Informatika dlya demokrati (Information Science for Democracy), a Russian NGO

² INDEM (2005)

³ Filipov, Boston Globe (31 May 2004)

⁴ *Corruption and Human Rights Should Top Agenda for Clinton-Yeltsin Summit* (1998)

⁵ See Mbonu (2004)

well as a human rights violator, since it lacks external checks and rejects both transparency and accountability. “Therefore, the campaign to contain corruption and the movement for the promotion and protection of human rights are not disparate processes.”⁶ A regime’s sincerity in the area of anti-corruption can give an indication of how seriously it takes its human rights record.

Corruption is only one impediment to the realization of human rights, and there are other issues as important as this one. Human rights implementation may demand a wide range of initiatives and fighting corruption is only one of them:

Corruption is not the only, or necessarily the most important, impediment to promoting human rights. Eradicating corruption will not in itself prompt a new well-spring of human rights. There are countries where human rights observance has increased in tandem with an increase in corruption, and conversely, there are countries like Singapore where corruption is very low but their human rights record is poor. Addressing corruption cannot be the only step taken to foster respect for human rights, but it can be an important one.⁷

1.2 Structure of the thesis

The rest of this introductory chapter is spent on introducing the topic and its setting briefly, as well as explaining concepts and methodology. Chapter two introduces the human rights norms which make up the legal framework for my human rights analysis. In chapter three I introduce the principles of the rule of law and judicial independence as preconditions for the realization of human rights.

Having set the framework for discussion I continue in chapter four by exploring manifestations of corruption in the Russian justice system. After introducing patterns of corrupt behaviour I discuss their human rights consequences. Chapter 5 is devoted to case studies. I present one case of petty corruption and one of grand corruption: the cases of

⁶ Jayawickrama (1998)

⁷ Truelove (2003), p. 3

Aleksey Mikheyev and Mikhail Khodorkovsky respectively. The last chapter, chapter 6, is the conclusion.

1.3 The link between corruption and human rights

“Since 1998, the Strasbourg court has received more than 28, 000 human rights complaints from Russia, mostly concerning the abuse of power by police and judicial corruption.”⁸

To elucidate the link between corruption and human rights I will quote Nihal Jayawickrama:

Many administrative decisions involving the exercise of a discretion may be vitiated if it can be demonstrated that the decision was influenced by a corrupt motive. In such event, administrative law may treat the discretion as not having been exercised at all, or may regard the decision as having been made for an improper purpose, on irrelevant considerations, or unreasonably. Where the decision has an impact on the exercise of a fundamental human right, the corrupt motive will render it arbitrary. An arbitrary arrest, arbitrary deportation, or arbitrary interference with privacy, will constitute a violation of the relevant protected right.⁹

By an act of omission the state may fail to fulfil its responsibility under international human rights law. The state violates human rights norms by tolerating corruption. This is the argument of Jarmila Lajcakova, who examines human rights violations by the Slovak state.¹⁰ The approach is different from the one offered by Ndiva Kofele-Kale who actually argues for the right to a corruption-free society.¹¹ Kofele-Kale, supported by C. Raj Kumar,¹² argues that either the right to a corruption-free society is a fundamental human right which is a component part of the right to economic self-determination and the right to development or it should be regarded as a freestanding autonomous right of its own.¹³ Rights such as the right to a fair trial and the right to a remedy are, however, already well

⁸ Nemtsova, Newsweek International (13 March 2006)

⁹ Jayawickrama (1998)

¹⁰ Lajcakova (2003)

¹¹ Kofele-Kale (2000)

¹² Kumar (2002)

¹³ Kofele-Kale (2000), p. 152

established rights within the human rights regime. These norms are also manifested in most domestic legislations. There is no need for recognising new rights, rather there is a need for the state to respect, protect and fulfil¹⁴ the rights which are already ratified. To fully implement human rights a state has to address the issue of judicial and law enforcement corruption. Arguing the emergence of new rights might seem tempting, but it is neither necessary nor constructive. One of the great dangers to the human rights regime is the watering down of the system. That could be the effect if we constantly argue the emergence of new rights whenever evils are identified. The rights affected by corruption already exist, but they cannot be properly implemented if corruption exists.

One may argue that corruption may, in some cases, actually help the individual to achieve justice and secure human rights. One example would be a practice well known from post-communist states; paying a bribe to speed up a case within the judicial system. Paying the bribe may prevent this person from having his case delayed (which ultimately could have led to a violation of the right to a fair trial, see chapter 2.2.5), and hence protecting the individual from a human rights violation. But considering that other individuals are within the same judicial system, waiting for their case to be heard, their case may be even more delayed since other pay to have their cases expedited faster. This way, the fact that one person pays to secure his human rights, leads to other people's rights being violated. Those who do not pay may have their rights violated, but no one have their rights properly secured. If a person has to pay to secure his human rights, they are not adequately implemented. As long as some persons are able and willing to pay for their freedoms, the police officers are willing to continue arresting people arbitrarily.¹⁵ Therefore, the fact that some are willing to pay for their freedoms actually contributes to a spiral of corruption, and a less secure human rights situation. Another reason for concern is that corruption undermines democracy, "especially in regard to rule of law, political competition, and regime legitimacy."¹⁶

¹⁴ See chapter 2.1 on state obligations.

¹⁵ On the condition that all other variables, which may influence the officers' willingness to engage in such practice are left unchanged.

¹⁶ Karklins (2005), p. 6

1.4 A brief introduction to the Russian Federation

Among the post-communist states I focus on the Russian Federation. One reason is that Russia is the largest European state, both in terms of size and number of inhabitants.¹⁷ Russia inherited much of what was left of the Soviet Union. It took over the international obligations undertaken by the Soviet Union and kept most of its territory. Russia still plays an important role in the region, being a member of the Commonwealth of Independent States, and keeping close ties to other former Soviet republics. There are also large Russian Diasporas in many of the former republics, and pro-Russian sentiments are quite strong in parts of its neighboring countries like Ukraine and Belarus.¹⁸

During recent years President Vladimir Putin has increased the control over the society in general, and has in particular imposed restrictions on the freedom of expression. Both media and NGOs have recently faced restrictions on their activities. The developments in the Russian Federation have brought about speculations over the direction the country now is taking and if the state is actually moving in the direction of a consolidated democracy. At the same time Russia experiences a decline in the level of judicial independence¹⁹ and has always received low scores on the Transparency International's Corruption Perception Index.²⁰

1.5 Corruption: Difficult to define, not difficult to recognize²¹

As many other concepts corruption is difficult to define. None of the international anti-corruption instruments have a clear definition of it, hence ending up with encouraging and instructing the states to criminalize and combat something which is ultimately left undefined. Much like with international counter-terrorism documents, the anti-corruption

¹⁷ Although it is geographically located both in Europe and Asia, sometimes referred to as Eurasia, Russia is often considered European, and has joined regional organizations like the Council of Europe.

¹⁸ This was seen played out as late as the last Presidential elections in the two states.

¹⁹ Freedom House (2005)

²⁰ Russia was included in the rating in 1996, and its scores ranges between 2.1 and 2.8. See Transparency International's Corruption Perception Index 1996-2005 available at http://www.transparency.org/policy_research/surveys_indices/cpi (visited 25. May 2006)

²¹ Inspired by Vito Tanzi, in Miller, Grødeland, Koshechkina (2001), p. 26

conventions tend to list acts covered by the term corruption, but not including a comprehensive definition of it. Among scholars there is an ongoing debate about how to define corruption, and there is even a debate about the debate. Michael Johnston criticizes that the debate about definition is actually displacing promising discussions.²² Among scholars the definition varies with their field of study; a social anthropologist would focus on how the actors themselves evaluate their acts, while legalists tend to define corruption in legal terms, focusing on the legality of the act itself. Economists are concerned with efficiency and economic development, while social scientists are guided by their interest in legitimate and efficient government. For my purpose I will draw on human rights law to define corruption. It includes acts which prevent equal treatment, equality before the law and in law and the full and equal enjoyment of all human rights. I will not address the moral aspect of human rights, leaving the discussion of the moral underpinnings of human rights norms to others. But human rights are moral norms expressed in legal rights of which I will not question the universality.

Corruption manifests itself in many different forms and on different arenas. I will focus on corruption in the justice system that transcends the private/public boundary; a public officer receives a benefit (pecuniary or non-pecuniary) for doing what he is supposed to do, or for deviating from the formal rules of conduct. The officer is exploiting his position for private benefit. I will rely on the working definition used by both the World Bank and the Transparency International that corruption is “*the abuse of public power for private profit.*”²³ Chapter 4 explores manifestations of corruption and hence serves to further develop the term for the purpose of this thesis.

When discussing corruption it is useful to distinguish between petty corruption and grand corruption. The former is “corruption in the public administration, in the implementation end of politics”, while the latter is when “politicians and political decision-makers [...], who are entitled to formulate, establish and implement the laws [...] are themselves

²² Miller, Grødeland, Koshechkina (2001), p 6

²³ Andvig (2001), p. 8

corrupt.”²⁴ Petty corruption is sometimes also called “low level” or “street level” corruption since it refers to forms of corruption that people can encounter on a daily basis in their interaction with public administration.²⁵ Grand corruption, sometimes but not always synonymous with “high level” or political corruption, takes place at the high levels of the political system “when politicians and state agents [...] are using this authority to sustain their power, status or wealth.”²⁶ It leads to misallocation of resources and leads to arbitrary decision mechanisms. “Laws and regulations are abused by the rulers, side-stepped, ignored, or even tailored to fit their interests.”²⁷ Compared to grand corruption petty corruption usually involves more modest sums of money²⁸ and is highly visible.²⁹ The distinction between the two types of corruption may seem clear, but in reality it is often blurred. “A petty corruption may be linked to a grand corruption when corruption flows from the top to the bottom in the government bureaucracy.”³⁰ Junior officials may also pass on part of their profit to senior officials.³¹ In the Russian justice system, grand corruption is to some extent played out by lower officials, and may look just like manifestations of petty corruption. The acts are, however, ordered from high political circles with the intent of personal gain.

According to Cyrille Fijnaut and Leo Huberts corruption is a crime without a recognizable victim since the corrupter and the corrupted both benefit from it.³² Discussing human rights implications of corruption, however, requires almost per definition an identification of victims. This thesis will identify human rights victims of corruption.

²⁴ *ibid.*, p. 13

²⁵ *Corruption glossary*

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ All though this may be true regarding the sums in each corruption situation, in aggregated numbers the total sum spent on petty corruption constitutes large sums of money.

²⁹ Manandhar, eKantipur.com (26 March 2006)

³⁰ *ibid.*

³¹ *Section 1: The Nature of Corruption*

³² Fijnaut, Huberts (2002), p. 5

1.6 Methodology

1.6.1 Choice of methodology and sources

I will approach the issue from an inter-disciplinary angle, combining international human rights law with social science methodology. The thesis draws on sources from various academic disciplines performing a desk review.

The thesis does not present any new research material but will rather rely on existing statistical findings and empirical data. The sources will be of both individual incidences represented by cases or groups of cases and comprehensive statistical findings and cumulative information. This means that both qualitative and quantitative data will be employed to investigate the hypothesis. The main focus will, however, be on individual cases, using them to illustrate the link between corruption and human rights violations. Since the intention is to explore non-compliance with human rights instruments I will not enter a *de lege ferenda* discussion regarding the international human rights regime.

As mentioned above I have not conducted surveys or interviews myself, meaning that I rely on secondary sources for data. They consist of scholarly research and a variety of country reports. I also use newspaper reports of incidents of corruption. I am aware that the media may have their journalistic agenda,³³ but because of the nature of the topic, I consider it necessary to rely on media for information.

To illustrate the human rights implications of corruption in the justice system I will only focus on a selection of human rights norms. The selection is made based on the types of corruption discovered, and on the individual cases illustrating them. For reasons of limited space and for the sake of clarity, only the content of each right which is relevant to the cases will be presented. Other human rights may also be infringed as a result of corruption,

³³ Sometimes a media is very politically coloured, and media is also depending on sales numbers, encouraging sensational stories, sometimes without being critical enough to their sources. Sometimes journalists or editors are receiving money or other benefits for writing a particular story. "Stories are for sales in most of the Russian media." Karklins (2005), p. 37

but the point is to illustrate that corruption has human rights implications and that the rights affected represent a wide variety of human rights. Lack of trust in the justice system has human rights implications far beyond the realization of these few selected rights; the implementation of all human rights is affected.

When discussing necessary precondition for human rights implementation I focus on judicial independence and the rule of law, as they are fundamental ingredients in democratic societies and reoccurring principles in the human rights discourse.

Ideally I would have presented four case studies in this thesis: two from the law enforcement agencies and two from the judicial system, one on petty corruption and one on grand corruption from each sector. One reason for focusing on two cases instead of four is the obvious lack of space. With this thesis I want to present facts and cases that are as representative as possible to the Russian reality. Hence it was a natural choice to select the case of Mikhail Khodorkovsky as my grand corruption case, representing government influence in politicized cases, and the case of Aleksey Mikheyev as the petty corruption case, representing the close ties between police officers creating possibilities for corruption. Both cases are also considered important cases; Khodorkovsky is one of the Russian oligarchs while Mikheyev is the first Russian to win a police torture case in the European Court of Human Rights (ECtHR). Both cases have received a fair amount of attention from both media and human rights organizations, generating a fairly large body of information. It is, however, difficult to get a truly balanced selection of sources.³⁴ Media and NGOs are sometimes overly critical while public sources may be too uncritical. Therefore I also rely on the Council of Europe rapporteur and facts stated in the court ruling from the ECtHR.

1.6.2 Measuring corruption

As stated in a paper prepared by Valts Kalniņš on behalf of the Anti-Corruption Network for Transition Economies/OECD there is really no ideal method for measuring the

³⁴ I did not succeed in getting a response from the Russian embassy in Oslo.

existence of corruption.³⁵ As a result of the very nature of corruption, no measurement is able to prove a certain level of corruption, but rather one could talk about probability. Kalniņš presents several measurements relied upon by different agencies: perception, experience, beliefs and values, service and sector assessments, governance indicators, and associated social phenomena. All existing methods have their strengths and weaknesses. The best solution would therefore be to use a combination of different methods. Corruption is very complex and can therefore “best be approached by integrating multiple perspectives and methodological tools.”³⁶ I will rely upon data collected on the basis of various methods; beliefs and values, experience, and perception, to be able to assess with greatest possible reliability the corruption in the Russian justice system. An important thing to remember is that once a reputation of corruption is established it takes time and effort to change it.³⁷ A large amount of media attention on corruption may also create a perception of corruption as a large scale problem even if the government has started to tackle the problem with some success.

The extent of corruption, meaning the number of incidents, is not my main concern, since human rights are individual rights, and a violation of such rights are as serious even if it relates to one person only. Hence, in my analysis, I will rely on two case studies that I believe are illustrative of my main hypothesis relating to the link between corruption and human rights violations. Numbers do, however, become relevant when discussing the implications of corruption for the rule of law. It is also relevant to know whether the cases of corruption, and the human rights violations, are single incidents or part of a greater pattern. This is not possible to fully establish in this thesis, but considering that a variety of sources report the same behavior it is likely that we are not only dealing with rare incidents. Finally, when I do refer to numbers and frequency I will do so by referring to as many sources as possible, reducing the likelihood of methodological problems.

³⁵ Kalniņš (2005)

³⁶ Karklins (2005), p. 10

³⁷ Fijnaut, Huberts (2002), p. 6

As regards the case studies it is difficult to get a complete overview of the case. Corruption tends, by nature, to be hidden and difficult to prove.³⁸ To substantiate my claims for corruption the discussion in chapter 5 is therefore based on circumstantial evidences.

³⁸ Karklins (2005), p. 10

2 Applicable human rights standards

As mentioned earlier, the Russian Federation took over international obligations undertaken by the Soviet Union as its successor state.³⁹ As a result Russia is committed to abide by a large number of human rights instruments along with the Vienna Convention on the Law of Treaties which is a source of interpretation of international law. This chapter serves as an introduction to a selection of human rights norms ratified by the Russian Federation.

I will first and foremost discuss civil and political rights and mainly rely on the International Covenant on Civil and Political Rights (ICCPR), article 2, 7, 9.1, 14, 17 and 26, the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), article 3, 5, 6, 8, 13 and 14, and the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT). These articles and conventions cover non-discrimination, prohibition of torture, the right to liberty and security of person, the right to privacy, the right to a fair trial and the right to a remedy. I will also introduce International Covenant on Economic Social and Cultural Rights (ICESCR) article 2 and 13, Protocol 1 of the ECHR (ECHR P1) article 2 and Convention on the Rights of the Child (CRC) article 28, which relate to non-discrimination and the right to education. I will introduce the right to education separately even if the violation discussed in chapter 4.2.1.4 is a violation of the prohibition of discrimination. The violation of the non-discrimination clause in ICESCR 2.2 must be read in conjunction with a covenant right, and the right to education includes a prohibition of discrimination. Internationally there has also been paid special attention to the prohibition of discrimination in education, demonstrated by the Convention against Discrimination in Education.⁴⁰ Education is the only economic, social

³⁹ Butler (2002)

⁴⁰ Convention against Discrimination in Education (1960). CESCR General Comment 13 (1999) paragraph 6 also makes special reference to the accessibility of education, referring to the prohibition of discrimination.

and cultural right I found which was directly affected by corruption in the Russian justice system. That is not to say that others are not, just that I did not come across other explicit examples.⁴¹

This chapter begins with a discussion of the obligations undertaken by any state when ratifying international human rights instruments before discussing the content of the selected rights and principles of international human rights instruments.

