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CONSEJO DE DERECHOS HUMANOS  
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Tema 3 de la agenda

**PROMOCIÓN Y PROTECCIÓN DE TODOS LOS DERECHOS HUMANOS,  
CIVILES, POLÍTICOS, ECONÓMICOS, SOCIALES Y CULTURALES,  
INCLUIDO EL DERECHO AL DESARROLLO**

**Informe del Relator Especial sobre la independencia de los  
magistrados y abogados, Leandro Despouy**

**Adición**

**MISIÓN A LA FEDERACIÓN DE RUSIA \***

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\* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe, que figura en el anexo del resumen, se distribuye como se presentó, en el idioma original y en ruso.

## Resumen

El Relator Especial sobre la independencia de los magistrados y abogados visitó la Federación de Rusia del 19 al 29 de mayo de 2008 por invitación del Gobierno. El Relator Especial está muy agradecido al Gobierno por haberle brindado esta oportunidad única de examinar los avances de las reformas judiciales en el país hasta la fecha. El Relator Especial agradece la cooperación plena del Gobierno y la franqueza y apertura del diálogo que tuvo lugar; se entrevistó con todos los interlocutores con quien tenía intención de reunirse y se siente en deuda con todas y cada una de esas personas por la información y las observaciones que le aportaron.

En la Federación de Rusia se han llevado a cabo importantes reformas desde 1993, en particular se han introducido nuevas leyes que rigen los procedimientos judiciales y se han mejorado sustancialmente las condiciones de trabajo de la judicatura. Estas medidas demuestran la voluntad de entregar a los jueces las riendas del sistema judicial. En el informe, el Relator Especial también expone las importantes preocupaciones que persisten en cuanto a la puesta en práctica de la igualdad de acceso a los tribunales y al gran número de sentencias que no se ejecutan. También señala que el proceso de selección de los jueces y la aplicación de sanciones disciplinarias carecen de la suficiente transparencia. Es de lamentar que las injerencias políticas y de otra índole hayan deteriorado la imagen del sistema judicial a ojos de la población. Asimismo, el importante logro de un colegio de abogados independiente y autorregulado se ha visto amenazado recientemente, y todavía no se ha reconocido plenamente el auténtico papel de los abogados defensores. Sin embargo, la reforma emprendida recientemente para separar las funciones de instrucción de las de acusación podría dar lugar a un mayor protagonismo de los jueces y aumentar la eficacia del sistema y el equilibrio entre las partes en un procedimiento judicial.

El Relator Especial subraya que un sólido marco jurídico no basta para lograr un sistema judicial con tribunales independientes que además garantice los procedimientos contradictorios. También es necesario un cambio de mentalidad. Recientemente se han emprendido iniciativas alentadoras, como la creación de un grupo de trabajo sobre la reforma judicial. El Relator Especial espera que el actual programa de reforma proyectado por el Gobierno para el período de 2007 a 2011, centrado de forma encomiable en el aumento de la transparencia, la accesibilidad y la eficacia de los tribunales, se perfeccione y amplíe teniendo en cuenta sus conclusiones y recomendaciones. El Relator Especial confía en que se dé al titular del mandato la oportunidad de visitar el país nuevamente en 2009 para examinar la puesta en práctica de sus recomendaciones.

**Anexo**

**REPORT SUBMITTED BY THE SPECIAL RAPPORTEUR  
 ON THE INDEPENDENCE OF JUDGES AND LAWYERS,  
 LEANDRO DESPOUY, ON HIS MISSION TO THE  
 RUSSIAN FEDERATION (19 to 29 May 2008)**

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## I. INTRODUCTION

1. The Special Rapporteur on the independence of judges and lawyers visited the Russian Federation from 19 to 29 May 2008, at the invitation of the Government.
2. The mission was facilitated by the Office of the Senior Human Rights Adviser to the United Nations Country Team and included visits to Moscow, Saint Petersburg, Yekaterinburg and Verkhnyaya Pyshma. The Special Rapporteur met with the Deputy Ministers for Foreign Affairs, Justice and the Interior, respectively, as well as with the Deputy Governor of Saint Petersburg and the Governor of Yekaterinburg. He had extensive consultations with a wide range of judicial and other officials: the Deputy Chairperson of the Constitutional Court; the Chairpersons of the Supreme Court and the Supreme Arbitration Court; the Federal Deputy Prosecutor General; the Deputy Prosecutor General of Saint Petersburg; the Prosecutor General of the Sverdlovsk Region; the Chairpersons of the Saint Petersburg City Court, the Vassileostrovsky District Court, the Leningradskiy District Court of Yekaterinburg, the Regional Court of the Sverdlovsk Region, the Charter Court of the Sverdlovsk Region and the City Court of Verkhnyaya Pyshma; the Deputy Chairperson of the State Duma Committee on Civil, Criminal, Arbitration and Procedural Legislation; the Federal Commissioner for Human Rights; the Commissioner for Human Rights of the Sverdlovsk Region; the Deputy Chairperson of the Presidential Council for Facilitating the Development of Civil Society Institutions and Human Rights; the Chairperson and members of the Public Chamber Commission on public control over the activities of law enforcement agencies and the reform of the judicial system; the Rector of the Saint Petersburg State University; the Dean of the Ural Law Academy; the Federal Bailiff of the Sverdlovsk Region; the Deputy Chairpersons of the Federal Bar Chamber and the Saint Petersburg Bar Chamber; the Bar Chamber of the Sverdlovsk Region; members of various other associations and Collegia of lawyers as well as numerous other legal experts and practising lawyers. The Special Rapporteur was also able to observe a criminal trial.
3. Moreover, he met various local non-governmental organizations including the Human Rights Centre Memorial, the Centre for the Development of Democracy and Human Rights, the Independent Council of Legal Expertise, the Public Interest Law Initiative, the Institute of Human Rights, the Migration and Law Network, the Civic Assistance Committee, the Public Verdict Foundation, the Committee of Soldiers' Mothers, the Moscow Bureau for Human Rights, the 'For Human Rights' Movement, Jurists for Constitutional Rights and Freedoms, the International Protection Centre, the Committee for Civil Rights, Soprotivleniya, the Russia Justice Initiative, Citizen's Watch, the Human Rights Resource Centre, Chance, Sutyazhnik, the Union of Human Rights Organisations, the Nizhnetagilsk Rights Defenders' Centre, the International Information Centre and the Ural Centre for Constitutional and International Protection of Human Rights.
4. In addition, he had consultations with the Resident Coordinator and heads and representatives of local offices of a number of United Nations agencies. He also held discussions with representatives from several international non-governmental organizations and national cooperation agencies: the American Bar Association's Central European and Eurasian Law Initiative, Human Rights Watch, Amnesty International, the Ford Foundation and USAID.



