

THE OBSERVATORY
For the Protection of Human Rights Defenders

L'Observatoire
pour la protection
des défenseurs des droits de l'Homme

El Observatorio
para la Protección
de los Defensores de los Derechos Humanos

Report

International Fact-Finding Mission

Russian Federation

Attacks on human rights defenders in Saint Petersburg: Russian authorities guilty of negligence

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The International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), in the framework of their joint programme, the Observatory for the Protection of Human Rights Defenders, carried out a joint mission in Saint Petersburg from June 18 to 23, 2005.

Concerned about repeated attacks on human rights defenders in Saint Petersburg, the Observatory considered it necessary to examine the way in which public law enforcement bodies operate in this city.

The Observatory had already carried out a fact-finding mission on human rights defenders in Russia in September and December 2003 and in May 2004¹. Since the mission in June 2005, the general situation of human rights defenders in Russia and the climate of violence in Saint-Petersburg have further deteriorated.

The Observatory received the support of Citizens' Watch in the organisation of this new mission. For many years, this association has carried out raising awareness activities in order

to sensitise law enforcement bodies to human rights protection issues.

The situation presented in this report specifically concerns the situation of human rights defenders in Saint Petersburg. However, the recommendations made by the Observatory are valid with respect to the whole of the Russian Federation.

The mission was made up of Mrs. Françoise Daucé, senior lecturer in Russian civilisation, and Mrs. Laurence Roques, a lawyer.

During their mission, the experts met representatives of Saint Petersburg law enforcement bodies as well as human rights defenders who had been victims of attacks, their lawyers, and specialists in the fight against criminality. Their thanks go to everyone who kindly agreed to reply to their questions.

The Observatory particularly thanks Citizens' Watch and Memorial Saint Petersburg for their help and assistance in organising the mission.

List of the persons met during the mission

Official representatives of law enforcement bodies

- *Prokuratura*² investigator in charge of the enquiry into the murder of Mr. Nikolai Girenko (anonymous interview)
- Colonel Boris Nikolaevitch Borin, deputy-head in charge of management policy at the Directorate of Internal Affairs (GUVD)
- Mr. Igor Timofeyevitch Maslobojev, criminal judge at the Saint Petersburg Court

Scientific representatives

- Mr. Yakov Gilinski, sociologist and police specialist
- Mrs. Valentina Uzunova, a researcher at the Russian Academy of Sciences (RAN) Ethnological Institute, a colleague of Mr. Nikolai Girenko
- Mr. Alexander Vinnikov, a researcher and a colleague of Mr. Nikolai Girenko

Human rights defenders

- Ms. Stephania Kulaeva, executive director of Memorial Saint Petersburg

- Mr. Boris Pustintsev, president of the organisation Citizens' Watch
- Mrs. Ella Polyakova, president of the Association of Soldiers' Mothers of Saint Petersburg
- Mr. Vladimir Schnittke, Memorial Saint Petersburg
- Mr. Rouslan Linkov, Democratic Russia association, formerly parliamentary assistant to Mrs. Galina Starovoitova
- Mr. Tounkara Aliou, president of the association African Union

Lawyers

- Mr. Boris Borisovitch Gruzd, from the Yuri Schmidt law firm, defence lawyer in the cases of Mr. Vladimir Schnittke and Mr. Nikolai Girenko
- Mr. Leonid Romualdovitch Sajkin, from the Yuri Schmidt law firm, defence lawyer in the case of Mrs. Galina Starovoitova

Official French representatives

- Mr. Pascal Maubert, French Consul General in Saint Petersburg
- Mr. Emmanuel Bérard, press attaché to the French Consul

1. See Report of the Observatory International Fact-Finding Mission, *Russia: Human rights defenders faced with the 'Dictatorship of Law,'* September 2004.
2. The *Prokuratura* is composed of judicial investigators and prosecutors under the Public Prosecutor of the Republic.

Introduction

The year 2005 was characterised with the adoption of the law entitled “Amendments to some federal laws of the Russian Federation,” which is a clear sign of the deterioration of the situation of freedom of association in Russia and makes human rights defenders even more vulnerable.³

Already since the early 2000’s, a number of attacks on human rights defenders have been noted in Russia, especially in Saint Petersburg. These attacks culminated with the murders of Mr. **Nikolai Girenko** in June 2004 and, in November 2005 (after the mission), of Mr. **Timur Kacharava**, an anti-fascist activist. Mr. Girenko, an ethnological researcher at the Russian Academy of Sciences, a legal expert involved in the combat against xenophobic and neo-fascist movements, president of the Ethnic Minority Rights Association, one of the most important anti-racist organisations in Saint Petersburg, and head of the Minority Rights Commission at the Scientific Union of Saint Petersburg, was shot by several bullets through the door of his home.⁴

These murders, which illustrate the deterioration of the social and political climate in Saint Petersburg, should have shocked and provoked a strong reaction from the public authorities, locally and throughout the entire country. Yet, this was not the case. Apart from a few formal statements, little significant action was taken to combat the climate of intolerance in Saint Petersburg. On the contrary, since these tragic murders, new attacks against human rights defenders have occurred and continued to occur on a regular basis. They call into question the very activities of associative activists. These assaults are

often accompanied by the theft of data relating to the activities of human rights associations. This data is sensitive, since it includes information regarding the names of those helped by the associations, the names of the association staff members, and financial information on their funding. It can also be misused. Defamatory articles against defenders, signed by far-right movements, are beginning to circulate in Russia in the press and on the Internet. When attacks bear a signature, the aggressors make reference to neo-fascist ideology, but their actions appear to go beyond simple Nazi propaganda and correspond to more specific intentions aimed at causing harm.

These acts pose the problem of the reaction of the public authorities confronted with attacks against human rights organisations and, more generally, civil society activists. This report has several aims. Firstly, it attempts to analyse the general climate of hostility against human rights associations that is developing in Russia and that might explain the move from verbal intolerance to physical violence. Secondly, it examines the recorded attacks in Saint Petersburg in recent years. Thirdly, it analyses the public response to these attacks. Thanks to the interviews held and information gathered, this report tries to throw light on the operation of the law enforcement bodies (police, *Prokuratura* and the law) and the administrative bodies to understand the relative impunity enjoyed by the attackers of human rights defenders and the vulnerability of the defenders. The report also draws up recommendations to try to improve the protection of human rights defenders in Russia.

3. See Observatory Explanatory Note, January 20, 2006.

4. See Observatory Annual Report 2004.

I - Attacks against human rights defenders in Saint Petersburg: a result of the growing intolerance in the country

Since 2003, human rights and civil society activists in Saint Petersburg have been subjected to several violent attacks, as illustrated by the assassinations of Mr. Girenko and Mr. Kacharava. In addition to assaults against individuals, damage to the property of human rights associations has also been recorded, and several organisations have been broken into. In the great majority of cases, the burglars have been interested in information held on computer rather than in the money or valuable equipment on site, thus negating the theory of malicious crimes. Finally, anonymous threats have been made against a certain number of human rights defenders with the aim of intimidating them. This series of acts against human rights defenders in Saint Petersburg takes place in a broader context of pressure on non-governmental organisations, the relative impunity of extremist movements and the relative weakness of civil society.

A - Russian NGOs on the front line

1) Authorities in fear of democratic movements

The changes in regime in Georgia and Ukraine following popular demonstrations have, in the last few months, increased the Russian authorities' fear of the emergence of social and political opposition. The overthrow of the governments of Mr. Edward Shevardnadze in Georgia and Mr. Leonid Kuchma in Ukraine was perceived by the Russian authorities as the result of a plot hatched by Western States financing opposition associations. In this context, the Russian non-governmental organisations are considered by the authorities to be a likely hotbed of opposition. As a consequence, they are closely monitored and even, sometimes, prevented from working. This pressure on the NGOs is backed up by the patriotic and sometimes nationalist discourse that the Russian State has held since President Vladimir Putin has been in power. The associations are regularly accused of collusion with foreigners and are presented as a "fifth column" acting for the benefit of foreign powers.

