

RUSSIAN FEDERATION

TRIAL AGAINST HUMAN RIGHTS

DEFENDER ALEKSEI SOKOLOV

Hearings of March 2 and May 5 and 6, 2010

City Tribunal of Bogdanovich

JUDICIAL OBSERVATION MISSION REPORT



July 2011

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Introduction

In May 2009, the Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), was alerted on the arrest of Mr. **Aleksei Sokolov**, President of the organisation “Pravovaia Osnova” (Legal Basis), then member of the Public Commission for the Supervision of Places of Detention in Sverdlovsk oblast¹ and well-known for his denunciations of the use of torture in Russian prisons. The Observatory decided to monitor the case and issued several urgent interventions. Throughout the criminal investigation Mr. Sokolov was kept in detention on charges of “theft”², “aggravated robbery”³ and “burglary”⁴.

In January 2010, the City Tribunal of Bogdanovich initiated a criminal lawsuit against Mr. Aleksei Sokolov.

The Observatory mandated Mr. Arman Danielyan, President of the Civil Society Institute (CSI) and Director of the Armenian “Court Observation Project” (Armenia), and Mr. Mykhailo Tarakhkalo, lawyer and member of the Kharkiv Human Rights Protection Group (Ukraine), to carry out a judicial observation mission for the hearings held on March 2 and May 5 and 6, 2010 before the City Tribunal of Bogdanovich, in the Sverdlovsk oblast of the Russian Federation.

The specific objectives of the mission were the following:

- To assess the compliance of the trial of Mr. Aleksei Sokolov with international standards;
- To prepare an independent, impartial and objective report on the fairness of the trial with concrete recommendations on the implementation of national and international standards.
- To provide moral support to Mr. Aleksei Sokolov.

The lawyers mandated observed three hearings:

- March 2, 2010: (10:00 a.m. and 14:00 p.m.)
- May, 5, 2010: (10:00 a.m. -12.00 a.m., 13.00 p.m. – 16.20 p.m., 16.35-17.00 p.m.)
- May 6, 2010: (10.00 a.m. – 12.10 a.m.)

I. The defendant

In 2006, Mr. Aleksei Sokolov founded the independent social organisation “Pravovaia Osnova” (Legal Basis), which monitors and denounces torture and ill-treatment of people held in detention centres in the Russian Federation. The same year he filmed a documentary entitled “Torture Factory”, which related cases of torture in a temporary detention centre in Yekaterinburg⁵. Mr. Sokolov has also investigated acts of corruption in some law-enforcement agencies in Yekaterinburg, related to crimes committed in the Yekaterinburg temporary

1. An oblast is an administrative division in the Russian Federation.

2. Article 158, Section 4 of the Criminal Code of the Russian Federation.

3. Article 161, Section 3 of the Criminal Code.

4. Article 158, Section 3 of the Criminal Code.

5. The film was made available in Russian with French subtitles on <http://www.youtube.com/watch?v=tAPon-ioSJo>, by the Action by Christians for the Abolition of Torture (ACAT).

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detention centre. This brought him broad recognition throughout the Russian Federation and abroad, and led to the closure of the centre. Legal Basis also brought about several investigations against law enforcement officers on allegations including the use of torture to coerce suspects to confess.

In January 2009, Mr. Sokolov was appointed as a member to the Public Commission for the Supervision of Places of Detention in Sverdlovsk oblast⁶. The commission is appointed by the Public Chamber of the Russian Federation and has unimpeded access to correctional centres. The commission has consisted of seven individuals, three of whom have been active participants⁷. The commission began its work in March 2009 and Mr. Sokolov conducted a series of visits to places of detention in this capacity.

On April 23, 2009, Mr. Sokolov held a press conference regarding a tragedy that occurred in the city of Pervuralsk on March 21, 2009⁸, which, according to Mr. Sokolov, occurred as a result of police inaction. Previously, Mr. Sokolov had reportedly received threats from law enforcement agencies, which aimed at impeding him to hold the press conference.

