

## Criminal Justice

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### RUSSIAN CRIMINAL JUSTICE: LIMITED PREDATION AND IMPLIED ETHICS

In principle, Russia's criminal justice system must contribute to the country's social integrity and equilibrium as it transitions from its Soviet past and reckons with the challenges of the twenty-first century. And yet in Russia, as in most of the post-Soviet states, instead of being used as a means of producing public good, criminal justice has, in the main, become a vehicle of institutional overturn. In other words, in its overall logic, Russia's criminal justice system to this day generally subordinates the quotidian safety and security needs of the public to the overall (implied) objective of protecting the national political system and the political-economic elite.

Although there was an attempt to establish a system of bona fide checks and balances and build an independent judiciary at the start of the socioeconomic and political transformation in 1990s, the structure of Russian criminal justice was not radically reformed at the end of the Soviet

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project. The major government decrees of the early 1990s were largely silent on the fight against crime and on overall reform of the criminal justice system—save for passing references to fighting economic crimes like tax evasion and illegal currency operations. Indeed, criminal justice and law enforcement would not return to the national policy agenda until the middle of the first decade of the 2000s.

The police, the prosecutorial and the prison systems were not reformed and changed only marginally during the 1990s—changes that were typically spontaneous and bottom-up, in response to severe economic pressures. For their part, the various players in the criminal justice system—the police, prosecutors and, among others, judges—trapped between professional duty and the basic need to survive, over time shaped the “limited predatory system” that today characterises Russian criminal justice. This “predation” was limited or constrained by government sanctions and, perhaps just as potently, the extant informal (cultural) code of ethics observed by criminal justice actors.

### THE STRUCTURE OF THE RUSSIAN CRIMINAL JUSTICE SYSTEM

The Russian criminal justice system comprises 8 major organisations: the Ministry of the Interior, the National Guard, the Ministry of Justice, the Office of the Prosecutor General, the Investigative Committee, the Judicial System (see Chap. 31), the Federal Security Service (FSB), and the Federal Protective Service (FSO).

In 2016, President Putin implemented a major reform of the criminal justice system by establishing the new National Guard (or the Federal National Guard Troops Service). Despite its scope, the reform was not at all discussed, in its prefatory phases, with the public or even with the law enforcement community, in contrast to far less important changes to the system, which are usually anticipated on the websites of the Ministry of Interior and other ministries. The principal goals of the National Guard, apart from supporting (together with the Ministry of the Interior) order and security in general, are to implement a state of emergency (if declared by the President) and to fight against terrorism and extremism. For all practical intents and purposes, then, the National Guard was created to counter public protests and riots. Viktor Zolotov, past head of the personal security service for the President and, until 2013, deputy director

of the Federal Protective Service, was appointed director of the National Guard, which is overseen directly by the Russian President.

To establish the National Guard, several departments (and some 400,000 personnel) were excised from the Ministry of Interior, including the Internal Troops, special forces (e.g. OMON and SOBR) and also the “Okhrana” Federal State Unitary Enterprise, a state company providing various security services to public and private clients. Meanwhile, for context, according to Ministry of Interior statistics, the total number of terrorist and extremist crimes in Russia in 2015 was 2839 (mostly in the North Caucasus), while the number of crimes connected to illegal arms was 26,900 in 2015. We might therefore infer, *prima facie*, that the new National Guard employs too many officers with too little work to do. Given the economic crisis in Russia at the time of this writing, one can conclude with some credibility that this key reform is manifestly not driven by considerations of economic policy.

For its part, the Ministry of Interior (905,000 people) is supervised by the President. It fulfils regular policing functions at the national, regional and municipal levels. During the creation of the National Guard, while some departments were removed from the ministry, others were added to it. These included the Migration Service (42,000 employees—to be reduced by 30 per cent, according to the presidential decree) and the Federal Drug Control Service. The Ministry of the Interior also includes a department of public safety, traffic police, criminal investigation, anti-extremism and, *inter alia*, anti-corruption functions.

The Ministry of Justice, also operating under the President’s supervision, includes the Federal Penitentiary Service (296,000 people) and the Federal Bailiff Service (76,000 people). As of May 2016, there were some 653,000 prisoners in the national prison system—a fall by a factor of 1.6 from 2000, when the amount of prisoners exceeded 1 million. Regardless of the various policy reasons underlying this trend, this net decrease is arguably one of the major achievements of the Russian criminal justice policy in the early twenty-first century.

The Office of the Prosecutor General includes the military, regional and municipal public prosecutor offices and a workforce totalling 48,000 employees. It oversees the implementation of laws, represents the state in the courts and coordinates the fight against crime with other players in the criminal justice system. A prosecutor can open and close a criminal case and can confirm the decision of an investigator to open a criminal case. Notably, the Office of the Prosecutor General does not report to any of

the branches of the Russian government (executive, legislative or judicial) and is not formally supervised by the President.