On May 26, 2004, Mr. Vladimir Putin himself, addressing the upper chamber of the Duma, the Russian Parliament, explicitly called into question international funding of the associations. He devoted part of his speech to the role

of "non-political organisations" (*o roli nepoliticheskikh obchtchestvennykh organizatsij*) and stated that "thousands of civil organisations and unions exist and work constructively in our country. But they are far from all being devoted to defending people's real interests. The main aim of some of these organisations is to receive funding from influential foreign foundations and others serve dubious commercial or individual interests. In the meantime, the most important problems of the country and its citizens go unnoticed. I must say that these organisations say nothing when there are attacks on basic human rights or on the real interests of the people. This is not by chance. Quite simply, they cannot bite the hand that feeds them." Mr. Putin referred here to foreign organisations that, according to him, would take advantage of the financial difficulties of Russian associations in order to control them. He went on saying: "Of course, such examples should not lead us to put the blame on civil organisations in general. I think that such exceptions are inevitably temporary."⁵ The speech by the Russian head of State can only be a direct attack on human rights organisations and, by referring to the temporary nature of these exceptions, is a thinly disguised threat to their existence. Shortly before, General Kraev, head of the General Direction of Sentence Enforcement in the Ministry of Justice, had declared that human rights NGOs were funded by "criminal networks." On October 20, 2004, Mr. Viktor Alsknis, Russian parliamentary representative and member of the party "Rodina" (motherland), publicly accused the Union of Soldiers' Mothers Committees of "undermining Russian defence capabilities," of being "funded by the West" and of "anti-military propaganda." At the same time, on October 22, 2004, he lodged a complaint in the name of the Duma with the Ministry of Justice and the General Prosecutor so that an enquiry could be opened into the funding of the organisation.⁶ In May 2005, Mr. Nikolay Patrychev, Director of the Federal Security Service (FSB), declared in a speech to the Duma that "his services were preoccupied by the increasing activities of foreign governments through NGOs" and that they were thinking of "introducing proposals to strengthen legislation regulating the work of foreign NGOs in particular." Finally, on September 14, 2005, Mr. Yuri Kalinin, head of the Federal Penitentiary Services, stated that "many (such) committees and all kinds of organisations exist in Russia today. None of these activists exercise their normal professions. The question is: how do they earn their living?"

5. See <http://www.kremlin.ru/text/appears/2004/05/64879.shtml>

6. See Observatory Annual Report 2004.

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Who is paying them? We know that their funds come from the robbers' money pot."

This kind of political discourse is at the origin of more and more intense direct or indirect pressure aiming at restricting NGO activities.⁷ Many organisations are subjected to judicial proceedings (Russian-Chechen Friendship Society - RCFS,⁸ Association of Soldiers' Mothers of Saint Petersburg), regular tax inspections (Nizhny-Novgorod Human Rights Society - NNHRS⁹), threats and attacks (Memorial Saint Petersburg, the Sakharov Museum) and the theft of data (Memorial Saint Petersburg, Association of Soldiers' Mothers of Saint Petersburg).¹⁰ One year after the murder of Mr. Nikolai Girenko in Saint-Petersburg, Mrs. **Lyudmila Zhorovlya**, a human rights defender, and her son were murdered at their home in Vorkuta in the Republic of Komi (in the North of Russia) on July 21, 2005.¹¹ On November 13, 2005, Mr. **Timur Kacharava**, a well-known anti fascist activist, was attacked by a group of *skinheads* while waiting outside a bookshop in Saint-Petersburg, and stabbed to death. A friend who was accompanying him was also attacked and severely injured.

On November 18, 2005, a bill entitled "Amendments to some federal laws of the Russian Federation" was presented before the lower House of Parliament (Duma) by the Parliamentary Committee on religious and associative organisations, presided by Mr. Popov, a member of the United Russia Party (ruling party). This bill amends three laws: the Federal Law No. 7 of January 12, 1996, on non-profit making organisations (Law on NKO - *O Nekommercheskih Organizacijah*), the Federal Law No. 82 of May 19, 1995 on public associations, and the Law of July 14, 1992 on closed territorial administrative entities.¹² It addresses all non-profit organisations including those working on the protection and defence of human rights. On November 23, 2005, the text was adopted by the Parliament in first reading. On December 8, 2005, under national and international pressure, several round tables were held by the Parliamentary Committee for the Affairs of Religious and Voluntary organisations, the legislation Committee of the Duma and the Property Committee, bringing together Russian and foreign NGOs, the Civil

Chamber of the Russian Federation and the Council for the development of civil society and the voluntary sector. On that occasion, Mr. Popov stated that the only purpose of the draft amendments was to protect the Russian Federation "against the activity of foreign politics." The second reading of the draft amendments, initially scheduled for December 6, 2005, was postponed to December 16, then to December 21, 2005. Although several restrictive provisions were withdrawn from the bill, the law, as adopted in third reading on December 23, 2005, remains in blatant violation of the right of freedom of association. On January 17, 2006, the law was published in the Official Journal after being signed by Mr. Putin and it will come into force on April 10, 2006.¹³

2) A general climate of intolerance

Threats against human rights associations are part of the more general context of intolerance against foreigners at the highest level of the Russian State. This intolerance is noticeable within both the executive and legislative authorities, and is particularly obvious in their statements. Some remarks made by Mr. Vladimir Putin illustrate the development of openly xenophobic or violent speech against people who are considered as being different. Already in November 2002, at the end of a European Union-Russia summit meeting, a journalist who had questioned the Russian President's policy in Chechnya received the response "If you want to become an Islamic radical and are ready to be circumcised, I invite you to come to Moscow. We are a multi-confessional country, we have specialists in the matter and I advise you to have the operation so that nothing will grow back again."¹⁴ In June 2005, Mr. Vladimir Putin committed new verbal slips. At the time of a summit meeting with Mr. Tony Blair, a journalist asked him "Mr. President, in the context of the G8, requirements of democracy and respect for human rights are placed on the African countries. Could the same requirements not be applied to Russia?" Mr. Putin replied "(...) we know that until recently in some African countries political opponents were 'eaten as an appetiser.' We do not have this kind of custom or 'culture.' This is why any comparison at this level is incorrect."¹⁵ These words greatly shocked the Africans, in particular those

7. See Report of the Observatory International Fact-Finding Mission, *Russia: Human rights defenders faced with the 'Dictatorship of Law,'* September 2004.

8. See Interview with Mr. Vladimir Schnittke, June 19, 2005.

9. See Observatory Appeal RUS 003/0805/OBS 069, August 17, 2005.

10. See Chapter II of the current report.

11. See Observatory Appeal RUS 002/0805/OBS 058, August 23, 2005.

12. These closed administrative entities are towns or regions, access to which is subjected to an authorisation from the Security Services (FSB).

13. See Observatory Note, January 20, 2006.

14. See http://www.politis.fr/article.php3?id_article=342

15. See http://www.kremlin.ru/appears/2005/06/13/1733_type63377type63380_89525.shtml

living in Russia. In turn, these verbal slips created a favourable climate for violent and extremist deviations within the country.

The large number of political parties within the legislative authority at the State Duma that claim to be patriotic and nationalist also contributes to the spread of an intolerant discourse that can even lead to open racism or anti-Semitism. In January 2005, twenty parliamentarians of the State Duma signed a letter to the General Prosecutor of Russia, Mr. V.V. Oustinov. This document, known as the "Letter of the 500," openly shows the language that nourishes the anti-Semitic movements in Russia. Here are a few extracts: "On December 18, 2003, during a televised discussion with the population, the President of the Russian Federation, Mr. Putin, quoted the following figures: in 1999, four people were prosecuted for 'incitation of racial hatred' (art. 282 of the Criminal Code), 10 people in 2000, and in 2003 around 60 cases were sent to court and 17-20 resulted in judicial proceedings¹⁶). The great majority of these cases were instigated by Jews or Jewish organisations who accused their opponents of 'anti-Semitism.' And most of the people accused and prosecuted are Russian patriots." The document develops the idea of a conspiracy according to which the Jews themselves profane their cemeteries and synagogues so that nationalists be convicted.

At the time of the Soviet Union, the different populations that existed within the USSR (Russians, Tartars, Uzbeks, etc.—over 200 groups in all) had to indicate their ethnic origin on their identity card. This requirement was suppressed in the post-Soviet reforms so as to avoid discrimination. Yet, radical patriots are defending this former Soviet habit. The above-mentioned document also includes international considerations that are characteristic of anti-Semitism: "Jewish communities in all countries carry out political lobbying on behalf of the interests of international Jewry, especially in the United States. This State has become the instrument that allows Jews to attain their global aims." This letter caused great emotion within the country and protests were made by human rights defenders. Some parliamentarians declared that their names were at the bottom of the document by mistake. However, many politicians continue to support it. A further demand was even added: that of "the prohibition of all Jewish religious and

community organisations." Although the document is overtly anti-Semite, the *Prokuratura* has refused to take action.

B - From daily racism to the development of neo-fascist movements in Saint Petersburg

For several years, observers have noted the development of radical nationalist movements in Russia,¹⁷ especially in Saint Petersburg. These movements are nourished by daily racism against foreigners and are accompanied by the construction of pseudo-scientific theories to justify the violence against non-Russians. Nationalists and their accomplices, neo-Nazi movements and *skinheads* put pressure on the human rights organisations that try to combat these movements and fight against discrimination in general.

