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Analysis

Russia Adopts New Counter-Terrorism Law

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Summary

On 10 March 2006, Russia's new counter-terrorism law entered into effect. The new law is a part of a larger legislative package that also includes several revisions to the penal code and to criminal procedure law. It codifies Putin's 15 February decree, which established a "National Counter-Terrorism Committee" under the leadership of the Federal Security Service (FSB) director. The new counter-terrorism law streamlines and tightens the existing regulations, but is unlikely to yield any significant results.

Combating Terrorism in Russia

During the last decade, there have been numerous, but ineffective attempts to organize Russia's counter-terrorism efforts. Naturally, the FSB had a key role in this development. In 1995, the FSB established a "Counter-Terrorist Center" within its Department for the Protection of the Constitution and Counter-Terrorism. In January 1997, Prime Minister Viktor Chernomyrdin established the "Interdepartmental Counter-Terrorism Commission of the Russian Federation," which was renamed the "Federal Counter-Terrorism Commission" in 1998. Supervised by the prime minister and his deputy, the FSB director, the commission ultimately brought together over two dozen power ministry officials and deputy ministers. The commission's main accomplishment was producing the 25 July 1998 law on combating terrorism, as well as the 10 March 2006 law, which replaces the 1998 version.

The new law is part of a larger legislative package that also includes several revisions of the penal code and of the criminal procedure law. Most importantly, it incorporates President Putin's decree of 15 February 2006, in which he ordered the establishment of a "National Counter-Terrorism Committee" under the leadership of FSB director Nikolai Patrushev. The "National Counter-Terrorism Committee" is expected to replace the older "Federal Counter-Terrorism Commission," moving responsibility for terrorism from the prime minister to the FSB.

The new Counter-Terrorism Law

The 2006 counter-terrorism law is similar to the 1998 law in scope and structure, but there are clear differences on a number of points. The most important changes relate to the re-distribution of responsibilities among the various executive branch agencies, including the military. Furthermore, the law defines the mission area for counter-terrorism measures and gives the executive branch broader rights to encroach

on civilian life. For the first time, the new law permits counter-terrorism units to seek out and destroy suspicious airplanes or ships. Overall, the revisions and new additions to the terror law make apparent the Russian desire to learn from the spectacular terrorist attacks of the last few years, including the attacks on the Moscow Dubrovka theater during a performance of the musical "Nord-Ost" in October 2002, a public school in Beslan, North Ossetia, in September 2004, and the regional capitals of Nazran in Ingushetia in June 2004 and Nalchik in Kabardino-Balkaria in October 2005.

The new counter-terrorism law streamlines and tightens the existing regulations and is even more uncompromising than previous versions. The new law requires the employment of all useful "systemic and complex" means to combat terror (Article 5, paragraph 2). There appears to be unwavering confidence on the part of the state that terrorism can be subdued by expanding and integrating all available instruments of repression, even though this hope is hardly justified by the results of the continuous tightening of counter-terrorism legislation and organizational measures since the mid-1990s. In fact, since just before the start of Vladimir Putin's presidency, the number of terrorist acts in Russia has not only increased, but the attacks also reached hitherto unaffected parts of the country, namely the capital, Moscow, and have taken on appalling proportions. Although terrorist activities were mainly limited to Chechnya during the 1990s, the rebels employing terrorist tactics have in the meantime increased their operational radius to include almost the whole Northern Caucasus. Hence, there is little reason to believe that the new law will advance the Kremlin's counter-terrorism strategy and bring success in the Northern Caucasus.

The new law makes clear that the FSB now has the main responsibility for counter-terrorism, and that the chief of the FSB or one of his subordinates decides on the execution of counter-terrorism activities and

is responsible for their operational implementation. For the purposes of such operations, he can draw on the assistance of an “Operative Staff” and can call on personnel support and material resources” from other security, defense, and law enforcement agencies.