## II. MAIN FINDINGS

### A. General political, legal and socio-economic background

5. Following the dissolution of the Soviet Union, the Russian Federation gained independence on 24 August 1991; its Constitution was adopted by referendum on 12 December 1993. The Federation consists of 83 subjects, which include 21 republics, 46 regions, 9 territories, one autonomous region, four autonomous districts, and the federal cities of Moscow and St. Petersburg.
6. As per its Constitution, the Russian Federation is a democratic, federal law-bound State with a republican form of government. Article 10 of the Constitution stipulates that state power shall be exercised on the basis of its division into legislative, executive and judicial powers, and that these branches of power shall be independent.
7. The Russian Federation is a presidential republic with a bicameral parliament. Under the 1993 Constitution, the President wields broad powers of appointment and is the guarantor of 'rights and freedoms of man and citizen'. The Federal Assembly is the legislature and consists of the State Duma (henceforth Duma) and the Federation Council. While the members of the Duma are directly elected, the representatives of the Federal Council are chosen by territorial politicians. Regional governors are nominated by the President and subject to approval by regional legislatures.
8. Newly elected President Medvedev took office in May 2008. Former President Putin was subsequently appointed Prime Minister and also elected Chairperson of the United Russia Party. The United Russia Party currently holds 315 of the 450 seats in the Duma; the remainder are held by the Communist Party, the Liberal Democratic Party and "A Just Russia Party".
9. Despite a serious financial crisis in 1998, the Russian Federation has seen important economic growth since 2000 with a real GDP growth averaged at around 6.5 percent annually. Main achievements in the past seven years were characterized by a significant reduction in poverty levels, from 25 to 15 percent of the population living below the national poverty line. Also, there has been a reduction in child and maternal mortality levels driven by increased income and some improvement in primary care. The National Human Development Report 2006/2007 highlighted the extreme level of differentiation that exists between the poorest and the richest regions of the country. This differentiation also exists within certain federal entities. For example, incomes of the richest 20 percent inhabitants of Moscow in 2000-2005 were 21-28 times higher than incomes of the poorest 20 percentage. While the unemployment rate in the country was around 7.5 percent in 2006, rates in certain regions were drastically higher. Thus, while growth has been significant and steady, its benefits have been distributed unevenly so that poor regions and certain segments of the population have fallen further behind.
10. The Russian Federation is party to the Covenant on Civil and Political Rights and its First Optional Protocol, the Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the

Rights of the Child. Moreover, the country has ratified the Optional Protocol to CEDAW and the Optional Protocol to CRC on the involvement of children in armed conflict. Most recently, it signed the Convention on the Rights of Persons with Disabilities.

11. According to the Constitution, international treaties and agreements ratified by the country form an integral part of the national legal system. In case of a contradiction, the norms contained in the international legal instruments shall apply. In 2003, the Supreme Court issued a decision instructing general courts to be guided by relevant international treaties, including human rights treaties.

## **B. Court system**

### **Structure**

12. The structure of the judicial system is determined by the Constitution and the 1993 Federal Constitutional Law on the Judicial System. While the Constitutional Court, the federal courts of general jurisdiction (including military courts) and the economic (arbitration) courts enjoy the status of federal courts, the constitutional (charter) courts and the Justices of the Peace are courts of the federal entities.

### **Constitutional Court**

13. The Constitutional Court, established in 1991, is composed of 19 judges who are appointed by the Federation Council upon nomination made by the President. The Court's competencies and procedures are enshrined in the Constitution and the 1994 Federal Constitutional Law on the Constitutional Court. In 2008, the Constitutional Court moved from Moscow to Saint Petersburg. The Court mainly considers the constitutionality of legal acts and disputes between State organs relating to their competencies. In addition, any federal court may request the Constitutional Court to judge on the constitutionality of a law if the law is to be implemented in a case, and a judge is in doubt about whether the law is compliant with the Constitution. Importantly, the Court is also competent to deal with individual complaints of citizens on alleged violations of their constitutional rights and freedoms resulting from the implementation of a law deemed unconstitutional. Decisions of the Constitutional Court are final. However, the Special Rapporteur learnt that an important percentage of the Court's decisions are not adequately taken into account by lower-level courts and public authorities.

### **The general court system**

14. The general court system consists of:

- (i) Justices of the Peace consider less complicated civil and administrative cases and criminal cases involving maximum sentences of less than three years as a court of first instance;
- (ii) District courts act as a higher judicial instance for the Justices of the Peace. They also act as courts of first instance (article 31 para. 2 of the Criminal Procedural Code);

- (iii) Supreme courts of the republics, kray (regional) courts, courts of cities of federal significance, of the autonomous region (oblast) and autonomous districts (okrug) act as higher instance courts for district courts. They also act as courts of first instance (article 31 para. 3 of the Criminal Procedural Code);
- (iv) The Supreme Court is the supreme judicial body for civil, criminal, administrative and other cases under the system of general jurisdiction. The Court is a cassation instance in relation to the federal courts of general jurisdiction of republics and equal entities. It acts as a court of first instance in criminal cases stipulated in article 31 para. 4 of the Criminal Procedural Code. The Supreme Court supervises the legality, validity and substantiality of sentences and other decisions of lower-level courts. The Court also gives clarifications on issues of judicial practice and has the right of legislative initiative. The Court's judges are appointed by the Federation Council upon the recommendation of the President, which in turn is based on a recommendation of the Supreme Court Chairperson. The Court consists of a plenum, a presidium and several judicial chambers.

### **Military jurisdiction**

15. Military jurisdiction is governed by the Criminal Procedure Code and the 1999 Federal Constitutional Law on Military Courts. First instance are military courts of armies, fleets, garrisons and military formations; the second instance consists of courts of the branches of the Armed Forces, military districts, districts of antiaircraft defence, navy and separate armies. As the supreme judicial body the Supreme Court is also the final instance for the military jurisdiction. Military courts have jurisdiction over servicemen and citizens undergoing periodic military training. The military jurisdiction includes civil, administrative and criminal types of cases, which are administered in accordance with existing procedural legislation. A recent reform initiative proposes, *inter alia*, that military judges shall henceforth no longer be members of the military service while acting as judges.

### **Economic courts**

16. Arbitration (economic) courts are specialized courts which resolve property and commercial disputes between economic agents. The Supreme Arbitration Court heads the four-level system of arbitration courts, exercises judicial supervision over their activity and issues explanations on judicial practice.

## **C. Other relevant institutions**

### **Congress and Council of Judges**

17. Pursuant to the 2002 Federal Law on Organs of the Judicial Community, which is the legal basis for the judicial organs of self-government, the All-Russian Congress of Judges is the supreme body of the judiciary. The Congress elects the members of the Council of Judges, a self-government body of the judiciary.