1) "Commonplace" racism

Racism has been openly developing in Russia for several years. Whereas in the 1990s this latent racism remained confined to the verbal domain, today it has led to a physical expression. Thus, in 2005, 366 people were victims of racial attacks in Russia, 28 of which leading to death according to the statistics of the SOVA Centre, specialised in the field of racial discrimination, and which itself points out that these figures are not exhaustive. Racism is especially violent against coloured people living on Russian territory (Africans, Asians, Caucasians). As an African from Saint Petersburg explained: "Everyone is subjected to the same situations every day. In the street you hear petty insults and words: 'monkey,' 'nigger,' 'darky'... You have to be careful, walk round the crowds, avoid the subway."¹⁸ There are around 4,000 people in the African community in Saint Petersburg. Almost all of them have been victim of verbal and physical attacks. Some people have been seriously hurt and remain severely affected by these attacks. In September 2005, a young student of Congolese origin died as a result of his wounds after being attacked in the street, apparently by *skinheads*. According to the association African Union, the *skinhead* movements "have not been in hiding over the last four or five years. Before, they used to hide more. Today, the nationalist movements serve as political cover for some *skinhead* leaders and give them a kind of 'right to beat up.'"¹⁹ Witnesses stress that the members of

16. See V. Putin. *Discussion with Russia*, December 18, 2003. Moscow, 2003, p. 53.

17. See Comments and Recommendations of the United Nations Committee on the Elimination of Racial Discrimination and the United Nations Human Rights Committee, during their consideration of the Russian Federation in 2003.

18 See Interview with a dozen members of the African Union association of Saint Petersburg, June 22, 2005.

19. *Idem*.

skinhead movements behind the physical attacks in the street are very young. "Children under 18 years old are encouraged to carry out these attacks since they cannot be sentenced as strictly as adults,"²⁰ asserted a member of African Union. The older ones who manipulate them are more ideologically motivated.

2) The ideological theory of racism

Nationalist movements in Russia offer a pseudo-scientific justification for racism and anti-Semitism. Several publications based on these themes circulate openly. The former political party Democratic Russia, which today operates as an association, takes note of anti-Semitic publications and lodges complaints with the *Prokuratura* under two headings: incitation to racial hatred and calls for war (art. 280 of the Criminal Code). The association has lodged complaints against publications of the movement Russian National Unity (RNE), which, in its texts, calls for war with Turkey in order to regain its lands in the Dardanelles region, and calls for the murder of Jews and Caucasians.²¹ Mr. Ruslan Linkov, former parliamentary assistant to the democratic Member of Parliament Mrs. Galina Starovoitova, murdered in Saint Petersburg in November 1998, has observed increased xenophobia and fascism in the media, and considerable tolerance of this by the city authorities. On May 1, 2005, neo-fascist activists joined the 1st May parade under the banner of the Union of Slavonic Communities. Pseudo-scientific racist literature is well-represented in the city's bookshops, which sometimes even have a shelf under the heading of "ethnology."²² The authorities do nothing to put an end to the dissemination of these publications. It is worth pointing out here that one of the assailants of Mr. Vladimir Schnittke, president of the Memorial Saint Petersburg association, belonged to a neo-paganist Nazi movement.²³

This discourse implicitly encourages the development of racist and anti-Semitic movements in Russia. The condemnation of the Chechens in the wake of the first war in Chechnya (1994-1996), then following the beginning of the second war in this Republic in 1999, led to increasing mistrust of Caucasians in particular and then of foreigners in general.

This dual trend makes the human rights movements involved in the defence of minority rights ideal targets.

C - A weak public response to the development of racism and extremism

1) The indulgence of the federal judicial authorities with regard to racist attacks

The attacks on coloured people living in Russia or against Jewish people are on the increase and their perpetrators benefit from relative impunity. Few proceedings are brought against the authors of racist and anti-Semitic publications or acts, and those that are initiated rarely succeed despite the fact that, since the adoption of the new Criminal Code in 1997, Russia has strengthened the punishment of individuals who commit racist or xenophobic acts.²⁴ A slight improvement is nevertheless noticeable in a few cases in Saint Petersburg against the fascist groups Schultz 88 and Mad Crowd, which attacked non-Slav looking people. The investigation into Mr. Timur Kacharava's murder also seems to be constructive, as eight of the eleven perpetrators were arrested and were detained as of January 2006. However, the association Democratic Russia has filed complaints against newspapers such as *Rus pravoslavnaia* and *Za russkoe delo*. On each occasion, no investigation into the complaints has been opened, on the grounds that these newspapers do not publish anti-Semitic or damaging texts, but rather works that enable improved knowledge of other peoples. The *Prokuratura*²⁵ has even stated that, given that Orthodox texts contain anti-Semitic writings, texts of this kind are not punishable in law.²⁶ This development of racism and anti-Semitism is sometimes dependent on the conservative sections of the Orthodox Church.

According to the people interviewed, different trends exist within the *Prokuratura*, including nationalist sympathisers of the *skinheads*. Besides, the prevailing position of the *Prokuratura* is to refuse to prosecute. In principle, investigations into incitation to racial hatred should be opened within three days. However, Mr. Ruslan Linkov observed that his cases take several months before being opened, which raises the problem of prescription. Mr. Linkov instigated an open letter

20. *Idem*.

21. See Interview with Mr. Ruslan Linkov, June 21, 2005.

22. *Idem*.

23. See below.

24. See Articles 136 and 282 of the Criminal Code.

25. The *Prokuratura* comprises judicial investigators and prosecutors under the General Prosecutor of the Republic.

26. See Interview with Mr. Ruslan Linkov, June 21, 2005.

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to Mr. Vladimir Putin, signed by 25 Russian intellectuals, complaining about the dissemination of racist literature and the inertia of the judiciary bodies, recalling that the *skinheads* boast about being in the freest country in the world, in which they are not subjected to threats. During a speech made to the senators, the Public Prosecutor even apparently indicated that there was no reason for concern since there was no serious anti-Semitism, and only isolated cases of vandalism.²⁷

2) The arbitrariness of local State representatives

Human rights and civil society activists in Saint Petersburg are trying to mobilise to put a stop to verbal and physical attacks of a racist nature. In order to do so, they are making contact with the city administration and local police. Mr. Tounkara Aliou, president of the African Union association, states that "We have obtained a meeting with the representative of the regional police chief (...). We proposed that they set up patrols around the hostels and in the most dangerous subway stations. We have also offered to give classes on Africa at the Police Institute. But this brings up the problem of funding. The only measures taken are superficial."²⁸ Even if it was possible to establish some contact with the city administration, this has not brought about any concrete improvement in the situation. In December 2005, this NGO started a programme dedicated to the promotion of tolerance in the schools of Saint Petersburg.

Furthermore, police behaviour is ambiguous when confronted with racial attacks in the street. As witnesses emphasise, "there are also a lot of racists within the police force. Some police officers threatened to give foreigners to the *skinheads* if they walk around their area."²⁹ According to one member of the African Union, "after an attack and during the identity checks in the street, the victim is the prime suspect. The police support the *skinheads*." All the witnesses are unanimous: the daily attacks are sometimes covered up by local police representatives. In 2004, Mr. Ruslan Linkov was witness to an attack by a group of *skinheads* on participants at a hip-hop concert. Two policemen intervened. Mr. Linkov then went to see the police chief to ask what had happened to the investigation. The latter retorted that he was wondering why

the young hip-hop fans were not at work at the time the events took place.³⁰

The overall assessment is very pessimistic. "We have lost confidence in the police and the political authorities. There is institutionalised racism. They are looking for scapegoats. The system is racist,"³¹ lamented several Africans from Saint Petersburg met with during the mission. The diplomatic corps present in Saint Petersburg is also concerned about violence against national minorities and foreign nationals. The city's French Consul has taken formal steps to condemn these acts to the administration. In his opinion, the reaction of the local authorities has been "disappointing," with the latter pointing out cosmetic measures that were taken, such as the creation of an emergency number or the establishment of interpreters in police stations, but not tackling the roots of the problem.

3) The weakness of civil society

In Saint Petersburg, human rights associations are active but they act in an environment that is unfavourable to them, in terms of media coverage, economy and society. The media, as it is the case throughout Russia, criticise their activities or, at best, ignore them. Most of the media have been returned to the control of the authorities. Among the general and public media, only the Echo of Moscow radio station, the *Novoye Vremya* magazine, the newspaper *Novaya Gazeta* and a few local publications are independent sources of information and strongly criticise the authorities. However, these media are only available in the central regions of Russia. Certain newspapers hold openly racist discourse. One lawyer considered that "some media provide the leaders of neo-fascist groups with ideological arguments. That is the most dangerous thing."³²

From the economic point of view, funds for the associations are becoming scarce. On the one hand, organisations have no access to national State funding, and, on the other hand, the rare examples of those who finance human rights and the opposition, such as Mr. Khodorkovsky, head of the Yukos petroleum company, recently sentenced to eight years in prison, give no encouragement to individuals to take the

27. *Idem*.