Various observers have complained that the Russian counter-terrorism law of 1998 lacked the broad scope necessary to successfully fight terrorism, namely the integration of preventive and reactive measures, both at the conceptual level and in practical implementation. Unfortunately, in adopting the 2006 law, legislators failed to develop a comprehensive law that would define prophylactic measures to combat terrorism. Instead, they were content to pass a law that mainly focused on combating imminent terrorist threats on an operational level, combined with the creation of inter-ministerial bodies that were assigned responsibility for all matters related to strategic planning, tactical research, international cooperation, and other duties. These bodies took the form of the National Counter-Terrorism Committee under the leadership of the FSB at the federal level, and through the retention of the Counter-terrorism Commissions at the regional level headed by the respective governors.

Another step was the creation of the Federal Operational Staff within the structure of the National Counter-terrorism Committee, and the establishment of Operative Staffs in the regions comprising between five and ten representatives of the security and law enforcement agencies. The chief of the Federal Staff is nominated by the head of the FSB (in accordance with Article 14 of the Counter-Terrorism Law), while the regional FSB chiefs serve *ex officio* as the heads of the territorial staffs. The responsibilities and competences of the operational boards are defined by Article 14 of the law. They are identical to those assigned to the National Counter-terrorism Committee.

Lessons learned from Beslan?

With the new definition of competencies, the law addresses one of the main problems that surfaced during the Beslan hostage taking. The three different operational staffs responsible for the handling of the Beslan crisis not only worked independently of each other, but often at cross-purposes. These three bodies were: (1) The territorial Operative Staff, directly managed by the president of North Ossetia/Alania, A. S. Dzasochov; (2) the Federal Operational Staff under the leadership of FSB General V. A. Andreev; and (3) the staff attached to the three deputy FSB chiefs Prunichev, Anisimov, and Tichonov. These two FSB staffs were only formed during the course of the hostage crisis.

The authorities seem to have concluded that the main reason for the failure in Beslan was the transfer of responsibilities for counter-terrorist operations, including those in the Northern Caucasus, from the FSB to the Russian Interior Ministry (MVD) in 2003. This conclusion at least seems to explain why the new counter-terrorism law has restored all relevant responsibilities to the FSB, why the Ministry of the Interior and the Ministry of Defense are both strictly subordinated to the FSB as far as combating terrorism is concerned, and why the governors have lost their operational functions related to counter-terrorism activities.

However, the new law does not correct the problems revealed by the Beslan crisis. Articles 7 and 8 of the presidential decree state that the organizational and leadership structures of counter-terrorist activities in the Northern Caucasus will be defined in the future by special regulations. It is not clear from the new law, however, what these regulations will be.

Putin’s Leadership Failure

Although Russia has an international and domestic terrorism problem, Putin’s Kremlin has made little headway in addressing it. The list below provides an overview of the main problems:

1. From the very beginning, but especially since the wars in Chechnya began, the Russian security services have engaged in a completely disproportional and ruthless counter-terrorism campaign without any regard for the civilian population, and have been on par with the terrorists in terms of their indifference for human life.
2. The Kremlin is not only responsible for the exceptionally grave violations of human rights perpetrated by the Russian security forces in the Northern Caucasus in the course of “combating terrorism,” but has also for years been conducting combat operations and suppressing militant groups in the Northern Caucasus while consciously refraining from imposing martial law, thus lacking legal legitimacy and blatantly violating the constitution and the laws of the country.
3. For years, the Kremlin has been supporting and promoting the brutal Chechen regime of Ramzan Kadyrov, who – under the pretext of counter-terrorism, and without any regard for law and order – employs terrorism against his own real or imagined political enemies, as well as the civilian population, and who is regularly rewarded by Moscow with medals and promotions within the state hierarchy.
4. The law enforcement and security services have

been unable to adequately respond to any of the major terrorist attacks that have taken place in Russia since 1999, including the attacks in Moscow, Volgograd, Nazran, Beslan, and Nalchik, despite the constant expansion of the state's authority and its increased logistical resources. There are strong indications that these shortcomings are due not so much to professional incompetence, but rather to an apparent unwillingness to conduct investigations without regard for the reputation of individ-

uals or institutions or with the necessary respect for the victims and their relatives.

5. By cooperating with groups that openly propagate the use of terrorist methods as a means to support their own political ends, such as the Palestinian Hamas organization, the Kremlin discredits and undermines the political legitimacy of its own counter-terrorism policies.

