First Steps to Judicial Reform

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The freely held Russian general election of March 1990 opened the way for broadly based democratic changes in Russia and for the replacement of the former totalitarian system by a law-based state. Soon after, on June 12, 1990, the first Russian Congress of People's Deputies adopted a Declaration of State Sovereignty, which proclaimed the principle of the separation of legislative, executive, and judicial powers. For the first time since the 1917 Revolution, the need to establish an independent judicial branch was officially affirmed. In order to draft the corresponding legislation, a Subcommittee on Judicial Reform was created within the Parliamentary Committee on Legislation. The subcommittee set up a group of independent experts consisting of eight outstanding jurists, academics, and working lawyers, who were charged with developing a Conceptual Framework (Kontseptsiya) for Judicial Reform. By the fall of 1991 a draft document had been completed.

President Boris Yel'tsin personally read the draft and recognized its exceptional importance for the creation of the new Russian state. Accordingly, on October 24, 1991, he presented it to the Russian Supreme Soviet as a presidential submission. Both houses of the Supreme Soviet in joint session then approved the Conceptual Framework for Judicial Reform by an overwhelming majority. The document became the legal foundation for the adoption of laws aimed at transforming the Russian justice system.
The judicial reforms that are now being carried out in accordance with the Conceptual Framework are aimed at establishing an independent judicial power for the resolution of civil and criminal cases. At the same time, the reforms will provide a procedure for reviewing the constitutionality of laws passed by the Supreme Soviet as well as of presidential decrees (ukazy). In addition to court systems in the individual republics of the Russian Federation, the judicial reforms envisage the creation of federal courts whose decisions are applicable throughout the territory of the Russian state, and also provide for the introduction of jury trials with jurors who will be responsible only for determining questions of fact, independently of professional judges. The judicial branch will also hear cases of violations of human rights guaranteed by the Russian Constitution, e.g., the inviolability of the person and of a person's residence, as well as the secrecy of correspondence.

One of the most important aspects of judicial reform is a change in the functions of the Public Prosecutor's Office (Prokuratura) from an organ of preliminary investigation and court supervision to an organ with solely accusatorial functions, consequently ensuring that the adversarial principle is consistently introduced into all criminal judicial procedure. As a result of the reforms, the punitive justice system that existed under the conditions of a totalitarian regime is to be replaced by a justice system appropriate to a law-based state, the main aim of which is to safeguard human rights.

The economic and social conditions existing in Russia have made it unavoidable that the planned reforms be carried out in stages. The old, outdated system of criminal justice will not immediately be supplanted by the new system: instead, obsolete institutions will be phased out gradually as new ones are introduced. During this process, priority will be given to changes in procedural law, guarantees of individual rights in criminal justice procedure, as well as reforms concerning the status of judges. Reforms in the court system itself will be carried out at a later stage.

Two years have passed since work began on the Conceptual Framework for Judicial Reform, and it is now possible to state that the first steps in the reform of the judicial
system have been completed. A vital achievement in this process was the adoption of the Law on the Constitutional Court and the selection of the members of the court. Despite the difficult sociopolitical situation, notably characterized by the absence of a stable democratic majority in the supreme legislative body, the Russian Federation Congress of People's Deputies proved capable of performing an act of "self-limitation" that did not come easily. Under the Law on the Constitutional Court, a body of 15 irremovable judges is granted the right to determine whether laws passed by the parliament and presidential decrees conform to the constitution. If a law or decree is determined to be unconstitutional, it immediately loses legal validity and ceases to be applicable.

The very first case that was considered by the Constitutional Court demonstrated the independence of the judges and their fidelity to their oath to defend the constitution. This case came before the court because a group of People's Deputies declared that, in their view, President Yel'tsin's decree combining the Ministries of State Security and Internal Affairs was a violation of the constitution. It was the first time in Russia's 1,000-year history that a court had invalidated a decision by the head of the executive power of the state. From the moment of this historic finding by the Constitutional Court, an independent judicial power began to exist in Russia.

