

International Commission of Jurists

Commission internationale de juristes - Comisión Internacional de Juristas

"dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights"

PROJECT ON FAIR TRIAL AND TRIAL OBSERVATION IN THE RUSSIAN FEDERATION

A collaborative project by:

**International Commission of Jurists – International Secretariat
International Commission of Jurists – Norwegian National Section**

Proposal Prepared October 2009

1. Introduction

This note describes a new collaboration by the International Commission of Jurists – International Secretariat (“International Secretariat”) and the International Commission of Jurists – Norwegian National Section (“ICJ-Norway”) with regard to a joint project entitled “Project on Fair Trial and Trial Observation in the Russian Federation” (the “Project”).

Background to the project

In recent years, as power has been concentrated in the Russian executive, the rule of law has become increasingly fragile, and the effective functioning of the justice system less reliable. Legislation allowing for extensive executive powers, including legislation on terrorism, extremism and regulation of non-governmental organisations, has been applied by a judiciary highly vulnerable to pressure from government or local authorities. Weak judicial independence, and the power of prosecutors in criminal cases, has led to high risks of unfair trials; a problem that has been acknowledged by President Medvedev.¹ These developments have taken place in the context of gross violations of human rights in Chechnya, including systematic torture, forced disappearances and secret detentions, and the impunity of law enforcement officials for these acts.² Former President Putin’s vision of a “dictatorship of law” has in reality become a system where the law is unable to protect the rights of individuals against executive dominance.

The Chechen conflict has led to a deterioration in human rights protection both in North Caucasus but also nationally, in fostering abusive practices within the security services, and as a pretext for draconian counter-terrorism and extremism legislation, which has criminalised much legitimate political dissent.³ The extremism laws, in conjunction with new NGO laws, have led to increasing harassment and

¹ www.theotherussia.org, 15 July 2008, *Medvedev; No Independent Judiciary in Russia*. President Medvedev is quoted as saying: “we must take all necessary means to strengthen the independence of judges ... it goes without saying that pressure and influence occurs, that administrative leverage is applied, that direct bribery is often used.”

² Memorial and Demos Centre, Submission to Eminent Jurists Panel (EJP), “Counter-terrorism operations” by the Russian Federation in the Northern Caucasus. [Http://ejp.icj.org](http://ejp.icj.org)

³ Federal Law on Counteraction of Extremist Activities, No.114 FZ July 2002, as amended; Federal Law of 10 January 2006, “On enactment of amendments to some legislative acts of the Russian Federation”.

obstruction of human rights defenders.⁴ A series of killings of human rights defenders working in Chechnya or on issues related to it, has raised serious concerns that essential rule of law protections are further disintegrating. Lawyers have been amongst those killed; in addition, when representing opponents of the government, or acting against the government for clients alleging violations of human rights, they have faced harassment and intimidation.⁵ There has been a high volume of applications to the European Court of Human Rights, one of the few means of redress open to victims of human rights violations in Chechnya, but applicants in these cases have been subject to extreme threats and reprisals, including torture and “disappearances”.⁶

Fundamental to preserving and enhancing the rule of law in Russia, both in the North Caucasus and nationally, are independent and impartial courts that reliably provide fair trials in both civil and criminal cases, and that can be trusted to hold to account those who have violated human rights. Under President Medvedev, there are indications of a real political will to address problems of judicial independence; at the same time, judges have been encouraged to assert their independence by the recent victory of a dismissed judge in the European Court of Human Rights case of *Kudeshkina v Russia*. Russian judges, lawyers and human rights defenders need to be supported in protecting the right to fair trial, by training in international human rights standards, by the presence of international observers at important trials, and by international attention to, and advocacy on, these issues.

Project Description: Project on Fair Trial and Trial Observation in the Russian Federation

The International Secretariat has recently designed a two-year project focusing on work in the Russian Federation and the Commonwealth of Independent States (CIS), to support the rule of law and the protection of human rights, and lay the foundations for greater engagement in the wider CIS region by the International Commission of Jurists, its National Sections, Commissioners, and Affiliate Organisations. The ICJ, together with its network partners, would carry out activities related to judicial independence and the role of lawyers, fair trial and accountability for human rights violations. This wider project would include missions on judicial independence and the role of lawyers; national and international advocacy; Russian-language publications and training; trial observations; and practical support for human rights defenders.