28. See Interview with a dozen members of the African Union association of Saint Petersburg, June 22, 2005.

29. *Idem*.

30. See Interview with Mr. Ruslan Linkov, June 21, 2005.

31. See Interview with a dozen members of the African Union association of Saint Petersburg, June 22, 2005.

32. See Interview with Mr. Leonid Romualdovich Sajkin, June 22, 2005.

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same route. Finally, when NGOs are funded by foreign foundations, they are accused of being in the pay of the West.³³ Thus, the NGOs find themselves in a situation that is particularly fragile and one of great dependence.

Most human rights organisations live today thanks to grant aid provided by international bodies. This international funding is not regular and when it stops it is difficult to find new partners.

Furthermore, when there is an end to the grants, the organisations are sometimes forced to reduce some of their human rights programmes and to lay off their associates.

It is more and more difficult to rent association premises. Today, the organisations that benefit from low rent municipal association offices in the city centre are subjected to increasing administrative pressure. The city property service would like to repossess these spaces, whose commercial value has greatly increased. Rent is a heavy burden on associations today. In this context, existing associations have difficulty in carrying out their activities and few new associations are being created. As a member of the African Union stressed, "There are few associations that defend foreigners in Saint Petersburg. Those who did so, such as Mr. Girenko, have dearly paid the price. They are poorly viewed by society. Human rights associations are weak."³⁴

33. See Part 1.A.1 of the current report.

34. See Interview with a dozen members of the African Union association of Saint Petersburg, June 22, 2005.

II - Summary of the main attacks on human rights defenders in Saint Petersburg and judicial proceedings in these cases

In this context, many attacks against human rights defenders have taken place in Saint Petersburg. Several of these attacks show the presence of sympathisers of neo-Nazi movements or skinheads amongst the attackers. After these attacks, only few investigations were carried out, including one with the assistance of private detectives. Indeed, the law enforcement representatives demonstrate a degree of laxity when confronted by the activities of extremist groups against human rights defenders. This raises the issue of possible collusion, implicit or explicit, between law enforcement bodies on the one hand and the extremist groups on the other. It must be stressed, however, that when the city governor, Mrs. V. Matvienko, was threatened in December 2004 by neo-fascist activists, the latter were quickly identified.

A - The attack against Memorial and Mr. Vladimir Schnittke in August 2003

On August 14, 2003, two people attacked Mr. Vladimir Schnittke, president of the association Memorial Saint Petersburg, and two of his colleagues.³⁵ They stole Mr. Schnittke's computer and his address book. The Memorial association lodged a complaint, without the police officers carrying out any concrete investigation to identify the attackers.

Following this attack, which was referred to in the press, private detectives working for a security firm offered their services to the Memorial association. One of these private detectives, a former member of the Federal Security Bureau (FSB ex KGB), was investigating into another matter in skinhead circles in the city when he heard confidential information about the Memorial case. He offered to sell his information to Memorial, to which the association agreed upon signature of a contract. The private detective gave the association a three-page report, which enabled to identify two of the attackers: Mr. Vladimir Goliakov, the head of a neo-paganist group in the area, and the brother of a skinhead leader in the city, a soldier on leave at the time of the facts.

The association transmitted this information to the police, who arrested one of the attackers, Mr. Vladimir Goliakov, on September 26, 2003. The second, who had returned to the

army, could not be arrested. Later, an officer of the FSB would have turned up to provide an alibi for the attacker who was in prison. According to Mr. Vladimir Schnittke, a man tried to get in contact with Mr. Goliakov to give him a letter containing the names of people who could give him an alibi (the alibi for Mr. Goliakov on the day of the attack was weak, since he was apparently only in the company of his relatives). A check was carried out on this man, who was detained and turned out to be a FSB employee. He was interrogated and FSB superiors were called in. This episode seems to indicate that Memorial's attackers were probably linked somehow to the FSB. However, no police enquiry has been expedited concerning possible links between the assailants and the FSB.

After the arrest of Mr. Vladimir Goliakov, the private detectives again contacted Memorial to propose a security contract and guard the association, which declined the offer. The detectives then decided to sell the contract signed by Memorial to the wife of Mr. V. Goliakov, and his lawyer produced the document during the trial. This new development had no direct effect on the trial.

The case of Mr. Goliakov was judged on June 22, 2004. During the trial, Memorial and Mr. Vladimir Schnittke had the support of a lawyer from the law firm Yuri Schmidt. The court gave Mr. Goliakov a suspended sentence of five years' deprivation of freedom. He was then released. This lenient verdict could cast doubt on the court's willingness to sanction this type of act and the authors of such acts linked to neo-fascist movements. Shortly afterwards, Mr. Vladimir Schnittke was again attacked.³⁶

B - Unsolved cases

Since 2004, with the exception of the Memorial case, many of the assaults against human rights defenders that have occurred in Saint Petersburg have remained unsolved. The most significant case is that of Mr. Nikolai Girenko, the ethnologist who was murdered at home in June 2004 and whose murderers have not been identified. Furthermore, other human rights defenders have been victims of physical attacks, either on the premises of their organisations or at home, and investigations into these attacks brought no result.

35. See Observatory Annual Reports 2003 and 2004.

36. See below.

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The lack of any identification of the attackers and of any punishment makes defenders concerned both for themselves and their families. No steps have been taken by the law enforcement bodies to protect those who have been threatened.

1) The powerlessness of the public authorities regarding Mr. Nikolai Girenko's assassination

On June 20, 2004, Mr. Nikolai Girenko, head of the Minority Rights Commission at the Saint Petersburg Scientific Union, was shot through the door of his home whilst he was asking his visitors who they were. Mr. Girenko died immediately. Aged 64, he was an experienced activist in the fight against fascism. He held official consultative posts with the local authorities on minority rights issues and was known for his appraisals during court cases involving far-right groups such as the Russian National Unity (RNU) and others. At the beginning of the 1990s, Mr. Girenko had worked with the democratic parliamentarian Mrs. Galina Starovoytova, who was murdered in 1998. In August 2003, he had acted as expert in the judicial proceedings initiated against the director of the Sakharov Centre in Moscow in connection with an exhibition entitled "Caution, religion!" This affair, linked to religious nationalism, had then had considerable repercussions throughout Russia.³⁷

Immediately following this murder, the governor of the city of Saint Petersburg, Mrs. Valentina Matvienko, brought together law enforcement representatives and announced that she herself would ensure that enquiries were carried out properly. On July 9, 2004, she stated that "it was a matter of honour to find the murderers of Mr. Nikolai Girenko." In July 2004, an organisation called "the Russian Republic" claimed responsibility for the murder. The *Prokuratura* considered the claim to be an act of provocation or a "public relations" operation.³⁸ One year later, in June 2005, the case had still not been solved. The Saint Petersburg *Prokuratura* investigator in charge of the enquiry assured that "progress was being made." As he explained, the *Prokuratura* was leading the operational side of the investigation with the help of the Main Directorate for Internal Affairs (GUVD). As of January 2006, the investigation was being extended every two months. According to the investigator, the murderers have not been seen. Insofar as those who carried out the murder were not immediately identified, the investigation could be

long. If there was no new information, the case might be suspended (closed) one day.

One year after the death of Mr. Nikolai Girenko, those of his friends who are active in human rights organised several meetings in memory of him. On June 21, 2005, a presentation of his posthumous work, published by his close colleagues at the initiative and with the help of Citizens' Watch, was organised at the Saint Petersburg House of Journalists. During this presentation, Mr. Yuri Belyaev, head of a local far-right group the "Freedom Party," was conspicuous for his threatening presence and his defamatory speech. Mr. Yuri Belyaev had already been judged and sentenced under article 74 of the former Criminal Code for "incitation to racial hatred," one of the few investigations at the time to end with a sentence. However, he was freed from all punishment in 1995, due to the adoption by the Duma of an amnesty decree to mark the fiftieth anniversary of victory over the fascists! Mr. Yuri Belyaev is currently faced with new accusations, still for "incitation to racial hatred" (article 282 of the new Criminal Code). His presence at the time of the presentation of Mr. Girenko's posthumous work demonstrates the sense of impunity held by neo-fascist representatives in Russia.

The city administration and the governor, on their side, made no statement at the time of the first anniversary of the ethnologist's death.