2.1 State obligations

Human rights treaties are different from other international treaties since they regulate the relationship between the states and individuals rather than the relationship between states. Human rights are the rights of individuals and there need not be systemic negligence by the state to amount to a human rights violation. In human rights law individuals are the rights holders while the state is the duty bearer.⁴²

According to article 2.1 the state is obliged to “respect and ensure” the rights enshrined in the ICCPR to “all individuals within its territory and subject to its jurisdiction [...] without distinction”.⁴³ Certain rights also apply extraterritorially.⁴⁴ The obligation of implementation has immediate effect⁴⁵ and the states are to give effect to the obligations in “good faith.”⁴⁶ According to the Human Rights Committee, reservations to article 2 would be incompatible with the ICCPR. The legal obligation under article 2.1 is both negative and positive in nature. States parties must refrain from violations of rights enshrined in the ICCPR (respect) and must adopt “legislative, judicial, administrative, educative and other

⁴¹ Of course, when discussing human rights implications of public distrust in the justice system the protection of economic, social and cultural rights is just as affected as the protection of civil and political rights.

⁴² Exceptions are certain regional instruments like the African Charter on Human and Peoples’ Rights and the American Convention on Human Rights which both make reference to duties of individuals.

⁴³ International Covenant on Civil and Political Rights (1966) article 2.1, a similar provision is found in the ECHR article 1.

⁴⁴ See CCPR General Comment 31 (2004), paragraph 12 and *Soering v. The United Kingdom*.

⁴⁵ CCPR General Comment 31 (2004), paragraph 5.

⁴⁶ Vienna Convention on the Law of Treaties, article 26.

appropriate measures”⁴⁷ (ensure) to fulfill their legal obligations. It also lies in the very nature of the ICCPR that states are obliged to prevent a recurrence of a human rights violation.⁴⁸ Included in article 2 is also the right to a remedy for those whose Covenant rights have been violated. This will be further elaborated on in chapter 2.2.6.

Regarding civil and political rights there rests a clear responsibility on the state for immediate implementation. However, in reality there is some degree of acceptance that full implementation may take some time. With these rights there comes both an obligation of conduct and an obligation of result. The situation is different when discussing state responsibility under the ICESCR where a state shall “take steps [...] to the maximum of its available resources [...] to achieve progressively” the Covenant rights.⁴⁹ This implies that all rights are not expected to be fully realized at the time of ratification. Rather there rests an obligation of conduct on the states, to take steps to achieve full implementation in a long time perspective. As stated by the Committee on Economic, Social and Cultural rights the states are obliged to move “as expeditiously and effectively as possible” towards the goal.⁵⁰ The non-discrimination provisions have, however, immediate effect.

According to Asbjørn Eide there rests a three-fold obligation on states to respect, protect and fulfil international human rights. This means that states must prohibit public officials from committing human rights violations, and provide effective redress for those whose rights have been violated (respect). The state must also prevent non-state actors from interfering with human rights (protect). The obligation to fulfil “requires the State to take the measures necessary to ensure for each person within its jurisdiction opportunities to obtain satisfaction of those needs, recognized in the human rights instruments, which cannot be secured by personal efforts.”⁵¹

⁴⁷ CCPR General Comment 31 (2004), paragraph 7.

⁴⁸ *ibid.*, paragraph 17.

⁴⁹ International Covenant on Economic, Social and Cultural Rights (1966), article 2.

⁵⁰ CESCR General Comment 3 (1990), paragraph 9.

⁵¹ Eide (1987), paragraph 66-69

A treaty enters into force as described by the treaty itself or as set out in article 24 of the Vienna Convention on the Law of Treaties. All the instruments which will be discussed in the following sections have been ratified by the Russian Federation and have entered into force. Russia has not made any relevant reservations to the documents. Therefore the instruments represent legal obligations of the Russian Federation. Any relevant limitation on a right will be discussed under each right. Finally it is important to remember that certain rights are derogable, and such derogations are regulated by article 4 of the ICCPR and article 15 of the ECHR. Considering that such derogations should be of an “exceptional and temporary nature,”⁵² which may only last as long as the life of the nation is threatened, the rights below will be discussed as if no such derogations have been made.

2.2 Selected human rights norms

2.2.1 Equality and non-discrimination

The principles of equality and non-discriminations are cornerstones of human rights law and constantly recurring in international instruments. They entered into international law with the United Nation Charter⁵³ and have extended their scope with later instruments. Today’s provisions vary in form; ICCPR and ICESCR express more or less general norms of equality and non-discrimination, some protect certain fields (like education) while some protect on certain grounds, like race or sex. A last group protects with regard to certain rights, like the right to organize.⁵⁴ The principle of equality can be realized through different mechanisms, the prohibition of discrimination being one major approach in human rights law.⁵⁵

Two non-discrimination clauses are found in the ICCPR; one free standing (article 2.1), applicable throughout the convention and one directly related to equality in and before the law (article 26). Article 2.1 is limited to convention rights, while article 26 “prohibits

⁵² CCPR General Comment 29 (2001), paragraph 2

⁵³ United Nations Charter (1945), article 1.3

⁵⁴ Eide (1990), pp. 17-19

⁵⁵ *ibid.*

discrimination in law or in fact in any field regulated and protected by public authorities.”⁵⁶ The principle of equality of law contains three related but distinct ideas, all contained in the ICCPR article 26: “equality before the law”, “equal protection of the laws” and “non-discrimination by way of law.”⁵⁷

ICESCR article 2.2 is a similar clause to ICCPR article 2.1, guaranteeing the convention rights to all “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁵⁸ The ECHR also contains an open ended non-discrimination clause found in article 14, with application limited to convention rights.⁵⁹

CRC article 2.1 obliges the state parties to secure the CRC rights to “each child within their jurisdiction without discrimination of any kind.”⁶⁰ “Disability” is added to the list of prohibited discrimination grounds found in ICCPR and ICESCR, and the list is related both to the child and its parents or legal guardians. Also a UNESCO convention protects against discrimination in education.⁶¹

The only instruments defining discrimination are International Convention on the Elimination of all Forms of Racial Discrimination (CERD) and Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), defining the term in relation to race and women respectively. These instruments list exhaustive grounds for discrimination, but the definitions still prove useful when interpreting other non-discrimination clauses. The Human Rights Committee refers to CERD and CEDAW when interpreting the term “discrimination,” meaning it should imply

⁵⁶ CCPR General Comment 18 (1989), paragraph 12

⁵⁷ Eide (1990), p. 7

⁵⁸ International Covenant on Economic, Social and Cultural Rights (1966), article 2.2

⁵⁹ The protection includes the law implementing the rights guaranteed, even if the laws go beyond the convention requirements. See Ovey, White (2002) pp. 349-350

⁶⁰ Convention on the Rights of the Child (1989), article 2.1

⁶¹ Convention against Discrimination in Education (1960)

any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.⁶²

This does not mean identical treatment in every instance, even the conventions may require unequal treatment for different persons.⁶³ The principle of equality may also require affirmative action to eliminate or diminish conditions which cause discrimination prohibited by the convention. As long as such measures are taken to correct discrimination in fact they constitute legitimate differentiation.⁶⁴ Any criteria for differentiation must be reasonable and objective with the aim of achieving a purpose legitimate under the convention.⁶⁵

2.2.2 Prohibition of torture

“No one shall be subject to torture or to cruel, inhumane or degrading treatment or punishment.”⁶⁶ Torture is defined in CAT as

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating him or a third person, or for any other reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in official capacity⁶⁷

⁶² CCPR General Comment 18 (1989), paragraph 7

⁶³ One example is the death penalty, which cannot be carried out on pregnant women.

⁶⁴ CCPR General Comment 18 (1989), paragraph 10

⁶⁵ *ibid.*, paragraph 13 and Ovey, White (2002) p. 350

⁶⁶ International Covenant on Civil and Political Rights (1966) article 7, similar provision in article 3 of the ECHR, but the word “cruel” is excluded. This has little significance since the treatment will then be covered by “inhumane or degrading”. When I in the following chapters refer to “torture” I refer to “torture, cruel, inhumane or degrading treatment or punishment.”

⁶⁷ Convention against Torture and other cruel, inhumane or degrading treatment or punishment (1984), article 1.1

Freedom from torture is a non-derogable human right,⁶⁸ and is ensured without any restrictions.⁶⁹ The prohibition of torture is considered customary international law and even enjoys the status of jus cogens.⁷⁰ It allows for no limitations.⁷¹ To be considered torture an act must constitute a severe intended physical or mental attack on someone's integrity. The ECtHR has through its case law developed an understanding of what constitutes torture or inhumane or degrading treatment. It must "attain a minimum level of severity,"⁷² and the court distinguishes between torture on the one hand and inhumane or degrading treatment or punishment on the other – the former having a higher threshold than the latter.

The Human Rights Committee makes it explicitly clear that the prohibition of torture must be read in conjunction with ICCPR article 2.3, which is the right to a remedy.⁷³ This interpretation is confirmed by the ECtHR, which has repeatedly stated that article 3 includes an obligation to investigate effectively any allegations or evidence of torture or inhumane or degrading treatment or punishment.⁷⁴

2.2.3 The right to liberty and security of person

International law does not prohibit deprivation of liberty but provides procedural guarantees and minimum standards for those deprived of liberty. Article 9.1 of the ICCPR and article 5 of the ECHR protect individuals from arbitrary arrest and detention. "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds

⁶⁸ Neither the ICCPR nor the ECHR provides for derogations in times of emergency. See International Covenant on Civil and Political Rights (1966) article 4.2 and The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) article 15.2.

⁶⁹ Nowak (2005), p. 157

⁷⁰ *ibid.*, pp. 157-158

⁷¹ CCPR General Comment 20 (1992), paragraph 3. See also Judgements like the case of *Chahal v. United Kingdom* where the applicant was considered to be involved in terrorist activity posing a threat to national security. The court still ruled that there would be a violation of article 3 to deport Chahal to India (paragraph 161)

⁷² *Ireland v. United Kingdom*, paragraph 162

⁷³ CCPR General Comment 20 (1992), paragraph 14

⁷⁴ *Intervention Submission by The Redress Trust, Mikheyev v. The Russian Federation*, p. 2.

and in accordance with such procedure as are established by law.”⁷⁵ This provision applies to all deprivations of liberty, even if paragraphs 9.2 and 9.3 only apply to detention on a criminal charge.⁷⁶ Any deprivation of liberty must be in accordance with procedure prescribed by law. Even when domestic law is complied with, deprivation of liberty is not lawful if domestic law allows for arbitrary or excessive detention.⁷⁷ Cases of deprivation of liberty are to be considered arbitrary if they are “manifestly disproportional, unjust or unpredictable.”⁷⁸ The manner in which an arrest is carried out must be appropriate and proportional according to the circumstances, and it should not be discriminatory.⁷⁹ Anyone detained on a criminal charge has to be brought “promptly” before a judge, and anyone deprived of their liberty has a right to have the legality of the detention controlled.⁸⁰

2.2.4 The right to privacy

The right to privacy is protected in article 17 of the ICCPR and article 8 of the ECHR: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”⁸¹ Article 8 protects against interferences from both the state and non-state actors such as press or private electronic data banks.⁸² As with the right to liberty and security of person, any interference with this right must be based in law and may, even with a firm basis in law, be deemed a violation if it is arbitrary.⁸³ Searches of a person’s home should be limited to searching for evidence, and not amount to harassment.⁸⁴

⁷⁵ International Covenant on Civil and Political Rights (1966) article 9.1 and The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) article 5.1

⁷⁶ CCPR General Comment 8 (1982), paragraph 1 and Nowak pp. 220-221. See his reasoning on pp. 218-221

⁷⁷ Ovey, White (2002), p. 108.

⁷⁸ Nowak (2005), p. 225

⁷⁹ *ibid.*, p. 225

⁸⁰ CCPR General Comment 8 (1982), paragraph 1 and 2

⁸¹ International Covenant on Civil and Political Rights (1966) article 17.1

⁸² Ovey, White (2002), p. 219

⁸³ CCPR General Comment 16 (1988), paragraph 4

⁸⁴ *ibid.*, paragraph 8

There is a positive obligation related to the right to privacy. The state must take some action to secure respect for this right, not just refrain from interfering with it. The state also has a duty to protect individuals from interference by other individuals.⁸⁵

Respect for “private life”, which is the term used in ECHR article 8, includes “respect for a person’s moral and physical integrity, personal identity, personal information, personal sexuality, and personal or private space.”⁸⁶ Physical and mental integrity is one of the key concerns of ECHR article 8, and requires the state to take positive measures to protect from interference.⁸⁷ It is, however, doubtful whether the right to privacy, in relation to physical integrity, provides protection wider than that afforded under provisions on prohibition of torture.⁸⁸

2.2.5 The right to a fair trial

The right to a fair trial consists of many components presented in ICCPR article 14 and ECHR article 6.

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.⁸⁹

The hearing can be held in camera for reasons of morals, public order, national security, when the interest of the private parties so requires, or when the court sees it strictly necessary in special circumstances to avoid prejudicing the interests of justice.⁹⁰ The public hearings are meant to protect the individual in question, guaranteeing a fair trial, preventing arbitrary decisions.⁹¹ The necessity of an independent court is obvious since a biased court

⁸⁵ Ovey, White (2002), p. 219

⁸⁶ *ibid.*, p. 221

⁸⁷ Høstmælingen (2003), p. 218

⁸⁸ Ovey, White (2002), p. 240

⁸⁹ International Covenant on Civil and Political Rights (1966), article 14.1

⁹⁰ *ibid.*, article 14.1

⁹¹ Ovey, White (2002), p. 163

will not serve justice. The issue of the independence of the judiciary will be discussed further in chapter 3.1.

Paragraph 3 (of both article 14 and 6) elaborates on the requirements of a “fair hearing” regarding criminal charges. They are only minimum guarantees, and even observing them may sometimes not be enough to ensure a “fair hearing” required by paragraph 1.⁹² From the case law of the ECtHR a number of specific features have emerged which are now considered components of a fair trial: procedural equality, an adversarial process and disclosure of evidence, a reasoned decision, appearance in person, and effective participation.⁹³ Another principle fundamental to the protection of human rights also contained in the right to a fair trial is the presumption of innocence, meaning that the burden of proof is on the prosecution, and guilt is not presumed until charges have been proved beyond reasonable doubt.⁹⁴

Procedural equality (often also referred to as “equality of arms”) requires a fair balance between the parties: “each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent.”⁹⁵ An adversarial process and disclosure of evidence means for instance that all relevant material is available to both parties. A reasoned decision is implicit in the requirements of a fair hearing. Regarding the presence and participation of the parties, it depends on the case whether presence is strictly necessary. It is clear, however, that a party should be present where an assessment of his character is relevant in forming the court’s opinion.⁹⁶ A person is also entitled to adequate time and facilities to prepare for his defense. This gives the accused and the lawyer of his choice the

⁹² CCPR General Comment 13 (1984), paragraph 5

⁹³ Ovey, White (2002), see in general chapter 8

⁹⁴ CCPR General Comment 13 (1984), paragraph 7

⁹⁵ Ovey, White (2002), p. 156

⁹⁶ *ibid.*, p. 159

right to communicate in confidentiality.⁹⁷ The right to a fair trial also secures that the hearing must be held “within a reasonable time.”⁹⁸

2.2.6 The right to a remedy

The right to a remedy is expressed in article 2.3 of the ICCPR and article 13 of the ECHR. The wordings of the two are very similar. “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy [...]”⁹⁹

The remedy should be accessible as well as effective and the right can be protected by different types of judicial and administrative procedures.¹⁰⁰ Administrative mechanisms are, however, required to fulfil the obligation to investigate allegations of violations “[...] promptly, thoroughly and effectively through independent and impartial bodies.”¹⁰¹ A failure by the state to investigate alleged violations could give rise to a separate breach of the ICCPR. Whenever an investigation reveals a breach of the ICCPR the state must ensure that those responsible are brought to justice and that the victims be compensated. A failure to bring perpetrators to justice may, as with lack of proper investigation, give rise to a separate breach of the ICCPR. No amnesties or immunities may relieve perpetrators of ICCPR violations from personal responsibility, and other impediments to legal responsibility, such as short periods of statutory limitation, should be removed.

The ECtHR decided in the *Klass* case that the right to a remedy is an independent provision which can be violated even if there is no violation of any other Convention right; it is a right for everyone who *claims* their convention rights have been violated.¹⁰² The obligation under article 13 depends on the nature of the complaint, but the remedy must be effective in

⁹⁷ CCPR General Comment 13 (1984), paragraph 9

⁹⁸ The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), article 6.1

⁹⁹ The European Convention for the Protection of Human Rights and Fundamental Freedoms *ibid.*, article 13

¹⁰⁰ CCPR General Comment 31 (2004), paragraph 15

¹⁰¹ *ibid.*, paragraph 15

¹⁰² *Klass and others v. Germany*, paragraph 63

practice and in law.¹⁰³ In relation to the right to life and prohibition of torture this would mean a thorough and effective investigation, identifying and punishing the once responsible.¹⁰⁴ Authorities must “make a serious attempt to find out what happened,”¹⁰⁵ and “should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions.”¹⁰⁶

2.2.7 The right to education

As stated in the CESCR General Comment 13, the right to education is both a human right in itself and a means to realize other human rights. The right to education is found in article 13 in ICESCR, article 28 in the CRC and article 2 in protocol 1 of the ECHR. In the ECHR.P1 the right is defined in negative terms, while in the other instruments the right is expressed in a positive language: “[...] recognize the right of everyone to education”.¹⁰⁷

The state has a positive obligation to ensure compulsory and free primary education. As with all economic, social and cultural rights this right should be achieved progressively.¹⁰⁸ The education shall be available, accessible, acceptable and adaptable.¹⁰⁹ Availability refers i.e. to the fact that education shall be available in sufficient quantity, while accessibility refers to non-discrimination, physical accessibility and economic accessibility. Primary education shall be free for all.¹¹⁰ The principle of acceptability demands for instance that the methods of teaching must be acceptable to students and parents, while adaptability refers to the need for any education to be able to adapt to changing social and cultural settings.¹¹¹

¹⁰³ Ovey, White (2002), p. 387

¹⁰⁴ *ibid.*, p. 392, *Intervention Submission by The Redress Trust, Mikheyev v. The Russian Federation*, p. 4

¹⁰⁵ *Intervention Submission by The Redress Trust, Mikheyev v. The Russian Federation*, p. 4

¹⁰⁶ *ibid.*, p. 4

¹⁰⁷ International Covenant on Economic, Social and Cultural Rights (1966), article 13.1

¹⁰⁸ *ibid.*, article 2.1, see also chapter 2.1 on state obligations.