In order to begin this engagement, the ICJ International Secretariat has formulated a collaborative project with the ICJ-Norway, focusing this work first through a project on trial observations. The project will draw on the long experience and expertise of the ICJ and its network in conducting trial observations worldwide, including in the CIS region; as well as the legal expertise and skills of the members of ICJ Norway, including experienced, practicing judges and lawyers. It will link this with the country and regional knowledge of the ICJ Network in Russia, including ICJ Commissioners Karinna Moskalenko and Andrei Richter; and its Russian affiliate organisations, the *Centre for Legal Expertise* and the *International Protection Centre*.

In sum, this project will include translation of the ICJ’s most recent publication, *Criminal Trials and Human Rights: A Trial Observation Manual* (2009) into Russian, training seminars in Russia on the right to fair trial and trial observation methods, as well as actual trial observations, conducted either expert observers working with

⁴ Submissions to the EJP: SOVA project, *Anti-Extremism Legislation and its Enforcement*; Yuri Dzhibladze, Centre for the Development of Democracy and Human Rights, *Impact of Counter-terrorism and the fight against “extremism” on the situation of NGOs in Russia*, [Http://ejp.icj.org](http://ejp.icj.org)

⁵ ICJ Press Releases, *Russian Federation: End Harassment of Leading Human Rights Lawyer*, 7 June 2007; *Russian Federation: Tax order threatens leading human rights organisation*, 31 July 2006; *Russian Federation, ICJ concerned over conviction of lawyer*, 19 April 2005, www.icj.org

⁶ European Human Rights Advocacy Centre and Memorial, *Memorandum on Threats to Applicants to the European Court of Human Rights in Cases from Chechnya*, submission to the EJP, [Http://ejp.icj.org](http://ejp.icj.org)

the ICJ, where there is a risk of unfair trial, pressure on the judge, on lawyers, or on the applicant in a particular case of relevance to protection or promotion of human rights, or where there are questions of impunity for violations of human rights.

Objectives

This project represents an important and innovative strategy for addressing the impacts of weak rule of law institutions on human rights and rule of law in the Russian Federation and CIS region. The strategy aims to:

- develop a constituency of lawyers and human rights defenders in Russia and the CIS countries who can carry out trial observations in accordance with international standards;
- enhance the awareness of the Russian and CIS legal community of international fair trial standards;
- Build links between Russian and CIS lawyers and lawyers in the ICJ Norwegian and international networks, and foster their shared commitment to protecting international fair trial standards.
- use the information gained from the training and trial observations, and reports of the trial observations, to influence national and international debates on fair trial and the rule of law in Russia.

In relation to the individual trials observed, the project aims to:

- make the participants in the trials observed– particularly the courts or judges and prosecutors – aware that they are under scrutiny and thereby encourage them to act, in the proceedings, according to fair trial standards;
- ensure that the accused parties receive fair trials;
- ensure that justice is done, that the rights of victims are respected, and that perpetrators of human rights violations or abuses are punished;
- obtain more information about the conduct of the trial, the nature of the case against the accused, and the legislation under which he/she is being tried;
- inform the government and the general public of possible irregularities in criminal procedure and practice, and prompt action to bring practice into line with international human rights standards;
- collect and verify information on fairness of the trial for campaigning and advocacy purposes;

Activities Summary

The Project here proposed is expected to take place over 12 months and will include three primary activities, conducted in a collaborative manner by the ICJ International Secretariat and ICJ-Norway:

- a. Translation of the Manual on Trial Observation and the Right to Fair Trial – Russian
 - a. Translation, Printing, and Distribution
- b. Two Workshops on Trial Observations in Russia (Moscow and Regional Capital)
 - a. Involving international experts and national lawyers and NGOs
 - b. Brief Reports on Workshops with participant-evaluations.
- c. Two Trial Observation Missions
 - a. Co-organized by International Secretariat and ICJ-Norway (participants to include representatives of ICJ Network, including ICJ Norway, ICJ Commissioners, and/or local experts as appropriate).
 - b. Trial Observation Reports (to be made available in both English and Russian).

