

# Russia's Legal Foundations for Civil Repression

## *Are Soviet Practices Being Reformed or Legalized?*

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### **Introduction**

The legal foundation has been created which grants the former KGB many of the powers it once enjoyed under the Soviet regime to repress individuals and groups who displease the government or the special services. Unfortunately, legislation passed by the Supreme Soviet in 1992 which grants these powers to the Ministry of Security, became law without significant opposition from democratic people's deputies. These laws could become the democrats' undoing.

It is apparent that state security officials, or *chekisti*, and their friends in certain newspapers are intent on criminalizing the activities of Russian citizens who demand the abolition of the instruments of repression, as well as their freedom to associate with foreign experts who might help them. The security organs have been conducting a defamation campaign which falsely portrays democrats and their colleagues from the West as tools of hostile intelligence services.<sup>1</sup> Once they are successfully labeled as such, it is not too much of a step to use the instruments of coercion against them under the rubric of fighting "spies."

### **1992 Laws Create Foundation for Legalized Repression**

Major legislation enacted in 1992 to "reform" the special services actually creates the foundation for legalized repression. These laws are alien to pluralistic democracy. What follows is a brief analysis of some of these laws.

#### *Law on Security*

The cornerstone of Russia's new internal security legislation upon which most other laws will be built is the Law on Security, passed in March and published in May 1992. Despite many new themes such as protection of the rights of the individual, the law reflects Soviet-style legalistic thought by containing enough qualifications and exceptions to legalize continued abuse

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of power. These flaws include:

—*Vague definition of “security,” vital “interests” and “threat.”* The text of the law begins with a vague legal definition of security, but nowhere is the type of society to be protected nor the inalienable rights of the individual defined.<sup>2</sup> The law’s definition of a “threat to security” is equally amorphous: “A threat to security is a combination of conditions and factors that present a danger to the vital interests of the individual, society and state. A real and potential threat to objects of security from internal and external sources determines the substance of activity to ensure internal and external security.”<sup>3</sup> The legal definition of “vital interests” is likewise vague.<sup>4</sup> Thus the law is useless as a basic charter of reform. The law provides no indication of whom or by which methods the definition of vital interests would be decided. Since the law grants the organs of the former KGB the power to carry out security functions, it thus does not consider the *chekist* apparatus a threat to society; rather, chekism works as the guarantor of order. By implication, a citizen or organization that criticizes or urges decentralization and fundamental reform of the security apparatus might be considered a threat to “state security” and the country’s undefined “vital interests.”

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—*No provision to break with chekist legacy.* The basic law assumes that the former KGB apparatus is sufficient to ensure the safety and civil rights of Russian citizens. The Law on Security contains no provision or statement of principle that the cultural essence of the old Soviet security and intelligence apparatus is inconsistent with democratic pluralism and human rights, nor is there recognition that perpetrators of crimes under the previous regime occupy posts at all levels of the security and intelligence apparatus. The law is content with the *chekist* status quo.

—*Scope of entities performing security functions is broadened.* Not only does the law provide security functions for the *chekist* apparatus, police, and other agencies, but it expands the “security system” to include social and nongovernmental groups: “The security system is formed by the organs of legislative, executive, and judicial power; state, social, and other organizations and associations; and citizens participating in ensuring security in accordance with the law as well as by legislation regulating relations in the security sphere.”<sup>5</sup> A further clause identifies security organs more specifically. In addition to the military, state security, internal affairs, foreign intelligence, and other “traditional” organs, the law includes “organs ensuring the secure running of

operations in industry, power engineering, transportation, and agriculture,” as well as “services ensuring the security of means of communication and information, customs services, nature conservation organs, public health organs, and other state organs for ensuring security which operates on the basis of legislation.”<sup>6</sup>

—*KGB informants continue to receive protection.* The law stipulates, “The state provides legal and social protection for citizens, social and other organizations and associations which assist in encouraging security in accordance with the law.”<sup>7</sup> No difference is made between informants who report on political “criminals” and those who report on true criminals. The implication is that past, present and future informants, regardless of the nature of their work, may be paid and given all necessary means of assistance by state security, as was the case under Soviet rule. If this is true, the political informants of the past may continue to receive benefits courtesy of the Russian taxpayer, and the state security organs may maintain their networks of agents and informers planted throughout society.