¹⁰⁹ CESCR General Comment 13 (1999), paragraph 6

¹¹⁰ *ibid.*, paragraph 6

¹¹¹ *ibid.*, paragraph 6

If there is differential treatment in provision of education which is not based on “reasonable and objective”¹¹² criteria the non-discrimination provisions become applicable.¹¹³ “[It] is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education.”¹¹⁴ Prohibition of discrimination in education is also explicitly mentioned by the Committee on Economic, Social and Cultural Right with reference to the “accessibility” of education,¹¹⁵ and there is also a separate convention on the prohibition of discrimination in education.¹¹⁶

2.3 Concluding remarks

Human rights implementation in Russia faces many challenges, only one of which is corruption. Human rights organizations report of deterioration of the situation the last years, in particular in relation to freedom of expression and erosion of democratic checks and balances. Another issue of great concern is the situation in Chechnya.¹¹⁷ In relevance to the following discussion on corruption in the justice system one should also note that the problem of police torture and violence has received attention, as has allegations of violations of fair trial provisions.¹¹⁸

This chapter has explained the Russian state’s responsibility to secure the realization of ratified human rights norms, and has introduced human rights norms which are compromised as a result of corruption in the Russian justice system. In reality these represent only a selection of the rights which are affected. As will be further elaborated in chapter 3 and 4, implementation of all human rights is affected as a result of erosion of the rule of law.

¹¹² See chapter 2.2.1 on prohibition of discrimination.

¹¹³ Ovey, White (2002), p. 321

¹¹⁴ CESCR General Comment 13 (1999), paragraph 31

¹¹⁵ *ibid.*, paragraph 6

¹¹⁶ Convention against Discrimination in Education (1960)

¹¹⁷ International Helsinki Federation for Human Rights (2006)

¹¹⁸ See Human Rights Watch (1999), Amnesty International Publications (2003) and U.S Department of State (2006) on police violence. Regarding fair trial violations, much of the case load from Russian to the ECtHR relates to The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) article 6.

3 The justice system

3.1 Preconditions for human rights implementation: the rule of law and judicial independence

This chapter introduces the principles of the rule of law and judicial independence as two key preconditions for human rights implementation which may be distorted by corruption in the justice system.

This connection between the rule of law and human rights is discussed by Rachel Kleinfeld Belton when arguing the need for developing a practical approach to the rule of law concept.¹¹⁹ The rule of law must not be understood as one unified good, but rather as consisting of five independent elements: government bound by law, equality before the law, law and order, predictable and efficient justice, and human rights implementation.¹²⁰ As we can see, human rights implementation is include as a separate good considered as a part of rule of law, but, as she discusses, its inclusion is contested among scholars.¹²¹ Equality before the law is both a human right on its own, and considered a separate component of the rule of law.

Brian Z. Tamanaha takes a different approach to the rule of law, discussing it as a component of liberalism. Tamanaha connects human rights, democracy and rule of law in his discussion on liberalism. According to him there are four themes in liberalism.¹²² The first one is the rule of law, which he also calls legal liberty. The law should apply equally to all, and should be foreseeable. The second theme is political liberty. In modern Western societies self-rule manifests itself as representative democracies. The realization of political

¹¹⁹ Belton Kleinfeld (2005)

¹²⁰ *ibid.*, p. 27

¹²¹ *ibid.*, p. 14

¹²² Tamanaha (2004)

liberty requires the realization of a few political rights such as the right to vote, to stand for election and freedom of speech, assembly and association. The third component of liberalism is personal liberty. This will protect individuals from state or other interference with personal autonomy. This protection is often offered by civil rights contained in human rights instruments. The fourth and last component is what Tamanaha calls institutionalized preservation of liberty. This entails the effective division of government power.

According to Tamanaha the relationship between the different components is sometimes asymmetrical. Rule of law, personal liberty and the institutional safeguards may coexist without political liberty.¹²³ Hence, one can have rule of law without democracy, but there can be no democracy without the rule of law.¹²⁴ Rule of law is also required for securing personal liberty.¹²⁵ The rule of law is a component of a liberal society, but an illiberal society can also secure personal liberties as long as the rule of law prevails.

Translating Tamanaha into a human rights discourse, one could think that democracy is unnecessary for proper human rights implementation. We need, however, to distinguish between human rights as manifested in the international human rights instruments and what Tamanaha calls personal liberties. What he calls personal liberties includes some of the rights we know from the international human rights instruments, but surely not all of them. The international instruments clearly state the right to vote, stand for election and the freedom of assembly, association and speech, (which are all rights Tamanaha mentions under political liberty) and constantly refer to “the democratic state.” Hence, human rights, rule of law and democracy are interdependent, and to fully implement what international instruments define as human rights, both a democratic state and rule of law is required.

“All forms of corruption, including political, economic and corporate corruption, undermine democratic values and institutions, degrade the enjoyment of rights, and impair the ability of the State to implement human rights, in particular, economic and social

¹²³ *ibid.*, pp. 36-37

¹²⁴ *ibid.*, p. 37

¹²⁵ *ibid.*, p. 37

rights.”¹²⁶ In 2002 Christy Mbonu was asked, by the UN Sub-Commission on the Promotion and Protection of Human Rights, to write a working paper on corruption and its impact on the realization of human rights. She was later appointed special rapporteur¹²⁷ and her final report is still pending, but she has presented both a preliminary and a progress report.¹²⁸ The main focus of these reports is the impact of corruption on economic, social and cultural rights. Mbonu does, however, include sections on the importance of integrity in the judiciary and the law enforcement agencies.¹²⁹ She relies heavily on a paper prepared by Petter Langseth and Oliver Stolpe at the UN Global Centre for International Crime Prevention. They claim that corruption undermines important principles of the rule of law, without which human rights cannot be secured.¹³⁰ Langseth and Stolpe refer to the right to due process of law, which includes the right to a fair trial and public hearing by a competent, independent and impartial tribunal established by law. The right is important in and of itself, but it is also important considering that the implementation of all other human rights depends upon proper administration of justice.¹³¹ When the judicial system is corrupt the elements of “equality of arms” and the independence and impartiality of the tribunal disappear.¹³² Decisions will be unfair and unpredictable, hence the rule of law does not prevail, and “fundamental precepts of human rights are violated rather than upheld.”¹³³ “Only where an independent judiciary exists, can judges decide cases impartially and justly, because “the rule of law” requires that a judge not be apprehensive of repercussions or retaliation from outside influences.”¹³⁴

A corrupt judiciary also means that the legal and institutional mechanism designed to curb corruption are compromised. The judiciary has mandate to provide essential checks on

¹²⁶ Interdependence between democracy and human rights (2005), p. 16

¹²⁷ Commission on Human Rights, Report on the Sixtieth Session (2004), p. 12

¹²⁸ Mbonu (2004) and Mbonu (2005)

¹²⁹ Mbonu (2005), pp. 6-8

¹³⁰ Langseth (2001)

¹³¹ *ibid.*, p. 3 and Jayawickrama (2002), p. 3

¹³² Langseth (2001); Jayawickrama (2002), p. 3

¹³³ Langseth (2001), p. 3

¹³⁴ Kelly, p. 4

other public institutions, including law enforcement agencies, and a fair and efficient judiciary is the key to anti-corruption measures.¹³⁵

In his report the UN Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, points to the fact that corruption in the judiciary may take the form of biased participation in trials because of politicization of the judiciary, party loyalty or different types of judicial patronage. The matter is serious considering that the judiciary is supposed to be an impartial and reliable moral authority open to all.¹³⁶ Despouy also refers to the case of *Incal v. Turkey* from the ECtHR. The court states that the judges must not only meet the objective criteria of impartiality, but must also be seen to be impartial.¹³⁷ It is of fundamental importance that the people brought before the court trust the judicial system since “the real source of judicial power is the public acceptance of the moral authority and integrity of the judiciary.”¹³⁸ Complete lack of trust in the judiciary and law enforcement agencies might lead the citizens to resort to instant justice, which in turn could result in anarchy.¹³⁹

In her reports, Mbuno also maintains that the law enforcement agencies have a fundamental role to ensure human rights protection. She claims that corruption in these institutions diminishes their ability to work as human rights protectors and hinders “efficient and fair functioning of society.”¹⁴⁰ “A state whose law enforcement agents are infected by corrupt practices lacks the necessary capacity for efficient criminal investigation, judicial proceedings and physical enforcement of sanctions.”¹⁴¹

¹³⁵ Langseth (2001), p. 3

¹³⁶ Despouy (2003)

¹³⁷ *Incal v. Turkey*, paragraph 65

¹³⁸ Jayawickrama (2002), p. 3. See also Despouy (2003)

¹³⁹ Mbonu (2005), p. 6 and Jayawickrama (2002), p. 5. According to Jayawickrama this is what happened in Venezuela where angry citizens lynched alleged murderers, rapists and car-thieves almost on a weekly basis.

¹⁴⁰ Mbonu (2005), p. 8

¹⁴¹ Mbonu (2004), p. 7

3.2 Structure of the law enforcement and the judiciary in Russia

In Russia there are three judicial systems; the courts of the general jurisdiction, the Arbitrazh courts and the Constitutional Court. The courts of the general jurisdiction handle regular civil suits and criminal cases while the Arbitrazh courts handle commercial disputes. The Constitutional Court can review the constitutionality of a law applied or due to be applied in a particular case.¹⁴² The courts of the general jurisdiction have a four-tier structure including military courts. The first tier comprises all general jurisdiction rayon (district) courts: city, inter-municipal and equal to them. The second tier includes the supreme courts of the republics, kray (regional), oblast (provincial) courts, city courts of Moscow and St. Petersburg, courts of autonomous provinces and autonomous districts, while the Supreme Court of the Russian Federation is the supreme judicial body for all courts of general jurisdiction, both civil and military. The Russian Constitution of 1993 guarantees, as the first Russian constitution, judicial independence and separation of power.¹⁴³

The Russian law enforcement agencies performing day-to-day functions belong to the Ministry of Interior (MVD). The police (militsiia) within the MVD are to ensure the personal safety of citizens, prevent and suppress crimes, uncover crimes, protect public order and ensure public safety, and render assistance to citizens, enterprises and organizations according to their rights.¹⁴⁴ The police is divided into “criminal police” and “public security police.”

3.3 Public sentiments towards the justice system in Russia

The Russian public opinion of the justice system is quite negative and one reporter expressed it like this: “We relate to the cops not as citizens to the defenders of law and

¹⁴² Redress (2003)

¹⁴³ *Judicial System of the Russian Federation and the Supreme Court of the Russian Federation* (2004), see Federal Constitutional Law, No 1-FKZ of Dec. 31 1996 On the judicial system of the Russian Federation (1996), Chapter 1, article 1.2

¹⁴⁴ Butler (1999), p. 202

order, but as inmates to prison guards. We just hope they'll leave us alone".¹⁴⁵ Numerous sources reach the same conclusion: Russians lack trust in the law enforcement and the judiciary – the human rights implementation bodies. According to a nation wide survey by Levada Centre 71% of the respondents do not trust the police at all, and only 2% think the police acts within the law. 41 % live in fear of police violence. The Russian human rights Ombudsman says the problem is so deep that it will take years to correct.¹⁴⁶ 80% think nothing can protect them from police abuse,¹⁴⁷ and 60% say extortion and racketeering are as integral parts of the police activity as patrolling the streets.¹⁴⁸ 83% regard the police to be corrupt, while 79% assume the courts and prosecutor's offices are corrupt.¹⁴⁹ Corruption pervades Russian law enforcement, from the bottom to the top of the system. The judiciary is under similar pressure, eroding the rule of law.¹⁵⁰

Research by Mendelson and Gerber produces similar findings: only 3% say the police "fully" deserve trust, while 23% say they "probably" deserve trust. 65% say that the police "probably not" (36%) or "not at all" (29%) deserve trust.¹⁵¹ Half the respondents say they live in fear of physical abuse by the police, and the number rises to 61% among males under 40. Trust in the courts is slightly higher than trust in the police: 34% trust them to some degree, while 49% do not. Only 4% feel certain they will be treated according to law if arrested, while about two-thirds say they will "probably" or "definitely" not. Here too, younger males are more sceptical than the average population: 76% say they do not think they will be treated according to law if arrested. Only 29% think it is unlikely that they can be convicted for a crime they did not commit.

Surveys of public opinion show a stable level of distrust to the law enforcement agencies, which is manifested in the fact that victims of crimes refuse to seek protection from the law

¹⁴⁵ Latynina, Moscow Times (11 August 2004)

¹⁴⁶ Finn, Washington Post (27 March 2005)

¹⁴⁷ Filipov, Boston Globe (31 May 2004)

¹⁴⁸ *ibid.*

¹⁴⁹ Kurkchiyan (2003), p. 31

¹⁵⁰ Orttung, Walker, Newsday (3 March 2005)

¹⁵¹ Mendelson, Gerber (2005), p. 17

enforcement agencies.¹⁵² According to Transparency International's report "The Russian Federation – Denial of Justice" discrimination and ethnically motivated violence occurs. Often these attacks are not reported to the police because the victims have a justified fear that they will experience harassment and extortion from the police if they choose to report the incidents.¹⁵³

As one might expect, experience with police misconduct correlates with low confidence in the police and increases concern about police corruption. More surprisingly, it also correlates with low confidence in the courts.¹⁵⁴ All types of experience with police abuse increases fear of police violence and decreases the confidence of fair treatment if arrested.¹⁵⁵ The impact of experience on perception was controlled for the effects of age, sex, ethnicity, education, social status and place of residence. From the results it is clear that police corruption undermines public trust in the whole justice system. The lack of human rights observance of the law enforcement agencies fosters growing distrust of the population, which in turn impedes the law enforcement activities, damaging the state power at large.¹⁵⁶

The fact that experience is a major factor contributing to perception could also mean that the public trust in the legal system can be improved if people experience fair and efficient public institutions. Some of the respondents in the survey by Mendelson and Gerber also stated a will to trust the police considering the vital role it could play in protecting public safety.¹⁵⁷

¹⁵² Public Verdict Foundation (2005), p. 3

¹⁵³ Amnesty International (2002). See also International Helsinki Federation for Human Rights (2006), p. 12

¹⁵⁴ Mendelson, Gerber (2005), p. 23. More specifically, the survey shows that it does not correlate with low confidence in other public institutions. See p. 22.

¹⁵⁵ *ibid.*, p. 23

¹⁵⁶ Public Verdict Foundation (2005), p. 2

¹⁵⁷ Mendelson, Gerber (2005), p. 29

3.4 Concluding remarks

Rule of law and judicial independence are fundamental pillars in any democratic state and necessary preconditions for the implementation of human rights law. International human rights standards also include rights which specifically require judicial independence and equality before and in law. The rule of law and judicial independence are affected by low public confidence in courts and law enforcement structures. Russians show a stable level of distrust to its courts and police, which is partially caused by corruption in the justice system.

4 Corruption in the Russian Federation

This chapter examines one of the reasons for low confidence in the Russian police and judiciary which is corruption in the justice system. The chapter documents its presence and discusses it as one obstacle to human rights implementation.

4.1 Presence of corruption in the Russian Federation

Recognizing the particularities of each country it is still useful and possible to make some generalizations of the post-Soviet states because of their common heritage. They all experienced the homogenizing effect of a single body of law, and identical administrative structures based on a common ideological background.¹⁵⁸ According to Karklins they were ruled by a few communist party elites who had exceptional powers and were above the law. The political influence of ruling elites on law enforcement still persist.¹⁵⁹ Also, “[...] post-communist regimes tended to have a special relationship between formal and informal institutions, with the latter often being decisive.”¹⁶⁰ Citizens managed to live normal lives partly because they learned how to be “artful dodgers,” constantly looking for loopholes or relying on informal networks.¹⁶¹

One way to operate as such “artful dodgers” is through blat. This involves giving gifts and mutual assistance, but unlike bribes, the relationship between the people involved is not only defined by the blat itself. The relationship is of a long term character, and the blat does not require immediate return of the favor.¹⁶² Even though most Russians accept that blat is happening everywhere in society, they are still hesitant to call their own acts blat. They

¹⁵⁸ Kurkchiyan (2003), p. 26

¹⁵⁹ Karklins (2005), p. 14

¹⁶⁰ *ibid.*, p. 15

¹⁶¹ Kurkchiyan (2003), p. 26. See also Ledeneva (1998)

¹⁶² Ledeneva (1998), pp. 39-40

rather use words like “helping out” or “mutual care” when describing personal involvement, leaving the word blat for describing acts of others.¹⁶³ Ledeneva maintains that blat differs from other forms of informal exchange, stressing that blat is an exchange of “favours of access” reorganizing the official distribution of goods.¹⁶⁴ Ledeneva claims that when a person is involved in blat, even when using her position, the act is done not for the benefit of himself, but for the benefit of someone else, and therefore it is not corruption. Blat is occurring between regular citizens, not necessarily crossing the public/private boundary.¹⁶⁵

Blat means relying on informal networks to achieve certain benefits which otherwise may be out of reach. Even if blat means relying on a network where the altruistic motive behind any act is dominant,¹⁶⁶ there are other types of informal networks where the motive behind the “mutual care” definitely is selfish. Normally informal networks consist of people from different sectors of society and with different backgrounds who are friends, family, neighbors or colleagues. Grødeland’s definition of an informal network is “an informal circle of people able to and willing to help each other.”¹⁶⁷ People within such informal networks derive some benefits from belonging to them, and hence have an interest in maintaining them. They may also feel an obligation towards other people within the same network, and a failure to comply with the norms within the network may lead to estrangement from the network altogether.¹⁶⁸ These informal networks seem to play a role within police departments, creating informal networks of police officers who are exploiting their powers for the benefit of colleagues, and, ultimately, themselves.