The Conceptual Framework for Judicial Reform recognized the principles of the irremovability of judges and of the superior remuneration of the judiciary as the main guarantees of the independence of the judicial branch. Accordingly, the Russian Parliament adopted a Law on the Status of Judges that confirmed their irremovability. Under this law, until he or she attains pensionable age, a judge cannot be dismissed, nor can a judge be transferred to a different position without the judge's agreement. It is possible to dismiss a judge against his or her will only if the judge is convicted of a crime, or if the corporation of judges as a body determines that, by his or her actions, the judge concerned has done damage to the honor and dignity of the high calling of a member of the judiciary. The same law establishes not only generous salaries for
judges, but also numerous privileges that make judgeships exceptionally attractive positions for legal professionals.

It is important to draw attention to various laws in the area of criminal justice procedure safeguarding an individual's rights that have been adopted as part of judicial reform. Among these laws, unquestionably first place in terms of importance belongs to a law that went into effect as recently as June 17, 1992, modifying and supplementing the existing Code of Criminal Procedure. For the first time in the entire history of Russian judicial practice, this law allows criminal suspects to request that a court review their arrests and the duration of their pretrial detention. Finally, after a 12-year delay, Russian judicial practice was brought into line with the *International Covenant on Civil and Political Rights*, which had been ratified by the USSR as long ago as 1976. This agreement, of course, gives a person who is being held in custody the right to demand an appearance in court without delay, and the court is then entitled either to order the immediate release of the person concerned, or to confirm the legality of the arrest.

Until this law came into effect, decisions regarding the arrest of a person suspected of a crime were made by a public prosecutor (*prokuror*), i.e., by a representative of the executive power. Arrests could not be appealed to a court. With the approval of the Prosecutor General (*General'ny Prokuror*), an accused could be kept in custody without trial for up to 18 months. Not infrequently, a period of detention of such duration in the absence of any court supervision was exploited by unscrupulous investigators to obtain coerced confessions of guilt in crimes of which the person was innocent. In addition, the lack of court supervision resulted in numerous cases of unjustified arrest.

What provisions exist under the new legislation to ensure that citizens are not improperly deprived of liberty? Henceforth any citizen who is subjected to arrest with the authorization of a prosecutor has the right to demand a court review of the legality and grounds for the arrest. On receiving a complaint of unjustified arrest from a prisoner, the administration of the place of detention where the prisoner is held must forward the complaint to a court within 24 hours of receipt of the complaint. At the same time, the
prosecutor who authorized the arrest must be notified of the complaint. The prosecutor
is then obliged within 24 hours to furnish the court with material evidence confirming the
legality and grounds for the arrest, and also to provide, if necessary, an explanation of
the action taken.

After receiving the prisoner's complaint, the judge is obliged to review it in court no later
than 72 hours after receiving the material evidence furnished by the prosecutor that
provides the grounds for the arrest.

The review of the legality and grounds for the arrest takes place at a closed court
hearing in the presence of the prisoner, his defending counsel, and the prosecutor. In
the event the prosecutor fails to appear in court for the hearing without adequate cause,
the judge must still consider the complaint. After considering the complaint, the judge
may either reject it, or order the immediate release of the prisoner. The judge's decision
is final, and is not subject to appeal either by the prisoner or by the prosecutor.

If a prisoner's complaint is rejected, the person may be held in custody for a maximum
of two months from the time of his arrest. The prosecutor has the right to extend the
period of detention beyond the two-month period, but in this case the prisoner again
enjoys the right to demand a court review of the legality and grounds for the
prosecutor's decision. The review of such an appeal is then held in accordance with the
same procedure as applies to a review of the original arrest. If the court determines that
necessity has not been shown for further detention of the prisoner, the court orders the
person's release from custody. The prosecutor does not have the right to appeal the
court's decision.

At the same time that the right of judicial review of arrest and detention was introduced,
unjustified restrictions on consultations between defending counsel and clients were
abolished. Previously, a rule had been in force in accordance with which counsel had
the right to meet with a client only subsequent to the first police questioning of the
suspect. As a result, a person under arrest remained deprived of legal assistance during
the course of his initial--and frequently in many respects the most important--
questioning. The procedure in force earlier completely failed to provide any guarantee of
a proper legal defense for the suspect, and did not conform to generally recognized
international standards, which require that professionally qualified legal assistance be
made available to a defendant at all stages of the investigation and subsequent trial. As
a result of the changes made in the Criminal Procedure Code under the law that came
into effect on July 17, 1992, the right of a defendant to meet with counsel is in no way
dependent on the completion of preliminary questioning or on the conduct of any other
investigative activity.