1) The charges against Mr. Aleksei Sokolov

On April 23, 2009, the very same day Mr. Sokolov held the above-mentioned press conference, the investigation into a robbery of the equipment (of a value of 1.5 million rubles) of the company “Uraltermosvar”, in Bogdanovich, Sverdlovsk oblast, that occurred in 2004 was re-opened after Mr. Evgeny Belyash, a suspect imprisoned for having committed another crime, reportedly confessed on March 17, 2009 that he had committed this robbery together with Mr.

6. The Federal Law No. 76-FZ of June 10, 2008) “On Public Control over Human Rights in Detention Facilities and on Assistance to Persons Kept in Detention”, enacted on September 1, 2008, provides a legal basis for the participation of civil society organisations in the public control of the respect of human rights in detention centres through the system of public supervisory commissions. The Federal Law refers to Public Supervisory Commissions to monitor the law enforcement in detention premises, i.e.: bodies pertaining to the Ministry of Interior, detention places, including military or customs facilities and re-education facilities for offenders. For this purpose, commissions have unimpeded access to correctional facilities. Civil society organisations, which use their proper funding to operate these commissions, propose candidates to the Ombudsman. Then, the latter appoints members of the commissions. However, it should be noted that the overall functioning of the commissions is under the supervision of the Public Prosecutor. Therefore, members of these supervisory commissions are placed under direct State control. Furthermore, the law states that members of the Public Supervisory Commissions are personally responsible for their positions. Apart from the State Prosecutor, local powers also enjoy wide prerogatives over members of the commissions. In many instances, members are asked to submit their requests to the prison administration for approval and to provide in advance the dates and names of the places of detention they wish to visit. Furthermore, interviews with detainees must take place in the presence of a representative of the prison administration, which are said to be dependent on regional political instances and on the regional Ombudsman.

7. In the Sverdlovsk oblast, most of the members of the Public Supervisory Commission are former employees of the Directorate for Sentencings, or former members of the judiciary. Their action within the commission has therefore reportedly been purely formal, and no finding or concern has been voiced to date by the latter. On the other hand, three human rights defenders also sit in the Commission, and have been standing to denounce acts of torture and humiliations suffered by detainees. In such a context, conflicts have rapidly arisen between the different figures of the commission. In front of their impossibility to make their findings public in the framework of the commission’s activity, the three defenders started to explore the possibility to use the media to expose the results of their activities of supervision. One of these human rights defenders was Mr. Aleksei Sokolov.

8. See http://www.ekaterinburg.com/news/spool/news_id-300229-section_id-100.html. A nightclub offered free entrance before 1 am on that day, which led to the venue of a considerable amount of people. When the doors opened, four persons died as they were squashed: three young girls and a security guard. Mr. Sokolov considered that this tragedy occurred as a result of police inaction because the police should have predicted this crowd and should have installed appropriate security structure. He organised a press conference to highlight this.

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Aleksei Sokolov (see below). Mr. Ilya Anikin, another detainee accused of similar crimes, would have reportedly made similar confessions on April 14, 2009.

Mr. Aleksei Sokolov had learned in 2008 that several prisoners were indeed being pressured into claiming falsely that he had been involved in crimes including this 2004 robbery, for which investigations had been closed several times because the perpetrators could not be identified.

On May 13, 2009, Mr. Aleksei Sokolov was violently arrested by police officers in plain clothes and put in detention on charges of his alleged participation to the 2004 robbery.

He was subsequently suspended from this position in the Public Commission for the Supervision of Places of Detention.

2) On Mr. Aleksei Sokolov's detention, conditions of detention and treatment during the trial

a) Arbitrary detention

Mr. Aleksei Sokolov remained detained from May 13, 2009 to July 27, 2011.

