

Police Reform in Russia: Obstacles and Opportunities

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In a democracy, citizens hire the police to protect them. Bound by contract, police officers enforce and obey the law. That, of course, is the ideal. In reality, every country struggles with police ineptitude and misconduct. Yet, with vigilance and proper mechanisms of oversight, established democracies manage to prevent most of the worst abuses. Indeed, countries cannot become established democracies unless they do.

Societies in transition from totalitarianism to democracy have it much worse. They must work with a police force that has always protected power at the expense of the people. The officials who have the authority to initiate reform are often the very ones most opposed to it. Moreover, drastic changes in political systems are fraught with social upheaval, including violence. Police officers are supposed to combat increasing crime with outdated structures and strategies while respecting individual rights for the first time.

In Russia, scattered attempts at reform have ended in failure. They seldom amounted to more than bringing in new commanders who would ceremoniously pledge to clean up the force. Supporters of reform have failed to take into consideration the inertia and open resistance of the law enforcement bodies themselves. As both crime and police misconduct rise steeply, the government must fundamentally change the police force and the laws that guide it.

In this paper, I will discuss policing reforms that the Russian government must implement. But first I will provide some background about the transition to democracy, the structure of the police, and the Chechen War.

Communism to Democracy

One of the first acts of the communists after they seized power in late 1917 was to disband the police corps. With the eighteenth-century French Jacobins as their guide, they recruited from their ranks a new force, the militsiya. Like the state security service, the militsiya sought not to serve the people but to keep them submissive. While the Communist party oligarchy, which included militsiya chiefs, had expansive freedom (even to break the law), most citizens lacked basic rights. Also lacking many necessities, they sustained a vast illegal market. "Beating the system" became a sort of a national

sport. Police corruption took on enormous proportions as many officers used their knowledge of illegal activity to blackmail citizens.

At the same time, the militsiya, who could use intimidation and force with impunity, managed to contain violent crime. The cities, devoid of nightlife, were well patrolled and relatively safe. Most crime occurred in the outer districts and usually went unreported in the press. The militsiya also successfully combated organized crime. As in Hitler's Germany, the Communist regime was itself a criminal operation that could not abide competition.

As the Soviet political apparatus was transformed in the late '80s and early '90s, the police remained largely unchanged. They were not prepared to assume their new role as defenders of democracy. Nor were they ready to cope with the crime unleashed by the transition. These outdated police structures are motivated primarily by survival instinct rather than concern for the public good. Russians are fully aware of the police's futility; the Ministry of Internal Affairs (MVD) estimates that 42 percent of crime victims do not approach the police for help. Police officers are also threatened by the crime wave; 173 officers were killed on duty in the first 10 months of 1997, according to the MVD. Furthermore, as I will discuss later, the police have become a major part of the crime problem.

Organizational Structure

As they did under the Communist regime, the police perform a range of functions, some of which have nothing to do with fighting crime. The police force, which falls under the rubric of the Ministry of the Interior, includes the police officers corps; the highway patrol (GAI); special services shock troops called OMON (special duty police detachment), similar to American SWAT teams; military units called "internal troops," designed to participate in emergency military operations, staff prison and labor camps, and escort prisoners in transit; the national fireguard service; the visa and internal passport department (OVIR); and various other guard agencies. Until November 1997, the Ministry of the Interior also had under its command all penal institutions. However, on the recommendation of the Council of Europe, they were placed under the authority of the Ministry of Justice. The regular police corps has about 700,000 officers, OMON has 50,000, and the internal troops have 400,000. (The figure for the police corps is very rough because of high turnover and poor recordkeeping, while those for OMON and the internal troops are more accurate because officers are conscripted for two years of service.)

The internal troops have a militaristic structure and appearance. In fact, most people used to think that the internal troops, with their military garb and bearing, were regular army units. In closely controlled Soviet society, the oligarchy managed to conceal their special operations against nationalistic rebel factions or mutinous prisoners. It was the

Chechen war that made the internal troops as well as the dark blue-clad OMON special force distinct and notorious entities.

War in Chechnya

In December 1991, the democratically elected president of Chechnya, Dzhokhar Dudayev, declared independence from Russia. In December 1994, Russian troops invaded, setting off the Chechen war. Yet the Russian authorities never called it a war. Because Chechens were Russian citizens and because of Moscow's contention that Chechnya was part of the Russia Federation, the Constitution prohibited an overt military operation. To uphold the illusion that the war was a police action, the Russian government deployed internal troops and the OMON special force to Chechnya. Regular army troops soon moved in, too.

