

Mr. Chairman and distinguished members of the Commission, my name is Dr. Peter Roudik. I am a Senior Foreign Law Specialist in the Law Library of Congress.

It is an honor to appear before you today to address the subject of law reform in Russia. This briefing comes at a pivotal time when high Russian officials, including President Putin, have recognized the country's legal system is corrupt and ineffective. Their statements have a special meaning because during the last fifteen years law reform was continuously used as a sign of positive transition from the nation's post-Soviet legacy. Just a few months ago, the government reported the conclusion of law reform; offering to its citizens newly adopted codes for arbitration, civil and criminal procedures, and new laws regarding police activities, prosecutions, and judicial appointments. However, the quality of these laws is extremely deficient, and the new concepts introduced serve as a showcase without affecting the essence of the legal process. Among the more positive changes, observers have mentioned the redistricting of court circuits to diminish their dependence on the regional authorities that finance them, and the expansion of the use of juries to the eighty-seven regional courts, instead of the previous nine experimental courts. Overall, however, the changes have created a refined legal system that still suffers from corruption.

The new Criminal Procedural Code was in force only twenty-three days, before more than three hundred amendments to the Code were added. Nevertheless, it still has many legal mistakes. For example, the Code begins with a statement (art. 6.2) that its purpose is to free innocents from a punishment. However, even a first year law student knows that the innocent must be acquitted, and punishments are disseminated through convictions. The Code was supposed to establish an independent judiciary, increase the rights of the accused, and instill firm rules of procedure and evidence for police and prosecutors. However, the current system continues the old Soviet practice of automatically convicting almost everyone who appears in court.

Criminal justice reform was praised highly for promoting the presumption of innocence and democratic legal norms. Among its provisions, defendants were entitled to request a lawyer, once detained, and were supposed to appear before a judge within forty-eight hours after they are initially brought into custody. Judges, not prosecutors, were to issue an arrest warrant and order that the accused be held in a pre-trial jail or be freed pending trial. However, the amendments that followed the adoption of the Code allowed the judge to extend detentions for seventy-two hours to give police time to discover missing evidence, which, in Russia, often means to extract confessions through tortures. These unscrupulous measures seem to be occurring in a large majority of the cases. To exacerbate the situation, the new Code of Administrative Violations permits an extra forty-eight hours of administrative detention without a judge's approval, meaning detainees face an excess of 120 hours of jail time.

The registration of crimes is a police function and is often used to adjust statistics. Because the evaluation of police work is based on the clearance rate, police are interested in registering crimes that are easily solved (petty crimes and misdemeanors) or those that cannot be avoided (most grave crimes). Police officers often decide not to initiate criminal proceedings when the case seems difficult to prove. Their superiors condone and, perhaps, even encourage this practice because it enhances the department's record by increasing the percentage of successful investigations. Despite the fact that almost all Ministers of Internal Affairs since the mid-90s

have called, on many occasions, for an end to “deception” over crime statistics, nothing has changed.

Under the new legislation, the powers of defense attorneys became greater; nevertheless, soon after the law’s adoption, the established norm, which once allowed detainees to meet with their attorneys without restriction, was changed to permit only one two hour attorney-client conference before an interrogation. The Supreme Court issued an instruction to lower court judges that recommended hiding materials submitted by the prosecution in support detention from the suspect and his attorney, and proposed the resolution of claims, surrounding the legality of a detention, in absence of a detainee.

To avoid the direct interference into the functioning of the courts by the regional authorities who formerly financed, which meant bribing, the courts, boundaries of the judiciary districts were expanded. Now, arbitration court circuits encompass several constituent components of the Russian Federation. However, the dependence of these courts on higher government authorities increased because all aspects of financial regulation are concentrated in the president’s administration. Just recently, the New York court for the Eastern District of Manhattan refused to recognize rulings of the Russian Supreme Court of Arbitration, which is the highest court for commercial disputes, because of its dependence on the federal government. The reason was the government’s resolution, as signed by the Deputy Prime Minister, requested the court to resolve a particular case in favor of one of the parties. This example demonstrates that impartiality in Russian courts exists only when the state has no interest in the resolution of a particular case. It is only in these cases that real equality of the parties can be secured.