Manual on Trial Observation and the Right to Fair Trial

The ICJ's manual on Trial Observation and the Right to Fair Trial, produced in collaboration with Frontline, will be published in November 2009. The manual explains the purposes and processes of trial

observation, sets out good practice guidelines for observers, and analyses in accessible form the international fair trial standards against which observers should measure the trial. Translation of the manual into Russian will enable it to have a wide influence on practice of trial observation and fair trial throughout Russia and the CIS region. It will be distributed to lawyers and NGOs through ICJ affiliate organisations, bar associations, NGOs, offices of the OSCE and OHCHR, as well as directly from the ICJ secretariat.

Workshops on trial observation

The undertaking of proper trial observations requires a specialised knowledge of the standards that need to be respected in order to achieve successful observations. The ICJ will therefore organise two workshops for practitioners from Russia, also including those from the wider CIS region, with experiences as judges, lawyers or prosecutors, or NGO advocates. The seminars will address the legislative frameworks within which courts operate, including the structure and functioning of the judiciary; the compliance of these frameworks with international rule of law and human rights standards; the components and guarantees of the right to fair trial; observing proceedings within the courtroom and the conduct of meetings with the relevant authorities and other advocacy work outside the courtroom. During the seminars, the ICJ will launch the Russian version of *Criminal Trials and Human Rights: A Trial Observation Manual* (English, 2009; Russian, to be translated).

Each trial observation seminar will gather and work with between 10 and 15 lawyers. The workshops will be led by an experienced trial observation trainer, and will include expert international participation from the ICJ international secretariat and ICJ Norway. The workshops will rely on the ICJ *Criminal Trials and Human Rights: A Trial Observation Manual* (2009), as well as other ICJ publications including *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors; Practitioners' Guide No. 1*. Participants will be introduced to international standards of trial observations with a special focus on judicial independence. Participants will be trained with the goal of encouraging them to carry out trial observations as individual practitioners, or on behalf of local or international organisations. It is important to note that developing a constituency amongst Russian-speaking lawyers and human rights defenders who can carry out trial observations in accordance with international standards is central to this project, as there is greater reluctance on the part of local governments to allow international observers to have access to some trials. This constituency can be used in the future by local and international organizations to monitor sensitive trials, including the cases of human rights defenders and political opponents under attack.

Trial Observations

Trial observers for the trial observation missions will be drawn from a pool of experts to include members of ICJ Norway. ICJ experts and lawyers from Russia may join in the trial observation missions, which will target observation of “paradigmatic trials,” important or high profile trials which could influence other trials or set principles or precedents for dealing with gross human rights violations. This will allow the lawyers, with the collaboration of ICJ experts, to put into practice the principles and standards highlighted and discussed during the workshops.

The observations will follow the good practice guidelines set out in the ICJ trial observations manual, and will be conducted with the support and advice of the international secretariat, with co-operation from ICJ Norway. The trial observers, with the involvement of the International Secretariat and ICJ Norway, will prepare a report of the observation, highlighting any fair trial concerns that arose during the trial, and the report will be used in ICJ advocacy on fair trial issues both with the Russian authorities, and with regional and international bodies, including institutions of the Council of Europe and United Nations.

Timeline

The ICJ will begin the project in Spring of 2010, planning for one trial observation training seminar to take place by the end of 2010. During the same time or just thereafter, or depending on the circumstances, the ICJ will organize two trial observation missions in the Russian Federation. Depending on the possibility of continued funding into a subsequent years, the ICJ will organize a second trial observation training seminar to take place in Spring of 2011, as well as a two more trial observation missions in Russia or one of the CIS countries, depending on the cases that emerge.