Public sentiment towards corruption is somewhat contradictory. Among the regular citizens many see corruption mainly an elite problem, believing that politicians do little to fight it because they are themselves part of it. Bribes which resolve a problem are considered

¹⁶³ *ibid.*, p. 37

¹⁶⁴ *ibid.*, p. 37

¹⁶⁵ *ibid.*, p. 40

¹⁶⁶ *ibid.*, p. 41

¹⁶⁷ Grødeland (2005), p. 5

¹⁶⁸ *ibid.*, p. 5

normal, and helping a friend is considered almost as a social responsibility.¹⁶⁹ Both Karklins and Marina Kurkchian believe some of this culture also stems from an assumption common among citizens in post-Soviet states that everybody else breaks the law and hence they have to do the same – even if they would rather live among law-abiding people.¹⁷⁰ Often people even act against their own values. People express negative expectations about the justice system, but wish things were different. Normative values about the rule of law are not significantly different from those in the Western Europe,¹⁷¹ but what Kurkchian calls the negative myth of the rule of law sustains even when positive examples occur. I.e. court decisions where both parties agree there was no corruption involved are still interpreted in a cynical way consistent with the assumption that judicial decisions are made on the basis of private interests.¹⁷² As a result, Russia has one of the worst records of legal behaviour in the world.¹⁷³

In 2006 the INDEM Foundation will release a comprehensive report “Diagnostics of the corruption in Russia: 2001-2005” on the level, structure and trends of corruption.¹⁷⁴ The preliminary report gives an indication of the current situation in Russia. Russians spend US\$ 3 billion on bribes every year.¹⁷⁵ This only estimates the total sum of money spent on bribes.¹⁷⁶ The trend seems to be that the risk of corruption, meaning the authorities’ corruption pressure on citizens, has increased, while people’s readiness to bribe is reduced. The number of average annual bribes for each briber has declined, while the average amount spent on each bribe has increased. In 2005 54.9 % of the respondents state that they

¹⁶⁹ Karklins (2005), p. 67

¹⁷⁰ Kurkchian (2003), p. 27 and Karklins (2005)

¹⁷¹ Kurkchian (2003), pp. 31-32

¹⁷² *ibid.*, p. 33, referring to an Armenian case between a state owned airline company and a private news agency where the decision was according to the law, in favour of the news agency, but where both parties believed the decision was made because the judge had an interest in ruling this particular way. The airline company stated that he was afraid of negative publicity in the media, while the news agency believed they won the case because the government was going to privatize the airline company and wanted its value to decrease so it could be bought as cheap as possible by a member of the ruling elite.

¹⁷³ *ibid.*, p. 26 referring to the TI Corruption Perception Index 2000.

¹⁷⁴ This report was supposed to be released in the fall 2005 but the release has been postponed.

¹⁷⁵ INDEM (2005)

¹⁷⁶ This number only includes bribes and this is only one type of corruption. Other types of corruption are embezzlement, fraud, extortion and favouritism. See Andvig (2001), pp. 11-13

have been involved in a corrupt activity (irrespective of the outcome), while the number was 50.4 % in 2001.¹⁷⁷

Corruption is a widespread phenomenon in the Russian Federation. All aspects of every day life are affected, and the consequences are serious. Corruption occurs in almost all sectors of public life, affecting individuals' access to public goods such as education and health care. It is also common to deliberately have contradictory rules so that business cannot avoid breaking one or the other, creating opportunities for corruption. Karklins gives the example of how police authorities require all jewellery stores to have bars on their windows while fire inspectors state that no windows can be barred.¹⁷⁸ In the 2004 Beslan school attack the terrorists paid bribes to bring trucks into the school compound.¹⁷⁹ Also the downing of two airplanes in August 2004 and the theatre hostage situation in 2002 was facilitated by corruption in the law enforcement agencies.¹⁸⁰ Corruption also facilitates and protects the operation of criminal trafficking networks in Russia.¹⁸¹ The TI Index 2005 shows that Russia scored lower than the year before, now scoring a low 2.4. This is the same as Sierra Leone, Nigeria and Albania.¹⁸²

4.2 Corruption in the Russian justice system

The following sections present manifestations of corruption in the Russian justice system. The overview is not a comprehensive diagnostic of types of corruption, but is rather meant as a tool to systematically assess human rights implications of corruption in the justice system, and as a framework for the case analysis in the following chapter. The police and courts are dealt with separately in chapter 4.2.1 and 4.2.2 and the sections are divided on the basis of different acts which may be manifestations of one or several types of corruption.

¹⁷⁷ INDEM (2005)

¹⁷⁸ Karklins (2005), p. 23. See also Steinfeld (2001), pp. 159-160

¹⁷⁹ *Studies in contemporary history and Security Policy*

¹⁸⁰ Orttung, Walker, *Newsday* (3 March 2005)

¹⁸¹ U.S. Department of State (2005) and Mbonu (2005), p. 8

¹⁸² Corruption Perception Index 2005 (2005)

The following tables express how different unlawful acts are related to corruption, and how these acts of corruption are linked to human rights violations. Table 4.1 relates to the law enforcement while table 4.2 relates to the judiciary. As will be further discussed in chapter 4.3 the corruption in the Russian justice system and human rights violations are either conceptually or causally linked. This means that the link between the two is either internal or external in character. An internal link means that the corrupt behavior constitutes a human rights violation in itself, while an external link means that corruption causes human rights violations.

Unlawful police activity:	Relevance to corruption:	Link to human rights:
detention/interference with privacy	extortion sell services	<u>internal:</u> right to liberty and security of person right to privacy <u>external:</u> erodes trust in the justice system
intimidation	sell services network activity extortion	<u>internal:</u> right to liberty and security of person prohibition of torture right to privacy <u>external:</u> prohibition of torture erodes trust in the justice system
improper investigation/ manipulation of evidence	network activity	<u>internal:</u> right to a remedy <u>external:</u> prohibition of torture erodes trust in the justice system
demand/accept money	bribe	<u>external:</u> prohibition of discrimination in relation to the right to education, equality in/before the law erodes trust in the justice system

Figure 4.1. The table shows of how unlawful police acts are related to corruption, and how this is linked to human rights violations.

Unlawful acts in the Judiciary:	Relevance to corruption:	Link to human rights:
change charges/release from detention	Bribe/intimidation	<u>internal:</u> relevant convention right <u>external:</u> erodes the rule of law
selective application of the law/biased ruling	bribe/intimidation	<u>internal:</u> right to a fair trial equality before the law <u>external:</u> erodes the rule of law

Figure 4.2 The table shows how unlawful acts in the judiciary are related to corruption, and linked to human rights violations.

Within the Russian justice system both petty corruption and grand corruption exist. It may be difficult to distinguish between the two since they manifest themselves in similar patterns. To successfully combat corruption it is necessary to clearly distinguish between the two, but for the purpose of this thesis it is not necessary at all times to determine between them when discussing different manifestations of corruption. Suffice to say they both exist within the justice system, and that most manifestations of corruption presented in this chapter may be manifestations of petty or grand corruption, depending on who initiates the acts and who benefits from them.

4.2.1 Corruption in Russian law enforcement

Demanding bribes for minor infractions is perhaps the most common form of corruption in the police,¹⁸³ but corruption does not only take the form of voluntary offerings of bribes.

¹⁸³ Mendelson, Gerber (2005)

Regularly, the corrupt activity is initiated by police officers, who sometimes use physical or verbal threats to extract money or to influence individuals' behavior in relation to a case under investigation or hearing. The police might also be under influence of powerful individuals, criminal networks and the executive branch of government.¹⁸⁴

Police officers who abuse their power to extort and exploit citizens instead of protecting them are called "werewolves in uniform."¹⁸⁵ The practice of abuse seems to be extensive and even increasing, and with few crackdowns.¹⁸⁶ Police officers are considered to do more public harm than public good, and 52% of Russians think that the police put both their own and elite interests over public order.¹⁸⁷ Voluntary offering of bribes is, however, also a common practice, especially in the traffic police.

The motivations for police officers to engage in corruption are many. One possible reason is that police effectiveness is measured by number of crimes solved.¹⁸⁸ Also, the principle of the presumption of innocence has a relatively weak position in Russia.¹⁸⁹ Many police officers consider human rights violations acceptable for the purpose of apprehending and punishing criminals.¹⁹⁰ According to Human Rights Watch some even say that they think it is impossible to solve crimes without sometimes resorting to torture.¹⁹¹ These factors all contribute to a tolerance among police officers of resorting to illegal measures, like torture, to solve crimes. Officially, evidence obtained in violation of the requirements of the Code of Criminal Procedure is inadmissible, but judges rarely exclude such confessions.¹⁹² At least one-third of all convictions are based on evidence obtained using violence.¹⁹³ To avoid criminal charges police officers protect each other by relying on informal networks existing between police officers, and engaging in corrupt practices like intimidating

¹⁸⁴ *ibid.*

¹⁸⁵ Filipov, *Boston Globe* (31 May 2004)

¹⁸⁶ Finn, *Washington Post* (27 March 2005), and U.S Department of State (2006)

¹⁸⁷ Mendelson, Gerber (2005), p. 19

¹⁸⁸ Filipov, *Boston Globe* (31 May 2004)

¹⁸⁹ Cockburn, *Independent* (6 November 2000)

¹⁹⁰ Public Verdict Foundation (2005)

¹⁹¹ Human Rights Watch (1999)

¹⁹² Redress (2003), pp. 15-16

¹⁹³ Finn, *Washington Post* (27 March 2005)

witnesses and otherwise obstructing justice. This is facilitated by the close relationship between the officers who are under investigation and those who investigate the cases of alleged torture or violence. Since evidence obtained through illegal measures is not dismissed, and since the officers protect each other, the circle of abuse continues. Another reason for corruption is that because of their low salaries, law enforcement personnel start looking for other possible sources of income.¹⁹⁴ The Public Verdict Foundation also blames the officers' low professionalism for their human rights violations.¹⁹⁵

An officer's income consists of two parts: one fixed part set by the work schedule, and one part consisting of a variety of supplementary payments.¹⁹⁶ These supplementary payments amount to 30%-60% of the monthly income. An officer's superior decides whether or not he will be paid extra in any given month. This means that an officer's income depends on whether or not he is favored by his superior, meaning that he will do whatever it takes to please him. Officers tend to obey orders without scrutiny, even when human rights are violated. Each police officer has a record of all violations (for which he may be dismissed or even prosecuted) he has committed. This list is used whenever the officer has fallen out of favor. Obeying the orders of his superior the officer hopes his violations are overlooked by the superior. This pattern means a constant reproduction of human rights violations.¹⁹⁷ This means that the networks within the police may consist of persons with unequal bargaining power, and may be a relationship defined by dependence.

According to the Public Verdict Foundation one of the most serious problems in the Russian law enforcement system is the ineffective system of management which stimulates corruption and facilitates replication of human rights violations.¹⁹⁸ In the research project "Arbitrariness in Law enforcement: Roots and Practices" the Demos Center used case studies to identify typical situations where law enforcement officers violate human rights. The first situation is where violations are committed "in the interest of the service." The

¹⁹⁴ Orttung, Walker, *Newsday* (3 March 2005)

¹⁹⁵ Public Verdict Foundation (2005)

¹⁹⁶ *ibid.*

¹⁹⁷ *ibid.*

¹⁹⁸ *ibid.*, p. 2

second situation is where commercial or political structures use law enforcement agencies to suppress their competitors or political opponents. A third situation is when law enforcement officers protect the interests of their colleagues. The last situation identified is when the officers use their authority for personal benefit or to solve problems of friends and family.¹⁹⁹ Three out of these four types of situations are typical corruption situations: officers use their position to the benefit of themselves, friends, relatives, colleagues, or criminal or political interests.

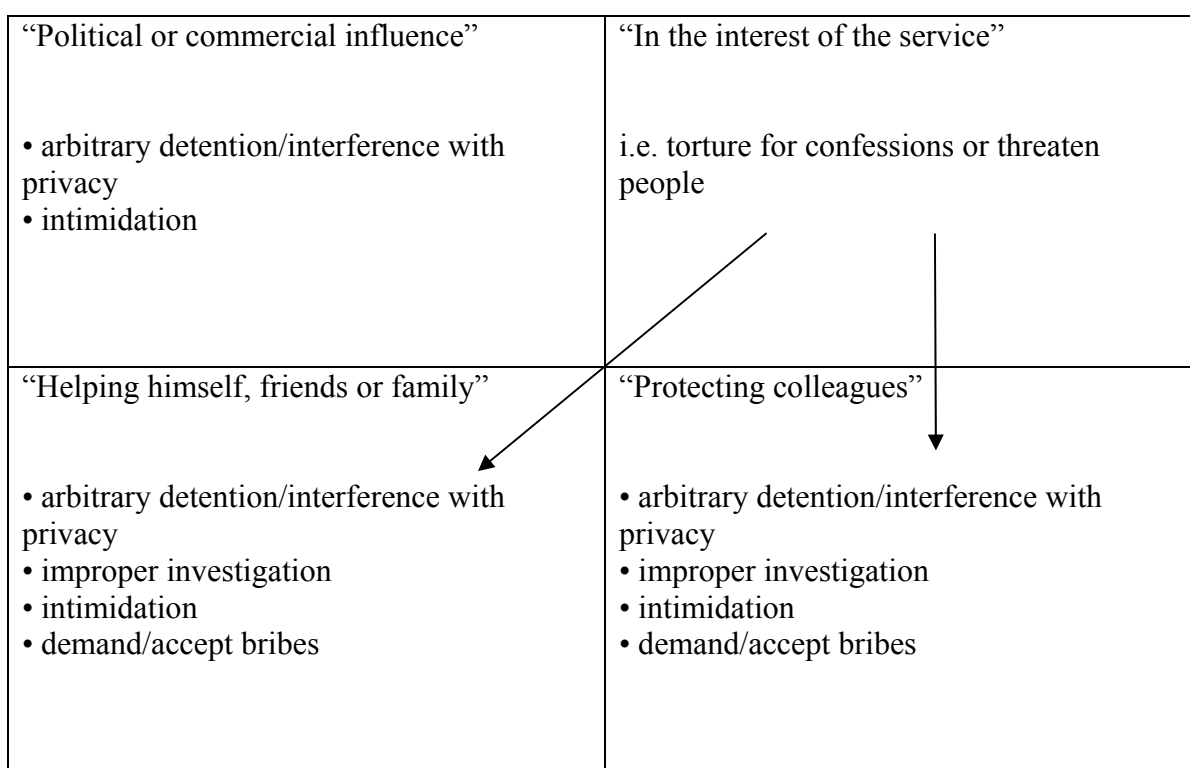


Figure 4.3. Illustration of the four situations where police officers commit human rights violations. The arrows illustrate how one act (which may be a human rights violation like torture), which may be done “in the interest in the service”, may lead to corrupt activity like improper investigation or intimidation to help himself (left box) or colleagues (right box). See (*Situation in the Russian law-enforcement system and its influence on human rights observance 2005*)

4.2.1.1 Arbitrary detention/interference with privacy

Arbitrary detention or arbitrary search of property can be examples of extortion. Police officers may stop people on the streets, search their homes or detain them. These situations

¹⁹⁹ *ibid.*, pp. 6-7.

are likely to end up with extortion or bribes.²⁰⁰ Another form of corruption in the law enforcement agencies is when the public officers sell their “services” to anyone willing to pay. According to the Boston Globe, the Russian magazine “Mergers and Acquisitions” published a price list of “services” for sale by the police and prosecutors,²⁰¹ one of which is seizing offices and interfering with individuals’ privacy. The “services” are primarily meant for business men who are willing to pay between \$10 000 and \$50 000 to harm their competitor, but the average citizens also have access to them. In the survey of Mendelson and Gerber a woman told that the police once refused to protect her family from someone who was harassing them because this person had paid a bribe.²⁰²

Sometimes the practice of arbitrary detention is combined with different forms of intimidation, like threats of criminal charges. This happened to Mr. Magsumov and Mr. Nizamutdinov who were detained in 2003. Two police officers planted illicit drugs on them and demanded 100 000 rubles to drop the charges.²⁰³

4.2.1.2 Intimidation

Intimidation is used for several purposes, as a way of generating money, either through direct extortion or through selling a service (intimidating a third party), or as a means to achieve other goals, such as stopping further investigation into allegations of police misconduct.²⁰⁴ Intimidation is here divided into two practices: detention and threats of criminal prosecution, and violence or threats of violence.

