



## RULE OF LAW BRIEF

### Russia's Removal of the Jury System May Chill Both Free Speech and Justice

By Tracey Merrell\*

In the last few hours of 2008, Russian President Dmitry Medvedev signed a bill eliminating the right of a jury trial in cases involving crimes against the state.<sup>1</sup> President Medvedev ran his presidential campaign as a moderate determined to uphold the rule of law in Russia. Now, however, it seems as if he is pursuing the same policies as Russia's former President and now Prime Minister, Vladimir Putin.<sup>2</sup>

Since the fall of the Soviet Union, most scholars have classified Russia as a civil law country.<sup>3</sup> Verdicts in all Russian trials have been handed down, until recently, by panels of judges.<sup>4</sup> But jury trials have been gradually reintroduced in Russia over the past few years.<sup>5</sup> The bill prohibits jury trials for cases in which the Russian government has brought charges for crimes against the state, including treason, revolt, sabotage, mass disturbances, espionage, or terrorism. Instead of jurors, a panel of three judges, potentially subject to administrative interference, will try such crimes.<sup>6</sup> Critics suggest that the bill is another step away from democracy and toward the Kremlin informally criminalizing dissent.<sup>7</sup>

Jury trials have historically been the avenue to protect freedom to criticize the government. Before the Bolsheviks seized control of Russia, every time they found themselves before the court, they demanded a jury of their peers.<sup>8</sup> After the revolution, they did away with the protection of jury trials and other legal institutions meant to protect individual rights.<sup>9</sup> The judicial system functioned with a panel of three judges who acted as triers of both law and fact.<sup>10</sup> A historical survey conducted in the late 1980s shows that the acquittal rate for defendants tried under the bench panels after the revolution was less than 0.05 percent.<sup>11</sup>

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<sup>1</sup> Megan K. Stack, *Russia Ends Jury Trials for 'Crimes Against State'*, L.A. TIMES, Jan. 2, 2009, at 3, available at <http://articles.latimes.com/2009/01/02/news/fg-medvedev-juries2>.

<sup>2</sup> *Id.*

<sup>3</sup> See William Partlett, *Reclassifying Russian Law: Mechanisms, Outcomes, and Solutions for an Overly Politicized Field*, COLUM. J. OF E. EUR. L., Vol. 2, p. 1 (2008), available at <http://ssrn.com/abstract=1197762>.

<sup>4</sup> Guy Faulconbridge, *Putin says Russian jury system discredited*, REUTERS, Jan. 11, 2007, <http://www.reuters.com/article/latestCrisis/idUSL11676062>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Editorial, *Silencing the People*, WASH. TIMES, Jan. 7, 2009, at A22, available at <http://www.washingtontimes.com/news/2009/jan/07/silencing-the-people/>.

<sup>8</sup> Irina Dline & Olga Swartz, *The Jury is Still Out on the Future of Jury Trials in Russia*, 11 E. EUR. CONST. REV. 104 (2002), available at [http://www3.law.nyu.edu/eecr/vol11num1\\_2/features/dline.pdf](http://www3.law.nyu.edu/eecr/vol11num1_2/features/dline.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

After the fall of the Soviet Union, the legislature enshrined the jury trial system into the Constitution of the Russian Federation in an effort to “free the system from political control, promote the adversarial process, and rid the courts of their strong pro-prosecution leaning.”<sup>12</sup> The jury system caused the acquittal rate to jump from 0.05 percent with the three-judge panel to 20 percent when juries are involved in the process.<sup>13</sup> The dramatic increase in the acquittal rate is due largely to the prosecution’s failure to meet higher standards for its case.<sup>14</sup> In practice, judges exclude improper evidence only in jury trials, and excluded evidence vitiates the quality of the prosecution’s case.<sup>15</sup> Prior to the reinstatement of the jury trial, the investigators were able to conduct themselves in any manner they chose, including coercing self-incriminating statements from defendants.<sup>16</sup> The advent of the jury trial improved the police and investigative process, resulting in more suppression of inadmissible evidence and protection of the rights of citizens.<sup>17</sup>

Procedural guarantees in the judicial system are critical to upholding the rule of law. It is necessary to have judges that are impartial, committed to enforcing the laws as written, and independent of political influence, in order to “be a reliable guide to individuals and a constraint on power.”<sup>18</sup> The International Covenant of Civil and Political Rights, to which Russia is a party, grants everyone the right to a fair and public hearing by a competent, independent and impartial tribunal.<sup>19</sup> But the Russian judicial system is far from impartial or separate from the executive. The President appoints the judges and their salaries come from the federal budget.<sup>20</sup>

Furthermore, critics like Leonid Nikitinsky have stated that the prosecutors and officials often call judges to “impress upon them the importance of making ‘the right decision’—and the consequences of making the wrong one.”<sup>21</sup> This practice, known as “telephone justice,” was curbed by jury trials but now will likely be unchecked. As a result of the constant political pressure the Russian government asserts over judges, whom it selects, the judges will likely weigh the interests of government heavily against the interests of justice. Without the protection of a trial by jury, the conviction rate in cases concerning crimes against the state could be extraordinarily high, like the conviction rate that existed during the Soviet Union.<sup>22</sup> Justice cannot be served when those who are supposed to deliver it are controlled in any way by the state.

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 107.

<sup>14</sup> Dline & Swartz, *supra* note 8, at 108.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> The Center for the Rule of Law, *Judicial System*, <http://rule-of-law.us/issues/judicial-system-international-business-trade/> (last visited Aug. 8, 2009).

<sup>19</sup> International Covenant on Civil and Political Rights art. 14(1), Mar. 13, 1976, 999 U.N.T.S 171, *available at* <http://www2.ohchr.org/english/law/ccpr.htm#art14>.

<sup>20</sup> Brian Whitmore, *Russian Juries on Trial In Wake of Politkovskaya Verdict*, RADIO FREE EUROPE/RADIO LIBERTY, Feb. 27, 2009, <http://www.rferl.org/articleprintview/1500481.html>.

<sup>21</sup> *Id.*

<sup>22</sup> *See* Dline & Swartz, *supra* note 8.