Translation from the German: Christopher Findlay

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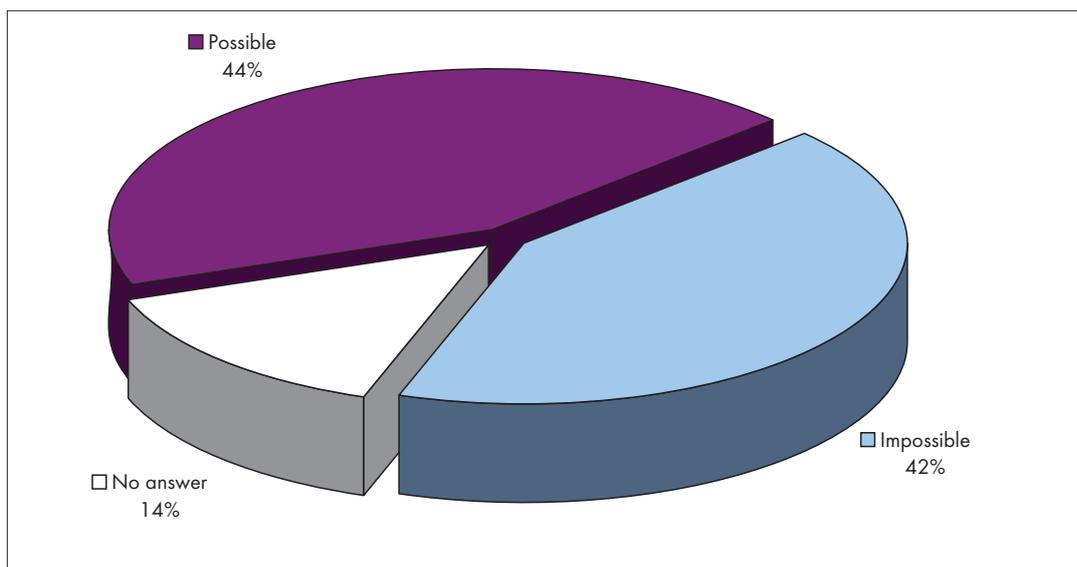
- Ekaterina Stepanova "Russia's Approach to the Fight Against Terrorism," in Jakob Hedeskog, et al. eds., *Russia as a Great Power: Dimensions of Security Under Putin*, London: Routledge, 2005.
- John B. Dunlop, *The 2002 Dubrovka and 2004 Beslan Hostage Crises: A Critique of Russian Counter-Terrorism*, Stuttgart: ibidem-Verlag, 2006.
- Paul Murphy, *The Wolves of Islam: Russia and the Faces of Chechen Terrorism*, Washington: Brassey's, 2004.

Opinion Survey

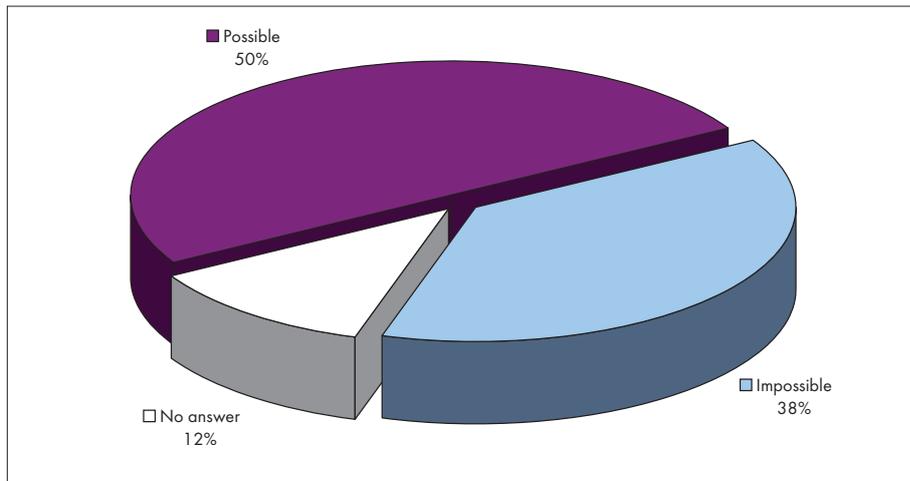
The New Counter-Terrorism Law in the Eyes of the Russian Public