On May 14, 2009, the Verkh-Isetsy Court in Yekaterinburg authorised Mr. Aleksei Sokolov's detention for 10 days, until May 24, but no information could be obtained at the time as to his actual place of detention. The Judge justified the detention by arguing that Mr. Sokolov's monitoring activities granted him a privileged access to places of detention and would therefore have enabled him to visit detainees, including Mr. Belyash, the above-mentioned suspect whose declarations led to the re-opening of the investigation, and whom Mr. Aleksei Sokolov could convince, according to the Judge, to withdraw his statement.

On July 31, 2009, the Sverdlovsk Regional Court ruled that Mr. Aleksei Sokolov should be discharged from pre-trial detention. However, the latter was not released and was virtually re-arrested on the same day. New charges of "theft" were filed against him, concerning the theft of a safe-box containing two million rubles from the office of a company in Yekaterinburg, within the framework of an organised group that would have been led by his brother, Mr. Alexander Sokolov.

On August 4, 2009, the District Court ordered that Mr. Aleksei Sokolov be remanded in custody for two months, pending trial for the new charges of "theft" of a safe-box containing two million rubles. However, the *Prokuratura*⁹ later informed the Judge that these new charges were actually related to the theft of metal pipes from a factory in 2001, and were based on article 158 Section 3 (b) of the Criminal Code. The Judge therefore also added this article to the case file.

On September 29, 2009, the District Court ordered the remand of Mr. Aleksei Sokolov until October 23, pending trial. One of Mr. Sokolov's lawyers reported that all the requests formulated by his client, i.e. request for a public hearing, for the obtaining of copies of the files of the criminal case, were denied by Judge Pichulin.

9. The *Prokuratura*, or The Public Prosecutor's Office, is staffed by criminal investigators and public prosecutors; it is headed by the Prosecutor-General.

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On October 21, 2009, the Yekaterinburg District Court ordered that Mr. Aleksei Sokolov be again remanded in custody until November 6, 2009.

On November 2, 2009, the Judge of the Leninski District Court decided to send the case back to the Bogdanovich District Court, on the grounds that the most important crime had been committed in this town, that the majority of the accused had their residence outside Yekaterinburg and that the witnesses were living in Bogdanovich.

Mr. Sokolov's lawyer appealed against this November 2 decision, challenging the competence of the Bogdanovich jurisdiction, and reaffirming the illegal character of the prolonged detention.

On November 6, 2009, no court decision was issued to extend the detention of Mr. Aleksei Sokolov. The latter should have therefore been released, but was kept in detention. A request in cassation was filed by Mr. Aleksei Sokolov's lawyers before the Tribunal of Sverdlovsk oblast against the Director of the detention centre # 1 of Yekaterinburg, on the grounds that the latter had not ordered his release on November 7, 2009 in the absence of any court decision requiring his remand in detention.

On November 18, 2009, a hearing in the appeal against the November 2 decision took place before the Sverdlovsk Regional Court. The court decided to postpone the examination of this case - on both detention and merits - to November 25, 2009. The hearing was public and representatives from the consulates of France, Germany and the United States of America attended the trial.

On November 25, 2009, the Sverdlovsk Regional Court ordered Mr. Aleksei Sokolov to be again remanded in custody until December 25, 2009. From November 7 to November 25, 2009, Mr. Aleksei Sokolov was therefore detained on the basis of no court decision.

On December 23, 2009, the Bogdanovitch District Court ordered Mr. Aleksei Sokolov to be remanded in custody until March 9, 2010.

On January 18, 2010, Mr. Aleksei Sokolov was transferred from the pre-trial facility in Kamyshov to the Soukhoi Log detention centre.

