



Interregional Non-governmental Organization
"COMMITTEE AGAINST TORTURE"

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Original: RUSSIAN

603000, Nizhniy Novgorod, Gruzinskaya st., 7b;

Tel (831) 433-14-04, Fax 433-61-01, E-mail: komitet@pytkam.net

www.pytkam.net

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Execution and no pardon.

The condemnatory tendency of Russian courts is the major problem of Russian justice and the source of numerous problems of the law enforcement system as a whole: judges readily support the prosecution, even when there are doubts that the guilt is proved. This encourages investigators and prosecutors to be rather negligent in proving their position, if one is fortunate. In the worst case, the "handicap" given to prosecutors by judges enables not only regular corruption, but also falsification of evidence and violations of criminal procedure up to tortures.

According to the Institute of Law Enforcement Problems, in 2008, Russian courts delivered 925166 judgments of guilt and 8448 judgments of acquittal; thus, their proportion is 110 to 1. The share of not-guilty verdicts in the total scope of verdicts pronounced by courts amounts to 0,67%. At the same time, in case of private charges where the litigation and its progress to a great extent depend on the aggrieved party, and involvement of the prosecutor is not compulsory, courts deliver 68% of all judgments of acquittal; 76% of cases are terminated due to exculpatory circumstances and 24% of cases are terminated for other reasons.

But as soon as the prosecutor gets involved in the case, the situation changes dramatically. If we look at similar cases tried by the same courts, but when the participation of the prosecutor is compulsory, we can see that there is just one acquittal for 1000 cases and only 8 cases out of 10 000 are terminated for exculpating circumstances.

So, we can notice that the prosecutor's presence in the courtroom changes the judge's behaviour. As a result, almost all accused are found guilty under certain categories of cases.

The internal reporting and prosecutorial workers' performance evaluation system are organized in a way that each lost case becomes the source of trouble for the prosecutor who worked with it. As one of prosecutors has once said, "*an acquittal guarantees a reprimand; three reprimands a year, and you are fired*". In their turn, prosecutors have their own means to discourage judges from delivering judgments which can be assessed as prosecutor's defeat. First, this is appealing against acquittals. The Prosecutor's Office almost always appeals against verdicts of not guilty, and each appeal does not only create problems for the judge in charge of the verdict, but also puts the chairman of the court to inconvenience. If the verdict is cancelled, the court is going to be thoroughly checked, the personnel will be suspected of corruption. There is another tool – prosecutorial checks in respect of judges. Although it is the qualifications panel which decides whether a judge should be dismissed, the prosecutor's office can conduct a check on its own initiative.

There is one more very important mechanism connected to appointment and reappointment of judges. In fact, the Prosecutor's Office has the right to veto an appointment. The qualifications panel sends information about candidates to the Prosecutor's Office for it to check whether the given data is true. This allows the Prosecutor's Office to eliminate undesirable candidates before they are sworn into office.

Thus, prosecutors have a variety of tools to influence judges. These tools vary from the simplest and legal ones, like appeals up to the last instance, to the gravest procedures, like checks and criminal charges.

Besides, very often former prosecutors or judicial staff who used to perform some prosecutorial duties become judges, and it is very difficult for them to put the skills of their former profession aside when administering justice. The European Court of Human Rights considers this practice violating the standard of an independent tribunal.

Therefore, if we want judges to be independent and impartial, we should first give them a free hand in their work, let them deliver judgments at their own discretion, without thinking about the consequences of their decisions for themselves. It is quite possible that if we allow judges to acquit the accused freely, we are going to face corruption, bribery and punitive bias of certain judges. But to combat these negative trends we need just the same thing, as to remedy other defects of Russian justice – an independent tribunal. And we cannot achieve this goal, as long as prosecutors' interests are a more significant factor for the outcome of the proceedings than the merits of the case and presumption of innocence.