Russia never declared a state of emergency, which may have legitimized, or at least legalized, such a massive use of police power. The presence of the internal troops and OMON was never brought into compliance with the Constitution. Many police officers felt betrayed. They knew that their participation was unpopular with most Russians and perhaps even illegal. The government ordered them to kill but refused to legalize their presence. This semilegal status angered the officers and divorced them from responsibility for their actions. The war cultivated in the police officers an utter disregard for both human life and the rule of law.

According to the estimates of Citizens' Watch, about 25 percent of OMON officers fought for at least three months in the Chechen War. Today, the OMON forces, who just a couple years ago were killing Chechen soldiers and civilians, perform crowd control, document checks, and drug busts. Some OMON officers even have regular beats. Given their experience in Chechnya, it is hardly a surprise that encounters involving OMON officers often escalate into bloody affairs. The Russian police force will have difficulty presenting itself as a credible organization as long as it employs paramilitary outfits—the same ones that participated in an unpopular war.

Police Misconduct

According to the MVD, 3,366 Russian police officers were disciplined for misconduct and 1,541 were arrested for serious crimes during the first nine months of 1997. The St. Petersburg police department, which serves 5 million people, registered 721 complaints of police brutality. The number of incidents that went unreported and unpunished is anyone's guess. Whatever the statistics, it is widely accepted that police brutality, harassment, and corruption are monumental problems.

Citizens' Watch and other human rights groups have documented numerous cases in which the police detained people without cause, often for many days; prevented detainees from notifying lawyers and relatives; placed suspects in cells with hardened criminals; and physically abused suspects. For example, on December 16, 1997, officers in the St. Petersburg police station allegedly beat to death a refugee from Azerbaijan. Representatives of the Azerbaijani community have asked Citizens' Watch to help them find a lawyer to take the case to court. We are attempting to make this case a legal precedent.

During Soviet times, the relatively small number of foreign visitors and residents received special protection from the police and KGB officers disguised as police. Although still more insulated from police violence than Russians, foreigners cannot escape it altogether. For example, in February 1997, the police carried out what they called a "routine drug bust" on a St. Petersburg nightclub patronized largely by foreigners. Several witnesses told Charles Diggs of the English-language *St. Petersburg Times* that OMON officers wearing black ski masks beat a number of people with rifle butts and took their money and possessions. In October 1997, OMON officers, during a "routine document check," attacked and robbed about 20 State Medical School students, most of whom were from India, Africa, and the Middle East.

The police have done little to curtail the power of organized crime, which has penetrated every sphere of Russian society. On the contrary, the police have helped organized crime leaders ascend to the highest echelons of power. The press is filled with accounts of cooperation between high-ranking police officials and professional gangsters. Reforming the police is essential to fighting organized criminals, who threaten to dominate the country.

Although vastly underreported, police misconduct is at least discussed and scrutinized in Russia's two major cities, Moscow and St. Petersburg. In other cities, towns, and villages, virtually all incidents of police misconduct escape the notice of outsiders. Human rights organizations are not very active outside Moscow and St. Petersburg, and the media generally do not investigate allegations of police abuse in small towns. One must assume that police misconduct is a grave problem throughout Russia given that most officers—especially those outside big cities—operate in a climate of impunity.

The Road to Reform

The Russia government has theoretically committed itself to police reform by signing international agreements that uphold human rights and the rule of law. In addition, leaders have championed those principles in numerous public pronouncements (see President Yeltsin's speech at the Strasbourg Summit, October 10, 1997).

Moreover, public indignation over the abuses and incompetence of the police force sometimes reaches a critical mass, which forces public officials to respond. For example, furor over a rash of well-publicized incidents in 1997 prompted the St. Petersburg police chief, Anatoly Ponidelko, to issue a rare public apology and to sack 170 high-ranking officers and about the same number of patrol men. Fifty-seven of the officers are in jail awaiting trial. However, as in Soviet times, the public learns little about the outcome of trials of police officers; the secrecy renders the effort virtually senseless and raises doubts about Ponidelko's motives. Indeed, his effort to clean up the police force seems to have waned considerably.

As the situation in St. Petersburg suggests, reforming the police will be exceedingly difficult. The government is burdened by its Byzantine-Tsarist-Soviet tradition and by pressure from police leaders firmly rooted in the totalitarian past. In 1997, Yeltsin signed a new anticrime and corruption law presented by the Interior Minister, General Anatoly Kulikov. The law simply pours more money into archaic structures. The police will surely be as ineffective as before, but in greater numbers. Kulikov, who became one of eight Vice Prime Ministers in 1997 and is bidding for even more power, poses a major barrier to reform. Russia's top policeman, he has resisted all efforts to reduce the force's or his own bloated responsibilities.