4.2.1.2.1 Detention and threats of criminal prosecution

Sometimes police officers use detention or threats of criminal prosecution as leverage to extort money. An example of this practice was revealed when seven police officers were

²⁰⁰ Amnesty International (2002), pp. 34-35

²⁰¹ Filipov, Boston Globe (31 May 2004)

²⁰² Mendelson, Gerber (2005), p. 27

²⁰³ Public Verdict Foundation (2004)

²⁰⁴ This would constitute network activity in table 4.1

arrested in 2003. They were charged for extorting \$500 000 from business men, and trumping up charges against those who refused to pay.²⁰⁵ The police frequently intimidate or threaten people with prosecution if they do not pay the amount asked for.²⁰⁶ Sometimes police officers plant evidence to substantiate their threats. This “service” is also possible to buy. Planting drugs on someone before making an arrest was listed as one possible “service” which was open for sale. It is also possible to pay to have a case opened or closed for further investigation.²⁰⁷

A Russian human rights group in Kazan has faced numerous checks of their finances and their employees have been threatened with imprisonment after the group persuaded the prosecutor to investigate 11 cases of police misconduct.²⁰⁸

4.2.1.2.2 Violence

Police officers go to great lengths to silence whistle-blowers, especially to avoid complaints at the ECtHR.²⁰⁹ Last year a man was threatened to write to the Prosecutor General in Moscow and request him to close a case filed to the ECtHR. The case concerned the disappearance of this mans brother while he was in the hands of the Russian armed forces. The man was told that if he did not do as requested they could arrange his disappearance too.²¹⁰ The organization Redress reports of several instances where individuals who had launched a complaint for torture against law enforcement personnel were bribed or intimidated into withdrawing their complaints.²¹¹ Suspects of police torture and their colleagues threaten and harass both plaintiffs, witnesses, lawyers and human rights defenders for pursuing a case against them.²¹²

²⁰⁵ Filipov, Boston Globe (31 May 2004)

²⁰⁶ Public Verdict Foundation (2004)

²⁰⁷ Filipov, Boston Globe (31 May 2004)

²⁰⁸ *ibid.*

²⁰⁹ Nemtsova, Newsweek International (13 March 2006)

²¹⁰ *ibid.*

²¹¹ Redress (2003)

²¹² *ibid.*, p. 15 and U.S. Department of State (2004)

A young man, German Gladesky, who initiated inquiries into police brutality was shot during a meeting with two unidentified men. The police say he was attacked by robbers, others say it was the werewolves of Moscow.²¹³ According to a lawyer for the European Human Rights Advocacy Center at least 5 petitioners to the ECtHR have been killed since 2001. In addition, dozens have been kidnapped, beaten or tortured by the police.²¹⁴

4.2.1.3 Improper investigation/manipulation of evidence

Police officers are reluctant to help investigate colleagues who face allegations of misconduct, particularly when it comes to torture. Several reports address cover-ups and manipulation of evidence.²¹⁵ In some cases, police officers accused of torture or their colleagues, have destroyed or tampered with incriminating evidence.²¹⁶ The investigation of torture allegations against police officers is often very limited. Sometimes they are closed without even questioning the victim or without providing proper medical examination.²¹⁷

4.2.1.4 Demand bribes to perform police duty

The Police also frequently demand bribes for doing the job they are supposed to do. One example of such practice is the process of registration at local police precincts. Every citizen must register at the police within seven days after moving to a new place of residence. The police frequently demands bribes for processing such registration applications.²¹⁸ A study from the late 1990s reports that Russian police officers receiving bribes were part of an organized scheme passing a part of the bribes up the law enforcement hierarchy.²¹⁹

²¹³ Filipov, Boston Globe (31 May 2004)

²¹⁴ Nemtsova, Newsweek International (13 March 2006)

²¹⁵ Redress (2003), p. 15

²¹⁶ Amnesty International Publications (2003)

²¹⁷ Redress (2003), p. 15

²¹⁸ U.S Department of State (2006), p. 27

²¹⁹ Karklins (2005), p. 21

4.2.1.5 Accept bribes to perform acts outside their duty

A typical example of voluntary offering of bribes would be bribing the traffic police. As stated in the introductory chapter, in 2001 \$368 million was spent on bribes to the Russian traffic police. The officers frequently accept bribes, which amount to a little less than the regular ticket, or a higher bribe to drop charges for more serious offences. One example is the wife of lawyer Sergei S, who was drunk and was stopped by the police. She avoided arrest by paying the officer \$300.²²⁰

4.2.2 Corruption in the Russian judiciary

One may think that if the number of persons prosecuted is low, it indicates a low level of corruption. On the contrary, the opposite is likely to be true. Few prosecutions can indicate a very high level of corruption, including judicial corruption. According to Karklins, this seems to be the case in Russia.²²¹ Louise Shelly also talks about “massive pay-offs to the police, procuracy, and judiciary” indicating a high level of corruption in the Russian justice system.²²²

According to Langseth and Stolpe indications of judicial corruption include:

delay in the execution of court orders; unjustifiable issuance of summons and granting of bails; prisoners not being brought to court; lack of public access to records of court proceedings; disappearance of files; unusual variations in sentencing; delays in delivery of judgements; high acquittal rates; conflict of interest; prejudices for or against a party witness, or lawyer (individually or as member of a particular group); prolonged service in a particular judicial station; high rates of decisions in favour of the executive; appointments perceived as resulting from political patronage; preferential or hostile treatment by the executive or legislature; frequent socialising with particular members of the legal profession, executive or legislature (with litigants or potential litigants); and postretirement placements.²²³

²²⁰ Myers, New York Times (13 August 2005)

²²¹ Karklins (2005), p. 35

²²² *ibid.*, p. 34

²²³ Langseth (2001), p. 6

In 2005 an estimated \$209.5 million was spent to “win justice in court”.²²⁴ This statistic does not distinguish between arbitration courts and general courts. The Government or the Parliament influence court decisions in high profile cases (politicized cases). The Supreme Court also frequently overturns “not guilty” rulings by juries. In a survey on the arbitration courts, 66% of the respondents believed that the arbitration judges were regularly under pressure from local and regional officials.²²⁵ The Russian general courts are less affected by corruption. Still, the numbers from the arbitration courts are interesting since they confirm that government officials are able and willing to interfere in a court of law. There is little reason to believe that such interference does not occur in the general courts as long as they have an interest in doing so. It is difficult to estimate the scale of corruption in the Russian judiciary. Lawyers who bribe tend to think that all judges are corrupt, while those who do not estimate that the number is between two and five percent. Even if the number is as low as two percent, it still means that 400 corrupt judges work in the Russian judiciary.²²⁶ A bribe is not given directly to the judge, but rather paid for instance to a legal firm where one of the judge’s relatives works. The bribe is disguised as a contract or a fee.²²⁷

The cases of concern in the general courts are mostly high-profile cases affecting the interest of major criminal groups or politicians.²²⁸ The performance of the general jurisdiction courts shows that judges do have the discretion to rule against the state. On average 80% of the cases where citizens complained against officials the citizens succeeded in their law suits.²²⁹ But most of these cases were not high-profile cases, and they did not matter to politicians or their friends.²³⁰ The statistics do not show what kinds of complaints were made and which institutions the officials represented. Hence there

²²⁴ INDEM (2005)

²²⁵ Frye (2002)

²²⁶ Gridneva, (3 July 2003)

²²⁷ *ibid.*

²²⁸ *ibid.*

²²⁹ Solomon (2004), p. 563

²³⁰ *ibid.*, pp. 572-573

might be big differences in the success rate between different agencies. There are also quite large geographical differences.²³¹

Surveys conducted in post-communist states suggest that contacts and informal networks are used to get information, advice or to speed up a procedure.²³² Respondents in all countries said they would comply with requests that were within the limits of the law – like speeding up procedures.²³³ Even if Russia is not one of the countries included in the survey by Grødeland, it is still likely that the findings are representative of Russia too. There, as in most other post-communist states, the impact of judicial reform has been limited due to a number of reasons: lack of funding, insufficient legal training resulting in shortage of qualified staff, and a legal “chaos” created by amended old laws and new laws making it difficult for anyone within the system to stay up to date. All these factors make the judiciary vulnerable to external influence.²³⁴ Similar situations for the judiciary in the aftermath of communism are combined with common experiences during communism. The judiciary was mainly serving a political purpose where the judge should rule according to the prosecutor’s demand.

The Freedom House rating of Russia on judicial framework and independence dropped from 4.75 to 5.25 in the 2005 report. Even if the law provides for judicial independence, judges are frequently influenced by governmental authorities, wealthy individuals and business enterprises.²³⁵ The Freedom House report also explains how the executive branch can exert pressure on courts through chief judges. They are appointed for six years and reappointment depends on a review by the presidential administration. The chief judges often decides which judges will hear sensitive cases and often assign them to “reliable” judges who will make the appropriate decision.²³⁶ These chief judges, or chairs, hence

²³¹ *ibid.*, p. 562, In 2000 the success rate was 62% in Leninskii raionnyi sud goroda Kurska and 91% in Kaluzhskii raionnyi sud.

²³² Grødeland (2005)

²³³ *ibid.*, p. 45

²³⁴ *ibid.*, p. 3

²³⁵ Burger (2004), p. 21

²³⁶ Freedom House (2005), p. 20

become the point of entry for anyone who wants to influence the outcome of a particular case. In return of making an illegitimate decision a judge may also be promised quick access to benefits like housing, to which he is entitled anyway.²³⁷ The chairs handle the delivery of perks, and they are able to influence the promotion of judges through positive evaluations. They also decide when to give unofficial warnings or invoke a formal process of review of the judges.²³⁸ The ground for disciplinary proceedings can be as broadly defined as producing red-tape, labour discipline infractions and violation of the norms of material and procedural legislation.²³⁹ The punishment for opposing these informal rules can be transfer to another district or even dismissal. Sergei Pashin and Olga Kudeshkina are two victims of this practice, who both lost their jobs as judges at the Moscow City Court because they refused to obey informal orders from the executive branch of government. “The chief judge of the Moscow court put a lot of pressure on me to rule the way she wanted. Even in Soviet times pressure like that did not exist.”²⁴⁰ In general, judges face pressure from their superiors, who are appointed by presidential decree.²⁴¹ In Russian general courts the conviction rate is 99 percent, which is extremely high.²⁴² One reason is that judges fear they will be dismissed or forced to resign if they do not convict the number expected by the prosecutors. Prosecutors also abuse the judicial system by bringing cases under falsified charges to target outspoken regime critics, sometimes in collaboration with the FSB.²⁴³ Because of lack of sufficient funding of the courts the majority rely on supplementary payments or allocations provided by local or regional governments.²⁴⁴

As for influence from powerful individuals or criminal networks, the judges may accept the bribe voluntarily or as a result of intimidation. The intimidation may take form of physical threats against the judge and his family or forcing him to take the bribe so that he can be

²³⁷ Gridneva, (3 July 2003)

²³⁸ Solomon (2005), p. 7

²³⁹ *ibid.*, p. 8

²⁴⁰ Mereu, (6 October 2004)

²⁴¹ *ibid.*

²⁴² Finn, Washington Post (27 February 2005)

²⁴³ *Russia: Importance of an Independent Judiciary*

²⁴⁴ Gridneva, (3 July 2003)

blackmailed in the future.²⁴⁵ The authorities do not provide adequate protection from intimidation or threats from powerful criminal defendants.²⁴⁶

Assizors may also be enticed by benefits or money. In December 2005 Ernst Cherniy, the Responsible Secretary of the Nongovernmental Committee for Protection of Scientists, gave a speech at the conference “Politically Motivated Legal Cases In Present Day Russia”.²⁴⁷ He gave an example of how jury members are pressured by the special services to vote in favour of a guilty verdict for Valentin Danilov. Cherniy claims that 8 out of the 12 assizors experienced pressure. One assizor, Suvorov, was, at the time of the hearing of the Danilov case, under criminal investigation. He was persuaded by a Federal Security Service (FSB) representative; if he voted “the right way” the criminal persecution would stop. Cherniy also implies that the assizors on this particular case were carefully selected.²⁴⁸

4.2.2.1 Change charges or release from detention

Corrupt judges can be bribed to release someone from custody, to change the qualification of the crime, or to release the person from criminal responsibility all together. One official tried for fraud paid \$300 000 and the official crime he was tried for was changed to negligence.²⁴⁹ The sentence he got was already served in the detention centre. In 2001, the Novgorod City Judge Svetlana Tuzikova released the leader of a criminal group, Aleksandr Artyushchik, from custody. He was accused of banditry and attempted murder, but the judge released him because of his heightened blood pressure. How much he paid is still unknown, but Tuzikova was dismissed for her intentional violation of the law.²⁵⁰

²⁴⁵ Burger (2004), p. 21

²⁴⁶ U.S Department of State (2006)

²⁴⁷ *Politically motivated legal cases in present day Russia* (2005)

²⁴⁸ *ibid.*, p. 3

²⁴⁹ Gridneva, (3 July 2003)

²⁵⁰ *ibid.*

4.2.2.2 Selective application of the law/biased ruling

Government influence can sway decisions or it can lead to selective application of the law. Several, like Gregory Yavlinsky, the leader of the opposition party Yabloko, claim that the law is applied selectively in favour of government interest.²⁵¹ According to several human rights organizations and the US State Department the arrest and detention of the oligarch Khodorkovsky is only one example of such practice.²⁵² Another example may be Mikhail Mirilashvili, a prominent Russian-Israeli business man who was sentenced in 2003 to 12 years in jail on charges of kidnapping and attempted murder. This case, like the case of Khodorkovsky, is denounced as a politically motivated trial.²⁵³ A third example would be the case of Mikhail Trepashkin, who came across circumstantial evidence of FSB involvement in the 1999 Moscow apartment house bombings.²⁵⁴ Mirilashvili's lawyer, Aleksandr Afanassiev, believes that judicial corruption is what leads many Russians to take their cases to the ECtHR.²⁵⁵ Mirilashvili, Trepashkin and Khodorkovsky have all three appealed to the ECtHR²⁵⁶ The case of Trepashkin has been declared admissible.²⁵⁷

4.3 Human rights implications of corruption in the Russian justice system

As shown by figure 4.1 and 4.2 different types of acts, which may be corruption related, have different types of human rights implications. It seems that there are two types of links between acts of corruption (and hence corruption) and human rights violations: they can be internally or externally linked.

²⁵¹ Yavlinsky, Financial Times (UK) (3 September 2003)

²⁵² U.S Department of State (2006) and Human Rights Watch (2006), p. 383

²⁵³ Bigg, Radio Free Europe/Radio Liberty (3 February 2006)

²⁵⁴ See The Trepashkin case web pages, and Kishkovsky, New York Times (12 December 2004). See also concern expressed by the International Commission of Jurists, *Russian Federation - ICJ concerned over conviction of lawyer* (2005)

²⁵⁵ Bigg, Radio Free Europe/Radio Liberty (3 February 2006)

²⁵⁶ See *ibid.*, *The Trepashkin Case, ECHR admissibility*, and *Press Center Mikhail Khodorkovsky* (2006)

²⁵⁷ *The Trepashkin Case, ECHR admissibility*

4.3.1 Internal links

That corruption and human rights violations are internally linked means that an act or corruption and human rights violations are conceptually linked. This means that the corrupt behaviour constitutes a human rights violation in and of itself. Examples would be the practice of arbitrarily stopping people on the streets or searching their homes. Such acts constitute, as explained in chapter 2.2.4 and 2.2.3, a violation of the right to privacy, or the right to liberty and security of person. When interference ends with the police asking for bribes or an extortion situation, or the situation is otherwise a manifestation of corruption, the corrupt practice creates situations of human rights violations. To threaten individuals with criminal prosecution (i.e. based on planted evidence) is not a human rights violation until the threat becomes reality and the prosecution begins and the individual is detained on criminal charges. Any detention based on planted or constructed evidence means illegal detention, which would violate the right to liberty and security of person.²⁵⁸

Police officers arbitrarily killing individuals are violating the individual's right to life, while enforced disappearances may constitute a violation of the same right.²⁵⁹ Torturing individuals to influence an individual's behavior is a violation of the prohibition of torture,²⁶⁰ and violence by police officers not reaching the threshold of torture is often covered by the same human rights provision under the term "cruel, inhumane or degrading treatment." Improper investigation into allegations of violations of the ICCPR or the ECHR constitutes a violation of the right to a remedy and may also be considered a violation of the relevant human right.²⁶¹

Bribes in the traffic police seems a widespread practice, and in the particular example mentioned in section 4.2.1.5 there is no victim of a human rights violation. Hypothetically though, there could have been one, had the drunk driver for instance been responsible for a lethal accident and bribed his/her way out of charges. Such corruption would violate the

²⁵⁸ See chapter 2.2.3

²⁵⁹ Smith (2003), p. 212

²⁶⁰ See chapter 2.2.2

²⁶¹ Ovey, White (2002), pp. 48-49

right to life. This is important to keep in mind, even if no such explicit examples are sited. Even seemingly innocent corruption in the traffic police may have human rights consequences.

In courts the judge or assizers may rule biased or arbitrarily release individuals from custody. If the ruling is bought the corruption constitutes a violation of the right to a fair trial, considering that the hearing is neither fair nor impartial. Corruption in the courts may also involve giving privileged access to information or creating obstacles for client-lawyer interaction. Both could constitute violations of fair trial provisions.²⁶² Where criminals who influence decisions have committed a violation of a right protected by human rights law, the corruption would also constitute a violation of the relevant right and may also constitute a violation of the right to a remedy.