Complimenting Others' Work

This project will contribute significantly to the understanding of lawyers in the Russian Federation and neighbouring countries of the principles of trial observation and the right to a fair trial. There are many lawyers in the region that are familiar with international human rights law and criminal law, but this project will assist them to expand their work to include professional observations of important cases. Participants in this project will include individuals who are currently working with the International Protection Centre, Memorial, and other Russian human rights NGOs. There are no other organisations undertaking activities that target capacity building for trial observations in the Russian Federation and the CIS countries as this one does; however, there are many organisations that are interested in expanding their work into this area, and will be enabled to do so with the ICJ training.

Competence of the ICJ and Relevant Past Activities

The ICJ has extensive experience of conducting trial observations, and has long been engaged in Russia and the CIS region, including on issues of independence of judges and lawyers, counter-terrorism and human rights, implementation of international human rights instruments and standards, and protection of economic, social and cultural rights.

Recent relevant work of the ICJ includes the following.

1. The ICJ, in co-operation with its Russian affiliate organisations, has regularly commented on and intervened on issues of judicial independence and the role of lawyers in the Russian Federation and in CIS states, including on killings and attacks on judges, lawyers and human rights defenders; attempts to harass or disbar lawyers; and impunity for violations of human rights. It has provided information and legal analysis, and advocated on these issues before UN human rights treaty bodies, UN special procedures, and to the Universal Periodic Review process (UPR). A list of relevant ICJ statements and documents is attached in annex.
2. The ICJ, in collaboration with its Russian affiliate, the International Protection Centre, and another NGO, the Centre for the Development of Democracy and Human Rights, is currently undertaking an observation of the appeal hearing of trial in Kazakhstan of Evgeny Zhovtis, the country's leading human rights defender. The ICJ's observer at the trial is ICJ Russian Commissioner Karinna Moskalenko.
3. In September 2008 the ICJ and Front Line held a trial observation training seminar, bringing together a group of 15 human rights defenders (three from each region, coming from among other places: India, Zimbabwe, Tunisia, Russia, Argentina) in Geneva for two days of training conducted on the basis of the draft revised ICJ Manual on Trial Observation. Many of the participants were lawyers, although some were journalists, legal clerks and directors of human rights NGOs. Participants covered both the practicalities of preparing for and carrying out a trial observation and discussed the relevant international legal standards. It was interactive and participatory, with participants taking part, for example, in a mock trial. This first coordinated training seminar was very successful. In anonymous evaluation forms filled out after the training all of the human rights

defenders were positive about the training seminar and the draft materials provided. Many of them remarked that their confidence about undertaking a trial observation mission had improved due to the training. A second trial observation seminar will be held in Geneva in November 2009, and will include participants from Russia, Kazakhstan and Uzbekistan. Feedback from these training sessions will be used for preparation of the trial observation training seminars being planned for Russia.

4. The ICJ Eminent Jurists Panel (EJP) on terrorism, counter terrorism and human rights, established to study the compatibility of counter-terrorism laws, policies and practices with international human rights law, held a hearing in Russia in 2007, with the participation of panel members Mary Robinson, Stefan Treschel, and Hina Jilani.
5. Through this project the ICJ would also build synergy and benefit from expanded professional capacity through direct partnership with the Norwegian national section of the ICJ. ICJ Norway has an active network of judges, lawyers and prosecutors with substantial trial experience. Experts from ICJ Norway will participate in both the training seminars and the trial observations, and will advise and assist in the planning of the workshops and trial observations. The project will also help to build their involvement in the region and will forge links between the Norwegian section lawyers and the Russian legal community.

Legal profile of the applicant

The International Commission of Jurists (ICJ) is a global network of judges and lawyers, united by international law and rule of law, which envisions a world in which, through the rule of law, a just, democratic and peaceful society can be achieved, and which is dedicated to the primacy and implementation of international law, and principles that advance human rights. Our vision is based on the rule of law, not as a static set of rules, but as a dynamic concept that protects against arbitrary power, expands freedoms, and embraces justice. A rule of law under which everyone is entitled to claim without discrimination their civil, cultural, economic, political and social rights.

