

Regional Report

Fabricated Evidence and Fair Jury Trials.

The Russian Fight Against Terrorism: Case Studies from Dagestan

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In several high-profile terrorism cases, Dagestani judges and juries have failed to convict suspected terrorists brought to trial by the authorities. In a system that once found nearly everyone brought to trial guilty, this outcome is unexpected. These cases show that Russian law does matter: juries and judges are throwing out terrorism cases with obvious police torture. They also show how the police and the prosecutors tend to make up cases.

Three Dagestani courts found terrorism suspects not guilty of the charges filed against them during the month of May. On 11 May a Dagestan Supreme Court jury acquitted Darbishgadzhi Gadzimogomedov of charges that he was an accessory to the 29 May 2005 killing of the Dagestani criminal police chief and participated in an attempt to blow up the Gimry tunnel, a strategically important link that connects the mountainous areas of Dagestan with the rest of the republic. A few days later, on 15 May, another Dagestan Supreme Court jury unanimously acquitted four suspects of bombing the local procurator's office, murdering six army and police officers, and assassinating the Dagestan Nationalities Minister on 20 May 2005. Finally, on 17 May a Khasavyurt City Court acquitted local human rights activist Osman Boliev of charges that he was a member of the terrorist cell headed by Arslanbek Abdulsheikhov, who was killed during the hostage-taking of the Moscow theater in October 2002 (*Chernovik.Net*, 19 May 2006). Most importantly, the courts found no evidence of terrorism in these cases. As a result the acquitted in all three cases were freed immediately following the announcement of the verdict, though the police unsuccessfully tried to detain some of them outside the courthouse.

Russia re-introduced the jury trial option in 1993, but only eight regions actually had jury trials up and running in the 1990s. Opposition from law enforcement personnel and a shortage of funds blocked further expansion until 2002, when President Vladimir Putin ordered all Russian regions to use juries in important cases. As of mid-2004, jury trials have been an option in all parts of Russia except Chechnya (which will introduce them in 2007), in both courts of general jurisdiction and military courts. In addition to serious cases of violence and crimes against the state, jury trials may be used in cases of crimes against humanity (such as genocide), justice administration offences (attempting to threaten or bribe a judge), participating in an organized crime group, and such extreme threats

to public order as piracy, kidnapping and hijacking aircraft or ships (*Oxford Analytica Daily Brief*, 8 July 2004). Although jury trials are a very small proportion of criminal cases, they represent one of the last bastions of judicial independence in Russia today.

Dagestan had its first jury trial in March 2003, in which the jury acquitted Murad Mustafaev of murdering the Makhachkala Vice-Mayor Akhmed Aliev and his wife (*Kommersant*, 26 March 2003). Since then, Dagestani juries have repeatedly failed to convict suspected terrorists, including such high-profile cases as the explosion of the apartment building in Buinaksk in 1999 and the bombing of the 9 May military parade in Kaspiisk in 2002.

Juries are ready to give defendants the benefit of the doubt due to shoddy investigations and poor trial work by prosecutors. Unlike professional judges, jurors do not read case materials and only base their verdicts on the evidence presented in court. Unlike most court cases, which are resolved by a single judge, juries reach their verdicts by majority vote: seven votes out of twelve suffice for a conviction; a six-six split produces an acquittal. It is more difficult to threaten or to bribe 12 jurors, and they function outside the traditional judicial hierarchy that strongly favors the prosecution. In many terrorism-related cases in the North Caucasus, the bulk of evidence against defendants is their confessions. In court, the defendants usually claim they confessed under torture, while the jurors themselves fear abuse, torture and extortion by police. In 2005, 18 percent of defendants tried by a jury were acquitted (205 out of 1,160 defendants in 600 cases), while only 3.6 percent of those tried by judges were cleared, according to statistics provided by the Russian Supreme Court. In previous years, the difference was even greater (*St. Petersburg Times*, 2 June 2006; *Vedomosti*, 10 April 2006).

There are dozens of terrorism cases in the Russian courts today, including appeals to the Supreme Court. The authorities are seeking to show that they are ef-

fectively fighting terrorism. Why did the Dagestani courts throw out the terrorism charges and reject the prosecutors' arguments in these cases? Most likely, the judges and jurors did not accept fake charges against innocent people.