4.3.2 External links

The second type of link between corruption and human rights is external. This means that there is a causal effect of corruption on human rights violations. One example is the police officers' practice of demanding money to process registration applications which is causally linked to infringements of children's right to primary education. Federal law provides education for all children, but regional authorities often deny access to schools for children of unregistered persons.²⁶³ The violation would be a violation of non-discrimination provisions in relation to the right to education since all rights should be provided to everybody, without discrimination. "No person or group has a right to privileged treatment. Conversely, every citizen is entitled to equality of treatment from public officials in the exercise of their powers, duties and functions."²⁶⁴ In this case, children whose parents are not registered are discriminated against.²⁶⁵ This type of practice would also violate the non-discrimination provision relating to equal protection of the law,

²⁶² See chapter 2.2.5

²⁶³ U.S Department of State (2006)

²⁶⁴ Jayawickrama (1998)

²⁶⁵ Registration problems seem to disproportionately affect ethnic minorities. See International Helsinki Federation for Human Rights (2006), p. 12 regarding Roma.

since this provision provides for protection against discrimination in the practice of the laws.²⁶⁶

As mentioned earlier, police officers go to great lengths to cover up each other's misconduct. It also seems that the relationship between the regular police officers and their superiors is defined by dependency. One might say that the police officers form an informal network, where they are required to follow a set of informal rules. This means that investigation into police misconduct often is not properly conducted, which stimulates an environment of replication of the misconduct. In particular, this relates to investigation into allegations of police torture, meaning that the practice of police torture may continue almost with impunity. In this way one could say that the police corruption causes future violations of the prohibition of torture. The fewer cases solved and tried on torture allegations against police officers, the easier this practice can continue – a practice which is even considered necessary by police officers to do their job. “Indeed, the problem of impunity for these violations [the prohibition of torture, summary and arbitrary killings, and enforced disappearances], a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations.”²⁶⁷ A UN report states that police violence is used to force confessions, to pressure witnesses, to discourage detainees to file a complaint against police, or to extort money. The ill-treatment of detainees is often facilitated by falsified entries in custody registers.²⁶⁸ According to several human rights organizations incidents of police torture are not at all rare,²⁶⁹ and it is even tolerated by society.²⁷⁰ Cases are difficult to bring to trial. The Nizhnii Novgorod Committee Against Torture has received 302 claims of torture, and only ten resulted in conviction.²⁷¹

²⁶⁶ See chapter 2.2.1

²⁶⁷ CCPR General Comment 31 (2004), paragraph 18

²⁶⁸ Nowak (2006), paragraph 251

²⁶⁹ See Amnesty International (2002), Human Rights Watch (1999), *Article 7 (1)* and U.S Department of State (2006)

²⁷⁰ *Russia Nizhnii Novgorod Committee Against Torture: Challenging impunity* (2005)

²⁷¹ *ibid.*

There is also a causal link between corruption in the justice system and a general problem for human rights implementation since the effect of such corruption is to undermine the very foundation upon which human rights implementation rests: judicial independence and the rule of law. Judicial independence presupposes a corruption free judicial system, since the judiciary is neither impartial nor independent if rulings are swayed in one way or another. If there is no judicial independence then the rule of law does not prevail, and this creates problems for the implementation of human rights law. As stated by Mendelson and Gerber corruption in the police contributes to a lack of trust in both the law enforcement agencies and the judicial system. This is critical since trust in the justice system is a crucial element for any rights protection.²⁷² There may well be certain groups of people who are more vulnerable than others. Taking the example of ethnic minorities, Amnesty International reports that ethnically motivated violence and xenophobia is on the rise in Russia.²⁷³ Many of these victims do not trust the police for protection and do not report the incidents in fear of suffering further harassment. As a consequence they may suffer violations of non-discrimination provisions, since they do not, in practice, have the same protection as the rest of the Russian population.²⁷⁴ This indicates that police corruption is causally linked to lack of protection of minorities and violations of the prohibition of discrimination.²⁷⁵ Corruption in the justice system also perpetuates discrimination in general since it means unequal treatment, not based on objective or reasonable criteria.²⁷⁶

4.4 Concluding remarks

The link between corruption in the Russian justice system and human rights violations is here conceptualized in a twofold manner. They may be conceptually related, where an act of corruption in and of itself turns out to be a violation of human rights. This means that the

²⁷² See chapter 3.1

²⁷³ See press release *Russian Federation: Racism and xenophobia rife in Russian society* (2006), the full report has not been possible to access.

²⁷⁴ See chapter 2.2.1 on equality before the law, equal protection of the laws, and non-discrimination by way of law.

²⁷⁵ Protection against violence committed against civilians may possibly also be covered by the right to privacy.

²⁷⁶ Jayawickrama (1998)

two are internally linked. One example is the practice of arbitrary detention as part of the extortion practice. This act constitutes a violation of the right to liberty and security of person. The second type of link is an external link which is causal. This means that corruption causes human rights violations. Here an example would be that corruption undermines fundamental preconditions for human rights implementation.

Obviously, there may well be other reasons for low confidence in the justice system and for the erosion of the rule of law besides corruption. There are certainly several other factors contributing to a difficult climate for human rights observance in Russia. One of these is already mentioned, namely the negative myth of the rule of law. The example in chapter 4.2.1.4 demonstrates that administrative procedures may create opportunities for corruption. In relation to the violation of the prohibition of discrimination of the right to education, the system of residence registration is one factor which in particular contributes to the human rights violation. Officially the Soviet propiska system of registration is abolished, but in some places a similar practice still remains in place and constitutes an obstacle to equal access to public goods such as education.²⁷⁷ One way of assuring rights protection is to eliminate all such procedural obstacles. This may be true regarding the propiska system, especially since it is also considered problematic regarding the right to freedom of movement.²⁷⁸ Looking at it from a more general perspective, though, the problem which must be addressed is the culture of corruption, since not all such administrative procedures are possible or even desirable to abolish.

The next chapter will present two cases where the main focus will be on the internal link between corruption and human rights violations, mainly in relation to fair trial provisions and the right to a remedy. It will, however, also shed some light on the causal effect of corruption on violations of the prohibition of torture, and on the negative effect on public perception of the judicial system contributing to the erosion of the rule of law.

²⁷⁷ U.S Department of State (2006)

²⁷⁸ Concluding Observations of the Human Rights Committee: Russian Federation (1995)

5 Case studies

This chapter introduces the two case studies and analyse them in a human rights perspective. The first is the case of Aleksey Mikheyev, who, as a victim of petty corruption in the police, suffered a violation of the right to a remedy. The second case is the case of Mikhail Khodorkovsky, who is a victim of grand corruption in the judiciary and possibly of violations of the right to a fair trial.

5.1 Aleksey Mikheyev

5.1.1 The case

The case of Aleksey Mikheyev is the first case from the ECtHR where the Russian Federation has been found guilty of police torture.²⁷⁹ The judgement is quite recent and fell on January 26th 2006.²⁸⁰ This case shows signs of the classic corrupt behaviour of police officers who are faced with torture allegations, using their informal networks resorting to intimidation and improper investigation.

Mikheyev and a friend were arrested by the police 10 September 1998 after a mother informed the police that her daughter was disappeared. The two men gave the girl a lift to Nizhniy Novgorod on 8 September, but claimed they had nothing to do with her disappearance.²⁸¹ None of them were charged, but they were still detained. On 12 September three officers from Bogorodsk municipal police filed an “administrative offence report” with a judge of Bogorodsk Town Court. The report stated that on the evening of

²⁷⁹ *Russian Federation: European Court of Human Rights found Russian police guilty of torture and ill-treatment of detainee* (2006)

²⁸⁰ Mikheyev v. Russia

²⁸¹ *ibid.*, regarding the circumstances of the case, paragraph 9-75.

11 September Mikheyev and his friend had committed a “disturbance of the peace” at the railway station.

While detained Mikheyev was repeatedly questioned about the girl. On 16 September the police opened a criminal investigation related to ammunition found in Mikheyev’s car, and he was moved to a detention centre of the Leninskiy police department. The treatment deteriorated and Mikheyev was threatened with torture and electric shock treatment if he did not admit to the murder of the missing girl.

At this point, Mikheyev’s friend had testified that he had seen Mikheyev rape and kill the girl, and gave the police a location where the body was supposedly hidden. The police found nothing when they search the place. Mikheyev was tortured at the presence of several police officers. While handcuffed to his chair he was treated with electric shocks to his earlobes, and he was threatened with severe beating and application of electric shocks to his genitals.²⁸² Mikheyev reported the ill-treatment to the deputy regional prosecutor, but he did not react. He was not present in the room at the time of the torture, but he did question Mikheyev after the ill-treatment. He also ordered the police officers to take Mikheyev “back to where he came from,” when Mikheyev refused to confess the murder.

On 19 September Mikheyev jumped out of the window to commit suicide as a result of the pain he suffered. He fell on a police motorcycle and broke his spine. Mikheyev was taken to hospital, but, even though his mother insisted, the doctors refused to include the burns on his ears in the medical record. On the day that Mikheyev jumped out of the window, the girl, who was allegedly raped and killed, returned home unharmed. She said she had been offered a ride by the two men, and had later stayed with a friend without letting her family know. On 25 September the criminal case concerning the alleged rape and murder of the missing girl was discontinued, but Mikheyev was then charged with abduction. This case was later closed on 1 March 2000. On 1 March 1999 the investigation into the illegal

²⁸² A torture method know as “zvanok Putin”, or “a phone call to Putin”. See Osborn, Independent (31 January 2006)

possession of ammunition was discontinued since Mikheyev had been an officer in the road police at the time.

The case of pre-trial investigation of the alleged torture of Mikheyev was closed and reopened numerous times. The first two investigation rounds were conducted by the same investigator, and when a new was appointed, he still based the discontinuation of the investigation on the same reasoning as made when the investigation was closed the first time, on 21 December 1998. In these reports, the only witness who confirmed to have seen burns on Mikheyev's ears was another patient at the hospital. He was an electrician so he knew what such burns would look like. His testimony was still rejected because he had "no specialist medical knowledge."²⁸³ In November 2000 the case was reopened by another supervising prosecutor, and this time Mikheyev's friend testified that he had been threatened with torture if he did not confess. The officer who threatened him was the same prosecutor who had questioned Mikheyev after he had been tortured. Mikheyev's friend told the officer in charge of the investigation about this, but it was not included in the official records.

During these rounds of investigations the Nizhegorodskiy District Court of Nizhniy Novgorod once quashed a decision to discontinue the investigation. They claimed that Mikheyev's submissions were detailed and consistent and that the case should be investigated more thoroughly. As a result the investigation was reopened, and later, once again, closed. On 2 December 1998 the President of the Nizhniy Novgorod Regional Court also noted that the report on Mikheyev's arrest relating to "disturbance of the peace" was incorrect since he had been in police detention at that time.²⁸⁴

Mikheyev's mother stated that the doctors refused to include remarks of burns on Mikheyev's ears because "they had been given instructions to that effect."²⁸⁵ Another, more objective reason for suspicion is the fact that the case was opened and closed

²⁸³ Mikheyev v. Russia, paragraph 35

²⁸⁴ *ibid.*, paragraph 69

²⁸⁵ *ibid.*, paragraph 39

repeatedly; it was opened for the 24th time after the ECtHR decided to hear the case.²⁸⁶ This indicates that someone within the group of officers conducting the investigation had an interest in obstruct the case investigation. After finally confessing to the murder, the police wanted Mikheyev to confess to at least five other murders as well.²⁸⁷ Mikheyev was also threatened and told he would die in a fake apartment robbery if he did not drop the case.²⁸⁸

Claims of ill-treatment made by both Mikheyev and his friend to the investigating officers were never included in the official documents. Mikheyev's friend told the regional NGO, Nizhniy Novgorod Committee against Torture, that he had seen bruises on Mikheyev's neck when they had met for a short time 18 September.

Medical examination of Mikheyev was carried out only on 26 October 1998, and only a few of the patients and personnel at the hospital were identified and questioned immediately after the case was opened the first time. Other patients and personnel were only included in the investigation in January 2000, after numerous complaints by Mikheyev and his representatives. In August 2002 Mikheyev requested the prosecution to question another patient, but on 5 September 2002 the case was discontinued because, inter alia, that it had been impossible to find this person. As it turns out, the officer who was supposed to question him was one of the officers under investigation. The former patient had been contacted by the police who said they would come to question him, but the investigator never showed up. The fact that an officer under investigation actually was involved in the investigation himself obviously gives him an opportunity to influence the process of investigation. He had an interest in the case not reaching the trial stage, and used the opportunity to avoid questioning a witness. This witness was earlier questioned by the Nizhniy Novgorod Committee against Torture, and stated that he had seen marks on Mikheyev's ears.²⁸⁹

²⁸⁶ Finn, Washington Post (27 March 2005)

²⁸⁷ Osborn, Independent (31 January 2006)

²⁸⁸ *ibid.*

²⁸⁹ Mikheyev v. Russia, paragraph 66

The ECtHR states that one reason for the lack of independence of the investigation is the dual responsibility of the State prosecutors' offices for prosecution and proper conduct of investigation. In this case, the prosecution official, who had supervised the questioning of the applicant on 19 September 1998, performed the role of Nizhniy Novgorod deputy regional prosecutor.²⁹⁰ Such a dual role impairs the independence of an investigation, but cannot be blamed for all the investigative irregularities in this case.

The fact that police officers go to such lengths as to create reports claiming that Mikheyev was responsible for disturbances while he was actually in police custody at least shows that the police is willing to go far to solve crimes – or in this case, solve a crime which was never committed. Three police officers were prosecuted for making false statements, but the charges were dropped because of a “change in circumstances” since one of the officers had been dismissed from his job, and the other two had been transferred to other positions within the Ministry of the Interior. This case was also reopened and closed several times, and the proceedings were still pending in January 2006.²⁹¹

5.1.2 The Mikheyev case as a case of corruption

Relating this case to figure 4.1, the malpractice starts with the torture of Mikheyev, constituting a violation of the prohibition of torture. The reason for this violence seems that the police wanted Mikheyev to confess a murder. As ruled by the ECtHR there were committed a series of acts which lead to a violation of the right to a remedy. But the question remains as to whether these acts were acts of corruption. As in any case of corruption evidence is difficult to find, but relating the patterns found in this case to what is already mentioned about the Russian police, it seems likely that justice was obstructed as a manifestation of police corruption. It may be difficult to separate the use of informal

²⁹⁰ This lack of independence effectiveness has been commented by the UN Committee against Torture. The prosecutor is formally independent from the police and Ministry of Internal Affairs, but they still work closely together. See *Intervention Submission by The Redress Trust, Mikheyev v. The Russian Federation*, p. 5.

²⁹¹ Mikheyev v. Russia, paragraph 71

networks from simply sloppy police work since the result may be the same. It is, however, indicative of reliance on networks when such improper investigation is happening in cases where police officers themselves are under investigation or where they have a clear interest in the outcome of the investigation.

The acts committed by the police officers are classic behaviour, part of a strategy to avoid investigation and prosecution of police torture. Remembering the necessity of performing their police duties “effectively” to be considered a well functioning police unit, and the need to protect and please superior officers to get the bonus salary, covering up police torture by abusing their powers may well be in the personal interest of a regular police officer. In the case of Mikheyev the police officers wanted him to confess not just the murder of the girl he had given a lift, but also several other murders, where there seemingly was no connection between him and the victims. This shows that the police officers in question were eager to “solve crime.” The deputy regional prosecutor was also aware of the torture, but he did not react. This means that not only low level police officers are responsible for the torture, and by obstructing the justice they do not only have to protect themselves from prosecution but also the prosecutor and other senior officers participating in the questioning.²⁹² Igor Kalypin, head of the Niznii Novgorod Committee Against Torture, confirms that there is a climate of impunity regarding police torture. He claims state officials avoid punishment because of their position.²⁹³ He also states that the police is a “self-contained entity” operating without transparency, and that the prosecutors normally side with the police.²⁹⁴

According to the deputy chairwoman of the same organization, Olga Sadovskaya, the investigator and the prosecutor’s offices deliberately dragged out the inquiries into the Mikheyev case.²⁹⁵ Kalypin agrees: “Prosecutors sabotage these cases.”²⁹⁶ This is confirmed by Mikheyev himself, who, after winning the case in the ECtHR, said he would

²⁹² *ibid.*, paragraph 19

²⁹³ *Russia Nizhnii Novgorod Committee Against Torture: Challenging impunity* (2005)

²⁹⁴ *ibid.*

²⁹⁵ Bigg, Radio Free Europe/Radio Liberty (3 February 2006)

²⁹⁶ Finn, Washington Post (27 March 2005)

pursue the case further until all those responsible are punished. He made specific reference to the prosecutors who protected the ones guilty of torture by repeatedly closing the investigation.²⁹⁷

5.1.3 Human rights implications

The ECtHR ruled a violation of article 3, freedom from torture, and 13, the right to a remedy.²⁹⁸ In cases like this one, where police officers in different ways obstruct investigation of alleged torture, their practice firstly, like determined by the ECtHR, violate the right to a remedy. According to the ECtHR a number of the investigative measures were taken very belatedly and there was no doubt that there was a connection between the officials responsible for the investigation and those allegedly involved in the ill-treatment. The Court also noted that the case did not reach the trial stage until seven years after the alleged torture. The corrupt practice, reliance on informal networks conducting improper investigation, constituted a violation of the right to a remedy.

Corruption also facilitates a continued practice of police torture. In cases where the practice of obstruction succeeds, the torture victim may never have his case tried, and no violation will be found, neither of the right to a remedy, nor of the right to freedom from torture. The more widely informal networks within the police are used to obstruct investigation into human rights violations, the less secure these rights are. Hence, corruption is not only violating the right to a remedy, but is also facilitating a continued practice of other human rights violations since the police officers, because of their informal networks, can continue their practice basically with impunity. The case of Mikheyev is, as mentioned earlier, the first case where the ECtHR has ruled that the Russian police has engaged in torture. The prohibition of torture is one right were widespread corruption in the police creates systemic problems in securing it. Obviously, other human rights may suffer the same destiny if police officers there too rely on informal networks to obstruct investigation into violations.

²⁹⁷ Osborn, Independent (31 January 2006)

²⁹⁸ Mikheyev v. Russia.

5.2 Mikhail Khodorkovsky

In this section the focus will be on the trial and conviction of former CEO of Yukos, Mikhail Khodorkovsky. Several others from the same company are also convicted or have recently faced charges, but for the sake of clarity, the scope here is limited to Khodorkovsky. The cases are also considered separate criminal cases within the Russian judicial system. The matter of guilt as to the charges is not of primary interest, and will not be discussed.

5.2.1 The case

Mikhail Khodorkovsky was one of several Russians who, during the time of privatization, were able to get control over a large portion of Russian industry, over a hundred companies in all.²⁹⁹ He invested in timber, titanium and copper smelting, but soon decided to invest in the oil industry. The price of these companies was way below market price; the oil company Gazprom was sold for less than one-thousandth of the value put on it by foreign investment banks.³⁰⁰ What happened during these years of privatization happened in a “vacuum without effective laws” in a weakened state.³⁰¹ “Lying, stealing, and cheating were part of daily business, and violence, brutality, and coercion were often tools of the trade.”³⁰² The question remains how to define the past activity of today’s oligarchs. Was it lawful or was it criminal? That is, however, not really the issue at stake here, still it is important to remember the background of Khodorkovsky’s industrial empire.³⁰³

²⁹⁹ Hoffman (2002), p. 205

³⁰⁰ *ibid.*, p. 205

³⁰¹ *ibid.*, p. 6

³⁰² *ibid.*, p. 6

³⁰³ Some observers claim that the charges brought against Khodorkovsky are both well-based and credible, and that the defence essentially rests on the idea that the large scale corruption of the 1990s should be legitimized. See Lieven, *International Herald Tribune* (10 June 2005)

Khodorkovsky was arrested on October 25 2003 by armed FSB agents. He was charged and prosecuted with fraud and tax evasion. On May 31 he received a nine year sentence of imprisonment.