Source: opinion surveys conducted by the "Public Opinion Foundation" (FOM) on 5/6 November 2005 and 18/19 March 2006
<http://bd.fom.ru/zip/tb0612.zip> and http://bd.fom.ru/report/map/projects/dominant/dom0545/domt0545_2/tb05450

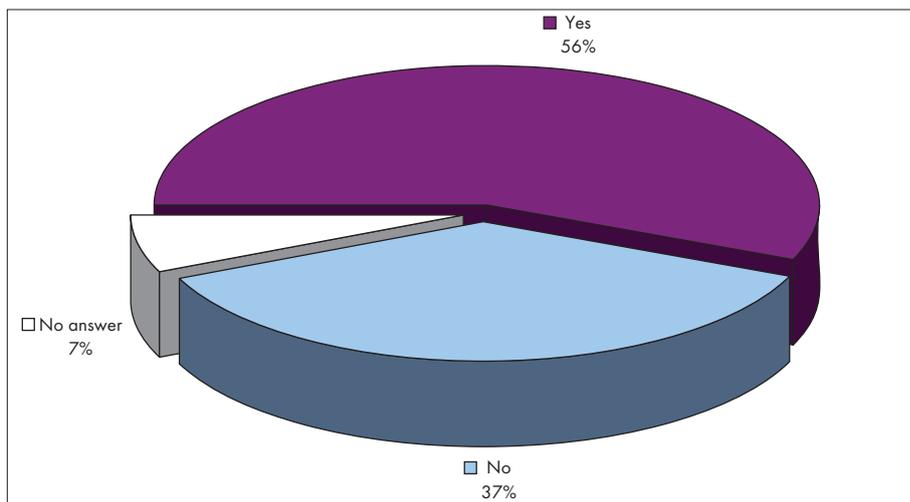
Is a major terrorist attack possible in the area where you live? (March 2006)



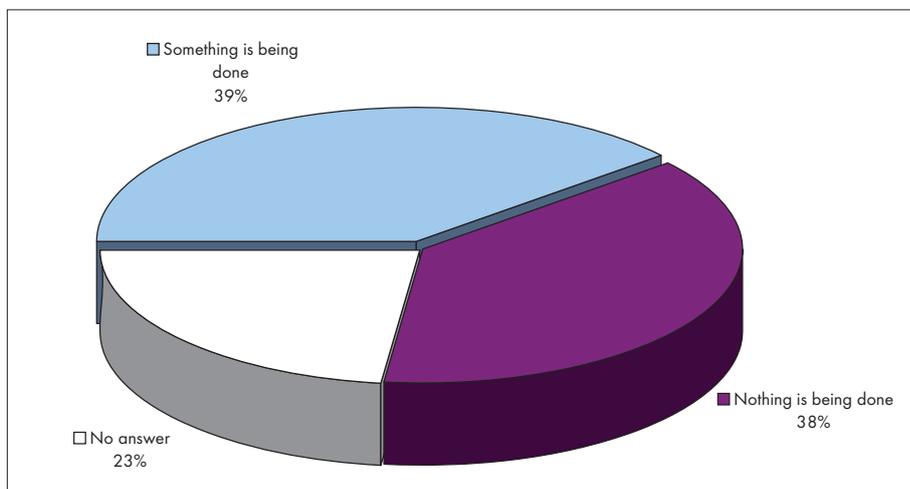
Is a major terrorist attack possible in the area where you live? (November 2005)



