

Visegrad Scholarship – Final Report

Failed Legislation Reforms and Democratic Rollback in Russia

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The project I am focusing on concerns reforms of Russian criminal procedural legislation in the period from 1990 to 2013. The early 1990s witnessed a comprehensive attempt to introduce and fix democratic norms and freedoms as main principles regulating criminal procedure. However, since the middle of 2000s a trend of democratic rollback could be clearly observed. After a closer look at the documents in the archives, I concluded that the rollback had already taken place in the middle of 1990s. At the archives I managed to locate the Draft of the Criminal Procedural Code initiated by Boris Yeltsin and developed in 1994 in line with the propositions of the Soviet human rights activists. While applying for the scholarship I assumed that in the early 1990s when reforming the criminal procedure, Soviet dissident experience of human rights activists of the 1970-1980s was largely neglected. In fact, the main ideas of the Soviet human rights activists were reflected in the basic legislative acts adopted in the early 90s (such as the new Russian Constitution and the Conception of the Judicial Reform). Therefore, due to the documents I found in the archives, I slightly modified the scope of the project from investigating the Soviet human rights movement experience to studying the social and political situation of the 1990s.

I tried to reveal why the proposed Draft was rejected as I did not find any discussions of these issues in the literature. Most of the scholars comparing the provisions of the Soviet times Code (1960) and the new Russian Criminal Procedural Code (2001) completely overlook the Draft. Only a short note is made about its existence. While a comparative analysis of the Draft and the adopted Russian Code shows that the former contained substantial democratic propositions and guaranteed protection of human rights in criminal procedure. There are many differences between the two documents. In particular, the Draft contained an explicit definition of criminal proceedings, its tasks, and its objectives. It also defined the bodies involved in criminal proceedings. By contrast, the adopted Code does not have such provisions at all. The Draft had also an important Article regarding protection of individuals and society from state power abuse and arbitrary acts. Such Article is completely missing in the adopted Code. Finally, the Draft contained a wider scope of the rights of the complainant, who has a right for his/her own investigation. The accused person could participate in the selection of jury and object to the actions of the chief judge. The defence attorney could undertake private investigation

measures and even consult with private detective. Even this brief comparison shows the advanced character of the proposed Code. Furthermore, the Draft was consistent with international laws in terms of human rights protection. While the adopted Code leaves much space for manoeuvring for law enforcement officials, which leads to multiple cases of rough violations of individual rights in criminal procedure.

Therefore, trying to explain the reasons of the Draft rejection, I started to investigate the documents concerning the social and political situation of the early 1990s. While the coups of 1991 and 1993 are usually considered as failed, the facts suggest that they were rather temporary defeats of the conservative forces standing behind the coups. In the cases of both coups no any serious investigation was undertaken. The figures participated in the coups were arrested, but soon they were released. Moreover, some of them even took key positions in Russian official institutions. For instance, the head of the Soviet KGB, General Kriuchkov, participated in the coup, in the late 1990s became an advisor to the Head of the Federal Security Service (FSS) - the former KGB. In the period from 1998 to 2000 this position was held by Vladimir Putin. The fact that Kriuchkov holding a rank of General served as the advisor to Colonel Putin is quite striking. It seems that Kriuchkov could continue to rule the organization. Valery Zorkin is another interesting example to consider. In 1993, as a Chair of the Russian Constitutional Court, he recognized the order of Yeltsin about constitutional reform as unconstitutional and supported termination of Yeltsin's powers as the president. In 2003 Zorkin again took the position of the chair of the Russian Constitutional Court and is holding this position nowadays. Therefore, to a large extent, the democratic rollback currently observed in Russia could be linked with the active participation of the conservative opposition to the reforms (formed by pro-communist parties and groups) in Russian social and political life. Of course, more research should be done on the topic, especially taking into account that the period of the 1990s and the 2000s is poorly covered by Russian scholars.

During the two-month research stay in the archives I looked through 71 boxes, studying the documents for the period from 1953 to 1997, focusing on the materials concerning the 1990s. Along with numerous documents I found, the finding of the Draft of the Criminal Procedural Code mentioned above became especially contributing for my research. Overall, I studied photocopies of the records from meetings of public officials, looked through criminal legislation of the Soviet Union, the RSFSR (Russian Soviet Federal Socialist Republic) and the RF (the Russian Federation). I also paid my attention to the Orders of the President of the RSFSR and the RF and to the Resolutions of the Supreme Soviet of the RF. In addition, I looked through the documents of the Constitutional Court, materials from the Samizdat archives (including Samizdat periodicals, for example, "Khronika of the Current Events"), Red Archives (all fonds 300). Of my primary interest were the materials from HU OSA 205 that cover mainly the period of the 1990s. Additionally, I read newspapers and periodicals from the Soviet period and the early transition. The documents I found have created a sufficient foundation for completing my project. My impression of working in the archives is very positive.

I looked through and consulted with the content from the following holdings:

1) HU OSA 103 Records of the Constitutional and Legislative Policy Institute, 1956-1997,

Series:

HU OSA 103-0-1, Articles, 1976-1996, Box 3

HU OSA 103-0-3, Country Specific Background Material, 1956-1997, Boxes 7-9

HU OSA 103-1-1, Country Files, Boxes 29-36

2) HU OSA 300 Records of Radio Free Europe/Radio Liberty Research Institute, 1949-1994:

HU OSA 300-80 Soviet Red Archives, Series:

HU OSA 300-80-1, Old Code Subject Files, Boxes 44-45, 236-237, 241, 293-295, 344-349; 398- 402, 528-529, 537-538, 580-581, 606, 649-651, 667-668, 688-694, 715-716, 726-727, 771, 878-883, 885-888, 958.

HU OSA 300-81 Monitoring Unit, Series:

HU OSA 300-81-1 Subject Files Related to the USSR and the Russian Federation, 1982-1994, Box 16

HU OSA 300-8 Publications Department, 1950-1994, Series:

300-8-38 Report on the USSR, Box 7

3) HU OSA 205 Records of the Open Media Research Institute, 1952-1997:

HU OSA 205-4 Information Services Department, 1952-1997, Series:

HU OSA 205-4-201, The Former Soviet Union Archives, 1975-1997, Boxes 107-109

4) Publications:

Prestuplenie i nakazanie: leningradskaia sudebno-sledstvennaia khronika (1990-2009);

Sobranie aktov Prezidenta i Pravitelstva Rossiiskoi Federatsii (1992-1994);

Sovetskii Soyuz (1994-1995);

Sovetskaia iustitsiia: zhurnal Ministerstva iustitsii i Verkhovnogo Suda RSFSR (1961-1997);

Weekly newspaper "Sovetskii patriot" (1991).

All in all, I greatly appreciated the opportunity to conduct a research at the Open Society Archives. I am very thankful to all OSA members for their professionalism, help and encouragement. My special thanks go to Örs Lehel, Robert Parnica, and Tibor Szigeti for providing me constant support in search of necessary holdings. I am very grateful to Kati Gádaros for managing the administrative part of my fellowship. I am also very thankful to my supervisor Olga Zaslavskaya. Her feedback was always very useful in developing and framing my research project. Overall, conducting the research in the OSA was very useful experience for my both professional and personal development and I greatly appreciate this opportunity.