The Law on Operational-Investigative Activity, adopted by the Russian Federation
Supreme Soviet on March 13, 1992, should also be considered as forming part of the
legislation aimed at putting the provisions of the Conceptual Framework for Judicial
Reform into practical effect and thus assuring individual human rights. Until this law was
enacted, any secret activity undertaken by the Special Services (security organs) with
the object of exposing and combating crime was carried out entirely on the basis of
directives (instruktsii) issued by the Ministry of State Security or the Ministry of Internal
Affairs. These official directives did not permit any supervision of the activity of the
Special Services, apart from that effected by the government agencies themselves. As a
result, the Special Services were given virtually unlimited scope to employ such
methods as secret searches of the residences of private individuals in their absence,
the bugging of telephone conversations, the opening of correspondence, etc. The
resulting dangerous abuses were the direct consequence of the omnipotence enjoyed
by the Special Services.

Since the Law on Operational-Investigative Activity came into effect, secret searches
are categorically prohibited, while such activities as the wiretapping and the opening of
correspondence are allowable only with the permission of the prosecutor for a specified
period, and then only in cases (circumscribed by the Criminal Code) involving the
investigation of grave crimes. A further major reform affecting the powers of the Special
Services with respect to private citizens is the right that citizens now enjoy to obtain
information about them gathered by the Special Services. Henceforth any citizen who
believes that he is under surveillance has the right to demand the relevant information
from the security organs, and the latter are obliged to supply this information. If the
request is refused, or if the citizen concludes that the information furnished is
incomplete, the person concerned has the right to complain to a court. In turn, the court
is obliged to demand from the Special Services authentic information on the
investigative activity in question. If the complaint is determined to be justified, the court
must require the Special Services to satisfy the citizen's lawful demands.

At a later stage of the implementation of the Conceptual Framework for Judicial Reform,
supervision of the Special Services--currently exercised by the Prosecutor's Office
(Prokuratura)--will be taken over by the judicial branch.

In discussing the first steps on the path of judicial reform being undertaken in Russia,
unfortunately, one cannot avoid mentioning the difficulties which are being encountered
in the Russian Federation Supreme Soviet. Whenever judicial reform bills are debated
in the Supreme Soviet, conservative forces attempt to hold up or even torpedo the
adoption of legislation aimed at implementing democratic changes in the criminal justice
system. At the present time, the mouthpiece of these forces in parliament is the Russian
Prosecutor General (General'ny Prokuror), Valentin Stepankov.

An excellent example of the struggle between supporters and opponents of judicial
reform is provided by the Supreme Soviet debate that took place on the precise issue of
court review of the arrest and detention of suspects. General Prosecutor Stepankov
introduced amendments to the relevant bill that were intended to deprive the courts of
any real control over prosecutors' decisions regarding arrests and periods of detention.
Stepankov endeavored to ensure that the courts would possess the right only to review
the formal conditions needing to be satisfied in cases of arrest, e.g., the suspect's age
and the gravity of the alleged crime. All factual elements, including the basis for the
suspicions entertained by the prosecutor, as well as aspects of the suspect's personality
having a bearing on the likelihood of the person's appearance before the investigator or
attendance in the court, were to be excluded from the information given to the court. Similarly, Stepankov objected to the right of the court to substantively review the duration of a suspect's detention. If the amendments proposed by the General Prosecutor had been adopted, the Prosecutor's Office would have been essentially freed of any outside supervision as far as the pretrial detention of citizens is concerned. In the end, the Supreme Soviet rejected these amendments only by a small majority. This parliamentary vote showed that the conservative deputies as a group are endeavoring to retain the old system of criminal justice inherited from a totalitarian regime without essential change.

While they realize the difficulty of the task confronting them, the supporters of judicial reform in Russia have no intention of abandoning their efforts to replace the former system of punitive justice by a system that protects human rights. Indeed, they will not cease the fight to ensure that the Russian criminal justice system guarantees the legal rights of the individual.

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