The Investigative Committee is supervised by the President and focuses on major crimes such as homicides, organised crime and elite corruption. (Lighter crimes, like small theft, are investigated by the investigative department of the Ministry of the Interior.) The Committee has some 21,000 employees. In spite of its small size, it is, in political terms, a very influential entity, as its head (at present, Alexander Bastrykin) has the prerogative to open or close investigations against even high-ranking executives and people in business, law enforcement and politics (subject to the confirmation or rejection of such decisions by a prosecutor).

The judicial system, which employs 34,000 judges, is composed of the Constitutional Court, the Supreme Court (which supervises courts of general jurisdiction), commercial courts and military courts (see Chap. 31). Each of these courts has a number of regional divisions. According to the Constitution, the judicial branch is independent of the legislative and executive authorities, including the President. However, in practice, there exists in Russia, as in most former Soviet states, a so-called telephone law, according to which powerful economic and political actors can exert an informal or implicit influence on the courts.

The Federal Security Service (FSB) employs between 150,000 and 350,000 people. The President supervises its overall operation. The FSB has almost boundless prerogatives, including in respect of intelligence, counterintelligence, anti-terrorist activity, fighting crime, information security and also border security, all under the broad aegis of providing security (with deliberate definitional vagueness) for Russia (see Chap. 14 on National Security). It can operate inside and outside the country and also duplicates the functions of many other law enforcement agencies. For example, the FSB houses a department of foreign intelligence that overlaps with the entire Foreign Intelligence Service. Anti-crime and anti-terrorist functions are also housed in the Ministry of the Interior. Moreover, the FSB's investigative department has a similar function to that of the Investigative Committee. Of course, the FSB's operations are, by definition and implication, far broader than regular law enforcement operations, all according to the general logic of subordinating criminal justice to, and embedding it within, a general security agenda.

The Federal Protective Service (FSO) is the special service for the protection of Russia's political elite. It was established on the basis of the Ninth KGB General Directorate, which protected the old Soviet political

elite. Supervised by the President, it provides direct protection services (physical, informational, protection of homes and offices, etc.).<sup>1</sup> The number of FSO employees is formally unknown, although some estimates have it at between 10,000 and 30,000 people.

All these closely interconnected players shape the unified system of criminal justice in Russia, even as they are all guided by different objectives. According to many studies, their behaviour is regulated by a so-called *palochnaya sistema*—that is, a system of quasi-central planning based on performance indicators. This system invariably creates distorted or perverse incentives, with all actors trying to deliver quasi-plans and meet the normative indicators, most of which relate to the percentage of criminal cases solved. As such, the actors in the Russian criminal justice system often collude to reject prima facie “difficult to solve crimes” and privilege “easy cases”.

Another closely related consequence of the *palochnaya sistema* is that the criminal justice system often turns a blind eye to the flaws of various criminal investigations, including those premised on ill-defined accusations. Russian criminal courts therefore produce a very low quantum of acquittals (only 0.3 per cent)—typically a function of the general “accusatory bias” embedded in the system, in which innocent but socially disadvantaged people are often convicted (or are more susceptible to conviction), not least because it is much faster and easier to convict people of low social status (i.e. the unemployed, ex-prisoners and the homeless) in order to meet higher performance indicators. At the same time, those who commit crimes in what the system may deem “hard to solve cases” often evade the criminal justice net, given that such cases tend to hurt performance indicators.

*Bref*, the criminal justice system is structurally disposed towards wrongful convictions, on the one hand, and often ignores many crimes (that are otherwise unregistered), on the other. And yet, according to Sergei Inshakov, the majority of crimes in Russia remain latent—that is, they are either unreported or are not properly processed by the police when reported. Indeed, by the end of the first decade of this century, only approximately 12 per cent of total crimes committed in the country had been registered by the police and included in the official statistics of the Ministry of Interior.<sup>2</sup> Inshakov suggests that less than 3 million crimes were registered in 2009, while 23 million were actually latent. Since 2009, according to official police statistics, the situation has only deteriorated, with the number of reported crimes constantly on the rise and the quantum of registered crimes falling (with police refusing increasingly to register crimes, performance indicators oblige).

Having said all this, the overall crime rate in Russia, as a country in transition, is neither extraordinarily low nor extraordinarily high: it is comparable to that of countries like Bulgaria, Romania, Latvia and others. In 2014, for instance, the Russian crime rate was 701 per 100,000 citizens, compared to 526 in Belarus, 1064 in Romania and 941 in Slovakia.<sup>3</sup> And yet, for proper context, the huge Russian criminal justice system described in this chapter cares little, *de facto*, about “regular” crimes—a neglect that increases over time, with the number of reported crimes rising as the number of registered crimes decreases.

Why such neglect? It is certainly not because the Russian criminal justice system employs underpaid and poorly equipped officers: indeed, between 2008 and 2015,<sup>4</sup> there was unprecedented growth in state funding of law enforcement. Federal budget spending during this period on all police forces and personnel in the country grew, in nominal terms, by a factor of 3.4, and twofold in purchasing power parity terms. It must follow, then, that much of the explanation for the system neglect must lie in the existence of the aforementioned undeclared, implied goals within the criminal justice system itself.