5.2.2 The Khodorkovsky case as a case of corruption

When discussing the case of Khodorkovsky the case of Vladimir Gusinskiy, the former majority shareholder in ZAO Media Most, a private Russian media holding company, comes to mind. He won his case in the ECtHR, claiming a violation of article 5. He claimed that he was detained because the government wanted to sell his media assets.³⁰⁴ Gusinskiy and Khodorkovsky both were controlling large commercial interests the authorities wanted to control, and Yukos filed a bankruptcy protection in a U.S. court to prevent the Russian government from selling assets.

Many see the prosecution of Khodorkovsky as economically motivated, while other critics say it is politically motivated since Khodorkovsky was politically active, openly supporting the opposition parties,³⁰⁵ organizations and media critical to the Putin administration.³⁰⁶ The Council of Europe rapporteur on the Yukos case, Sabine Leutheusser-Schnarrenberger, concludes in her report that “the presence of an interest of the State that exceeds its normal interest in criminal justice being done and includes such elements as: to weaken an outspoken political opponent, to intimidate other wealthy individuals, and to regain control over “strategic” economic assets – can hardly be denied.”³⁰⁷ “[The arrest and prosecution of Yukos executives is] a clear case of non-conformity with the rule of law and [...] these executives were – in violation of the principle of equality before the law – arbitrarily singled out by the authorities.”³⁰⁸ The claim is supported by various human rights organizations like the Freedom House stating that “Khodorkovsky and his associates were

³⁰⁴ Gusinskiy v. Russia

³⁰⁵ Moskalenko, The Wall Street Journal (16 December 2004)

³⁰⁶ U.S Department of State (2006)

³⁰⁷ Leutheusser-Schnarrenberger (2004)

³⁰⁸ *PACE Resolution 1418 (2005) The circumstances surrounding the arrest and prosecution of leading Yukos executives* (2005)

singled out by the Russian authorities as soon as they expressed concern with an increasing authoritarian government.” Freedom House also states that many other business leaders could be charged with the same crimes, but those who are prosecuted are those who challenge the regime.³⁰⁹ The timing of these cases also seems connected to the Kremlin’s political agenda, since most of the crimes are committed years ago and could have been investigated much earlier.³¹⁰

When he came to power Putin made a tacit agreement with the oligarchs; if they stay out of politics the state administration would stay out of their business. Several observers of the case think Khodorkovsky violated this agreement by seeking political power.³¹¹ As a consequence Putin manipulated the corrupt political and legal systems to silence Khodorkovsky.³¹² Robert Amsterdam, defence attorney for Khodorkovsky, claims that the state’s motive for prosecution is twofold: “to eliminate Mr. Khodorkovsky as a political opponent, and to eliminate Yukos as a competitor to state-owned energy companies.”³¹³ Making such a tacit agreement with certain business interests which would give them preferential status and treatment would constitute grand corruption. Initiating a criminal prosecution as a punishment for breaking the agreement means to initiate a process of selective application of the law to secure power and status or other personal interests. This would be an example of grand corruption.³¹⁴ Regarding the economic motive, on December 19 2004 Yukos’ main production unit, Yuganskneftegaz, was auctioned off by the Russian government.³¹⁵

According to Taras Kuzio there is a close relationship between “the deterioration of democratization in the CIS, creation of hybrid regimes by elites who have “captured” the state, and corruption.”³¹⁶ Kuzio also claims that the prosecution of Khodorkovsky is not

³⁰⁹ *Russia: Khodorkovsky sentencing illuminates erosion of rule of law* (2005) , see also Kuzio (2003)

³¹⁰ *E.U.-Russia Foreign Ministerial Meeting* (2004)

³¹¹ *Recent Cases*, Kuzio (2003)

³¹² *Recent Cases*

³¹³ *Rosneft IPO represents nothing but the syndication of the gulag* (2006)

³¹⁴ See definition in chapter 1.5

³¹⁵ *The case*

³¹⁶ Kuzio (2003)

part of an anti-corruption campaign, rather selective enforcement of the law which is a phenomenon applied throughout CIS states.

Leutheusser-Schnarrenberger presents two main groups of explanations of the Khodorkovsky case. The first is that this is only the beginning of a campaign to reassert the authority of the State and to enforce one legal standard for all. Any procedural violations are committed by sheer incompetence. The second explanation is that this is part of a long term strategy to centralize power in Kremlin. It started with the prosecution of Gusinskiy and the takeover of NTV to warn all media companies, making actual censorship unnecessary. The next step is attacking the oligarchs who have advanced transparency in business and who have funded civil society groups and opposition parties. The final step would be an attack on the independence of civil society organizations. This was only predicted in 2004, but has actually been introduced since then. On January 10 Putin signed legislation introducing new restrictions on NGOs, expanding the grounds for closing or denying their registration.³¹⁷ In the name of national interest and security it opens for government investigation of organizations, and it imposes restrictions on foreign funding and having foreigners working in the offices.³¹⁸ The Federal Registration Service already claims the dissolution of Russia's Human Rights Center.³¹⁹

According to Katarina Moskalenko, one of Khodorkovsky's lawyers, the General Prosecutor's office and the courts are subject to manipulation by the government. They are "instruments to intimidate and subdue critics of the state."³²⁰ According to her one judge has been removed from the Yukos tax case because a failure to conduct the trial as expected by political superiors.³²¹ Hearings are kept in small court rooms to keep media out, and the main national television media are all controlled by the State, preventing independent media coverage. Moskalenko also points to several procedural errors under the investigation. Robert Amsterdam, another Yukos lawyer, was visited in his hotel room by

³¹⁷ *Russia/France summit must spotlight NGO protection* (2006)

³¹⁸ *European Commission reacts to new Russian NGO law* (2006)

³¹⁹ *Russia's Justice Ministry to Wind Up Human Rights Center* Newspaper 27 January 2006

³²⁰ Moskalenko, *The Wall Street Journal* (16 December 2004)

³²¹ The Yukos tax case is separate from the criminal case against the former Yukos executives.

five men and had his visa revoked. The Interior Ministry denies involvement, so does the FSB.³²² Amsterdam has been publicizing the Yukos case in the West and is expected to play a leading role in any appeal to the ECtHR.

The court's reasoning in the judgement is almost identical with the pleadings of the prosecution, and the judgement undermines trust in Russia and shows a lack of legal certainty.³²³ Khodorkovsky was denied bail, which could be another sign of excessive government interest in the case since persons accused of economic crimes are generally not placed in pre-trial detention.³²⁴

“The manner of his arrest, the length of his jailing and the assigning of the case to a court that is well-known in Russian legal circles for its slavish obedience to the will of the state prosecutor are indicative of the corruption of democratic institutions and processes under President Putin.”³²⁵

5.2.3 Human rights implications

“The trial against the former leading executives of Yukos, the oil company that is meanwhile almost totally dismantled, was won by the enemies of the rule of law and the independence of the judiciary.”³²⁶ Leutheusser-Schnarrenberger points to numerous procedural shortcomings and that the judgement is revenge for political opposition. In her final report, Leutheusser-Schnarrenberger points to a possible violation of the right to liberty and security of person, when denying bail, referring to the case of *Letellier v. France*. She also raises issues of concern relating to article 6 ECHR, the right to a fair trial. The lawyers had difficulties getting the “permission” from the prosecutor's office to access the clients in the pre-trial detention facilities. According to the prosecutors such

³²² Tim Wall, *St. Petersburg Times* (27 September 2005)

³²³ *M. Khodorkovsky convicted: the trial was won by the enemies of the rule of law, says rapporteur*

³²⁴ *ibid.*, and *PACE Resolution 1418 (2005) The circumstances surrounding the arrest and prosecution of leading Yukos executives (2005)*, paragraph 8vii

³²⁵ *Comments in the media*

³²⁶ *M. Khodorkovsky convicted: the trial was won by the enemies of the rule of law, says rapporteur*

“permissions” are no longer needed, but a “supportive letter” to facilitate access is common practice. The gap between law and practice makes the lawyer’s job more difficult, and the difficulties vary with the sensitivity of the case. On several occasions there has also been a breach of the lawyer-client privilege, which is protected under the right to a fair trial. The office of lawyer Anton Drel was searched and documents were seized.³²⁷ Confidential papers have also been confiscated when lawyers have visited pre-trial detention facilities. Lawyers also suspect that their conversations are taped and listened to by the authorities. The defence also claims that there has been an unfair limitation of the time for their clients to familiarize themselves with the files.³²⁸ All this may raise issues under ECHR article 6.3.b, relating to the right to adequate time and facilities to prepare for the defence.

Leutheusser-Schnarrenberger also claims that most pre-trial hearings were held in camera. When open, the court rooms were small, and most seats already taken by men in uniform. Some journalists were denied entry and the procedure to enter the court room was inconvenient. This may raise concerns in relation to ECHR article 6.1 and the right to a public hearing. As stated in chapter 2.2.5, a hearing should only be closed under special circumstances and the right to a public hearing exists as a guarantee against arbitrary decisions.

The prosecutor was systemically allowed to read out the minutes of the pre-trial interrogation of witnesses. Then the prosecutor spent time in the court room, pressuring the witnesses to confirm those minutes almost phrase by phrase. This undermines the effectiveness of the right of the defence to question the witnesses of the prosecution and raises concern about the principle of equality of arms, inherent in the right to a fair trial.³²⁹

³²⁷ *Russian Federation - Yukos Lawyer Harassed* (2003)

³²⁸ Lautheusser-Schnarrenberger (2004)

³²⁹ See chapter 2.2.5

If the law is applied selectively to Khodorkovsky, as is claimed by human rights organizations, the Council of Europe and even British courts,³³⁰ this would constitute a violation of non-discrimination provisions which provide for equality of all before the law.³³¹

5.3 Concluding remarks

This chapter has served as a more thorough investigation into the human rights consequences of corruption in the Russian justice system, illustrating the consequences mainly at the individual level. The case of Mikheyev illustrates police officers' reliance on informal networks when faced with allegations of torture. They resort to corrupt practices like improper medical examination of the torture victim and belated and improper investigation in general. The officers are willing to exceed their powers to avoid criminal charges for themselves or colleagues. They are also willing to continue a practice of police violence to solve crimes (and protect this practice with corruption) which increases the likelihood of getting bonus payments. The ECtHR ruled a violation of the right to a remedy as a result of improper police investigation.

The case of Khodorkovsky is an example of how grand corruption is played out in a court of law. The Council of Europe rapporteur on the Yukos case observes possible violations of both the right to a fair trial and right to liberty and security of person. She does, however, clearly state that she does not proclaim a final judgement since she does not want to prejudge any future findings of the ECtHR.³³² Some observers have commented how this case has been a litmus test on the Russian judicial system – which ultimately failed.³³³

³³⁰ *PACE Resolution 1418 (2005) The circumstances surrounding the arrest and prosecution of leading Yukos executives (2005) and Russian Federation: The case of Mikhail Khodorkovskii and other individuals associated with YUKOS (2005)*

³³¹ See chapter 2.2.1

³³² Leutheusser-Schnarrenberger (2004), paragraph 4

³³³ *M. Khodorkovsky convicted: the trial was won by the enemies of the rule of law, says rapporteur*

6 Conclusion

In this thesis I have investigated the relationship between corruption in the Russian justice system and human rights implementation. The findings confirmed my main hypothesis: corruption in the Russian justice system increases human rights abuses. Corruption and human rights are here linked in two ways: conceptually or causally.

The conceptual link means that corruption behaviour may be internally linked to human rights violations, constituting violations of human rights law in and of itself. Rights affected are the right to liberty and security of person, the right to privacy, the right to a fair trial, prohibition of discrimination, and the right to a remedy. Causally, corruption may infringe the prohibition of discrimination and the prohibition of torture. Corruption in the justice system leads to erosion of the rule of law and violations of judicial independence, undermining fundamental preconditions for any human rights implementation. The case studies exemplify human rights consequences of corruption, demonstrating the effects of petty corruption and grand corruption, in the police and judiciary, respectively. The case of Mikheyev illustrates the informal networks as a means to perform corrupt acts, which in the Russian police contributes to a climate of impunity, creating possibilities for further human rights violations. The case of Khodorkovsky demonstrates the government's willingness and ability to interfere in a court of law, selectively applying laws, and violating fair trial provisions.

These preliminary findings are considerable enough to justify further research. The causal effect should be further analysed controlling for the effects of other factors, relying on other types of research methodology. What has been firmly established in this thesis is that certain acts of a corruption are themselves violations of human rights. This means that human rights violations in the Russian Federation cannot only be addressed as such. Human rights awareness should go hand in hand with anti-corruption initiatives.

This thesis clearly demonstrates the need for the Russian Federation to implement effective anti-corruption strategies to honour its human rights obligations. What types of counter-measures which should be implemented is left to others to decide, but they must provide security against human rights violations. They must adequately be provided with democratic checks and balances, to avoid politicization of the anti-corruption strategy.³³⁴ This is already a problem in Russia and other CIS states where anti-corruption campaigns sometimes are used as political tools to root out opposition.³³⁵ According to Kumar this can be avoided by recognizing corruption as a human rights issue since it “broadens the scope for engagement and political consensus can be developed to ensure that such a violation of human rights is uniformly recognized without any form of discrimination.”³³⁶

³³⁴ Kumar (2004), p. 342

³³⁵ See Kuzio (2003) and Freedom House (2004)

³³⁶ Kumar (2004), p. 350

References

Legal sources

Legal instruments and case law

1945 *United Nations Charter*

1950 *The European Convention for the Protection of Human Rights and Fundamental Freedoms*

1960 *Convention against Discrimination in Education*

1966 *International Covenant on Economic, Social and Cultural Rights*,
(GA/Res/2200A(XXI))

1966 *International Covenant on Civil and Political Rights*, (GA/Res/2200A(XXI))

1969 *Vienna Convention on the Law of Treaties*

1984 *Convention against Torture and other cruel, inhumane or degrading treatment or punishment*, (GA/Res/39/46)

1989 *Convention on the Rights of the Child*, (GA/Res/44/25)

1996 Federal Constitutional Law, No 1-FKZ of Dec. 31 1996 On the judicial system of the Russian Federation, 31 December 1996, Russian Federation.

Chahal v. United Kingdom. European Court of Human Rights (1996),
Application no. 22414/93

Gusinskiy v. Russia. European Court of Human Rights (2004),
Application no. 70276/01

Incal v. Turkey. European Court of Human Rights (1998),
Application no. 41/1997/825/1031

Ireland v. United Kingdom. European Court of Human Rights (1978),
Application no. 5310/71

Klass and others v. Germany. European Court of Human Rights (1978),
Application no. 5029/71

Mikheyev v. Russia. European Court of Human Rights (2006),
Application no. 77617/01

Soering v. The United Kingdom. European Court of Human Rights (1989),
Application no. 14038/88 ion no. 14038/88

General Comments and Concluding Observations

1982 CCPR General Comment 8. UN Human Rights Committee (CCPR/C/21/Rev.1)
30 July 1982.

1984 CCPR General Comment 13. UN Human Rights Committee (CCPR/C/21/Rev.1)
13 April 1984.

1988 CCPR General Comment 16. UN Human Rights Committee (CCPR/C/21/Rev.1)
8 April 1988.

1989 CCPR General Comment 18. UN Human Rights Committee
(CCPR/C/21/Rev.1/Add.1) 10 November 1989.

1990 CESCR General Comment 3. UN Committee on Economic, Social and Cultural
Rights (E/1991/23) 14 December 1990.

1992 CCPR General Comment 20. UN Human Rights Committee
(CCPR/C/21/Rev.1/Add.3) 10 March 1992.

1995 Concluding Observations of the Human Rights Committee: Russian Federation.
Human Rights Committee (CCPR/C/79/Add.54) 26 July 1995.

1999 CESCR General Comment 13. UN Committee on Economic, Social and Cultural
Rights (E/C.12/1999/10) 8 December 1999.

2001 CCPR General Comment 29. UN Human Rights Committee
(CCPR/C/21/Rev.1/Add.11) 31 August 2001.

2004 CCPR General Comment 31. UN Human Rights Committee (CCPR/C/21/Rev.1/Add.13) 29 March 2004.

Literature

Amsterdam, Robert R. *Rosneft IPO represents nothing but the syndication of the gulag*, Press Center for Mikhail Khodorkovsky (web)
Accessed:http://www.mbktrial.com/qanda/violations_01May2006.cfm
(23 May 2006).

Andvig, Jens Christopher...[et al.]. *Corruption : a review of contemporary research*, Norwegian Institute of International Affairs, (2001).

A review of human rights violations by law enforcement officials in Russia, Public Verdict Foundation, (2004),
Accessed:http://www.pulicverdict.org/eng/articles/police/review_of_human.html

Article 7 (1), Moscow Helsinki Group (web)
Accessed:<http://www.mhg.ru/english/1F25799> (22 May 2006).

Belton Kleinfeld, Rachel. *Competing definitions of the rule of law. Implications for practitioners*, Carnegie Endowment for International Peace, (2005),
Accessed:<http://www.carnegieendowment.org/files/CP55.Belton.FINAL.pdf>

Bigg, Claire. *Russians increasingly seek redress in European Court*, Radio Free Europe/Radio Liberty, 3 February 2006, Accessed:
<http://www.rferl.org/featuresarticleprint72006/02/deb146c3-60a5-4a03-8c3d-e86a686f727a.html>

Burger, Ethan S. *Corruption in the Russian Arbitrazh Courts: Will there be significant progress in the near term?*, Vol. 38 International Lawyer, pp. 15-34 (2004).

Butler, William E. *Russian Law*, Oxford: Oxford University Press, (1999).

Butler, William E. *The Law of Treaties in Russia and the Commonwealth of Independent States. Text and Commentary*, Cambridge: Cambridge University Press, (2002).