Founded in Berlin in 1952, the ICJ is today composed of fifty-seven eminent jurists who are representatives of the different legal systems of the world. Applying its expertise in law, justice systems, and advocacy, the ICJ works for victims to obtain remedies, for those responsible for human rights violations to be held accountable, and for justice systems to be independent, impartial, and active protectors of human rights. Based in Geneva, Switzerland, the ICJ Secretariat is responsible for the realisation of the aims and objectives of the ICJ. Together with the Secretariat and Regional/Country Offices the ICJ employs 38 staff members. The ICJ also benefits from a network of autonomous national sections and affiliated organisations located on all continents.

The ICJ Regional Programmes focus primarily on promoting the independence and accountability of the judiciary and on rule of law and human rights issues particular to their regional contexts. The ICJ has regional offices in Bangkok, Thailand; Johannesburg, South Africa; and Guatemala City, Guatemala, and has a Europe Regional Programme and a Middle East and North Africa Regional Programme, both currently based out of the ICJ Secretariat in Geneva.

Project Implementation

The ICJ International Secretariat will be responsible for the Project's financial management, administration, coordination, and implementation, with appropriate coordination, consultation, and agreement from the implementing partner ICJ-Norway. These project organisation activities will include, but not be limited to, the

following:

- **Publication:** The publication of the Russian-language edition of the *ICJ Manual on Trial Observation* will be undertaken by the International Secretariat as the first step in the project.
- **Project Implementation:** Project planning, scheduling, and coordination, including setting dates for activities, making required arrangements (travel, accommodation, space/equipment rental, hiring project consultants, etc.), and overseeing the implementation of activities will be planned together by International Secretariat and ICJ-Norway. At least two representatives from ICJ-Norway shall have the right to participate directly in each of the two training workshops, and in the reporting on activities as part of the project. Trial observers will be drawn from a pool of experts to include representatives of ICJ Norway. Depending on the level of support for this the ICJ and ICJ-Norway would hope for both workshops and both observations to take place during a period of one year.
- **Per Diem:** A daily cash allowance with a reasonable limit will be provided for all non-staff project-implementing participants during the course of project activities. This allowance is provided to cover small project expenses incurred by these participants (e.g. local transport, meal expenses, and other miscellaneous expenses, at the participants' discretion) during their participation in the field. These funds will be provided up-front to participants when they report for their project-specific duties, due to the difficulty of using Russian-language receipts for reimbursements.
- **Financial Management:** All grant monies shall be expended in accordance with the Project Budget. The International Secretariat will undertake to finance activities of the project, will account for all of the funds, and will provide financial expenditure reports to donors, as well as providing a copy of the audited financial statements during the period for which funding on this project has been received and managed.
- **Fundraising and Reporting:** International Secretariat and ICJ-Norway shall work together to obtain funding for the Project, using a mutually-approved Project Description and this Letter of Understanding, and in accordance with the Budget. The International Secretariat, as the recipient of all revenues relating to the financing of the project, will create all substantive content of narrative reports to donors, which shall be submitted after mutual approval by International Secretariat and ICJ-Norway. Administrative responsibility for donor communication, abidance by donor contracts and creation of financial reports, will be the responsibility of the International Secretariat, with appropriate prior consultation of ICJ-Norway.

Financial profile of the applicant

The International Commission of Jurists' projected annual operating budget for 2009 is approximately 5.9 million Swiss Francs (CHF).

ICJ List of Donors in 2008:

Ace/King Baudouin Foundation US
Anonymous Donor
Australian Section of the ICJ
Federal Public Service Foreign Affairs of Belgium
DanChurchAid
Diakonie
EuropeAid
Finland, Ministry of Foreign Affairs
Ford Foundation
France, Ministry of Foreign and European Affairs
Geneva, Republic and Canton
Geneva, Ville de Genève
Greece, Ministry of Foreign Affairs