On February 11, 2010, the Tribunal of Sverdlovsk oblast quashed the request in cassation that had been filed by Mr. Aleksei Sokolov's lawyers against the Director of the detention centre # 1 of Yekaterinburg on the grounds that the latter had not ordered his release on November 7, 2009 in the absence of any court decision requiring his remand into detention. The tribunal issued this decision in the absence of Mr. Aleksei Sokolov, although the latter had explicitly requested to be present. Judge Mayorova considered that the Code of Civil Procedure did not provide for the transfer of detainees to attend civil trials. Mr. Aleksei Sokolov's lawyer argued that by acting that way, the court had violated the rights of the detainee.

b) Conditions of detention and treatment during the trial

During his detention, Mr. Aleksei Sokolov was subjected to several acts of ill-treatment. In addition, he and members of his family were subjected to several violations of their rights.

On May 14, 2009, Mr. Aleksei Sokolov told his lawyer that he was subjected to explicit threats of torture in the framework of his detention, and reported marks caused by handcuffs on his wrists.

On August 4, 2009, although the hearing before the District Court should have been open to public, guards prevented people from attending the trial, which lasted three hours.

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On October 12, 2009, food, clean trash bags and a spoon brought to Mr. Aleksei Sokolov were confiscated by the prison administration. On October 16 and 20, the two lights of his cell blew and were not replaced, thus leaving Mr. Sokolov in the dark.

On October 21, 2009, the hearing before the Yekaterinburg District Court was held in camera, and Mr. Sokolov's wife was denied access to the court room.

On January 6, 2010, Mr. Sokolov's wife was subjected to pressure by prison administration officers of the Kamychlov detention centre who attempted to force her to sign a statement recognising that she had committed an administrative offence. As Ms. Sokolova refused to sign, she was no longer allowed to visit her husband.

On January 17, 2010, Mr. Sokolov was assaulted by Mr. Golovin - his cell mate at the Kamychlov pre-trial facility - who threw boiling water at Mr. Sokolov before attacking him. Prison officials stood behind the door without intervening. One of them finally entered the cell, and shouted to his colleagues: "Sokolov attacked a co-detainee and is beating another one". Mr. Golovin had been transferred into Mr. Sokolov's cell on January 14 and had been provoking him since then.

On January 18, 2010, Mr. Aleksei Sokolov was again assaulted in the Soukhoi Log detention centre, where he had been transferred on the same day. His new cell mate, Mr. Evgeny Belyash, hit him hard in the jaw and threatened him, saying "We already warned you, but you still don't understand". This cell mate is one of the convicts who are at the origin of the re-opening of the investigation against Mr. Sokolov on April 23, 2009 since he signed an interrogation document on March 17, 2009 alleging Mr. Aleksei Sokolov was an accomplice in the crime for which they were both subsequently charged.

In addition, the documents written by Mr. Sokolov during his detention to prepare his defence and his discussions with his lawyer were consistently confiscated by the prison guards, thus violating his right to prepare his defence, as provided by the European Convention on Human Rights and the International Covenant for Civil and Political Rights.

II. The trial on the merits

The trial on the merits against Mr. Sokolov and others started on January 19, 2010, before the City Tribunal of Bogdanovich in Sverdlovsk oblast, with Mr. V. V. Vassilev as Presiding Judge.

The charges pending against Mr. Sokolov were the following:

- "theft" pursuant to Article 158, Section 4 of the Criminal Code of the Russian Federation;
- "aggravated robbery" pursuant to Article 161, Section 3, Point a of the Criminal Code of the Russian Federation;
- "burglary" (literally "theft committed with an illegal entry into living quarters or on a large scale") pursuant to Article 158, Section 3 of the Criminal Code of the Russian Federation.

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The charges related to three incidents that took place in 2001 and 2004:

- A robbery at the “UralTermoSvar” industrial base in Bogdanovich in which welding equipment and a cable were stolen and allegedly committed in 2004;
- A theft of a safe containing two million rubles from a Yekaterinburg business in 2004;
- A theft of metal pipes from a factory in 2001.