Yet, a short while ago, the prospect of military reform was equally daunting. Faced with a number of problems—financial woes, sagging morale, threats of mutiny by General Lev Rokhlin, the unpopularity of compulsory service—the government has begun to reform the military despite the opposition of the extremely powerful Defense Minister, Pavel Grachev. The plan for military reform, already approved by government, will affect the police force. It envisages a 50 percent reduction in internal forces by late 1998, a measure that Citizens' Watch supports.

Police reform should be next on the agenda. Russian officials need to recognize the futility of investing more money and energy in the existing system; there are no quick fixes. Political and police leaders need to fundamentally change the force by improving training, changing the laws that foster misconduct, and making officers more accountable to the citizens they serve.

Education and Training

Some well-trained and well-educated police officers turn out to be inept and corrupt. However, a variety of studies, and common sense, suggest that they are less likely to make mistakes and to engage in misconduct. Unfortunately, training for Russian officers is dangerously weak. A beat patrol officer is turned loose on the street with a weapon and the authority to arrest people after an average training period of six months. The investigative forces of the Interior Ministry recruit undertrained patrol officers or people with no training.

Officers are ill-equipped to cope with Russia's soaring crime rate. Lacking basic skills, they often resort to abusive treatment and fail to perform sufficient investigation. Courts are forced to send many cases back to the same undertrained officers for further investigation. Because pretrial release is extremely rare in Russia, many suspects languish in unsanitary and dangerous jails for months and even years. It is safe to assume that most officers cannot meet the basic standard of knowledge articulated by the 1931 Knapp Commission, which stated that every officer "...must be able to point to a specific statute or a specific rule of the common law that authorizes him to arrest and detain a citizen under the circumstances of a given case."

The government needs to revamp the system of officer training with new primary police schools, academies, teachers, textbooks, and curricula. Every officer should be required to attend a certified policing institute that teaches the basics of police work. The curricula should emphasize individual rights, a new concept to most Russian officers. The schools could borrow instructors and curricula from American and European academies, and could use such Council of Europe projects as Police and Human Rights, 1997-2000.

At the same time, government and human rights groups should make an effort to educate citizens, who are similarly ignorant about constitutional rights. For example, Article 46 of the Constitution states that every citizen has the right to petition the court to review the actions of police officers. However, in St. Petersburg, only three people filed appeals alleging police misconduct in 1996. Rights matter little if people do not know how to exercise them. To that end, Citizens' Watch and other groups have proposed a number of projects, such as a question-and-answer booklet and television series about civil liberties, and comprehensive human rights curricula for colleges.

Legislation

The laws that dictate police behavior have not been brought into accordance with the Constitution or international standards to which the government purportedly adheres. Laws that engender police misconduct stay on the books mainly because the government does not have the will to change them. Another problem is that new laws or reforms of old ones are drafted by people in the departments who will be most affected by the changes. For example, people from the internal troops write the laws that concern them without the input of independent and unbiased voices. In this section, I will discuss a few of the most egregious laws and deficiencies in the legal system. It is important to point out, however, that legal reform demands a comprehensive approach. The government's alteration of individual laws has only produced more contradiction and confusion. It should review all the laws that govern police behavior at the same time.

The Law on the Militsiya of 1991

The basic law on the police contains many defects. For example, Paragraph 18, Article 11 grants the militsiya unimpeded access to private property. Officers may enter homes and businesses to pursue suspects or “if facts warrant the assumption that a crime has been committed or is being committed.” To protect citizens’ right to security of residence, the phrase should be changed to “in the presence of information that a serious crime has been committed or is being committed.” Paragraph 28, Article 11 gives officers the right to use vehicles belonging to citizens and private businesses to pursue suspects. The law does not provide for compensation for property or for physical harm. Perhaps most important, Chapter 3, Article 37 provides for public control over the militsiya but does nothing to make it a reality. This chapter should be completely rewritten.