In the first case, prosecutors alleged that Gadzimagedov helped terrorists lay explosives near the Gimry tunnel by sitting at a nearby roadside café and warning them about approaching police (*Kommersant*, 12 May 2006). Defense lawyers argued that the prosecution overlooked transcripts of Gadzimagedov's phone conversations, which demonstrated that he spent all day in Makhachkala, rather than monitoring the police near the Gimry tunnel.

Prosecutors claimed that they caught Gadzimagedov driving away from the scene where the local police chief was gunned down on 29 May 2005, and that they found 5 cartridges from a Kalashnikov machine gun, a walkie-talkie, fake driver's license, falsified FSB identification card, muddy clothes, and clay used in making explosives in his possession. Prosecutors told jurors that the mud and clay found in Gadzimagedov's car were identical to those at the crime scene. The defense team argued that the prosecutors failed to provide evidence that they had actually found a walkie-talkie in his car. The defense team further insisted that charges of terrorism could not stand because the numerous witnesses diverged on the actual number of the explosives found, and because combat engineers only were able to blow up those explosives after they attached blast cartridges to them. Moreover, the only bullets and case-cartridges found on the crime scene belonged to police guns – the investigators failed to produce any evidence that it was the accused who shot the police chief. Finally, witnesses told the jury that Gadzimagedov was detained before the shooting had begun, which undermined the prosecution's claim that he tried to drive away from the accident. In his last word before the jury deliberations, Gadzimagedov confessed that he bought the fake driver's license and identification card for \$450 each so that the police would leave him alone. He denied the accusations of terrorism and complained that police tortured him during his detention. Even though the judge told the jury to disregard the complaints of police torture, and repeatedly warned the defense counsel to shorten their speeches during the trial, the jury unexpectedly acquitted Gadzimagedov after a few hours deliberation because they believed that the prosecution failed to make a case that he and his accomplices tried to blow up the Gimry tunnel. The jury did find Gadzimagedov guilty of using fake identification cards, but he was released because he already had spent almost a year in

jail waiting for his trial (*Novoe delo*, 12 May 2006).

In the second case, Dagestani prosecutors sought the conviction of Dzhamil Kibedov, Magomedtagir Gashimov, Amirkhan Musaev, and Israpil Iziev, all alleged members of the Shariat terrorist cell (*Kommersant*, 1 March and 16 May 2006). During the ten-week jury trial, prosecutors accused all four of bombing the procurator's office in Dagestan's Lenin District, murdering six army and police officers, and assassinating the Dagestan Nationalities Minister on 20 May 2005. According to the prosecutors, Kibedov made explosives, Gashimov had a gun and rented out his apartment to terrorists, Musaev drove the terrorists and explosives to the procurator's office, while Iziev disseminated leaflets with allegedly extremist content. The defense team built its case on the fact that the prosecution based all of its accusations against the four solely on their confessions. Indeed, none of the 113 witnesses produced any incriminating evidence, while all four accused claimed that they had confessed while being tortured during their detention. Kibedov's defense pointed out that he was only a ninth-grader, yet his "confession" was full of legal subtleties and details, which tended to grow with every new police interrogation. He testified that he had never made explosives. He worked in a window-making shop and repaired floors in a neighbor's house and did not resist arrest. Gashimov's defense argued that he did not know that he rented the apartment to terrorists, that he was at the far end of the city at his friend's house when the procurator's office was attacked, and that the charges of gun possession were fabricated because the prosecution identified different guns as belonging to Gashimov at the different stages of the criminal cases. Musaev's defense counsel asked the jury to acquit his client because no witness mentioned Musaev's name and no other incriminating evidence existed to convict him. Musaev himself testified that he did not know the passengers he drove on the day of the explosion. Finally, Isiev's lawyer told the jury that his client, who is Kibedov's second cousin, was not guilty: he was arrested only because he responded to Kibedov's phone call for help when the latter was being detained. After deliberating for more than three hours, the jury announced its unexpected verdict: all four suspects were acquitted, and, more importantly, there was no terrorist cell. The judge immediately freed all four, but attending policemen, who did not believe the verdict, tried to detain all the suspects after the trial. The defense lawyers managed to rescue their clients (*Novoe delo*, 19 May 2006). Procurators were shocked at the acquittal, called the verdict "absurd" and complained that they did not know how to prosecute terrorism cases (*Yuzhnyi reporter*, 22 May 2006).

Meanwhile, the police proudly reported that it found and detained three new suspects in this case (*Kavkaz. Memo.Ru*, 5 June 2006).