### **Qualification Collegia**

18. Qualification Collegia are bodies of judicial self-regulation that were established at the regional (Judicial Qualification Collegia) and national (Supreme Qualification Collegium) levels. They play a key role in the appointment, promotion and dismissal of judges. The Supreme Qualification Collegium is composed of twenty-nine members; two-thirds of them are judges. The All-Russian Congress of Judges selects, every four years by secret ballot, eighteen judges to serve on this body; the Federation Council selects ten members of the public, and the President appoints one representative. The regional Judicial Qualification Collegia are in general composed of 21 members, 13 of which are judges, seven are representatives of the public and one represents the President of the Federation.

### **Academy of Justice**

19. The Russian Academy of Justice, which started to operate in 1999, has a law college, a law faculty, and additional facilities for continuing legal professional training with 21 academic departments and seven academic sections. The Academy deals with continuing professional development and retraining of judges and administrative employees courts of general jurisdiction and economic courts. The Academy also conducts fundamental and applied research. It trains more than 6,000 judges and administrative employees per year.

### **Commissioner on Human Rights**

20. According to the 1997 Federal Constitutional Law on the Commissioner on Human Rights, the Federal Ombudsman is independent, elected with an absolute majority by the Duma and serves for a term of five years. Activities of the Ombudsman's office are financed by federal budget. The Ombudsman is mainly responsible for helping to remedy violations of individual rights and freedoms. To this end, the Ombudsman can appeal to courts of general jurisdiction and the Constitutional Court. However, the former competency appears not be translated into the newly adopted Civil and Criminal Procedure Codes. Furthermore, the institution analyses legislation and prepares recommendations to improve national legislation with a view to achieving compliance with international human rights standards. In cases of gross or mass infringement of human rights, the Ombudsman may ask the Duma to investigate violations. In 2007, the office received more than 28,000 complaints. The law also foresees the establishment of Commissioners in the regions. To date, 45 of the 83 federal entities have established regional Commissioners. The Special Rapporteur hopes that the remaining entities will establish such Commissioners shortly since these are performing invaluable work, as he has seen in the case of the Ombudsman of the Sverdlovsk Region.

### **Presidential Council**

21. The Civil Society Institutions and Human Rights Council is an advisory body to assist the President in carrying out his constitutional responsibility as a 'guarantor of rights and freedoms'. A main task is also to promote the development of civil society institutions and legal education among the public.

## **Public Chamber**

22. The Public Chamber, established in 2006, channels public and civil society input into legislative decision-making. The chamber has over 30 commissions specialising in different areas, including on the judicial reform. The commissions conduct public discussions, review draft laws, conduct studies, and give advisory recommendations to the government and legislature.

## **D. Main recent reforms and developments affecting the judicial system**

### **Governmental programmes**

23. The 2002-2006 federal programme on the “Development of the Judicial System in Russia” allocated a significant budget to improve mainly working conditions of judges. The aim of the new federal programme for 2007-2011 is to improve the quality of the administration of justice and the strengthened protection of rights and legal interests. The programme contains a series of measures to increase the transparency of the justice system, raise confidence in the courts through an increased effectiveness and quality of examination of cases, broaden access to court, and enhance the execution of judicial decisions.

### **Adoption of new codes**

24. Since independence, the Russian Federation has adopted amended legislation in relation to the Civil Code, the Civil Procedure Code, the Criminal Code, the Code of Criminal Procedure, the Criminal Corrections Code and the Code of Administrative Offences.

### **Justice of the Peace**

25. The institution of Justices of the Peace, which had not existed since pre-revolutionary Russia, was re-introduced. It is mainly governed by the 1998 Federal Law. First Justices of the Peace became operational in 2000. Initially, the Justices were introduced on a trial basis but now exist in all regions, except the Chechen Republic. They handle a substantial number of cases previously heard by other courts which has assisted in reducing the caseload and improving the effectiveness of the justice system.

### **Jury trials**

26. The law provides for the use of jury trials for a limited category of especially grave crimes. Jury trials have been introduced to all but one region (the Chechen Republic). These trials account for about 1 per cent of the overall cases. Current procedures do not automatically exclude the possibility of (deputy) heads of legislative or executive bodies, army servicemen, judges, prosecutors, advocates, and law enforcement officials to become jurors. The Federal Ombudsman suggested that the law ban participation of the above mentioned categories of persons in the juries and that the system of selection be reformed to exclude any possibility for arbitrary selection.



### **Moratorium on the death penalty**

27. The death penalty was abolished *de facto* by Presidential decree in 1996. In 1999, the Constitutional Court banned judges from sentencing people to death until the jury system will have been introduced in all regions of the country. In November 2006, the Duma postponed the introduction of jury trials in Chechnya until 2010, which had the effect of extending the current *de facto* moratorium on sentencing people to death.

### **Administrative justice system**

28. In 2005, a draft Federal Constitutional Law was submitted to the Duma which envisaged the establishment of administrative courts vested with the competence to adjudicate on complaints by citizens against unlawful actions of public authorities. This draft law has thus far not been adopted by the Duma.

## **E. Conduct of judicial proceedings**

### **Powers of arrest**

29. The new Code of Criminal Procedure authorizes the court to order an arrest.

### **Access to legal counsel**

30. Article 16 of the Criminal Procedure Code guarantees the right of an individual, suspected of a crime or charged with a crime, to the assistance of a lawyer. Everyone is entitled to the assistance of legal counsel from the moment of his/her arrest. Article 50 of the Criminal Procedure Code guarantees the individual the right to choose his/her lawyer. However, the Special Rapporteur has received information that access to legal counsel can be obstructed by the following practices:

1. The implementation of internal regulations of temporary police detention facilities and pre-trial establishments;
2. While a permission issued by the prosecutor's office is no longer required under the new Criminal Procedure Code, it appears that there are still cases in which a "supportive letter" by the prosecution is required to facilitate access for the defence counsel to their detained clients.

### **Right to be promptly informed of the charges**

31. Charges need to be brought within 3 days. If preventive measures are applied, charges need be brought within 10 days (article 100 para. 1). Furthermore, a person suspected to have committed crimes enumerated in article 100 para. 2 of the Criminal Procedure Code (including terrorism related crimes), may be detained for up to 30 days without being charged. In both latter cases, concerns arise as to the lack of effective judicial review during on-going detention.

### **Notification of family members**

32. A family member of the arrested or detained person must be notified not later than within twelve hours. If in the interests of the investigation it is necessary to keep the fact of the detention secret, the notification may be withheld. However, notification in a criminal case against a minor is mandatory.

### **Review of the lawfulness of the detention**

33. Three hours after the arrest of an individual, a custody report needs to be compiled (article 92 Criminal Procedure Code). Judicial review of the lawfulness of the detention is required to take place within 48 hours after the arrest. According to the Ministry of Interior, a notification about the arrest needs to be made at the latest 8 hours prior to the expiration of the 48-hour period. According to the law, a suspect must be released after 48 hours unless there is a decision by the court to prolong detention. The court can extend the detention until a maximum of 72 hours. However, it appears that these time limits are not always adhered to by the courts. One of the main problems seems to be that the police at times fail to keep accurate detention records.