—*Financing of state security and intelligence is not confined to budget.* This item is crucial, because unless the government controls all funds of the special services, it can never hope to bring them under control. The Law on Security stipulates that the organs shall be financed not only by the governments of the Russian Federation, republics within the Federation, *krais*, *oblasts*, and other local administrative regions, but through an additional source called “extrabudgetary funds.”<sup>8</sup> This item seems to support reports that the *chekist* networks are being financed by front companies and businesses run by officers in the “active reserve.” A conclusion that one can draw is that the budgets of the organs by law are not intended to be under strict civil control.

—*Civil rights may be violated legally.* Citizens’ rights and freedoms are guaranteed in the law, unless the situation makes it necessary for their liberties to be violated. According to the law, “In ensuring security,

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limitation of citizens’ rights and freedoms is not permitted, with the exception of cases for which the law makes direct provision.”<sup>9</sup> Therefore, all laws pertaining to security may, if passed by Parliament, permit potentially massive and systematic

abuses of the citizenry. This is not beyond the capabilities of the current Congress of People’s Deputies or Supreme Soviet.

—*Law permits abuses through follow-on legislation.* Because of its failure to set strict principles and guidelines on individual rights and the ability of the state to protect or violate them, the Law on Security allows for denial of civil rights to be permitted through additional legislation.

*Dangerous Follow-on Legislation*

Follow-on legislation based on the Law on Security is understandably flawed, and presents a grave long-term threat to human rights and civil liberties in Russia. One such follow-on statute, the Law on Operational Investigative Activity, was critiqued by lawyer Sergei Zamoshkin in the weekly *Moscow News*. Published after its passage in May 1992, the law permits security personnel to enter a premises without a warrant "in the line of duty" to conduct "interrogations of citizens, make inquiries, collect samples for comparative studies, objects and documents, conduct surveillance, and identify persons."<sup>10</sup> The law contains numerous other serious flaws.

—*Mail interception, bugging allowed with no checks against abuse.* Mail may be intercepted and telephones tapped with permission from the state prosecutor, but permission is not needed if "inaction under the circumstances may result in a terrorist or subversive act," according to the law. In such a case, a warrant may be obtained retroactively within 24 hours. Because the law does not stipulate how searches, mail intercepts or electronic eavesdropping must be conducted, the implication that witnesses need not be present allows agents to plant "evidence" in order to incriminate an individual as it did under the old regime. Subjects of surveillance must be suspected of involvement in a crime, though the law does not differentiate between a potential suspect and a potential witness, and opens both to having their civil rights violated legally.<sup>11</sup> Furthermore, the fact that Russia has no independent judiciary, and that the Procuracy is known to be penetrated and co-opted by state security, issuance of a warrant under current circumstances is not necessarily a meaningful check against abuse.

—*No right to face accuser.* Like the Law on Security, the authors of the Law on Operational Investigative Activity attempted to appear progressive by granting the individual the right to demand written explanation from the organs of the reason his rights are being infringed, and the right to appeal in court. However the latter law states that the organs must provide the explanation "within the limits of classification," a publicly undefined criterion which effectively denies the right of the accused to face his accuser, since the accuser may be an informant, and the informant's identity by law is a state secret.<sup>12</sup> Nor is there much assurance that an affected individual would have a meaningful chance to prove his innocence in court, since the Russian judiciary is not independent and maintains a tradition whereby the judge often defers to the prosecutor.

—*Continued penetration of civil institutions and churches.* The Law on Operational Investigative Activity prohibits security personnel from "secretly taking part in the operation of bodies of representative or judicial power, as well as of duly registered public associations and religious organizations" if "the objective is to influence the nature of their activity." However, if the objective is not an influence operation but a domestic or political intelligence

operation, there is no legal prohibition.<sup>13</sup>

—*No distinction between police and chekist organs.* Additionally, the law makes no distinction between law-enforcement agencies such as the police in the Ministry of Internal Affairs, and *chekist* organs such as the Ministry of Security and the External Intelligence Service, leading one to conclude that all organs broadly named in the Law on Security may legally commit the above human rights violations.<sup>14</sup> Despite its official classification as such, the Ministry of Security is not a “law enforcement” organ, since it is inherently political in nature despite its new separation from the Communist Party.