2) The second attack against Mr. Vladimir Schnittke and Memorial

On December 11, 2004, Mr. **Vladimir Schnittke**, president of Memorial Saint Petersburg, was attacked around midnight close to the entrance of his private home. He was struck from behind with a "head-breaker" (a metal object) and lost consciousness. He was unable to identify his attacker. His laptop computer, which he carried in a case, was stolen, but not his mobile phone. Mr. Vladimir Schnittke was taken to hospital with cranial trauma. He lodged a complaint with the police, but to date the case has not been solved.³⁹

On February 18, 2005, a new attack occurred at a second office of Memorial Saint Petersburg. At around 11 pm, unknown individuals rang at the door of the organisation,

37. See Observatory Annual Reports 2003 and 2004.

38. See Interview with the Saint Petersburg *Prokuratura* investigator in charge of the enquiry into the assassination of Mr. Nikolai Girenko, June 21, 2005.

39. See Observatory Annual Report 2004.

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saying they were recommended by Memorial Moscow. Mr. **Emanouil Polyakov**, an employee of Memorial, opened the door and three people pushed him inside, hit him with a blunt object and beat him until he lost consciousness. His jaw was broken and he lost an eye. He was found the next morning in a critical condition and taken to hospital. The attackers destroyed a large amount of Memorial's equipment and turned over its files, in particular those relating to the association's anti-fascist activities. They also broke into the organisation's safes. The police opened an enquiry, which is currently still under way.⁴⁰

3) Threats against human rights defenders

In the days following the assassination of Mr. Nikolai Girenko, Mrs. **Stephania Kulaeva**, in charge of Memorial's Northwest Centre for Legal and Social Protection of Roma and president of the Anti-fascist Commission of Memorial Saint Petersburg (she has since become executive director of the association), received anonymous telephone threats at her home (such as "You are next on the list, Heil Hitler!"). The next day, she discovered her door covered with swastikas and the Nazi symbol 88 (for "Heil Hitler").⁴¹ She immediately filed a statement with the police, who which advised her to leave the city for a while and then to install an alarm linked to a semi-private anti-criminal brigade. This is a pay service and she had to find the money herself to cover the cost. On August 31, 2005, she received insulting and anti-Semitic messages by SMS on her mobile phone.

In April 2005, Mr. **Ruslan Linkov**, a member of the association Democratic Russia, was subjected to threats published on nationalist websites, as well as on Saint Petersburg news sites (*rusprav.ru*, *zrd.spb.ru*, *derjava.ru*). Anonymous readers wrote in the chat column that it was time he joined Mr. Girenko and Mrs. Galina Starovoitova and that he was next on the list. He was also threatened on three occasions on the Rosbalt website. Mr. Linkov contacted the police, but received no protection. Following the murder of Mrs. Starovoitova, Mr. Linkov, who was present at the time of the murder of the MP and who was also wounded by a bullet, was given protection by the FSB for six months and then refused it because he found it "unbearable."⁴²

Mrs. **Valentina Uzunova**, a researcher at the Academy's Ethnological Institute, a close colleague of Mr. Nikolai Girenko and an expert in affairs of incitation of racial hatred, has also received threats. She has received telephone calls threatening her directly, as well as her daughter and grandson, giving the age of the latter and the address of his nursery school.⁴³ Mrs. Valentina Uzunova, like all the experts called on in court cases, receives no protection. Worse still, her contact details are given by the investigator to the opposing side, which makes her particularly vulnerable. Some researchers who are asked to provide expert opinions on disputed documents today refuse to let their own name be used and prefer to remain anonymous.

C - Closure of cases: data theft

Many cases of computer hardware and data theft were recorded in Saint Petersburg in the past few months. The above-mentioned violent attacks on human rights defenders were usually accompanied by computer theft. However, non-violent burglaries were also recorded over the same period. Such acts are generally filed unresolved and the police avoid recording reports of theft.

1) An increasing number of attacks on office premises

On December 8, 2004, the Democratic Russia Association was victim of a computer robbery. This burglary took place during the night at the premises of the Association, which are located in a well lit courtyard. The burglars reportedly arrived by car and used a winch to break the windows and remove all the computer equipment as well as photocopier and a fax machine. Members of the Association called in the police the following morning and it took them six hours to come and check for finger prints. The police advised them not to lodge a complaint. The Association drew up a list of the missing items and handed it in to the police. However, after having established the facts of the case the police did not open an investigation.⁴⁴

During the night of June 3 to 4, 2005, the premises of the Soldiers Mothers' Association of Saint Petersburg were burgled.⁴⁵ The three reinforced entrance doors had not been

40. See Observatory Urgent Appeal RUS 001/0803/OBS 042.1, February 23, 2005.

41. See Observatory Annual Report 2004 and Annex 1.

42. See Interview with Mr. Ruslan Linkov, June 21, 2005.

43. See Interview with Mrs. Valentina Uzunova, June 20, 2005.

44. See Interview with Mr. Rouslan Linkov, 21 June 2005.

45. See Observatory Urgent Appeal RUS 001/0605/OBS 043, June 20, 2005.

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forced. Electronic hardware was taken (two telephone/fax machines, a film camera, a dictation machine and a TV monitor), and one of the safes of the Association, which contained a digital camera, was emptied. Two USB keys containing data were also stolen but not the donations that had been paid cash. On the morning of June 4, 2005, the police established the facts and blocked access to the room where the weekly meeting of the organisation was to take place. Further, the police took the fingerprints of all the members of the organisation and, before they left, attempted to persuade the Soldiers Mothers' Association not to lodge a complaint. In the police report of June 4 (which is available to journalists), the burglary was not even mentioned. Several days later, one of the Association's volunteers found the place where the burglars had broken into the premises. At the end of a storage room full of cardboard boxes, he found a passage that led to the cellars of the building but police officers refused to come and investigate into this discovery. The members of the Association believe that the police will classify the case as ordinary burglary and close it.

2) The consequences of data theft

Human rights defenders are concerned about the consequences of these data thefts. They fear they represent an attempt to destabilise them by publishing information on their accounts or by making malicious use of the data on their work. The data taken during the burglaries relates precisely to the activists and the people they help. This information contains names and may enable ill-intentioned individuals to locate these very vulnerable people.

Articles discrediting the work of human rights defenders are beginning to circulate on the Internet. Thus the newspaper *Duel* in its 22nd edition on June 7, 2005 published an article entitled "The fifth column and the way it is funded."⁴⁶ In particular, it read: "Today, these activities traditionally known as 'the defence of human rights' bring in good money. They are funded by Western foundations, especially American ones. However, American foundations do not fund all human rights associations. The funds go to those who defend the 'right causes,' like, for instance, the separatist Chechens." This article, which is well informed, then provides very specific information on the American foundations which finance four Russian associations: the Moscow Helsinki Group, Memorial Moscow, Memorial Ryazan and the Perm Centre for the Defence of Human Rights. Its conclusions are unambiguous: "of the ten donors who finance the Moscow Helsinki Group, there is not a single private or public Russian organisation. Seven out of ten donors belong to NATO countries. What kind of human rights defence policy can be conducted by an association that is funded independently from the Russian state but that is dependent on the governments of NATO countries, no prizes for guessing..." The article then draws anti-Semitic conclusions on the part played by Jewish capital in funding Russian associations and denounces their move to "cosmopolitanism."

Human rights defenders are anxious about the dissemination of this kind of malicious and misleading articles which draw on specific information about the associations. The tone of the articles is redolent of President Putin's speech against non-governmental organisations.⁴⁷

46. See http://www.duel.ru/200522/?22_4_1

47. See above.

III - The ambiguities of the judicial reaction

The police and public order authorities' response to this series of attacks against human rights defenders seems rather weak. Their representatives deny any link between the various cases and usually insist on addressing them individually as foul crimes. This approach does not cater for the scale of the issue and fails to envisage concerted measures to defend human rights defenders.

A - Lack of interest from the police

In cases of attacks on human rights defenders, the police can act at various levels: they can record complaints, order on the spot investigations and protect the persons attacked. In all three areas, police activities are dubious.

1) Recording complaints

Following attacks on human rights defenders, the police refused on several occasions to take down the complaints from the persons assaulted. Indeed, the Saint Petersburg police tend to downplay the importance of such attacks and often describe them as common law offences and vandalism. As Colonel Borin, assistant head of human resources at the Saint Petersburg Main Directorate for Interior Affairs (GUVD) explained: "I do not think there is a systematic intention to assault human rights defenders. There are no movements against human rights defenders as such. There are cases of vandalism, except for the case of Girenko who was killed because he defended human rights."⁴⁸ When the Saint Petersburg Memorial office was attacked in August 2003, the public order authorities refused to recognise the specificity of the case and to consider that the intention had been to get hold of information on the association. They preferred to treat it as an economic offence. Since the police consider attacks on human rights defenders as mere vandalism, they show little interest in recording complaints which might add to the statistics of unresolved crimes. Thus, as has already been pointed out, the police have attempted to dissuade several associations from reporting attacks against them.