### **Preventive measures**

34. Pursuant to article 97 of the Criminal Procedural Code, any preventive measure may be ordered only in specific circumstances. In addition, personal circumstances of the suspect must be taken into account (Article 99).

### **Remand in custody**

35. The law distinguishes between “detention pending investigation” and “detention pending trial”. At the investigative stage, the extension of the detention must be authorised by judicial decision within the maximum limit of 18 months (Article 109 paras. 3, 4). An appeal against such decisions may be lodged with a higher court. In practice, detention on remand is not employed as an exceptional measure. On 27 September 2006, the Presidium of the Supreme Court pointed to the following shortcomings in relation to the use of detention on remand:

1. The courts’ very formal approach in ordering detention, omitting at times to specify facts justifying the grounds of detention;
2. Detention in cases of minor and average offences;
3. Detention of juveniles in the absence of exceptional circumstances and the failure to consider alternative preventive measures;
4. The courts’ failure to take into account the defendant’s personal circumstances;
5. The failure of cassation and review (nadzor) courts to fully address the defendants’ arguments given in their applications for release.



### **Length of pre-trial detention**

36. The maximum time-limit for detention pending trial of persons prosecuted for offences of minor and average importance is 6 months (255 para. 2 of the Criminal Procedure Code). However, no such time-limit is provided for persons prosecuted for grave and particularly grave crimes.

### **Presumption of innocence**

37. While the principle of the presumption of innocence is enshrined in the Constitution and the Criminal Procedure Code and the burden of proof for the charges lies with the prosecution, the following concerns are to be noted:

1. The acquittal rate of 1,1 percent leads to the assumption that the principle of presumption of innocence is not consistently enforced in practice;
2. Most of the court rooms where criminal trials are held continue to be equipped with a metal cage where the defendants are held.

### **Defence rights**

38. Article 48 para. 1 of the Constitution sets out the right to qualified legal assistance. The suspect has the right to have private confidential meetings with his defence counsel, including in the period preceding the first interrogation, without restriction of their number and duration (articles 46, 47 of the Criminal Procedure Code). However, cases have been reported in which restrictions as to the numbers, duration, privacy and confidentiality of visits were applied.

### **Equality of arms**

39. The principle of equality of the parties is enshrined in article 15 of the Criminal Procedural Code. In addition, this provision stipulates that the court shall not be seen as a body of criminal prosecution and create the necessary conditions for the parties to discharge their procedural duties and to exercise their rights. The Special Rapporteur was made aware of the following main obstacles in this regard:

1. *De facto* limitations for the advocate to present evidence on behalf of the accused;
2. Cases have been reported in which legal counsels have experienced difficulties in obtaining access to and extracting files of case materials during the investigative stage. The Special Rapporteur notes that unhindered access is vital to give full effect to the principle of equality of arms;
3. In some cases, defendants have experienced significant pressure exerted by the prosecutor who attempted to have the declarations made by the defendant during the interrogations confirmed word by word. In this connection, the Special Rapporteur points to the importance of article 240 para. 1 of the Criminal Procedure Code according to which judges must subject documents in the dossier to “first hand examination”.

### **Confessional evidence and allegations of torture**

40. Article 75 of the Criminal Procedure Code stipulates that any testimony given pre-trial by a suspect or defendant, in case it is denied by the individual in court, is inadmissible if given in the absence of a legal counsel. In addition, article 88 para. 4 of the Criminal Procedure Code states that courts may rule evidence inadmissible at the request of the parties, or at their own initiative. Article 75 of the Criminal Procedure Code expressly prohibits the use of evidence obtained through torture. Article 235 para. 4 of the Criminal Procedure Code states that if a lawyer lodges a complaint that evidence was gathered illegally, then the burden of proof falls upon the prosecutor to show that it was not. However, it appears that this provision is not always adhered to. Also, there seems to be no clear legal obligation of the court to order an immediate, impartial and effective investigation into torture allegations.

### **Role of witnesses**

41. In the past, witnesses were said to be reluctant to give testimony on behalf of the accused. There is now a new Federal Law on the protection of victims, witnesses and other participants in criminal proceedings in place, providing for a system of governmental protection. In addition, in June 2003, the Criminal Procedure Code was amended to permit witnesses to bring their own advocates to interviews conducted by the police. This amendment was designed to address the police practice of interrogating suspects without the presence of counsel under the fiction that they were witnesses.

### **Acquittal rate**

42. In 2007, the percentage of convictions was 71.6 percent of all criminal cases heard by courts. The acquittal rate was 1.1 percent; 26 percent of the cases were dismissed during trial. It should be noted that the acquittal rate of juries amount to 26 percent and differ significantly from the acquittal rate of professional judges (about 1.1 percent).

### **Rehabilitation and compensation**

43. Chapter 18 of the Criminal Procedure Code provides for rehabilitation and compensation of a person who has been unlawfully or groundlessly subjected to criminal prosecution. The Special Rapporteur received reports pointing to the fact that there are still too few cases in which those entitlements have been granted.

## **F. Equal access to the courts**

44. There is no independent entity responsible for organising the legal aid system as a whole. In the absence of a specific federal legal framework, legal aid is regulated by a number of laws and regulations, notably the Criminal Procedure Code and the Federal Law on Legal Practice and the Bar. The Special Rapporteur acknowledges that the level of awareness of the authorities and their concern about improving and expanding the legal aid system has significantly increased during the past years.

**Free legal assistance in criminal cases**

45. Article 16 para. 4 and article 47 para. 4 item 8 of the Criminal Procedure Code provide the right of a suspect, who cannot afford to pay a lawyer, to make use of counsel for the defence free of charge. Criminal legal aid is funded by the federal budget. While existing legislation provides for a separate legal aid budget line in the budgets of the investigation authorities, no such line is defined in the courts' budgets. Article 51 of the Criminal Procedure Code enumerates mandatory defense categories. Furthermore, a suspect's right to have a lawyer arises at the time of instigating criminal proceedings against him, the actual arrest or the beginning of preventive measures. The method used for legal aid in criminal cases is *ex officio* appointment. Decisions to appoint a lawyer are made by investigation agencies or courts depending on the stage of the proceedings. There appear to be diverging systems of cooperation between the bar chambers on the one side and the courts and the investigation bodies on the other to ensure proper appointment. While some systems seem to provide the opportunity to allow for objective appointment of a legal defense counsel, others seem to cause arbitrary appointments. According to the law, advocates are obliged to provide the same quality of defense work for *ex officio* appointment as for paid services. In spite of this, existing legislation appears to only envisage paying advocates for participation in investigative proceedings and court appearance. There is no compensation provided for other services or costs. Decisions to pay the legal counsel are made by investigation authorities or the courts. For different reasons, both may tend to allocate fewer resources than needed in the interest of effective defense work. This does not only affect the quality of legal defense but also the adherence to the principle of equality of arms. Furthermore, low tariffs, difficulties and delays with payments adversely affect advocates' motivation to perform high-quality work.