In the third case, the Khasavyurt City Court acquitted local human rights activist Osman Boliev, the leader of the local non-governmental organization Romashka which investigates cases of police torture. The prosecution alleged that Boliev was a member of the terrorist cell headed by Arslanbek Abdulsheikhov, who was killed during the hostage-taking of the Moscow theatre in October 2003. A hand grenade allegedly found in Boliev's car during his arrest in November 2005 presumably provided evidence of his guilt. Moreover, the prosecution produced a Justice of the Peace decision sentencing Boliev to two days in jail for resisting arrest. At the trial, prosecutors dropped the terrorism charges and asked the court to imprison Boliev for 18 months for illegal weapons possession. As in the cases discussed above, Boliev's lawyer argued that his client was tortured and that the prosecution had fabricated evidence against him. For example, they found one hand grenade in his car, but they sent a different grenade for forensic examination. Boliev never knew about the Justice of the Peace conviction against him: that judgment was issued in Boliev's absence, and he was never informed about the proceedings. Indeed, Boliev's detention was widely seen as revenge on the part of the police for his numerous complaints against police torture to the European Court of Human Rights. On 17 May, Judge Ramazanov acquitted Boliev of all charges, while the procurator vowed to appeal the acquittal (*Kavkaz. Memo.Ru*, 17 May and 23 May, 2006).

These acquittals come at a time when the law enforcement agencies are under increasing pressure to solve terrorist crimes so that the authorities can report that they are successfully combating terrorism in Russia. The prosecution will certainly appeal all of these acquittals to the Russian Supreme Court.

In contrast to Western countries, jury verdicts are subject to appeal on the basis of simple procedural violations, such as the failure of the jurors to keep the jury deliberations secret or to disclose previous criminal convictions at the stage of the jury selection. Using these alleged violations, procurators automatically appeal all acquittals or convictions, which they deem as too lenient, to the Russian Supreme Court. This Court may uphold the acquittal, or reverse it and send the case back for re-trial. In 2005, the Supreme Court reversed 43 percent of jury acquittals (*NEWSru.com*, 7 April 2006). Defendants whose acquittals were rejected could opt once again for trial by jury and could

be found guilty or acquitted a second time. This process between the jury trial and the Supreme Court can go on indefinitely.

As these acquittals in Dagestan and the controversial prosecution of the only hostage-taker in the Beslan attack show, ordinary people increasingly distrust such fake counter-terrorism prosecutions and the law-enforcement agencies in general. These cases come at a time when the security services proudly report their victories in fighting terrorism. No doubt, capturing these six "terrorists" in Dagestan was on the list of FSB achievements for the past year: as FSB Director Nikolai Patrushev told the National Counter-Terrorism Committee earlier this month, security forces captured over 80 terrorists with 110 kilograms of explosives this spring (*Ezhednevnyi zhurnal*, 19 May 2006). These acquittals, however, point out that the achievements of the security services in the fight against terrorism are often more apparent than real. The Russian Supreme Court proved this point twice this spring by upholding the jury acquittals in the high profile "terrorism" cases of the 2001 bombing of the Astrakhan city market and of the December 2004 attack on the headquarters of the anti-drug enforcement agency in Kabardino-Balkaria (*Kommersant*, 20 April 2006; *Kommersant*, 19 May 2006).

More importantly, these acquittals took place when the Russian elites are divided over the wisdom of keeping jury trials operating. Not surprisingly, many law enforcement officials insist that juries should not decide terrorism and espionage cases. Others complain that jurors are guided by pure emotions instead of careful examination of facts. Some Russian liberals argue that the juries behave irresponsibly because they tend to acquit skinheads and military officers, who kill civilians in Chechnya. Some politicians complain that court verdicts in the North Caucasus are for sale, while the jurors there are simply pawns of their own clan. These attacks on the juries have been so strong in the wake of acquittals that the Russian judges had to launch a public-relations campaign to defend jury trials. Meanwhile, jurors in Chita, Khabarovsk and Moscow published open letters in the local press, in which they defended their acquittal verdicts and rebuked all charges against them of being emotional, manipulated, bribed or threatened! To be sure, the Russian judges disagree among themselves on the issue of the jury trials. But the recent jury acquittals in Dagestan show both that it is still possible to get a fair trial in the Russian courts at the local level, and that the judges and jurors take their responsibilities more seriously than the law enforcement agencies do.