

AT THE HARRIMAN INSTITUTE

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The Rule of Law and Human Rights in Russia: Karinna Moskalenko at the Harriman Institute

“The European Court of Human Rights is our domestic court,” stated Karinna Moskalenko, Director of the International Protection Center, who discussed the rule of law and human rights in Russia at the Harriman Institute on January 27, 2010. The Russian courts are dysfunctional and Russian human rights lawyers have turned to the European Court in order to obtain justice. “The judgments of this court are binding and our authorities know this. With the European Court we can still have hope, even in hopeless cases.”

In Russia, the courts are at the whims of the Russian authorities—judges face tremendous pressure to rule in favor of the prosecution. “The courts refuse to satisfy the motions of the defense and to allow them to obtain documents from witnesses, while the prosecution has everything at its disposal,” lamented Moskalenko. “We are very lucky to have the European Court. You can think whatever you want about the Yeltsin era but it was then that scholars pushed for Russia to join the Council of Europe.”

Moskalenko hopes that Russia will continue to be a member. “The Russian authorities have threatened to pull out of the Council of Europe but so far they have been unsuccessful. It is much easier not to join the Council than it is to exit.” Moskalenko fears that a day will come when the government will be able to carry out its threats. “Each time they threaten to pull out I imagine the destinies of all my clients. I cannot even fathom what it would be like if our highest authority were the Russian Supreme Court.”

The jury trial is the most successful mechanism in Russia’s domestic court system. Unfortunately less than 1% of cases go to jury trial, and since January 2009 jury trials have been banned for cases deemed to be crimes against the state—terrorism, hostage taking, armed insurrection, sabotage and civil disturbances. “If Khodorkovsky could have a jury trial he would actually have some hope,” reflected Moskalenko.

The International Protection Center, which recently celebrated its 15th anniversary, receives nearly a thousand legal aid requests per month.

“We cannot help everyone, but every letter is opened and answered,” described Moskalenko. Prisoners’ rights cases comprise a large portion of the Center’s caseload. The conditions in Russian prisons are atrocious. With the help of the European Court for Human Rights, the Center has been able to push the government toward some improvement. “Many of our cases help not just our clients, but other people who experience similar abuses.”

Moskalenko referred to the Center’s victory in the case *Kalashnikov v. Russia*, which was the first public hearing of a Russian case before the European Court of Human Rights. Valeriy Kalashnikov, former president of the Northeast Commercial Bank, was arrested on charges of embezzlement in 1995. He was kept in a pre-trial detention center in Magadan, a city in the Russian Far East, for five years, spending two months of that time at a labor camp in Siberia. Upon his release in 2000, Kalashnikov sued the Russian government for the inhumane conditions he suffered at the detention center. “We didn’t win this case for Kalashnikov, who was already released, we won for the sake of all Russian prisoners.”

Moskalenko emphasized that Kalashnikov had suffered at a pre-trial detention center, not a prison. “Most people at these centers are innocent, yet the European Court found that the conditions there are even worse than in colonies and prisons. This means that our authorities are not serious about the presumption of innocence.” Moskalenko paused, adding that even guilty people should not be treated the way that innocent people were treated at the pre-trial detention center.

As a result of the Kalashnikov case, and others like it, the Center has become a well-known outlet for prisoners, and the Russian government has been pushed to make changes. “Russian authorities appeared before the Council of Europe with an outline of concrete measures that they plan to take in order to improve penitentiary institutions. This, of course, was not purely due to political will,” remarked Moskalenko, explaining

that the Council of Europe has an effective controlling body. “The Committee of Ministers follows up to make sure that judgments have been implemented in every case. The European judicial system is expensive, and they want to be sure that this money is not going to waste.”

The use of torture to obtain confessions and incriminating evidence has become systematic in Russia. “Once there is a final judgment, it is difficult to prove that the evidence against you was obtained through torture.” Moskalenko explained that defendants only have hopes for success if they can address their complaints at the beginning of their detainment. “Some are very brave, and manage to bring torture complaints to the prosecution or the courts at the initial stage.” In those cases, the Center has been able to appeal to the European Court. “I don’t want to oversimplify things, but once the police start seeing more of these cases, and realizing that evidence obtained through torture is inadmissible, using torture will cease to make sense.”

Complaints about unfair judicial proceedings comprise another big part of the Center’s cases. The vast majority of Russian cases are decided entirely by a judge, and these judges face pressure to rule in favor of the prosecution. Moskalenko laments that acquittal rates are less than .05%. “When looking at the larger picture, it’s quite obvious that something is wrong, but it is nearly impossible to prove individual cases of judicial unfairness before the European Court of Human Rights.”