46. There are many under-populated and distant areas where there are no advocates at all. Existing legislation attempts to resolve this problem by empowering bar chambers to establish offices of "juridical consultations" based on a request by regional authorities. Such offices are supposed to be funded by regional authorities; bar chambers are tasked to assign advocates thereto. So far very few such offices have been established in the regions.

**Legal aid in non-criminal cases**

47. Civil legal aid is supposed to be funded by regional budgets. The Federal Law on Legal Practice and the Bar contains a list of categories of cases in which civil legal aid must be provided. However, these categories are very narrow and do not cover the majority of cases that indigent people face such as disputes on housing and labour rights. Within these categories, the law stipulates that legal aid is provided to citizens, whose family members' average household income is lower than the "subsistence minimum". This amount is defined by each region. The most recent average figure was approximately 200 USD per month. Some regions began to address these problems by adopting their own legislation aiming at expanding eligibility criteria. However, particularly in less prosperous regions, civil legal aid is not funded by the regional authorities and thus virtually not provided.

48. In 2006, the civil legal aid "experiment" was launched by the Government, pursuant to which "state legal bureaus" were set up in 10 regions. These bureaus are staffed with lawyers who provide legal assistance in non-criminal matters to the indigent, which are defined in the same way as in the Federal Law on Legal Practice and the Bar.

## **G. Execution of judicial decisions**

### **Legal certainty**

49. Supervisory review of final judgments (*nadzor*) has been increasingly limited by the new procedural legislation.<sup>1</sup> However, further reforms, in particular in civil cases, are required.<sup>2</sup> In criminal proceedings, chapter 48 of the Criminal Procedure Code governs the rights of both parties to lodge appeal against a final judgement. While article 405 of the Criminal Procedure Code stipulates that a supervisory review can only be requested in the accused person's favour, it should be noted that there are no time limits set and no specific reasons indicated in the law for lodging such review.

### **Lack of execution of judicial decisions**

50. Since 2002, the European Court of Human Rights has issued a number of judgments against the Russian Federation on account of the public authorities' failure to comply with domestic decisions delivered against them.<sup>3</sup> This shortcoming reflects negatively on the entire justice system and diminishes significantly public confidence. A draft Federal Constitutional Law, elaborated by the Supreme Court, which has recently been introduced in the Duma, aims at addressing this key problem. Another hampering factor appears to be that bailiff offices are detached from the courts.

51. As regards implementing mechanisms for judgments of the European Court of Human Rights, in criminal matters the violation attested by the Court is considered a new circumstance leading to the resumption of the proceedings. However, there is no such clause for non-criminal cases.

## **H. Judges**

### **Historical legacy**

52. During the period of the Soviet Union, judges had not been viewed as protecting individuals' rights in court, but rather as an extended arm of the Communist Party dominating the executive branch.

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<sup>1</sup> Council of Europe, Committee of Ministers, Supervisory review (*nadzor*) procedure in the Russian Federation, CM/Inf/DH(2005)20.

<sup>2</sup> See European Court for Human Rights, *Viktor Petrov v. Russia*, no. 15890/04, 24/7/2008; *Limasovy v. Russia*, no. 37354/03, 22/7/2008.

<sup>3</sup> Recently: European Court for Human Right, *Nagovitsyn v. Russia*, no. 6859/02, 24/1/2008; *Khamidov v. Russia*, no. 72118/01, 15/11/2007; see also Council of Europe, Committee of Ministers, Non-enforcement of domestic judicial decisions in Russia, CM/Inf/DH(2006)19rev3E.

## **Qualification**

53. According to the Constitution, a judge must be at least 25 years old (40 years for the Constitutional Court, 35 years for the Supreme Court), must have attained a higher education in law, and must have at least five years experience in the legal profession (15 years for the Constitutional Court, 10 years for the Supreme Court). The 1992 Law on the Status of Judges requires a judicial candidate to take a qualifying examination administered by the Examination Commission, composed of members approved by the respective Qualifying Collegium. The Special Rapporteur was told that these examinations are conducted orally. On the basis of the examination results, the Qualifying Collegium reviews the application and makes its recommendations. If the Collegium approves a candidate, its opinion will be directed to the chairperson of the respective court, who gives approval or returns it for repeated consideration to the Collegium. If the Qualifications Collegium confirms its initial decision by two-thirds of its members, the court chairperson is obliged to recommend the person to the post of judge. The Human Resources Department of the Presidential Administration reviews the application for final approval. The President has the power to refuse a submitted recommendation. The Special Rapporteur met with some individuals who were proposed by their respective Qualification Collegia, but were then refused to be appointed by the President.

## **Work experience**

54. It appears that the majority of judges - before being appointed - have served as prosecutors, investigators or court staff. Due to practical obstacles, it is extremely rare for one to be appointed as a judge after having worked as a lawyer.

## **Appointment**

55. Federal judges of general jurisdiction are appointed by the President. Although the President has the obligation to appoint or reject a candidate within two months after having received the recommendation for appointment there seem to be considerable delays in this procedure leading to backlogs in the administration of justice due to vacant judicial posts. Justices of the Peace and judges of constitutional (charter) courts are elected by the local legislative organ, in most cases upon proposal made by the local governor.

## **Tenure and re-appointment for life**

56. Judges of federal courts receive life tenure only after re-appointment by the President at the end of their three-year probationary period. The five year term of Justices of the Peace is once renewable. The term of judges of constitutional (charter) courts is established by regional laws. In the Sverdlovsk Oblast' the term of the Charter Court judges is 12 years.

57. On several occasions, the Special Rapporteur was told that - at the end of the three probationary years - there is another qualification exam to pass in order to secure life tenure. However, no such requirement is specified in the law. Also, while the Special Rapporteur notes that probationary periods are commonly employed in other judicial systems, he raises concern at this requirement for re-appointment.



### **Practices obstructing the independent judicial functioning**

58. While article 120 of the Constitution provides that judges shall be independent, the Government itself acknowledges that the practice of “telephone justice” or “justice for money” persists in the country. Political interference, which was confirmed by media reports at the time of his visit, has been brought to the attention of the Special Rapporteur. In addition, cases have been reported that in the past judges have sometimes failed to make independent decisions as they feared to have their judgement overturned after they received “advice” from the prosecutor’s office, the respective appeal court or their own court chairperson.

### **Court chairpersons**

59. Court chairpersons of general jurisdiction courts, except for district courts and Justices of the Peace, are appointed by the President on the proposal by the Chairperson of the Supreme Court, based on the recommendation of the Supreme Qualification Collegium. For district courts, the same procedure applies, but on the basis of a recommendation by the respective Qualification Collegium. The term of court chairpersons is six years, once renewable. The Chairperson of the Supreme Court is appointed by the Federation Council on the proposal of the President, based on the recommendation by the Supreme Qualification Collegium. The Chairperson of the Constitutional Court is elected in plenary session among the Court’s members by secret ballot with an absolute majority. In most cases, the same procedure applies for the election of chairpersons of constitutional (charter) courts.