The independence of judges is an empty concept, as influence on judges can be indirect. Judges understand what decisions are expected from them and behave accordingly. They know what consequences may follow a decision that does not satisfy higher authorities. They can be removed for a simple violation, and several notorious cases involving recent dismissal of judges from the Moscow city court for their disagreement with the court’s chairwoman confirm this assertion. The procedure of judicial appointments was substantially amended during President Putin’s term. All judges may serve only until they reach the mandatory retirement age of sixty-five. They are appointed by the President, upon recommendations of regional qualification commissions formed by the President and chairmen of the regional courts. All initial appointments are made for a three-year term. After expiration of this three-year term, judges are not appointed for permanent service if the qualification commission, i.e., their superior judges, find their performance unsatisfactory. There are no formal requirements for the termination of a judge’s appointment. The Constitutional Court of Russia confirmed the constitutionality of this three-year probation. The problem is worsened because this probation applies both to new judges and those who are promoted and transferred to higher courts or other positions within the judiciary. For persons falling within the latter category, each new appointment starts another three-year probation. This practice may become an issue because the Government intends to hire twice as many judges before the end of 2006, meaning more than a half of the judiciary corps will consist of judges on probation. There is no need to speculate whether the independence of these judges will be more than questionable. The problem is aggravated by the lack of preparation judges have for their role. Most of the judges graduated correspondence law schools during the Soviet time and still have a Soviet mentality, along with Soviet habits of interpreting

laws in favor of the government. There is no nationwide system that prepares lawyers for judicial careers. The recent appointment of a Chairman of the Supreme Court of Arbitration, which occurred with numerous procedural violations, illustrates all the defects of the existing system.

In general, Russian judges do not respect the principles of due process for the accused; they condone torture as a device to extract confessions, and are not mindful of Russia's international obligations in this respect. In essence, trials are a pro forma mechanism of sentencing defendants and basically all the players – including the judges, prosecutors, police, and, often, the defense lawyers – are on the same side. In this regard, attempts to prove guilt beyond a reasonable doubt are not common practice.

One positive development is the expanded role of juries. They are now utilized in all eighty-seven constituent components of the Russian Federation. However, jurors may participate only in trials originating in the eighty-seven state level courts of the second instance. Meanwhile, there are more than 2,500 courts of general jurisdiction. Statistics released by the Supreme Court of Russia reveal that cases in the 87 out of 2,500 courts constitute no more than 0.5 percent of all criminal cases, and jury trials represent about eight percent of all criminal trials. Moreover, even in the eighty-seven courts, jurors do not hear all cases. The accused must request a trial by jury and there is a complicated procedure for the submission of such a request. As a rule, police and investigators attempt to discourage detainees from submitting such requests because there is a greater acquittal rate with jury trials.

In Russia, the conviction rate in criminal cases heard by judges is ninety-nine percent. The rate has persisted since the early 1950s, the last years of the Soviet dictator Joseph Stalin, when the work of judges and prosecutors was automatically reviewed if a defendant was acquitted. According to a study conducted by Peter Solomon in his book, "*Soviet Criminal Justice Under Stalin*", before 1951, about ten percent of defendants were acquitted in non-political trials. In some courts there are simply no acquittals. In 2003 and 2004, two district courts in Moscow that heard a total of almost five thousand criminal cases had no acquittals, according to court records. In the regional court in the southern city of Krasnodar, no one has been acquitted in the last ten years in any case heard by a judge. In jury trials, a defendant is more likely to be found not guilty, with acquittal rates averaging around fifteen percent, according to an article carried in *The Washington Post*. However, acquittals are often appealed, overturned by the Supreme Court, and sent back for retrial with a fresh jury. Last month, the Russian Constitutional Court confirmed the legality of this practice.

Despite the fact that the law requires the random selection of jurors, the appointment of individuals to juries, by Russian special services, has been reported. It is not unusual that, in the middle of a trial, a judge is removed and a newly appointed judge dismisses the entire jury and selects a new one, before the trial continues. The European Court of Justice has cited Russia for manipulations with jury selection, especially in sensitive cases.

A continuing issue for the Russian federal government is that it has been unable to build a unified legal system throughout the country that would accommodate regional legal specifics but still recognize the supremacy of the federal laws. The Russian legal system is being eroded due to an imbalance between federal and state powers, as the supremacy of federal legislation is

accepted rarely by constituent components whose laws deviate from federally established norms. The insufficient involvement of constituent components in the federal legislative process, the incompatibility of regional and federal legislation, and the inability of the federal government to accommodate regional, legal and customary practices, force President Putin to build a vertical system of power, as a synchronized, nation-wide legal policy does not exist.