The case *Kudeshkina v. Russia*, which the Center has been litigating for years, receiving a favorable ruling from the European Court in February 2009, has shed light on the kind of manipulation Russian judges can face. In 2003, Olga Kudeshkina was appointed to judge a criminal case against Mr. Zaytsev, a police investigator accused of conducting unlawful searches during his investigations. Kudeshkina faced pressure from the President of the Moscow City Court to rule in favor of Zaytsev. When she refused to succumb, Kudeshkina was removed from the case without explanation.

Kudeshkina spoke openly to the media about her removal and complained to the High Judiciary Qualification Panel. The Panel did not press charges against the President of the Moscow City Court; instead the Moscow City Court removed Kudeshkina from her position. Kudeshkina unsuccessfully appealed to the Supreme Court. Years later a judgment from the European Court of Human Rights ordered financial compensation for Kudeshkina from the Russian government.

“Russian authorities resisted this judgment as much as they could, but Kudeshkina became a national hero.” Moskalenko commends the increasing number of judges that have started to appeal to the Center after Kudeshkina. Most judges, however, continue to yield to pressure and “some judges don’t even need pressure, they just know how to behave.”

The Center is also representing the family of the journalist Anna Politkovskaya, whose murder has never been properly investigated by the government. Cases like the Politkovskaya case are known as “right to life” cases. “In matters of ‘right to life’ we seek to impose a positive obligation on the state—not only should the state not be killing journalists and activists, state officials should be acting to prevent more deaths and to investigate the murders that have occurred.”

“The one case where you can see almost all of the violations of the EU Convention in a concentrated form is the case of Khodorkovsky,” asserted Moskalenko. Mikhail Khodorkovsky is the founder of Yukos, formerly Russia’s largest oil company. Aside from being a businessman, and the wealthiest man in the Russian Federation, Khodorkovsky was a philanthropist who established the Open Russia Foundation—a nongovernmental organization working to fight corruption and promote democracy in Russia.

In 2003 Khodorkovsky was arrested on charges of fraud. “Everyone warned him that he would be arrested if he stayed in Russia, but he didn’t leave.” Moskalenko had met with him shortly before the arrest. “We discussed civil society in Russia,” Moskalenko recounted. “He said something shocking; he asked me what we were doing this work for, how it could possibly serve ordinary Russian people.” Then Moskalenko showed Khodorkovsky some of the Center’s cases in more detail and he was impressed. “We arranged to meet again but it never happened because by that time he was already in prison.”

Khodorkovsky’s key associate, Platon Lebedev, had been arrested a few months before him. This was seen as a warning to the Yukos head. Khodorkovsky remained in Russia, hoping to clear Lebedev of the charges, but was soon arrested and sentenced to a nine-year prison term. Currently Khodorkovsky and Lebedev remain in a pre-trial detention center.

The case is in the midst of its second trial—which broke for two weeks over the holidays, a period during which Khodorkovsky and Lebedev were not allowed contact with their lawyers. The defendants now face a 22-year sentence. “The new charge is completely absurd, even the people who don’t like Khodorkovsky recognize this. They are

accusing him of stealing the entire production of Yukos—this is completely groundless,” expressed Moskalkenko. “You can’t even say that Khodorkovsky is not properly represented—he has tremendous legal efforts behind him. I keep asking myself, how is it possible to get away with something like this in front of the entire global community?”

Moskalkenko was nearly disbarred because of her choice to represent Khodorkovsky. “I have been stopped in airports, I have been threatened. So far they have failed to impede me. I’ve told all of my lawyers—you are free to go, because we are in trouble now.” So far Moskalkenko’s lawyers have stayed, however the Center is small, comprised of 5-7 attorneys as well as several law students. “They all do incredibly brilliant work,” Moskalkenko stressed.

Despite the lack of judicial freedom, Moskalkenko contends that things are better than they were during Soviet times. “The Moscow Helsinki Group exists, and operates openly. We have Echo Moskva and *Novaya Gazeta*—journalists have been killed but they are still publishing things that the authorities don’t like, these outlets are still allowed to exist.”

Moskalkenko feels encouraged that judges have become well-versed in European case law. “Ten years ago, if a lawyer tried to reference European case law as precedent, a judge would yell at them for not respecting the Russian judicial system. Now judges retort with knowledgeable answers—they know that in order to avoid problems they have to take precedent from European cases into account.”

Moskalkenko invests her hopes in the European Court for Human Rights. Nearly 50% of the European Court’s cases come from the Russian Federation, and 10% of these cases come from the International Protection Center. “I can’t say that it will save Russia, but there is some sense to it.” Unfortunately, the European Court is overburdened—it is not supposed to be a substitute for a domestic court system, but right now the European Court is all that Russia has.

Reported by Masha Udensiva-Brenner