60. Chairpersons wield considerable powers over the judges attached to their respective court in the following matters:

1. Appointment, re-appointment for life and promotion: Instances have been reported where probationary judges seeking formal appointment had been intimidated by the chairperson under the threat of a re-appointment not being recommended;
2. Disciplinary measures, in particular dismissal: It is the chairperson who makes the initial recommendation to a Qualification Collegium;
3. Allocation of cases (para. 61).

### **Allocation of cases**

61. The distribution of cases among the judges is left to the discretion of the court chairperson. It appears that there is no system for ensuring that cases are allocated according to objective criteria. Instances have been reported in which more sensitive cases are allocated to ‘certain’ judges or where a criminal case was transferred to another judge during the ongoing trial because the judge in question refused to be influenced.

### **Removal and disciplinary measures**

62. The Constitution establishes that judges may not have their powers terminated or suspended except under procedures and grounds established by federal law. According to article 12.1 of the 1992 Law on the Status of Judges, disciplinary measures can be taken in case of violation of provisions of the above mentioned Law or the Code of Judicial Ethics. Against



the background of this rather broad provision, the Special Rapporteur notes the decision of the Constitutional Court of 28 February 2008, which states that such ‘infraction must be incompatible with the honour and dignity of judges’ so as to trigger disciplinary measures. As regards termination of office by removal, it is the court chairperson who presents the case for a particular judge’s dismissal to the relevant Qualification Collegia. Dismissal decisions can be appealed to the respective supreme court of the federal subject and then to the Supreme Court.

### **Immunity**

63. Under the Constitution, judges enjoy immunity. Immunity from criminal prosecution can only be lifted under specific procedures.

### **Salaries**

64. Judicial salaries have been significantly raised several times in the past years. While in 2000, a judge’s average monthly salary was less than 200 USD, the monthly salary today is 50,000 roubles for district court judges (about 2000 USD).

### **Continuing legal education**

65. The Academy of Justice, together with its 10 regional branches, is responsible for the continuing legal education of judges. At present, it appears that federal judges still have too few opportunities to update their skills. At the All-Russian Congress of Judges in 2004 a decision was made on a mandatory continuing professional development for federal judges, which appears to not have been translated into federal legislation.

## **I. Prosecution**

### **Historic legacy**

66. The competencies of the *prokuratura* were two-fold throughout Soviet history: prosecution of criminal cases in court and general supervision of the legality of public administration, including exercising scrutiny over the legality of court proceedings.

### **Appointment and dismissal**

67. According to the 1992 Federal law on the Prosecutor’s Office, the Prosecutor-General is appointed for five years by the Federation Council, upon the recommendation of the President. Prosecutors of the regions are appointed by the Federal Prosecutor-General, in agreement with the regional governors. The Prosecutor General may be dismissed by the Federation Council upon recommendation by the President. No grounds for dismissal are provided for by law.

### **Investigative Committee**

68. In September 2007, an independent Investigative Committee was established within the Prosecutor’s office. The Committee is in charge of all preliminary criminal investigations within the Prosecutor’s Office. The Committee did not take over the investigation responsibilities of other agencies. The power to open criminal investigations now lies with the Investigative Committee; no further prosecutorial approval is required. The separation of the functions of

investigation and prosecution has the potential to eventually put into practice the guiding role of judges in judicial proceedings, which had already been assigned to them by the revised Criminal Procedural Code. However, the Special Rapporteur heard concerns as to a possible decrease in the quality of investigations.

### **Role in criminal proceedings**

69. With the establishment of the Investigative Committee, the Prosecutor's role in criminal proceedings rests with the function of prosecution. The Prosecutor's almost complete control over the preliminary investigation has ceased to exist.

### **Supervisory and other roles**

70. The Prosecutor's Office retains broad supervisory powers. This function entails supervision over state executive bodies at the federal, regional and local levels (except for the Federal Government); legislative bodies of federal entities and of municipalities; and administrative agencies.

71. Prosecutorial powers to exercise supervision over the legality of court proceedings have been limited (articles 376, 377 and 387 of the Civil Procedure Code, article 405 of the Criminal Procedure Code). However, the Office retains the competency to apply to the court and to enter the case at any stage of non-criminal proceedings if the protection of civil rights and lawful interests of society or the state so require. Also, the Prosecutor General may take part in any hearings of the Supreme Court as well as the Supreme Arbitration Court.

### **Legal "aid function"**

72. Bringing complaints to the attention of the *Prokuratura* has long been the primary method of challenging acts of state officials. It appears to be an effective and inexpensive remedy, which is typically used in matters of employment, housing and pensions.

## **J. The Bar**

### **Organisation**

73. With the adoption of the 2002 Federal Law on Legal Practice and the Bar, the Russian Bar became an independent and self-regulatory body. Under this law, bar chambers have been established in each of the regions. The Federal Bar was set up as an umbrella organisation. Each chamber has a council acting as collective executive body.

74. While all lawyers may represent their clients in civil and administrative cases, one has to be a member of such a bar chamber to practice as a defense lawyer (advocate).

### **Access to the profession**

75. Within the bar chambers, qualification commissions were established, consisting of 13 persons, 7 of whom are advocates, 2 representatives of the local Ministry of Justice, 2 members elected by the regional legislature and 2 representatives of the judiciary. The qualification commissions decide on the admission of candidates to the bar based on the bar

examination. In order to be admitted to the bar, an individual is required to have a legal degree, two years of legal expertise or internship with an advocate, and to pass the bar examination. This exam should consist of a written exam and an interview. However, it appears that a uniform scheme of written examinations still remains to be developed by the Federal Bar. Exams continue to be conducted orally at least in some chambers. Upon admission, the advocate's name is entered into a public register maintained by the local Ministry of Justice's office.

### **Continuing legal education**

76. Pursuant to a decision of the Federal Chamber, it is mandatory for each advocate to attend annually 20 hours of legal education. However, it is up to each regional chamber to establish its own system of continuing legal education.

### **Ethical rules**

77. The Code of Ethics of Advocates was adopted by the first all-Russia Congress of advocates in 2003, and subsequently amended twice. The Code comprises rules of professional conduct and disciplinary proceedings.

### **Disciplinary measures**

78. Advocates are subject to disciplinary sanctions if they violate provisions of the law On Legal Practice and the Bar and/or the Code of Ethics. Disciplinary sanctions can only be initiated by the bar chamber itself. Article 20 of the Code of Ethics details who is entitled to appeal to the bar chamber in order for it to initiate such proceedings. An oral and adversary hearing is conducted by the bar chamber's qualification commission, which subsequently adopts its recommendation. The final decision is taken by the bar chamber's council, which can be appealed in court.