ICCO
Irish Aid, Department of Foreign Affairs
JEHT Foundation
Joffe Charitable Trust
Liechtenstein, Office for Foreign Affairs
Loterie Romande
John D. and Catherine T. MacArthur Foundation
The Moriah Fund
The Netherlands, Minister for Development Cooperation
The Netherlands, Minister of Foreign Affairs of
Nederlandse Juristen-Vereniging
Norway, Royal Ministry of Foreign Affairs
Organisation Internationale de la Francophonie

Oxfam Novib
Swedish International Development Cooperation Agency
Spain, Ministry of Foreign Affairs and Cooperation
Switzerland, Federal Department of Foreign Affairs,
Political Division IV
Switzerland, Development and Cooperation Department

& Political Division IV
Switzerland, Federal Authorities of the Confederation
Taipei Bar Association (Taiwan)
United Kingdom DFID/ESP/CSC&CO
United Kingdom, British Embassy, Guatemala City
United Kingdom, British Embassy, Kathmandu

Key Personnel

Åsne Julsrud

Åsne Julsrud is a Judge at Drammen District Court of Norway since 2005. She obtained her law degree from the University of Oslo in 1995. Julsrud also holds a Masters of Law degree from the University of Southampton, where she specialized in Human Rights and Civil Liberties. Julsrud formerly worked at the Ministry of Culture, dealing with issues concerning freedom of expression and digital media. Her work experience also includes being an Assistant Judge in Oslo District Court, Research Assistant at the Norwegian Institute of Human Rights, and a barrister for the Counsel of Oslo. She is presently a board member of ICJ-Norwegian National Section and the leader of the Human Rights Committee of the Norwegian Judges Association.

Andreas Motzfeldt Kravik

Andreas Motzfeldt Kravik is an Assistant Judge at Drammen District Court of Norway. Kravik received his law degree from the University of Oslo in 2006 where he specialized in International Human Rights Law and International Criminal Law. Prior to his current work, Kravik was a Legal Intern at the United Nations in the Office of the Co-Prosecutors at the Extraordinary Chambers in the Courts of Cambodia (ECCC). He has been a Legal Consultant at the Norwegian Centre for Human Rights since 2006. As of fall 2009, he teaches Human Rights Law at the University of Oslo. Kravik is the head of ICJ Norway's subgroup on Judicial Independence.

Róisín Pillay

Róisín Pillay is Senior Legal Adviser at the International Commission of Jurists where she is responsible for the ICJ's European Regional Programme. She studied law at Trinity College Dublin and at the University of Cambridge, and qualified as a barrister in Ireland. After graduation, Róisín worked for the Irish Law Reform Commission and for several human rights NGOs. She was Legal Officer and then Senior Legal Officer at the UK NGO JUSTICE, working on implementation of the Human Rights Act from 2000 to 2002, and an adviser to the UK Parliamentary Joint Committee on Human Rights from 2002 to 2006. She has also been a managing editor and book review editor of the European Human Rights Law Review.

Wilder Tayler

Wilder Tayler is Acting Secretary-General of the International Commission of Jurists, based in Geneva, Switzerland. Mr Tayler, a Uruguayan lawyer, joined the ICJ in April 2007 as Deputy Secretary-General. He was Legal and Policy Director of Human Rights Watch from 1997 to March 2007. From 1990 to 1996 he worked with Amnesty International, initially as a Legal Advisor for the Americas and Asia regional programmes. In 1995, he became Programme Director of the Americas Region. From 1987 to 1990, he was Executive Director of the Institute for Legal and Social Studies (IELSUR) in Uruguay, a legal NGO that specializes in litigating human rights cases. Before this (1983-1987), he was Legal Officer for IELSUR, coordinating the Institute's defense of political prisoners and the representation in court of the families of the "disappeared". Mr Tayler is a member of the Board of the International Council on Human Rights Policy. He is also a member of the UN Sub-Committee on the Prevention of Torture established under the Optional Protocol to the Convention against Torture.

Attachments:

- Budget: Project on Fair Trial and Trial Observation in the Russian Federation 2010
- ICJ Annual Report and Audited Financial Statements 2008
- ICJ Publication: *Criminal Trials and Human Rights: A Trial Observation Manual* (English, 2009)