The seven individuals who provided statements supposedly involving Mr. Aleksei Sokolov in the above-mentioned events are: Mr. Alexander Sokolov (Mr. Aleksei Sokolov’s brother), Mr. Sergei Skvortsov, Mr. Valery Maslov, Mr. Evgeny Belyash, Mr. Konstantin Grigoryev, Mr. Ilya Anikin and Mr. Dmitry Noskov. The six first were serving sentences for other crimes as of January 2010, while Mr. Dmitry Noskov was granted a non-custodial measure of detention. The seven appeared as co-accused.

All of the accused were represented by attorneys¹⁰. All - to the exception of Mr. Aleksei Sokolov - were defended by State-appointed attorneys, whose actions are formal in nature. Indeed, although they did attend the hearings - as a trial cannot be conducted without attorneys - they were reportedly very passive during the trial.

Mr. Sokolov was defended by two lawyers, Mr. Roman Kachanov (Yekaterinburg) and Mr. Valeri Shukhardin (Moscow), as well as by two social advocates¹¹, Ms. Gulya Sokolova (Mr. Sokolov’s wife) and Mr. Gleb Edelev (a journalist).

The Observatory mission was informed that on February 2, 2010, fifth day of the trial, one of Mr. Aleksei Sokolov lawyers, Mr. Valeri Shukhardin, requested the Bogdanovich Tribunal to adjourn the hearing, with the support of his client and of the other defendants, on the grounds that he was summoned for another case. Judge Vassiliev rejected the request, arguing that the rights of the defence were not violated since Mr. Aleksei Sokolov had another professional lawyer among his defenders. In addition, the Judge considered that Mr. Shukhardin had violated the lawyers’ Code of Ethics by not informing his colleagues about his absence, and announced that he would refer the case to the chamber of lawyers.

Mr. Ilya Anikin, one of the accused and also a witness testifying against Mr. Aleksei Sokolov, requested that Mr. Sokolov’s wife be rejected as a social advocate of the latter, alleging that she kept on threatening him. This request was rejected by the court as groundless.

Mr. Aleksei Sokolov then challenged the composition of the board of judges, for “partiality” and “unfairness”. This request was refused after the holding of a session of the Council Chamber of the Tribunal.

Several witnesses were then interrogated, in particular an agent from the road police, who confirmed that Mr. Aleksei Sokolov was arrested in 2004 as he was in a vehicle containing stolen material, before adding that he did not remember exactly what happened at the time.

The witnesses testifying in favour of Mr. Aleksei Sokolov, who could have provided alibis, had informed the tribunal in advance that they could not come to Bogdanovich, and had asked

10. Article 51 part 1, pt. 5 of the Russian Federation Criminal Procedure Code requires the presence of attorneys if a sentence in a given criminal case may exceed 15 years’ imprisonment.

11. A social advocate, or civic defender, is a person or a group admitted by the court to give and examine evidence, as well as to give its opinion on questions related to the trial. They have a consultative status.

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the court to authorise them to provide written testimonies only. Mr. Aleksei Sokolov had supported their move.

In her written testimony, Ms. Elena Koporuchkina, the first wife of Mr. Aleksei Sokolov, confirmed that in the night of June 19 to 20, 2004, when the UralTermoSvar company was burgled, Mr. Aleksei Sokolov was at their place of residence, as they were celebrating her father's birthday.

1) The hearings observed by the Observatory mission on March 2 and May 5 and 6, 2010

All hearings were held at the City Tribunal of Bogdanovich.

a) Court hearing of March 2, 2010, 10:00 am.

After opening the hearing, the Judge announced that two of the State-appointed attorneys were busy with another trial at the same time, and were therefore not able to attend the hearing. The Judge also asked the defendants whose attorneys were absent whether they would object if the hearing proceeded without the attorneys, but upon their consent, he nonetheless announced a recess until 2:00 pm, stating that "the rights of the accused shall not be violated".

Representatives of the Consulate of the United States of America in Yekaterinburg also attended the hearing.

b) Court hearing of March 2, 2010, 2:00 pm: on the remand in detention

After opening the hearing, the Judge raised the issue of the measure of detention against Mr. Aleksei Sokolov.