### **Recent proposals**

79. A new bill was submitted to the Duma in May 2008, under which the State Registration Agency would be able to withdraw the professional status of advocates without approval given by the respective bar chamber. Also, the new law would require advocates to provide their working files as part of potential inquiry which would compromise the privileged nature of lawyer-client relations.

### **Identification of lawyers with clients**

80. There is a tendency to identify defense lawyers with the interests and activities of their clients.<sup>4</sup> In this connection, the Special Rapporteur has also received information on instances where defense counsels have been intimidated by public officials. As a consequence, lawyers have been limited in their ability to exercise their profession, for example in the case involving the Yukos company and Mikhail Khodorkovsky. While he does not wish to judge on the adequacy of the sentence in this case, he points to some important procedural and other

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<sup>4</sup> See the joint allegation letter of 22 January 2009 on the killing of the human rights lawyer Mr. Stanislav Markelov, A/HRC/11/41/Add.2 (Russian Federation).

shortcomings, mainly obstructing the right to adequate defense, that have been revealed by other international and regional organisations.

## **K. Working conditions of the judiciary**

### **Budget**

81. The control over financing of the courts is vested in the Judicial Department attached to the Supreme Court. Federal courts are funded by the federal budget. The law provides for direct involvement of the judiciary in the budgetary process: the Chairpersons of the Constitutional, Supreme, and Supreme Arbitration Courts, and the head of the Judicial Department and the Council of Judges are to be consulted in the process of drawing up the draft federal courts' budget. Furthermore, the amount of the budget resources allocated to the courts in the current fiscal year or subject to be allocated for the next financial year may be reduced solely with the consent of the All-Russia Congress of Judges or the Council of Judges.

### **Material resources**

82. As a result of the Government Programme 2001-2006, most of the court buildings, court rooms and offices of judges appear to be in commendable and operational shape. The Special Rapporteur was able to visit many of these.

### **Security**

83. The law guarantees judges and their families special protection. Upon request by a judge, the relevant internal affairs bodies are obliged to adopt necessary measures. In April 2008, the Deputy Chairperson of the Supreme Court of Ingushetia, who handled cases of large-scale corruption, was shot dead. According to the Ministry of Interior, it is rare that judges apply for security measures.

### **Case load**

84. There is a significant imbalance of case load between Justices of the Peace and federal judges. Under the new judicial reform programme, a reallocation of competencies and possibly also the restructuring (merging) of district courts are envisaged.

## **L. Transparency and accountability**

### **Availability of judgements**

85. Jurisprudence of the Supreme Court, including its review of judicial practice, is available online. Decisions of the Constitutional Court will be available online shortly. There has been an effort to create websites for all federal courts; in some cases their jurisprudence is already available online. In addition, the project "Pravosudie" aims at inter-connecting electronic databases of courts.

### **Access to statistical data**

86. The review of judicial statistics of the Supreme Court is available online. There appear to be plans to make such reviews also available for other courts.

### **Public access to proceedings**

87. According to the Constitution, court cases are accessible to the public. However, the hearing can be held *in camera* in specific cases. The Special Rapporteur received information that access of the public to criminal proceedings has been hampered in some cases.

### **Ethical norms**

88. In 2004, a revised Code of Judicial Ethics was adopted. The Supreme Qualifying Collegium issues a bulletin about its ethics decisions, which aims at increasing transparency.

### **Corruption**

89. Under the criminal code, giving and receiving bribes are criminal acts. As mentioned above, judges' salaries have been significantly increased in the past years to, *inter alia*, combat corruption. However, there were continued reports of judges being bribed. Under the new governmental programme 2007-2011, two key measures are envisaged to curb corruption: 1) excluding direct contact of the parties to the case with the judge prior to the judicial proceedings by establishing departments responsible for receiving complaints from individuals; and 2) annual disclosure of financial income of judges and their spouses. In May 2008, a council was established to fight corruption, which is chaired by the President himself.

### **M. Proportion of women in the legal professions**

90. Equality between men and women is enshrined in the Constitution. In the judiciary, the percentage of women is 57. Among prosecutors, there are 46 percent women. The percentage of women advocates is estimated at 40 percent.

### **N. Lack of effective investigations and remedies**

91. In addition to the capital, the Special Rapporteur visited Saint Petersburg and the region of Yekaterinburg. In light of the cooperation received from the authorities of the Russian Federation, the Special Rapporteur is confident that the mandate visit the country again in 2009 in order to examine the implementation of the recommendations made following his first visit. In particular, he proposes that the mandate visit the Chechen Republic and other places in the North Caucasus region from where he has received disturbing information and testimonies of



trials short of the most basic due process guarantees,<sup>5</sup> and where, according to the European Court of Human Rights,<sup>6</sup> a situation of serious impunity persists.

### **O. Juvenile justice**

92. The Russian Federation has not yet established a juvenile justice system. In 2005, the Duma adopted in its first reading a bill on a juvenile justice system, including the establishment of specialised juvenile courts. However, the second reading of the bill has not yet taken place. Pilot projects for elements of a juvenile justice system have been conducted in a number of regions. Based on the positive assessment of these projects, a Presidential decree was issued on measures to improve the prevention of juvenile delinquency, focusing on social and psychological support. Currently, over 30 juvenile courts are operational in more than 18 entities. However, the absence of a legal and institutional framework at the federal level significantly hampers progress made in the regions.

## **III. CONCLUSIONS AND RECOMMENDATIONS**

### **A. Conclusions**

93. **The Russian Federation experienced significant changes in recent years which had an important impact on all spheres of life. Important reforms for the justice system have been implemented since 1993, such as the adoption of new legislation, with the new Criminal Procedure Code being a milestone in the attempt to introduce a system where the judge wields the guiding role and where both the prosecutor and the defense lawyer are on equal footing. Significant improvements for the working conditions of judges were the result of the first government reform programme.**

94. **Important concerns remain about the practical implementation of equal access to the courts and the fact that an important percentage of judicial decisions is not implemented. Another main preoccupation is that there is not sufficient transparency in the selection process of judges as well as in the implementation of disciplinary measures. Political and other interference has damaged the image of the justice system in the eyes of the population. It is also unfortunate that the major achievement of an independent and self-regulatory bar has recently been put at risk and that the actual role of defense lawyers has not yet been fully recognized.**

95. **Despite the solid, though improvable, legal framework, judges have at times not yet been able to assume their central function in the proceedings. The recent separation of the functions of investigation and prosecution has the potential to further encourage them to**

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<sup>5</sup> See also Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, Legal remedies for human rights violations in the North Caucasus, AS/Jur (2008) 21.