### *Complementary Laws*

Numerous other laws were drafted or enacted in 1992 to complement the basic Law on Security. A Law on Federal State Security Agencies was

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enacted in August to define the responsibilities and duties of the apparatus.<sup>15</sup> A draft law to grant individuals the right to appeal against state organs in court was also passed, but without guarantees of an independent judiciary, the law is a mere technicality, since the current judiciary tends to defer to

the state prosecutor and presumes guilt before innocence.<sup>16</sup> The Law on State Secrets will codify potentially severe limitations on free speech in Russia, as it allows the government to term information a “state secret” even if the information does not originate in government.<sup>17</sup>

### **Conclusion**

The laws in themselves offer no hope that basic human rights will be sacrosanct in Russia. In fact, when considered with recent statements and actions of the Ministry of Security and its friends, the laws are alarming. The Ministry of Security and co-opted newspapers have alleged that Russian citizens who advocate fundamental reforms of the special services are potential traitors, and that foreign organizations which seek to help Russian reformers in this respect, are somehow doing the work of the CIA.

This is not only slander, but is creating a political climate for a future crackdown. Armed with the 1992 laws, the *chekisti* can now legally harass and repress individuals and organizations who challenge the continued existence of the old KGB, and can criminalize their contacts with foreign experts who share their views. Russia will never be free as long as these laws are in effect.

## Notes

<sup>1</sup> See Ministry of Security public relations director Andrei Chernenko, *Pravda*, 30 September 1992, p.2, translated in *Foreign Broadcast Information Service* (hereafter referenced as FBIS-SOV), 92-195, 7 October 1992, pp.32-33; and Chernenko in Andrew Higgins, "New KGB Lashes Out at 'foreign meddling,'" *The Independent*, London, 28 January 1993. In the latter case, Chernenko made an official statement at a news conference in which he falsely alleged that the International Freedom Foundation and other private American organizations which criticized the Russian state security apparatus were fronts of the CIA. The denunciation was in apparent reference to the February conference on the KGB sponsored by the Glasnost Foundation in Russia.

<sup>2</sup> Law No. 2656-1 of the Russian Federation "On Security," signed by President Boris Yeltsin and dated at the Russian House of Soviets, Moscow, May 5, 1992, in *Rossyskaya Gazeta*, May 6, 1992, first edition, p.5, translated in FBIS-SOV-92-088, May 6, 1992, p. 34.

<sup>3</sup> *Ibid.*, Article 3.

<sup>4</sup> *Ibid.*, Article 1.

<sup>5</sup> *Ibid.*, Article 8.

<sup>6</sup> *Ibid.*, Article 12.

<sup>7</sup> *Ibid.*, Article 2.

<sup>8</sup> *Ibid.*, Article 20.

<sup>9</sup> *Ibid.*, Article 7.

<sup>10</sup> Sergei Zamoshkin, "Special Services Get More Powers Than Is Good for Citizens," *Moscow News*, 27 May 1992, p. 22.

<sup>11</sup> *Ibid.*

<sup>12</sup> Law No. 2646-1 of the Russian Federation "On Security," *Op. cit.*, Articles 2 and 7; and Zamoshkin, *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> Zamoshkin, p.22.

<sup>15</sup> "Law on Federal State Security Agencies," *Rossyskaya Gazeta*, 12 August 1992.

<sup>16</sup> Alexei Tabachnikov, ITAR-TASS in English, 1133 GMT, 21 December 1992, in FBIS-SOV-92-248, 24 December 1992, pp. 21-22.

<sup>17</sup> See preliminary analysis by Kate Martin of the American Civil Liberties Union/Center for National Security Studies, submitted for the record at the conference "KGB: Yesterday, Today, Tomorrow," sponsored by the Glasnost Foundation in February 1993 in Moscow.