Reform in legal institutions is not accompanied by reform in the interpretation of law. Indeed, Russia's legal system is statutory-based and, hence, judicial precedent holds a lower priority. There is no case law and, even if there were, it could hardly flourish without the attachment of opinions to verdicts, especially in cases where courts interpret international treaties or the Russian Constitution. Several court decisions often contradict the interpretation given by the Constitutional Court of Russia. Interpretations of the Constitutional Court are not binding on other courts, contributing to the imbalance between federal and regional centers of power.

The Office of the President cites these problems as justification for its ongoing attempts to remove judicial institutions from the sphere of influence of local and regional leaders and to increase the control of federal, executive authorities over the judicial branch. Regrettably, the current ombudsperson's actions suggest that he is dependent on the ruling elite, ineffective in promoting the rule of law, and is an extension of the Presidential administration.

The Khodorkovsky case illustrates the failures of Russian legal policy. Even without focusing on the political elements of Khodorkovsky's persecution, the case reflects weaknesses of the legal system and the inability of the court to resolve a case without procedural violations and strong support from the executive branch.

The case started with procedural violations and unfair manipulation of the process. Knowing that Mr. Khodorkovsky was on a business trip outside of Moscow, he was called to the Prosecutor's Office for interrogation. When he did not appear due to being out of town, he was accused of refusing to cooperate with the investigation and his arrest was initiated. Given that Russian law prohibits an attorney from meeting with his client on weekends, the arrest was organized on a Saturday afternoon to keep him, for almost two days, from obtaining the assistance of any legal defense. Another attempt of the prosecution to destroy his defense was its interrogation of Mr. Khodorkovsky's attorneys as witnesses. When an attorney's office is searched and his documents are seized, without a court order, he can be interrogated as a witness and will not be allowed, under Russian law, to participate further in the trial. Original charges brought against Mr. Khodorkovsky by the Prosecution Office show that the prosecution did not prepare well for the trial. Initially, as an individual, Mr. Khodorkovsky was accused in avoiding the payment of his taxes in a form established by the Russian state. However, in May 2003, the Constitutional Court of Russia ruled that Russian citizens have the right to choose an independent, but legal method of paying their taxes when it is more adequate for them and their businesses. For example, the taxing authority could agree to receive services or infrastructure improvements from a company in lieu of cash payments. This arrangement often worked to the advantage of both the local taxing authority and the company as inflation was so rampant, the taxing authority received the benefit of a completed project or service while the company did not have to produce all of the cash at one time. In some instances, due to the inflationary impact, some taxing authorities refused to accept cash payments.

The prosecution's actions were driven by the approaching expiration of the statute of limitations, which forced it to rush the submission of its case. The exact legal grounds for its case remain unclear. All the alleged facts that happened in the Sverdlovsk region in 1994 are indistinguishable from the actions of other companies in this timeframe due to the spiraling inflation and allowable bartering system to meet their tax obligations. Previous Russian legislation did not regulate these actions and, the lack of a prohibition allowed so-called "agreements on credit compensations," which in this case was the payment of taxes through Yukos' letters of exchange. The prosecution was aware of this fact, which also explains its failure to investigate the facts of the crime, while it interfered in the dispute over legal entities. The prosecution's action is also a sign of the selectivity of Russian justice.

Other illegal methods have been applied to almost all twenty Yukos' executives, and their attorneys, who were imprisoned or forced into exile. It does not appear that all accusations were corroborated by evidence and the prosecution continues its attempts to obtain self-accusatory statements from detainees. Families of the accused also have been persecuted. The absence of legal reasons for the prosecution's accusations was confirmed by courts in Israel and Great Britain, which denied Russian extradition requests.

There are several other signs that point at the political, rather than the legal nature of this trial. At the beginning, a member of the Russian Parliament who initiated the request to the Prosecutor's Office demanded the return of Yukos' funds to the state. The court did not investigate any evidence provided by the defense. The verdict repeats the accusatory statement prepared by the Prosecutor's Office. The court was not interested in monetary compensation through damages. A bail, which could have exceeded the supposed damage inflicted by Mr. Khodorkovsky, was not considered. The political context of this trial was indirectly emphasized by President Putin, who on the eve of the announcing the sentence, promised executives of the country's largest companies that he would limit legal review of past privatizations and minimize arbitrary tax claims, in exchange for their politically correct behavior.

All these discrepancies, violations, and legal mistakes allow one to conclude that the verdict against Mr. Khodorkovsky is simultaneously a verdict to the entire Russian legal system.