Chevallier, Claire. *Euroeapan Commission reacts to new Russian NGO law*, Bellona, (web)
Accessed:
http://www.bellona.no/en/international/russia/envirorights/info_access/42516.html

- Cockburn, Patrick. *City Life: Moscow - In Russia you are guilty till proven innocent - that goes for judges too*, Independent, 6 November 2000, Accessed:
http://www.findarticles.com/p/articles/mi_qn4158/is_20001106/ai_n14343565
- Comments in the media*, Supprtmbk.com (web)
 Accessed:http://www.supportmbk.com/support/comments_media.cfm
 (23 May 2006).
- Confessions at any costs. Police Torture in Russia*, Human Rights Watch, (1999),
 Accessed:<http://www.hrw.org/reports/1999/russia/>
- Corruption and Human Rights Should Top Agenda for Clinton-Yeltsin Summit*, Human Rights Watch (web) 28 August 1998,
 Accessed:<http://www.commondreams.org/pressreleases/Aug98/082898a.htm>
- Corruption glossary*, U4 Utstein Anti-Corruption Resource Centre (web)
 Accessed:<http://www.u4.no/document/faqs5.cfm> (21 May 2006).
- Corruption Perception Index 2005*, Transparency International (web) Accessed:
http://www.transparency.org/policy_and_research/surveys_indices/cpi/2005
 (20 April 2006).
- Corruption process in Russia: level, structure, trends*, INDEM, (2005),
 Accessed:http://www.indem.ru/en/publicat/2005diag_engV.htm
- Country Reports on Human Rights Practices. Russia*, U.S. Department of State, (2004),
 Accessed:<http://www.state.gov/g/drl/rls/hrrpt/2004/41704.htm>
- Despouy, Leandro. *Civil and Political Rights, including the questions of independence of the judiciary, administration of justice, impunity*, Economic and Social Council (E/CN.4/2004/60), (31 December 2003).
- Eide, Asbjørn, Torkel Opsahl. *Equality and Non-Discrimination*, Norwegian Institute of Human Rights, (1990).
- Eide, Asbjørn. *Report on the right to adequate food as a human right*, Economic Social Council (E/CN.4/Sub.2/1987/23), (7 July 1987).
- Fijnaut, Cyrille, Leo Huberts. *Corruption, Integrity and Law Enforcement*, In Cyrill Fijnaut, Leo Huberts (ed.) *Corruption, Integrity and Law Enforcement*, Hague: Kluwer Law International, (2002).

- Filipov, David. *In Russia, police on wrong side of the law*, Boston Globe, 31 May 2004, Accessed:
http://www.boston.com/news/world/articles/2004/05/31/in_russia_police_on_wrong_side_of_the_law?mode=PF
- Finn, Peter. *Fear Rules in Russia's Courtrooms*, Washington Post, 27 February 2005, Accessed:
<http://www.washingtonpost.com/wp-dyn/articles/A56441-2005Feb26.html>
- Finn, Peter. *For Russians, Police Rampage Fuels Fear*, Washington Post, 27 March 2005, Accessed:
<http://www.washingtonpost.com/ac2/wp-dyn/A40092005Mar26?language=printer>
- Freedom in the World. Country report. Russia.2004*, Freedom House, (2004), Accessed:
<http://www.freedomhouse.org/template.cfm?page=22&year=2004&country=3013>
- Frye, Timothy. *The two faces of Russian courts: evidence from a survey of company managers*, Vol. 11, No ½, East European Constitutional Review, (2002).
- Gridneva, Mariya. *The Court of Corruption. Bandits and Businessmen Include Bribes for Judges in "production costs"*, 3 July 2003.
- Grødeland, Åse B. *Informal Networks and Corruption*, New Frontiers of Social Policy: Development in a Globalized World, (2005)
- Hoffman, David E. *The Oligarchs. Wealth and power in the new Russia*, PublicAffairs, (2002).
- Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2006. Russian Federation*, International Helsinki Federation for Human Rights, (2006), Accessed:
http://www.ihf-hr.org/viewbinary/viewdocument.php?download=1&doc_id=6800
- Høstmælingen, Njål. *Internasjonale Menneskerettigheter*, Oslo: Universitetsforlaget, (2003).
- Interdependence between democracy and human rights*. Economic and Social Council (E/CN.4/2005/58), 18 March 2005.
- Intervention Submission by The Redress Trust, Mikheyev v. The Russian Federation*, Redress, Accessed:
<http://www.redress.org/casework/Mikheyev15.03.pdf>
- Jayawickrama, Nihal. *Combating Judicial Corruption*, Commonwealth Judicial Colloquium on Combating Corruption within the Judiciary, Cyprus, (2002)

- Jayawickrama, Nihal. *Corruption - a violation of human rights?*, Transparency International (1998). Accessed: http://ww1.transparency.org/working_papers/jayawickrama/jayawickrama.html (27 May 2006)
- Judicial System of the Russian Federation and the Supreme Court of the Russian Federation*, The Supreme Court of the Russian Federation (web) Accessed: <http://www.supcourt.ru/EN/supreme.htm> (20 April 2006).
- Kalniņš, Valts. *Assessing trends in corruption and impact of anti-corruption measures*, (2005).
- Karklins, Rasma. *The System Made Me Do It. Corruption in post-communist societies*, New York: M.E. Sharpe, (2005).
- Kelly, F.B William. *An independent judiciary: the core of the rule of law*, Accessed: http://www.icclr.law.ubc.ca/Publications/Reports/An_Independent_Judiciary.pdf (27 May 2006)
- Kishkovsky, Sophia. *Critics See Kremlin's Hand in Charges Against Ex-K.G.B. Agent*, New York Times, 12 December 2004, Accessed: <http://eng.trepashkin.ru/press/81282.html>
- Kofele-Kale, Ndiva. *The right to a corruption-free society as an individual and collective human right: elevating official corruption to a crime under international law*, Vol. 34 International Lawyer, pp. 149-178 (2000).
- Kumar, C. Raj. *Human rights approaches of corruption control mechanisms - enhancing the Hong Kong experience of corruption prevention strategies*. Vol. 5 San Diego International Law Journal, pp. 323-351 (2004).
- Kumar, C. Raj. *The human right to corruption-free service - some constitutional and international perspectives*, 19 Frontline, (2002). Accessed: <http://www.flonnet.com/fl1919/19190780.htm>
- Kurkchian, Marina. *The illegitimacy of Law in Post-Soviet Societies*, In Marina Kurkchian, Denis J. Galligan (ed.), *Law and informal practices. The post-communist experience*, New York: Oxford University Press, (2003)
- Kuzio, Taras. *Corruption and democratization in the CIS*, RFE/RL Organized Crime and Terrorism Watch, (2003), Accessed: <http://www.ukrweekly.com/Archive/2003/470306.shtml>

- Lajcakova, Jarmila. *Violation of human rights through state tolerance of street-level bribery: case study, Slovakia*, Vol. 9 Buffalo Human Rights Law Review, pp. 111-160, (2003).
- Langseth, Peter, Oliver Stolpe. *Strengthening Judicial Integrity against Corruption*, UN Global programme against corruption, Centre for international crime prevention, Office for drug control and crime prevention, (2001), Accessed:<http://www.unodc.org/pdf/crime/gpacpublications/cicp10.pdf>
- Latynina, Yulia. *Police are at war with the Russian people*, Moscow Times, 11 August 2004, Accessed:<http://www.cdi.org/russia/Johnson/8323-6.cfm>
- Ledeneva, Alena V. *Russia's economy of favours : Blat, networking and informal exchange*, Cambridge: Cambridge University Press, (1998).
- Leicht, Lotte, Rachel Denber. *E.U.-Russia Foreign Ministerial Meeting*, Heinrich-Böll-Stiftung (web) Accessed:http://www.boell.de/de/05_world/2494.html (23 May 2006).
- Leutheusser-Schnarrenberger, Sabine. *The circumstances surrounding the arrest and prosecution of leading Yukos executives*, PACE Council of Europe, 29 November 2004, Accessed: [http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/documents/Working Docs/doc04/EDOC10368.htm](http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/documents/Working_Docs/doc04/EDOC10368.htm)
- Lieven, Anatol. *Is Khodorkovsky Really the Victim?*, International Herald Tribune, 10 June 2005, Accessed: <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=17066>
- Manandhar, Narayan. *Corruption: Grand vs petty*, eKantipur.com, 26 March 2006, Accessed:<http://www.kantipuronline.com/kolnews.php?&nid=69454>
- Mbonu, Christy. *Corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights*. Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, (E/CN.4/Sub.2/2004/23), (7 July 2004).
- Mbonu, Christy. *Corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights*, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, (E/CN.4/Sub.2/2005/18), (22 June 2005).
- Mendelson, Sarah E, Theodore P. Gerber. *Fear and Loathing of Police Violence and Corruption in Russia: Prevalence, Correlates and Consequences*, (2005).

- Mereu, Francesca. *Judges who lost their jobs speak out*, Moscow Times, 6 October 2004, Accessed:<http://www.cdi.org/russia/johnson/8396-9.cfm>
- Miller, William L., Åse B. Grødeland and Tatyana Y. Koshechkina. *A culture of corruption? : coping with government in post-communist Europe*, Budapest: CEU Press, (2001).
- M. Khodorkovsky convicted: the trial was won by the enemies of the rule of law, says rapporteur, Council of Europe (web)
Accessed:<http://assembly.coe.int/ASP/APFeaturesManager/defaultArtSiteView.asp?ArtId=220> (13 April 2006).
- Moskalenko, Karinna. *Russia on Trial*, Wall Street Journal, 16 December 2004, Accessed:http://www.sovest.org/gb/russiaontrial_en.htm
- Myers, Steven Lee. *Pervasive corruption in Russia is "Just Called Business"*, 13 August 2005, New York Times, Accessed:<http://www.indem.ru/en/publicat/Pervasive.htm>
- Nations in Transit – Russia*, Freedom House, (2005), Accessed:http://www.freedomhouse.org/inc/content/pubs/nit/inc_country_detail.cfm?page=47&nit=366&year=2005&display=law&pf
- Nemtsova, Anna. *Russia: A Phone Call to Putin. How do Kremlin authorities deal with whistle-blowers? Silence them*, Newsweek International, 13 March 2006, Accessed:<http://www.msnbc.msn.com/id/11677921/site/newsweek/>
- Nowak, Manfred. *Civil and political rights, including the questions of torture and detention. Torture and other cruel, inhumane or degrading treatment of punishment. Addendum Follow-up to recommendations made by the Special Rapporteur. Visits to Azerbaijan, Brazil, Cameroon, Chile, Mexico, Romania, the Russian Federation, Spain, Turkey, Uzbekistan and Venezuela.*, Economic and Social Council, (E/CN.4/2006/6/Add.2), (21 March 2006).
- Nowak, Manfred. *U.N. Covenant on Civil and Political Rights. CCPR Commentary*, 2nd revised edition, Kehl: N.P.Engel Publisher, (2005).
- Orttung, Robert, Christopher Walker. *Russian police: steps Toward Democracy*, Newsday, 3 March 2005, Accessed:<http://www.american.edu/tracc/resources/publications/orttung05.doc>
- Osborn, Andrew. *Victim of torture by Russian police wins landmark payout*, Independent, 31 January 2006, Accessed:<http://www.rusnet.nl/news/2006/01/31/report01.shtml>

- Ovey, Clare, Robin C.A. White. *European Convention on Human Rights*, Third edition, New York: Oxford University Press, (2002).
- PACE Resolution 1418 (2005) The circumstances surrounding the arrest and prosecution of leading Yukos executives*, Council of Europe (23 May 2004).
- Politically motivated legal cases in present day Russia*, Conference: Politically motivated legal cases in present day Russia, Moscow, (2005)
- Press Center Mikhail Khodorkovsky* (web)
Accessed:<http://www.mbktrial.com/media/20060403-0409.cfm> (12. April 2006).
- Recent Cases*, Project for Russian Human Rights (web)
Accessed:<http://www.russiaontrial.org/cases/yukos.html> (23 May 2006).
- Reparation for Torture: A Survey of Law and Practice in 30 Selected Countries (Russia Country Report)*, Redress, (2003),
Accessed:<http://www.redress.org/studies/Russia.pdf>
- Report on the Sixtieth Session Commission on Human Rights*, UN Economic and Social Council, (E/CN.4/2004/127).
- Rough Justice: The law and human rights in the Russian Federation*, Amnesty International Publications, (2003),
Accessed:<http://www.amnesty.org/russia/pdfs/justice-report-eng.pdf>
- Russia. Country Report on Human Rights Practices*, U.S Department of State (2006),
Accessed:http://moscow.usembassy.gov/embassy/print_human_rights_2005.php
- Russia/France summit must spotlight NGO protection*, Human Rights Watch (web)
Accessed:<http://hrw.org/english/docs/2006/02/11/russia12656.htm> (18 April 2006).
- Russia: Importance of an Independent Judiciary*, Human Rights First (web)
Accessed:http://www.humanrightsfirst.org/defenders/hrd_russia/hrd_russia_03.htm (22 May 2006).
- Russia: Khodorkovsky sentencing illuminates erosion of rule of law*, Freedom House (web), 31 May 2006, Accessed:
http://www.mbktrial.com/pdfs/Freedom_House_31May2005.pdf (23 May 2006).
- Russian Federation: European Court of Human Rights found Russian police guilty of torture and ill-treatment of detainee*, Amnesty International (web)
Accessed:<http://web.amnesty.org/library/Index/ENGEUR460042006?open&of=ENG-2U4> (26 May 2006).

- Russian Federation - ICJ concerned over conviction of lawyer*, International Commission of Jurists (web), 19 April 2005
 Accessed:http://www.icj.org/news.php3?id_article=3679&lang=en
 (12 April 2006).
- Russian Federation: Racism and xenophobia rife in Russian society*, Amnesty International (web) Accessed:<http://web.amnesty.org/library/Index/ENGEUR460182006>
 (22 May 2006).
- Russian Federation: The case of Mikhail Khodorkovskii and other individuals associated with YUKOS*, Amnesty International (web)
 Accessed:<http://web.amnesty.org/library/Index/ENGEUR460122005?open&of=ENG-RUS> (23 May 2006).
- Russian Federation - Yukos Lawyer Harassed*, International Commission of Jurists (web) 14 November 2003,
 Accessed:http://www.icj.org/news.php3?id_article=3171&lang=en
- Russia Nizhnii Novgorod Committee Against Torture: Challenging impunity*, The John D. and Catherine T. MacArthur Foundation (web)
 Accessed:<http://www.macfound.org/site/c.lkLXJ8MQKrH/b.1038727/apps/s/content.asp?ct=1544751> (21 May 2006).
- Russia's Justice Ministry to Wind Up Human Rights Center*. Kommersant,
 Accessed:<http://www.kommersant.com/page.asp?id=-8018> (27 May 2006)
- Section 1: The Nature of Corruption*, The United Kingdom Parliament (web)
 Accessed:<http://www.publications.parliament.uk/pa/cm200001/cmselect/cmintdev/39/3906.htm> (21 May 2006).
- Situation in the Russian law-enforcement system and its influence on human rights observance*, Public Verdict Foundation, Moscow (2005),
http://www.publicverdict.org/eng/articles/researches/analytical_report.html
- Smith, Rhona K.M. *Textbook on International Human Rights*, New York: Oxford University Press, (2003).
- Solomon, Peter H. *Informal practices in Russian justice: Probing the limits of Post-Soviet reform*, VII ICCEES World Congress, "Law versus Informal Practices: Obstacles to Legal Order in Post-Soviet States", Berlin, (2005)
- Solomon, Peter H. *Judicial power in Russia: Through the prism of administrative justice*, Vol. 38 Law and Society Review pp. 549-581 (2004).
- Steinfeld, Hans Wilhelm. *Frihetens bitre tiår*, Oslo: Cappelen, (2001).

- Studies in contemporary history and Security Policy*, 6th International Security Forum,
 Accessed:<http://penguin.ethz.ch:81/serviceengine/FileContent?serviceID=ISFPub&fileid=4CC4C305-CDFE-064C-6270-3317C15EB4AF&lng=en>
- Tamanaha, Brian Z. *On the rule of law : history, politics, theory*, Cambridge: Cambridge University Press, (2004).
- The case*, Press Center for Mikhail Khodorkovsky (web)
 Accessed:<http://www.mbktrial.com/about/> (23 May 2006).
- The Russian Federation. Denial of Justice*, Amnesty International, (2002),
 Accessed:[http://web.amnesty.org/aidoc/ai.nsf/afec99eadc40eff880256e8f0060197c/926470531af8183580256c36005337be/\\$FILE/denial_of_justice.pdf](http://web.amnesty.org/aidoc/ai.nsf/afec99eadc40eff880256e8f0060197c/926470531af8183580256c36005337be/$FILE/denial_of_justice.pdf)
- The Trepashkin Case, ECHR admissibility*, Foundation for Civil Liberties (web)
 Accessed:<http://eng.trepashkin.ru/reaction/95790.html> (12 April 2006).
- The Trepashkin case*, Foundation for Civil Liberties (web)
 Accessed:<http://eng.trepashkin.ru/court/> (12 April 2006).
- Trafficking in Persons Report*, U.S. Department of State, (2005),
http://www.usembassy.ru/bilateral/bilateral.php?record_id=report_trafficking_2005
- Truelove, Andreanna M. *Oil, diamonds, and sunlight: fostering human rights through transparency in revenues from natural resources*, Vol. 35 Georgetown Journal of International Law pp. 207-230 (2003).
- Wall, Tim, Catherine Belton. *Canadian defence lawyer forced to leave*,
 St. Petersburg Times, 27 September 2005,
 Accessed:<http://www.sptimes.ru/story/15652>
- World Report*, Human Rights Watch, (2006),
 Accessed:<http://www.hrw.org/wr2k6/wr2006.pdf>
- Yavlinsky, Grigory. *Reforms that corrupted Russia*, Financial Times (UK), September 3 2003, Accessed:http://www.eng.yabloko.ru/Publ/2003/PAPERS/9/030903_ft.