The *Prokuratura* requested an extension of Mr. Sokolov's detention, in view of the gravity of the crimes, and of the fact that these crimes were committed in three different regions - Krasnoufimsk region, Bodganovich region (Sverdlovsk oblast) and Yekaterinburg region (Sverdlovsk oblast).

Mr. Aleksei Sokolov's lawyers - Messrs. Valeri Shukhardin and Roman Kachanov - challenged this request, arguing in particular that his conditions of detention did not make it possible for him to organise his defence properly. Mr. Sokolov's lawyers remarked that the *Prokuratura* had not provided any legal basis justifying the extension of the detention. Furthermore, it was noted that the previous court decisions on the measure of detention had been appealed by Mr. Aleksei Sokolov's lawyers but that, as of that date, no court decision had been issued on that matter.

c) The Court hearing of March 2, 2010, 4:00 pm: on the remand in detention

The *Prokuratura* requested the extension of the detention of Mr. Aleksei Sokolov for another six months, arguing this time that it was necessary to carry out a thorough investigation on the thefts Mr. Aleksei Sokolov was accused of. The *Prokuratura* further argued that this "safety measure" would facilitate the investigation¹².

One of Mr. Aleksei Sokolov's lawyers, Mr. Kachanov, retained his former argument, as the *Prokuratura* did not express new arguments justifying the need to extend Mr. Aleksei Sokolov's detention.

12. See <http://alexeisokolov.wordpress.com/2010/03/06/la-detention-dalexai-sokolov-prolongee/>.

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He stated in particular that the arguments formulated by Mr. Aleksei Sokolov in cassation to strike down the first decisions ordering his detention had still not been examined by the court, adding that “we still [did] not know whether Mr. Aleksei Sokolov’s detention [was] conform with the law”.

He also stated that as the procedure was now at the stage of the trial, this meant that all of the evidence should have already been gathered during the pre-trial period, and added that the witnesses had never complained of any kind of pressure from Mr. Aleksei Sokolov, which meant that the latter did not constitute any “real danger” and shall not be subjected to a “safety measure”. It was noted in this regard by the lawyers that there had been no examination by the court of so-called elements of proof showing that Mr. Aleksei Sokolov had been putting pressure on his prison inmates and that no new document had been presented by the *Prokuratura*.

During the hearing, on the contrary, the court systematically avoided to fully hear the testimonies of prison inmates, stating that they had never been subject to any kind of pressure from Mr. Aleksei Sokolov.

Mr. Aleksei Sokolov’s lawyers concluded with the fact that the request to extend his detention was therefore groundless.

The judge decided however to extend the detention of Mr. Aleksei Sokolov until April 29, 2010, pursuant to Article 255 of the Criminal Procedural Code of the Russian Federation, merely arguing that the rationale justifying the measure of detention of the accused was “the same as previously” (i.e. gravity of the crimes, and of the fact that these crimes were committed in three different regions).

Further hearings were then set for early May 2010.

d) The Court hearings of May 5, 2010 (10:00 a.m. -12.00 a.m., 13.00 p.m. – 16.20 p.m., 16.35-17.00 p.m.) and of May 6, 2010 (10.00 a.m. – 12.10 a.m.)

At the beginning of the court hearing on May 5, 2010, the lawyer of Mr. Grigoryev, one of the co-accused in this trial (see above), requested that the hearing be postponed. He complained that Mr. Grigoryev had a high blood pressure and felt ill. Mr. Grigoryev admitted that he was feeling bad, but that his health conditions allowed him to be present at the hearing.

The Judge decided to proceed with the consideration of the case without requesting a medical examination of Mr. Grigoryev by a competent doctor.

Following a motion filed by Mr. Aleksei Sokolov’s lawyers, some written evidence such as medical references on Mr. Aleksei Sokolov’s health status and requests formulated by the lawyers were attached to the criminal case-file.