<sup>6</sup> In more than 40 rulings to date, the European Court for Human Rights found the Russian Federation responsible for serious human rights violations in the Chechen Republic. Furthermore, the Court frequently detected the country's failure to conduct effective investigations into the alleged violations and the lack of effective domestic remedies.

take on this central role. All this shows that the new system of independent courts and adversarial proceedings not only requires a legal framework, but also a change in attitude. Recent initiatives, in particular the setting up of a special working group on the judicial reform, in which all main stakeholders appear to be involved, are encouraging signs in this regard. The existing government reform projected for 2007 to 2011, focusing commendably on increased transparency, accessibility and effectiveness of the courts, should be refined and expanded, taking the following recommendations into account.

## **B. Recommendations**

96. In order to assist the Russian Federation in pursuing and renewing efforts in the judicial reform process, the Special Rapporteur recommends that:

97. With respect to the institutional and legal framework:

- As measure of utmost importance, a mechanism for rapid and comprehensive execution of domestic and international judicial decisions be promptly established. In this regard, urgent consideration be given to the recently proposed draft Federal Constitutional Law. Courts' adherence to jurisprudence established at the highest domestic instances be monitored closely. Also, a closer cooperation between bailiffs and courts be institutionalised.
- The draft law for the establishment of a juvenile justice system, setting a minimum framework for all regions, be adopted without delay.
- Renewed efforts be undertaken to establish an administrative court system as one of the means to strengthen mechanisms to effectively fight corruption and ensure liability of state officials.
- With respect to equal access to justice, a federal legal framework on legal aid should be created, providing minimum standards for the regions. A single independent entity be established organising and overseeing the legal aid system as a whole.
- Regarding criminal legal aid, a separate budget line in the courts' budget be created. Where they do not yet exist, harmonised systems of cooperation between bar chambers and courts or investigative authorities allowing for objective appointment of legal counsel be set up in all regions. Advocates be paid for all services they provide for free.
- For non-criminal legal aid, regions be encouraged to expand eligibility in terms of categories and income level. The results of the pilot project of state legal bureaus be analysed carefully. On this basis, thorough examination be conducted to determine whether the scheme of state bureaus is apt to ensure the independence of legal advice given.

- As regards military jurisdiction, the Government is invited to share with the Special Rapporteur the details of the currently debated reform steps so as to enable him to offer his advice on the envisaged initiative.
- All competencies enshrined in the Federal Constitutional Law on the Commissioner for Human Rights be translated into the Criminal and Civil Procedural Codes; the respective draft legislation be adopted without delay.
- Thought be given to expand the individual complaints procedures before the Constitutional Court to all violations of constitutional rights resulting from the unconstitutional implementation of any acts of public authority. This would also contribute to a more effective domestic judicial system.

98. To strengthen procedural legislation and practice:

- The courts' adherence to procedural rights, particularly those affecting the defense rights, be monitored closely
- Any existing practices and (internal) regulations affecting the rights of detainees be brought in compliance with the guarantees enshrined in the Criminal Procedure Code
- Provisions allowing for pre-charge detention be re-considered so as to allow for effective judicial review
- Appropriate mechanisms for keeping accurate arrest and detention records by the police and an immediate obligation to notify the court about an arrest be introduced
- Explicit time limits on the length of pre-trial detention for grave and particularly grave crimes be stipulated in the legislation
- The right of the defendant to access files kept by the investigative bodies during the investigative state and the right to make copies be enshrined in the law
- Concrete, narrow and exceptional circumstances requiring withholding notification of family members of an arrested person be enumerated in the law
- The practical implementation of the principles of equality of arms and the presumption of innocence be strengthened, including the banning of metal cages from courtrooms
- A legal obligation of the court to order an impartial and effective investigation into credible allegations of torture be created
- Supervisory review be further limited so as to ensure the principle of legal certainty

- **Participation of state officials and other persons possibly entering a conflict of interest by serving as a juror in criminal cases be automatically excluded by the law**
- **The impact of the new Federal Law on the protection of victims, witnesses and other participants in criminal proceedings be carefully analysed and adjustments be made to address possible shortcomings**

**99. To enhance the independent role of judges:**

- **Selection of judges be made on merit only, based on a qualification examination, which be at least partly conducted in a written and anonymous manner.**
- **Following such selection and a three-year probationary period, life appointment be automatically granted unless probationary judges were dismissed as a consequence of disciplinary measures or an independent body declaring, following a specialised procedure, that a certain individual is not capable of fulfilling the role of a judge.**
- **Selection and appointment procedures as well as tenures be harmonized for judges of federal courts and courts of the federal entities. This should entail life tenures for Justices of the Peace and constitutional (charter) court judges.**
- **Consideration be given to introduce a system whereby court chairpersons be elected by the judges of their respective courts, as currently done in the Constitutional Court and constitutional (charter) courts.**
- **A mechanism be established to allocate court cases in an objective manner.**
- **The law be further elaborated to give guidance on the infractions by judges triggering disciplinary measures. Also, the gravity of the infraction determining the kind of disciplinary measure to be applied be explicitly indicated in the law. Final decisions taken to discipline or remove a judge be subject to independent and objective review.**
- **The requirement of mandatory continuing professional development for federal judges be translated into federal legislation. An equivalent requirement be also applied to judges of courts of the federal entities.**
- **Consideration be given to the adoption of preventive security measures for increased protection of judges examining cases of large-scale corruption and organized crime.**

**100. With respect to the Prosecutor's Office:**

- **The recently introduced reforms and their impact on the conduct of judicial proceedings and the quality of investigations be analysed on an ongoing basis by an independent entity.**

- **The still existing general supervisory role of the Prosecutor's Office be gradually transferred to the courts. Also, the right of the Prosecutor-General to participate in parliamentary debates and sessions of executive bodies at any level be reconsidered as it is generally contrary to the principle of separation of powers. Reconsideration be also given to the competency of the prosecutor to sit in non-criminal proceedings as it may create an environment in which judges feel not inclined to act independently.**
- **Thought be given to transfer the Prosecutor's legal aid function gradually to other bodies, such as the Ombudsman office. At the same time, appropriate remedies be made available which are as accessible and effective.**

**101. Regarding the maintaining and strengthening of the role of the bar:**

- **Refrain from adopting the recently proposed amendments to the 2002 Federal Law on Legal Practice and the Bar as they would compromise the principles of self-government and independence of the bar.**
- **The bar be consulted in any legislative procedures possibly affecting the rights of advocates.**
- **A uniform scheme for the bar exam, which be at least partly conducted in a written and anonymous manner, be established by the Federal Bar.**
- **Practical obstacles for lawyers to become judges be removed. There needs to be more permeability between the two professional groups.**
- **Appropriate conditions be ensured for defense lawyers to exercise their profession without any improper interference.**

**102. To fight against impunity:**

- **Independent and impartial investigations be conducted into serious human rights violations and effective domestic remedies be made available so as to comply with article 2 paragraph 3 ICCPR**
- **Relevant Special Procedures of the Human Rights Council be invited to the country to analyse the situation, including in the Northern Caucasus, and to make appropriate recommendations**

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