Arrests

A majority of complaints about police misconduct concern arbitrary arrests. According to the Code of Criminal Procedure, arrest commences from the moment the investigative organ writes up a charge sheet. But what about the time from when the officer apprehends the person to when the officer presents the person to the investigator? This period, known as “no-man’s land,” is not regulated by criminal procedure or administrative law. Officers are guided only by the manual on policing and patrolling, which leaves too much to their own judgment and does not have the force of law. The government must pass laws that compel officers to follow strict and clear procedures. For example, the United States Supreme Court’s decisions in *Escambedo* (1964) and *Miranda* (1966) established that police officers must identify themselves; present documents, badge, and a card on which basic rights are listed; explain the reasons for arrest; inform arrested people of the right to remain silent and to representation; and tell them that everything they say may be used against them in court.

Moreover, Article 5 of the *European Convention on the Protection of Human Rights and Basic Freedoms* states the police must present every arrested person to a judge, who determines the legality of the arrest. But the Russian Code on Criminal Procedure requires only that the police inform the prosecutor about the arrest. Although Article 22 of the Constitution provides for judicial oversight of arrests, Article 6, part II states that until the laws of criminal procedure are brought into sync with the Constitution, old (Soviet) legal norms will dictate the process of arrest and detainment.

Detainment

The grounds for detaining people charged with crimes must also be brought into conformity with international standards, which permit the state to take into custody people who may flee or hinder the establishment of truth in the case. Article 96 of the

Criminal Procedure Code allows the Russian government to use custody as a preventive measure for people charged with crimes punishable by at least a year of incarceration (or even less, in some exceptional cases). However, the seriousness of a crime should not be used to justify detainment because guilt has yet not been established.

Structure

The police are responsible for both preliminary investigation and initiating criminal proceedings. That is, the same officer discovers the initial facts and determines whether to pursue the case based on those facts. Police officers often decide to not initiate criminal proceedings when the case seems difficult to prove. Their superiors condone and perhaps even encourage this practice because it enhances the department's record by increasing the percentage of successful investigations. The government could stop this corruption by creating a governmental organ, independent of both the militsiya and prosecutors, that has the authority to initiate criminal proceedings.

Investigations

Articles 414 to 418 of the Criminal Procedure Code allow for protocol investigations, which can lead to widespread police misconduct. Under this peculiar procedure, used for nonserious offenses, police officers do not initiate a formal criminal probe. They do not perform any independent investigation. Nor do they interrogate the subject or witnesses. They simply obtain explanations from the defendant and the arresting officer and perhaps some information from the police department. If the officer in charge of the investigative department signs off on the protocol, it is forwarded to a local prosecutor. If the prosecutor has no objections, he or she presents it to a judge, who has 14 days to decide whether to press charges.

Protocol investigations flagrantly violate the Constitution. First, subjects are not given an attorney. Second, the Criminal Procedure Code refers to subjects as offenders, depriving them of the presumption of innocence. Third, in a protocol investigation, evidence obtained illegally is admissible. Despite numerous objections of the courts, the Ministry of Internal Affairs continues to use protocol investigations.

Citizens Groups

Over the past few years, Citizens' Watch and other human rights nongovernmental organizations have become very active in protesting police misconduct and bringing lawsuits to redress abuses, despite the resistance of victims. Due in part to the efforts of citizens groups, the legislative assembly in St. Petersburg proposed Russia's first ombudservice, which would focus on police misconduct cases. In December, the governor of St. Petersburg rightly vetoed the bill because legislators refused to grant

the ombudservice sufficient autonomy. The assembly is reworking the bill and will soon resubmit it to the governor.

In addition, Citizens' Watch is organizing a campaign in support of trade unions, which would work with human rights groups to democratize the force. The Russian section of the International Police Association has signed on with the project. The German trade councils, whose members are elected by police officers of all ranks, may serve as a model. The bodies make recommendations that are considered by the command in promoting officers, settling conflicts, and other decisions.

In the spring of 1998, Citizens' Watch will hold a conference on relations between the police and the public in Russia and Belarus, where the police are a tool of repression in the hands of the country's autocratic president, Alexander Lukashenko. We hope the conference will help build a model for police reform applicable to Russia and all the other post-Soviet states as they attempt to, once and for all, move beyond totalitarianism.

Conclusion

Burdened by a tradition of controlling everything that crawls, the national government is suspicious of measures that would loosen its control over agencies, especially the police. Unwilling to support even modest reforms, such as the establishment of trade unions, the federal Parliament, dominated by extremists, will certainly not do what is necessary to transform the police: develop a new system of training, overhaul the laws that guide police behavior, and put in place mechanisms of state and social oversight.

But the political pendulum swings back and forth. When political leaders more amenable to reform assume control, we must be ready with drafts of laws and plans for change. Meanwhile, we must work at the local level to improve the police and to turn it into an institution worthy of a democracy.