2) The pursuit of perpetrators

These matters are examined either by the *Prokuratura* or by the Ministry for Internal Affairs (MVD), or by the FSB. The cases are assigned on the basis of the Criminal Procedure Code. Generally speaking, once the investigation starts the *Prokuratura* first and foremost examines murder cases. The police handle attacks where no murder has been committed. The FSB has special responsibility for cases related to terrorism. In all cases, however, the police, under the authority of the MVD, even where they are not in charge of the case, conduct the preliminary work (questioning, searches, etc.).

The police encounter a number of difficulties in carrying out their mission. On the one hand, within the MVD, there may be conflicts between the various departments (law and order section, organised crime squad crime (UBOP), criminal investigation department (ugolovnij rozysk), fight against economic crime (UEP), etc.).⁴⁹ Furthermore, the police force is understaffed. As Colonel Borin explained: "Officially, there are 38,000 police officers working in Saint Petersburg and in the Leningrad region. That is not any for a conurbation with 8 million inhabitants. In Moscow, there are 120,000 police officers."⁵⁰ This understaffing may explain the reluctance of the police to process complaints and to run investigations where human rights defenders are concerned. When Mr. Vladimir Schnittke was assaulted in August 2003, the police did arrest one of the authors, but only after a private detective had identified them. Once their identity had been established, and only then, did the police move to arrest them.

The police authorities recognise the emergence of neo-fascist movements in Saint Petersburg but fail to link them with attacks on human rights defenders. The Directorate of the Criminal Investigation Department (18th Section) of the Saint Petersburg GUVD has set up a section specialised in investigating into youth movements. It takes a particular interest in neo-fascist groups. However, the establishment of this new entity does not mean that it is called upon to investigate into all attacks related to neo fascist movements.

48. See Interview with Colonel Borin, Saint Petersburg, June 21, 2005.

49. See Interview with Mr. Gilles Favarel-Garrigues, June 2005.

50. See Interview with Colonel Borin, Saint Petersburg, 21 June 2005.

3) Protecting human rights defenders

The police are also responsible for protecting persons under threat. This mission is enshrined in law. However, it is difficult to carry it out. The police lack resources and some of its members suffer from the canker of venality. Protection services nowadays are basically devolved to private companies staffed by former policemen. In 2005, the average wage of a policeman with 20 years service was 7,000 roubles (200 euros) a month. In the private sector wages can reach 15,000 roubles.

No human rights defender is currently under police protection. Some have therefore turned to private or semi-private security firms that charge for services like installing alarms in the homes of persons under threat. In such cases, the interested parties have to pay out on their own.

B - The powers of the *Prokuratura*

Apart from the police, the *Prokuratura* is the main resource for human rights defenders who have been attacked. The powers of this institution are both very broad and very unclear.⁵¹ Victims of attacks are very weak when faced with the *Prokuratura* and its malfunctioning. For the Russian Federation, despite having introduced some reforms under pressure from the Council of Europe with a view to separating the powers and making Justice truly independent, the police and the *Prokuratura* still remain the predominant bodies in the Russian Criminal Justice system. Under the Soviet regime, the separation of powers was abolished because it was deemed as a bourgeois institution. Judges took a poor third place after the police and the *Prokuratura*. It was only in 1993 with the adoption of the new Russian Constitution that the separation of powers was re-established. Nonetheless, attitudes are still marked by the culture where the police and the *Prokuratura* predominated, especially since the reforms of the Criminal Code and the Criminal Procedure Code, which began in 1996, were only completed at the end of 2001.⁵² The new Criminal Procedure Code, promulgated by the members of parliament on November 22, 2001, introduced some long awaited amendments like the transfer of competence from the *Prokuratura* to the judge to authorise arrest warrants or search warrants, however it is still difficult to get it implemented.⁵³

1) The powers of the *Prokuratura*

The legislator has conferred excessive powers on the *Prokuratura*, which the latter exercises without any real oversight. This body is responsible for the examination of most penal cases with the exception of sensitive political or terrorist crime cases which go to the FSB. Hence, attacks on human rights defenders or racist crimes are generally examined by the *Prokuratura*.

For instance, the *Prokuratura* will decide whether to order an investigation when a complaint has been lodged. In principle, an investigation should be launched within two months but the *Prokuratura* can order an extension of the examination of the case for purposes of the investigation or, on the contrary, decide to drop the case. The *Prokuratura* often refuses to examine or suspends the examination of complaints from human rights defenders or complaints relating to incitement to racial hatred. When the *Prokuratura* orders an investigation, the actual work is done by the police. This presupposes close cooperation between the two institutions. In Saint Petersburg, the *Prokuratura* examining officer in the N. Girenko case claimed that the police readily cooperated with him. Straight after the murder, he claimed to have mobilised 200 police officers to attend the case, take fingerprints etc. Since then, he has been able to call upon police assistance as required. In this case, the shortage of police was not used to explain the slowness of the investigation.

2) A murky institution

It is very difficult for an outside observer to understand the delays in an investigation because the *Prokuratura* is such a murky entity. There is a total lack of transparency when it comes to the examination of cases. It is true that this institution has a peculiar statute in that while it is made up of jurists, none of them are magistrates nor belong to the judiciary.

Hence, the relations between the *Prokuratura* and the lawyers in fact depends far more on personal affinities than on norms laid down in a criminal procedure. As Mr. Boris Gruzd, barrister in charge of defending Messrs. Vladimir Schnittke and Nikolai Girenko, pointed out, it is better to have friendly relations with the *Prokuratura* if you want to be kept abreast of the progress of an investigation. Thus, lawyers have to

51. See Annex II, Extracts of the conclusions of the Venice Commission of the Council of Europe on the Russian Federation's federal law on the *Prokuratura* and the full text on : [http://www.venice.coe.int/docs/2005/CDL-AD\(2005\)014-e.asp](http://www.venice.coe.int/docs/2005/CDL-AD(2005)014-e.asp)

52. See Report on the visits to Russia of Mr. Alvaro Gil Robles, Commissioner for Human rights of the Council of Europe in 2004/2005.

53. See Country file of the UN High Commissioner for Refugees (HCR), Russian Federation.

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cultivate personal relations with the examining officers in charge of the cases they are on. Now, various political currents exist within the institution. At lower levels in the hierarchy, some members of the *Prokuratura* Prosecution Department are in favour of investigations into neo-fascist and extremist movements. Some of their hierarchical superiors in Saint-Petersburg and in Federal circles would take a totally different stance. "In the city of Saint Petersburg and in the *Prokuratura* in general, prosecutors seek above all to keep the Kremlin happy. Lawyers and their clients, therefore, have themselves to find persons willing to support them within the institution." Incidentally, it is striking that, to date, Mr. Girenko's lawyers have been unable to glean any useful information on progress in the examination of the case.

The lawyers interviewed confirmed that complainants' rights of appeal against ruling of the *Prokuratura* to refuse to proceed or to suspend the examination of a case were very limited in legal terms as they had no access to the paperwork. According to Mr. Gruzd, lawyers have already had to struggle to get some of the Criminal Procedure Code provisions ruled anti-constitutional and so gain the right to be apprised of the hearings of their witnesses as well as the decision of the *Prokuratura* to call for expert witness testimony or the results of same. Where there is no access to the files pertaining, in particular, to hearing of the alleged perpetrators as well as details of the investigation carried out, appeals to the municipal Tribunals against *Prokuratura* rulings are pointless especially since the Court in question will not have had access to the paperwork but only to the reasons for the refusal to examine or the decision to suspend examination. Any appeal is therefore purely formal and academic. Furthermore, in practice, Mr. Igor Masloboev, judge at the Tribunal of Saint Petersburg city, recognised that there are scarcely any appeals against *Prokuratura* rulings.

According to a lawyer from the Yuri Schmidt's law firm "the rights and prerogatives of the victim and his or her lawyer are practically non-existent, the victim is not seen as a party to the procedure but rather as a nuisance or even an enemy. The *Prokuratura* is a political body."

3) The question of protecting experts and witnesses

The extraordinary powers of the *Prokuratura* are also reflected in the examination process and, in particular, in ordering expert

witness testimony that can be decisive in some cases to establish the offence, especially in cases of incitement to racial hatred or racist crimes. The assassination of Mr. Girenko testifies to the importance of expert witness testimony in the judicial process.