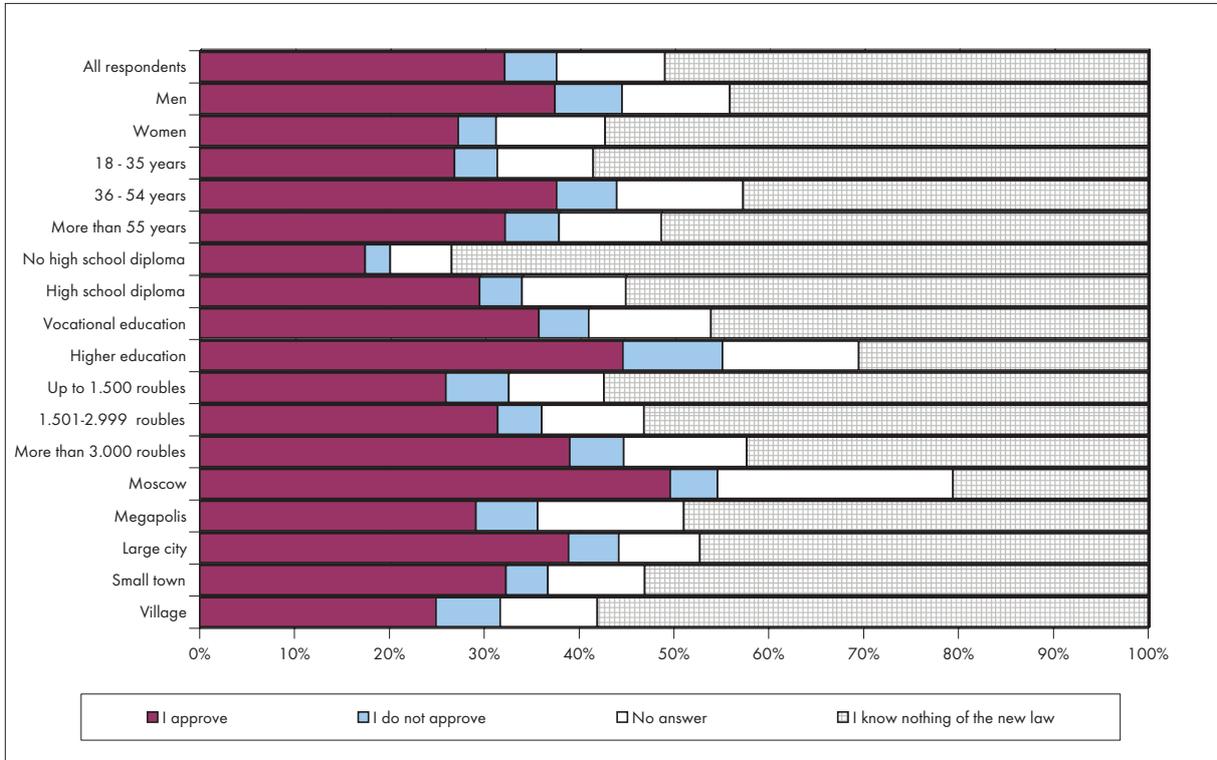
Are you afraid of becoming a victim of a terrorist attack yourself? (March 2006)



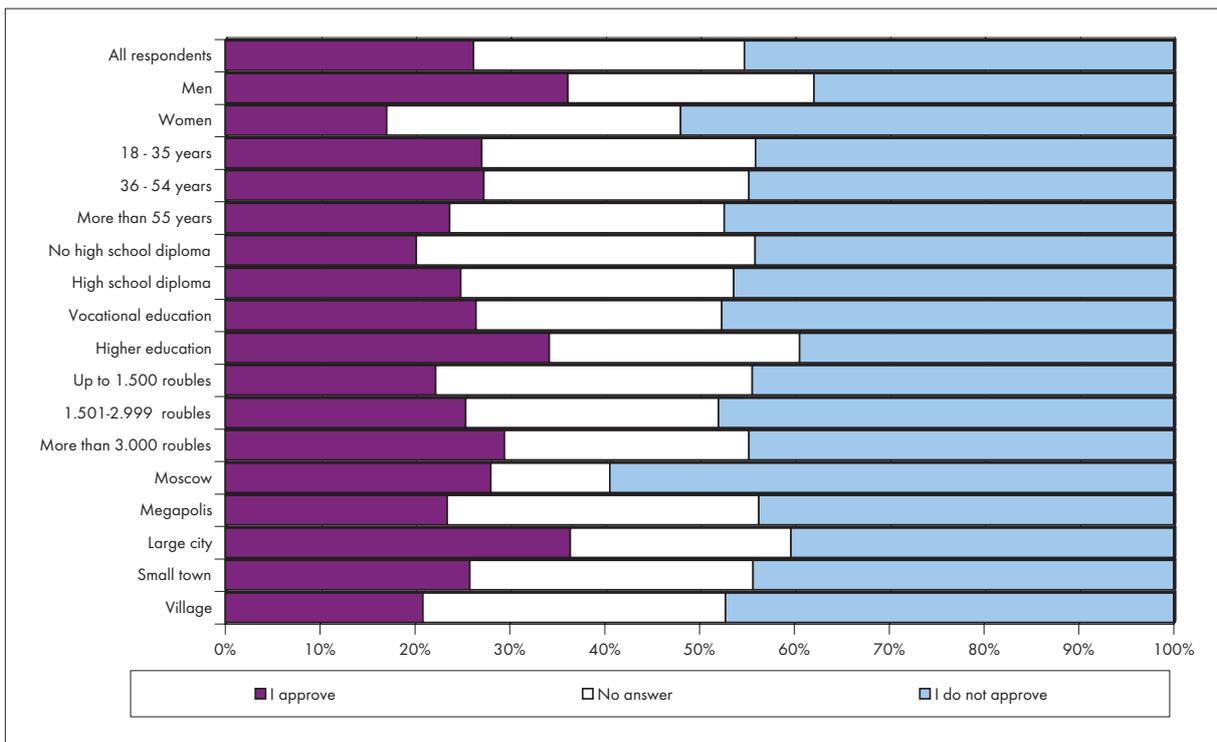
Is something being done to prevent terrorist attacks in the area where you live or not? (November 2005)