In fact, let us propose that though there are no formal laws that regulate the hierarchy and subordination of the various players in the Russian criminal justice system, there are, in practice, particular implied hierarchies and specific types of subordination that shape the formal and informal interactions between these players. These informal hierarchies are reflected in the legal culture of the public as well as in the professional subcultures of the other players in, and as part of, the criminal justice system. As such, the employees in the 8 organisations and numerous suborganisations of the criminal justice system have tacit knowledge of the real importance and true authority of each entity. Evidently, it is this tacit knowledge that allows these players to understand and appreciate the actual restrictions on their behaviour and the proper scope of their prerogatives. Consider, for example, that the FSB, which already enjoys an outsized role in the criminal justice system, can, on the strength of these informal understandings, investigate crimes committed by police officers; the reverse, of course, is impossible—and this is broadly understood and accepted within the system.

Between 2008 and 2015, there was an unexpectedly high level of federal spending on high policing (FSB, FSO, internal troops and special forces). This spending represented 88 per cent of total police expenditures for this 7-year period, whereas the number of high police

officers in the country is no greater than a third of total police effectives. In other words, two-thirds of the regular police officers—those involved in “low policing”—received slightly more than a tenth of the entire policing budget, betraying a near-total official neglect for the daily security of Russian citizens in favour of the protection of the political elite and the extant political-administrative system more generally.

### WHAT’S TO BE DONE?

As stated at the outset of this chapter, the Russian criminal justice system, in its structure and logic, is little exercised by the daily safety and security needs of the Russian public, focusing instead—again, in structure and logic—on the protection of the political system and elite. Low policing accordingly suffers from a lack of funding, and “low” police officers are overwhelmed by paperwork, bureaucratic formalities and activities that are often far removed from, or peripheral to, the fight against crime (including rent-seeking and pursuit of the fruits of the perverse incentives described above). More generally, low policing is controlled by the security intelligence organisations, not least through implicit and informal understandings in the culture of the justice system. All these factors naturally lead to a Russian population that overwhelmingly does not trust the police, fails to report many crimes and often tries to solve crimes on its own (i.e. resorts to self-help and self-defence).

Needless to say, the Russian criminal justice system must be reformed. However, major reforms may not be entirely possible under the current political system—so entrenched is the symbiosis between its survival and the justice system in its present logic and structure. But if there were a serious reform push, the starting point surely must be to change the global goals of the system—to wit, to move from the protection of the political regime and elite to the daily security and safety of Russian citizens. This, in turn, would create the opportunity for critical organisational and financial changes. The subordination of the police to the FSB must end. The number of officers involved in high policing must be radically reduced, releasing much-needed funds for regular policing. Other key organisational innovations should include the decentralisation of national policing and, before long, the creation of proper municipal police forces. Indeed, in the context of the longer-term decentralisation of the entire justice system, the “senior” or main laws and most critical functions—national security, organised crime, inter-regional and international

crime—should remain in the hands of the central government in Moscow, while the remaining or residual functions should be delegated over time to the regions and municipalities.

For its part, judicial reform must aim to ensure and consolidate the independence of the courts. Penal reform should finally eliminate whatever remains of the Soviet Gulag legacy, including so-called carceral collectivism and numerous excessive restrictions on prisoners, in order to humanise the system and introduce modern best practices into Russian criminal justice, including restorative justice.

This is a strategy of transformation. Among the immediate changes feasible in the current conditions—that is, doable without radical systemic changes or substantial increases in funding—might be the development of deeper cooperation between the police and the public on the ground, at the level of beat cops and local communities.

Of course, any change in the nature and practices of the criminal justice system must be led or preceded by a change in the legal culture of the system's officers and employees. For now, police culture, penal culture and the other professional subcultures within Russia's criminal justice system continue to betray the accumulated shortcomings of earlier stages of systemic transformation—with conspicuous biases inherited from the recent Soviet past, when the value of individual human life was very low. *Bref*, the structural transformations and the change in legal culture must put humans and human rights at the centre of all criminal justice procedures and experiences. This will require comprehensive reformatting of the education regime for legal professions, including civilianising the police forces to a far greater degree. And this must evidently be supported by a reformed ethics code and modern recruitment and promotion practices. All of this—even the starting pangs of reform—may well take at least a decade or two, but it will at least begin to lay the foundations for a twenty-first century Russian criminal justice system that, at long last, has a human face.

## NOTES

1. <http://www.fso.gov.ru/struktura/p8.html>
2. Inshakov S. (2011) *Theoretical Foundations of Research and Analysis of Latent Crime*. Moscow: Yuniti-Dana.
3. <http://data.unodc.org>
4. Authors' calculations based on federal budget data between 2008 and 2015.