While it is correct to say that the *Prokuratura* decides to order expert witness testimony, for the time being, it does not have the right to choose the expert. It has to apply to an institute that enjoys competence in the area required and ask them to appoint an expert who is willing to serve. There is, however, a project afoot to set up a pool of referent experts. In addition, although the experts are supposed to be independent, it can be hard to find one when there is no specific status or protection in law to cover him. Indeed, this work is unpaid and has to be performed outside normal working hours. His personal details are given to both sides of the case which makes him very vulnerable. As stated earlier, several experts have received threats. Mr. Girenko himself received 'warnings' before he was assassinated. Some experts now refuse to sign their testimony for fear of suffering the same fate.⁵⁴

Where the *Prokuratura* refuses to assign an expert witness, the victim is compelled to use a private expert and to foot the bill. The Saint Petersburg Soldiers' Mothers Association, for instance, was forced to have the abused cadets of a military academy in Saint Petersburg examined by a private physician at their own expenses because the *Prokuratura* initially refused to appoint a court expert.⁵⁵

Witnesses interrogated by the police at the request of the *Prokuratura* during an examination process are not afforded better protection. In fact, in general, the police record the hearing as part of the investigation on a CD which is then on sale freely in some places.⁵⁶ Measures provided for under the law, such as plastic surgery or re-housing witness are totally unworkable because they are very expensive and the witnesses are expected to foot the bill.

The legislator has recently become aware of this situation and, in 2004, a reform was undertaken whereby witnesses can be questioned by the police and remain anonymous. However, it is the police who decide as to who shall benefit from this provision. So, in practice, witnesses can rarely be sure that they can remain anonymous and, consequently, fear for their security.

54. See Interview with Mr. Iakov Gilinski, sociologist, June 20, 2005.

55. See Observatory Annual Report 2004.

56. *Idem*.

C - The timorousness of judges

During the Soviet era, the absence of the separation of powers relegated judges to a secondary role in the judicial system. Apart from the overriding powers of the police and the *Prokuratura*, which incidentally attracted the best law students, judges had a poor press with ordinary citizens who preferred the administrative route and turned to district, town or Party committees (the famous *raikomi* or *gorkomi*), as Mr. Alvaro Gil Robles, former Council of Europe Human Rights Commissioner, emphasised.⁵⁷ Things have changed since then. In 1992, the authorities brought in a reform of the judicial system, but it was only from June 2001 that a real reform was undertaken. The Russian authorities then decided to give priority to the difficult working conditions in which magistrates operated and the independence of the judiciary system. To achieve this, a judges' code of ethics has been adopted, which alters the way in which judges are recruited; henceforth they are partially recruited on the basis of a competitive examination and have to be recommended for a vacant post by a judges' qualification panel. Furthermore, federal judges will, in the future, be appointed by the head of state on recommendations made by the Supreme Courts.

The judiciary is divided into three branches:

- Courts with general competence (civil and criminal cases), of which there are 2,500 (municipal courts, regional courts and the Supreme Court), 90% of civil and criminal cases go before these courts;
- Arbitration courts, under the authority of the High Arbitration Court, deal with economic and labour disputes;
- The Constitutional Court.

Despite the legislative reforms undertaken, citizens have a deep seated mistrust of judges and their timorousness is both traditional and institutional. Indeed, the independence of the judiciary system is undermined both by the fact that high court judges are appointed by the President and that corruption is rife, especially amongst high-ranking judges where most offices are bought for a very high price. According to sociologist Mr. Iakob Gilinski, "newspapers publish every July the list of the amounts paid in bribes to get university places; the faculty of law scores the highest."

In addition, although the President decided to increase substantially the remuneration of judges, which is scandalously low, the salaries paid to young judges remain fairly low and they only qualify for a 40% bonus after twenty years service which brings their monthly earnings up to \$1,000.⁵⁸

Again, the lack of mobility of judges does not help them be independent. Insofar as judges are not under any obligation to change Courts in the course of their careers, it is not unusual for them to spend their whole professional life in one town. Finally, many former members of the *Prokuratura* become judges.

The powers of judges are fairly limited when compared to those of members of the *Prokuratura*. They are referred cases once the instruction by the *Prokuratura*, is already finished. Since the reform of July 1, 2002, they no longer have the right to request additional information from the *Prokuratura* and are therefore completely dependent on the findings of the former.

According to Mr. Igor Masloboev, Saint Petersburg Municipal Tribunal judge and specialised in criminal and first degree murder cases, this has considerably cut down the number of cases coming before him. He handled seven cases in 1994 and has no complaints about an excessive workload. On the contrary, based on the cases coming before him it would seem that crime is decreasing, something the Bench would agree with.⁵⁹ He confessed that, to his knowledge, only one racist case had been brought before the Court in recent years. This statement may seem odd in a climate where there are an increasing number of racial attacks, and raises the issue of how judicial institutions downstream of the courts operate.

D - Defence difficulties

Against this judicial background, it remains difficult to defend human rights associations. While the lawyers profession has also been subjected to the general changes to Russian legislation and is now governed by a law passed in 2002 that makes provision for the setting up of a national bar association to represent lawyers for the defence of the local courts and prohibits any investigation on a lawyer without the

57. See Report on Mr. Alvaro Gil Robles, former Council of Europe Human Rights Commissioner, visits to the Russian Federation, April 20, 2005.

58. See Interview with Mr. Igor Timofeevitch, 22nd June 2005.

59. See interview with Mr. Alvaro Gil Robles, former Council of Europe Human Rights Commissioner and the President of the Leninsky district court of the town of Ekaterinburg, during which she confirmed that there had been a significant fall in the number of criminal cases: at least 500 fewer a year.

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authorisation of a court, the lawyers interviewed in the course of the mission confirmed that human rights associations do not get defended in court because of a lack of funds.

It is a fact that, in pursuance of article 26 of the Law governing the profession of lawyer, free legal aid is reserved for citizens whose income does not exceed the minimum survival income and who are complainants either in cases of child support or retirement pension or veterans of the second world war, or again victims of political repression during soviet times and who are seeking rehabilitation.

Hence, human rights associations cannot legally benefit from the assistance of a legal counsel free of charge and therefore have to pay one to defend them in court, which constitutes a considerable obstacle as they have such paltry resources. Thus, most of the lawyers who defend human rights associations do so at their own expenses or have to wait for some

hypothetical remuneration from foreign foundations, all of which renders the process very uncertain.

In addition, although the lawyers interviewed did not report having been subjected to official penalties for their work with human rights defenders, they did refer to indirect pressures.

Furthermore, the system of penalties that can be taken against lawyers in Russia puts them in a particularly dangerous position when it comes to an area as sensitive as human rights. Article 33 of the Law governing the profession of lawyers stipulates that penalties can be applied to lawyers by a committee made up not only of lawyers but, above all, of representatives of the Ministry of Justice as well as judges of the Supreme Court of the region concerned. That membership is open to question in the light of the need to safeguard the independence of lawyers, especially since most of the complaints against lawyers are lodged by judges.

Conclusion and recommendations

A - Conclusion

The information gathered by the mission shows that human rights defenders face a climate of blatant hostility in the exercise of their everyday activities.

Instead of guaranteeing their safety and promoting a climate conducive to their work, the Russian authorities, by their libellous discourse, foster violations against them. Moreover, defenders are increasingly excluded insofar as, at the last general elections, in December 2003, they lost the few political connections they had in the Duma. In addition, the press, which has been increasingly muzzled, no longer provides any outlet for their views.

This hostile atmosphere goes hand in hand with a growth in xenophobia, racism and anti-Semitism in Russia directed at foreigners and minorities, and, naturally, at the defenders of their rights. This phenomenon, prevalent in Saint Petersburg, not only comes from extremist groups but is gradually extending to public administration departments, political and judicial institutions.

Assaults on defenders and attacks on their premises as well as theft of their data have been on the increase in recent years. The absence of official reaction in conducting effective investigations, or even any investigation at all, is tantamount to a blank cheque handed to the perpetrators of these violations who, de facto, enjoy almost total impunity.

The tendency to liken these offences against defenders to common law crimes and the timorousness of the judges contributes to this climate of impunity.

Finally, those who stand up to the system are themselves threatened. The absence of a scheme to protect witnesses and experts lead them, in this climate, to refuse to run the risks involved in giving testimony.