Do you approve or disapprove of the adoption of the new counter-terrorism law? (March 2006)



Do you approve or disapprove of the provision in the new counter-terrorism law permitting hijacked airplanes to be shot down? (March 2006)



Regional Report

Fabricated Evidence and Fair Jury Trials.

The Russian Fight Against Terrorism: Case Studies from Dagestan

Alexei Trochev, Institute of Intergovernmental Relations, Queen's University, Kingston, Canada

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 Gadzimagedov 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.

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About the Russian Analytical Digest

The Russian Analytical Digest is a bi-weekly internet publication jointly produced by the Research Centre for East European Studies [Forschungsstelle Osteuropa] at the University of Bremen (www.forschungsstelle-osteuropa.de) and the Center for Security Studies (CSS) at the Swiss Federal Institute of Technology Zurich (ETH Zurich). It is supported by the Otto Wolff Foundation and the German Association for East European Studies (DGO). The Digest draws on contributions to the German-language *Russlandanalysen* (www.russlandanalysen.de), the CSS analytical network on Russia and Eurasia (www.res.ethz.ch), and the Russian Regional Report. The Russian Analytical Digest covers political, economic, and social developments in Russia and its regions, and looks at Russia's role in international relations.

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The Research Centre possesses a unique collection of alternative culture and independent writings from the former socialist countries in its archive. In addition to extensive individual research on dissidence and society in the Soviet Union, in 2006, a group of international research institutes will be assembled for a collaborative project on the theme "The other Eastern Europe – the 1960s to the 1980s, dissidence in politics and society, alternatives in culture. Contributions to comparative contemporary history" which will be funded by the Volkswagen Foundation.

In the area of post-socialist societies, extensive research projects have been conducted in recent years with emphasis on political decision-making processes, economic culture and identity formation. One of the core missions of the institute is the dissemination of academic knowledge to the interested public. This includes regular email service with more than 6,000 subscribers in politics, economics and the media.

With a collection of publications on Eastern Europe unique in Germany, the Research Centre is also a contact point for researchers as well as the interested public. The Research Centre has approximately 300 periodicals from Russia alone, which are available in the institute's library. News reports as well as academic literature is systematically processed and analysed in data bases.

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The CSS runs the International Relations and Security Network (ISN), and in cooperation with partner institutes manages the Comprehensive Risk Analysis and Management Network (CRN), the Parallel History Project on NATO and the Warsaw Pact (PHP), the Swiss Foreign and Security Policy Network (SSN), and the Russian and Eurasian Security (RES) Network.

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Editors: Matthias Neumann, Robert Ortung, Jeronim Perović, Heiko Pleines, Hans-Henning Schröder

Layout: Cengiz Kibaroglu, Matthias Neumann

ISSN 1863-0421 © 2006 by Forschungsstelle Osteuropa, Bremen and Center for Security Studies, Zürich

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