B - Recommendations

The FIDH and the OMCT, in the framework of their joint programme, the Observatory for the Protection of Human Rights Defenders, urge the authorities of the Russian Federation to:

1/ To secure the protection of human rights defenders:

- publicly recognise the role of human rights defenders and be committed to protecting them in pursuance to article 12.2 of the Declaration on Human Rights Defenders, adopted by the United Nations General Assembly on December 9, 1998, according to which "the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually or in association with others, against any violence, threat, retaliation, de facto or de jure adverse discrimination, pressure or other arbitrary action as a consequence of the legislation referred to in the present Declaration;"

- guarantee, in all circumstances, the physical and psychological integrity of human rights defenders and immediately stop any act of violence or harassment against them;

- ensure the protection of experts in cases related to minorities and to incitement to racial hatred, through, in particular, the establishment of a specific expert status. Comply, in that connection, with article 9.3 of the Declaration on human rights defenders, according to which "Everyone has the right to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms;"

- ensure the conduct of full and impartial investigations into cases of assassinations, attacks and harassment directed against human rights defenders, so as to identify the perpetrators of these offences, prosecute them and punish them

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according to the laws in force and this, in particular, pursuant to article 9.5 of the Declaration on Human Rights Defenders, according to which "The State shall conduct a prompt and impartial investigation or ensure that an enquiry takes place wherever there is reasonable grounds to believe that a violation of human rights or fundamental freedoms has occurred on any territory under its jurisdiction;"

- end libellous statements, including official ones, on human rights defenders;

- set up a remote protection system for the associations' premises and the homes of defenders under threat and ensure that the public authorities defray the cost of this protection. More generally, the protection measures needed to keep human rights defenders safe should be put in place so that such associations are not hindered in carrying out their work. In this respect, the physical presence of police officers alongside volunteer movements is not recommended.

2/ To effectively combat racial discrimination and violence:

Xenophobia engenders many acts of violence against minorities in Russia and have a *de facto* very negative impact on the defenders of these minorities. In this regard, the authorities should:

- train jurists and members of the judiciary in combating racism, xenophobia and interethnic tensions;

- introduce into educational and training programmes for future police officers courses on tolerance awareness raising and the basics of police work in a multicultural society, organise crash courses on these issues for acting police officers; start programmes of recruiting police officers of minority ethnic background into police service;

- conduct effective action to promote human rights, both on the part of civil society and of the authorities including the police authorities;

- combat ultra-nationalist and xenophobic movements through the criminal courts and through prevention in the form of social programmes for youth;

- reinforce Russian legislation in order to sanction hate crimes and the application of already existing laws in this matter;

- comply with the international and regional commitments of the Russian Federation, relative to racial discrimination and with the recommendations of the UN Committee for the Elimination of Racial Discrimination (June 2003) and of the UN Human Rights Committee (November 2003).

3/ To improve the judiciary administration system:

- ensure the transparency of the procedures that guarantee access of the lawyers to all the case materials throughout the investigation, as well as the right to request documents from the *Prokuratura*, to attend interrogations and confrontations involving their client;

- reform free legal aid so as to allow all citizens or collective entities access to justice;

- comply with article 11.1 of the Document of the Copenhagen Meeting of the Second Conference on the Human Dimension of the Conference on Security and Cooperation in Europe (CSCE) (1990), which guarantees the right "of everyone to request and receive appropriate legal aid;"

- comply with article 13 of the European Convention on Human Rights, according to which "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

4/ On freedom of association and funding of NGOs:

- comply with the provisions of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, which stipulates, in particular that "States express their commitment to ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organisations that seek the promotion and protection of human rights and fundamental freedoms,

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including trade unions and human rights monitoring groups” (art.10.3) and that they “allow members of such groups and organisations to [...] solicit, receive and utilise for the purpose of presenting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law” (art. 10.4);

- comply with article 13 of the Declaration on Human Rights Defenders, according to which “everyone has the right, individually and in association with others, to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration [....].”

5/ More generally:

- comply in all circumstances with the provisions of the

Declaration on Human Rights Defenders, in particular in article 1, according to which “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels;”

- uphold in all circumstances the principles and provisions enshrined in the international and regional instruments for the protection of human rights ratified by the Russian Federation and which, in particular, guarantee freedoms of association, demonstration, expression and opinion, in particular the European Convention on Human Rights and the International Covenant on Civil and Political Rights;

- invite the Special Representative of the Secretary General of the United Nations on Human Rights Defenders to visit the Russian Federation.

**Annex 1: Picture of the door of the private home of Ms. Stephanie Koulaeva,
head of the Memorial Centre for the Social and Legal Protection of the Roma of the North West Russia
and President of the Saint Petersburg Memorial anti-fascist Commission, June 2004**



Annex 2: European Commission for Democracy through Law (Venice Commission)

**OPINION ON THE FEDERAL LAW ON THE PROKURATURA (PROSECUTOR'S OFFICE)
OF THE RUSSIAN FEDERATION
(EXTRACTS)⁶⁰**

ADOPTED BY THE COMMISSION AT ITS 63RD PLENARY SESSION (VENICE, 10-11 JUNE 2005)

ON THE BASIS OF COMMENTS BY MR. J. HAMILTON (MEMBER, IRELAND) & MRS. H. SUCHOCKA (MEMBER, POLAND)

Conclusions

73. There have been undoubted reforms in the Russian system of Procuracy, notably the limitations on the prosecutor's powers of supervisory review of court decisions, the fact that the Law provides for the subordination of the prosecutor to the courts, and the fact that intervention in court cases on behalf of the citizens is limited to cases where they are unable to act for themselves or where this is justified because numerous citizens are affected by the wrongdoing concerned.

74. Nevertheless the overwhelming impression remains of an organisation which is still too big, too powerful, not transparent at all, exercises too many functions which actually and potentially cut across the sphere of other State institutions, in which the function of supervision predominates over that of criminal prosecution, but which nevertheless, despite its powers, remains vulnerable to presidential and other political power. The strongly hierarchical structure of the Procuracy, concentrating power in the hands of the Prosecutor General, reinforces these concerns. As it stands, the system does not seem to comply with Recommendation (2000)19 and raises serious concerns of compatibility with democratic principles and the rule of law.

75. A further reform of the system seems therefore indispensable. That would be the way by which, in the Commission's opinion, the existing Russian system of *Prokuratura* could be brought into line with European standards for the Public Prosecutor's office functioning in a State governed by the rule of law. A new, comprehensive, politically definitive legal instrument based on different fundamental principles in accordance with democratic norms should be adopted. That would require depriving the Prosecutor's Office of its extensive powers in the area of general supervision which should be taken over by various courts (common courts of law, an administrative court and constitutional court) as well as the ombudsman. The direction in which the Venice Commission would recommend to go has been clearly formulated in Recommendation 1604 (2003) of the Parliamentary Assembly, which states: "*the power and responsibilities of prosecutors are limited to the prosecution of criminal offences and a general role in defending public interest through the criminal-justice system, with separate, appropriately located and effective bodies established to discharge any other function.*"

60. See [http://www.venice.coe.int/docs/2005/CDL-AD\(2005\)014-e.asp](http://www.venice.coe.int/docs/2005/CDL-AD(2005)014-e.asp)

THE OBSERVATORY

For the Protection of Human Rights Defenders

L'Observatoire

pour la protection
des défenseurs des droits de l'Homme

El Observatorio

para la Protección
de los Defensores de los Derechos Humanos

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Activities of the Observatory

The Observatory is an action programme, based on the conviction that strengthened cooperation and solidarity among defenders and their organisations will contribute to break the isolation of the victims of violations. It is also based on the necessity to establish a systematic response from NGOs and the international community to the repression against defenders.

With this aim, the priorities of the Observatory are:

- a) a system of systematic alert on violations of rights and freedoms of human rights defenders, particularly when they require an urgent intervention;
- b) the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- c) personalised and direct assistance, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- d) the preparation, publication and diffusion of a world-wide level of reports on violations of human rights and of individuals, or their organisations, that work for human rights around the world;
- e) sustained lobby with different regional and international intergovernmental institutions, particularly the United Nations, the Organisation of American States, the African Union, the Council of Europe, the European Union, the Organisation for Security and Cooperation in Europe (OSCE), the International Organisation of the Francophonie, the Commonwealth and the International Labour Organisation (ILO).

The activities of the Observatory are based on the consultation and the cooperation with national, regional and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria for the examination and admissibility of cases that are communicated to it. It also targets action based interpretations of the definition of "Human Rights Defenders" applied by OMCT and FIDH.

The competence of the Observatory embraces the cases which correspond to the following "operational definition:" "Each person victim or risking to be the victim of reprisals, harassment or violations, due to its compromise exercised individually or in association with others, in conformity with international instruments of protection of human rights, in favour of the promotion and realisation of rights recognised by the Universal Declaration of Human Rights and guaranteed by several international instruments."

An FIDH and OMCT venture - Un programme de la FIDH et de l'OMCT - Un programa de la FIDH y de la OMCT

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