After the examination of the written evidence, the court opened the debate.

In its pleadings, the *Prokaratura* asked the court to convict all defendants in the case, stating in particular that:

- Mr. Aleksei Sokolov, Mr. Grigoryev and Mr. Alexander Sokolov should be convicted for stealing pipes from the industrial base of Krasnoufimsk in Sverdlovsk oblast in 2001;

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- Mr. Aleksei Sokolov, Mr. Skvortsov, Mr. Maslov, Mr. Belyash, Mr. Anikin, Mr. Noskov should be convicted for stealing coloured metal for the amount of more than one million rubles from a plant located in Bogdanovich, Sverdlovsk oblast, in 2004.

The *Prokuratura* qualified the acts attributed to Mr. Skvortsov, Mr. Maslov and Mr. Belyash under Article 161, Section 3, Points a and b of the Criminal Code of the Russian Federation (“aggravated robbery”); and the acts attributed to Mr. Anikin, Mr. Noskov and Mr. Aleksei Sokolov under Article 161, Section 3, Point a of the Criminal Code of the Russian Federation (“aggravated robbery”).

Mr. Aleksei Sokolov was also convicted of stealing a safe-box containing two million rubles in Yekaterinburg in 2004. Mr. Alexander Sokolov (his brother), Mr. Skvortsov, Mr. Maslov and Mr. Belyash had already been convicted previously for the same crime.

The *Prokuratura* requested to the Court :

- to sentence Mr. Alexander Sokolov to one year of imprisonment;
- to sentence Mr. Grigoryev to one and a half year of imprisonment;
- to sentence Mr. Noskov to three years of imprisonment;
- to sentence Mr. Belyash, Mr. Skvortsov, Mr. Maslov and Mr. Anikin to four years of imprisonment;
- to sentence Mr. Aleksei Sokolov to seven years of imprisonment.

However, because the majority of the defendants at the time of the trial had already served long terms of imprisonment, the *Prokuratura* instead requested the court to reduce the terms it had just requested, by merely increasing the period of imprisonment already served by the accused to an average of one year. The *Prokuratura* however stated that this treatment shall not be applied to Mr. Aleksei Sokolov.

After the *Prokuratura*’s pleadings, the court gave the floor to Mr. Aleksei Sokolov for his closing remarks.

Mr. Aleksei Sokolov asked the court to acquit him and highlighted the following elements in that regard:

- Central Administrative Board of Federal Service of Execution of Punishments (CABFEP) officers reportedly played an active role in the extension of his detention and in the criminal case against him by, e.g., allowing the co-accused to use mobile phones during their detention in order to coordinate their statements against him;
- Although the crimes in question were committed in 2001 and 2004, a criminal case was only opened against him in 2009, after he publicly blamed the administration of the CABFEP of carrying out illegal activities and being responsible for human rights violations (see above);
- Before the start of the criminal investigation and proceedings, he had been threatened and urged to stop his human rights activities;

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- The genuine reason for the detention and criminal prosecution against him was therefore related the fact that he exposed and denounced abuses committed by the officers of the *Prokuratura*'s Office and CABFEP;
 - In 2008 he had already stated publicly that pressure was being put on some prisoners with the purpose to exhort statements against himself;
 - Officers from these institutions had reportedly put pressure on his co-accused in order to extort false statements against him in exchange of minimum terms of punishment or release on parole;
 - Despite the gravity of the charges brought against the persons incriminating him, the *Prokuratura* indeed requested to add only about one year of imprisonment to the period of imprisonment already served by his co-accused;
 - He was the only co-accused not falling in the scope of that treatment;
 - The only evidence presented by the *Prokaratura* to demonstrate that he had committed the afore-mentioned crimes were statements made by his co-accused;
 - Testimonies made by his co-accused contradicted each other significantly throughout the various stages of the proceedings;
 - None of the victims of the crimes in question accused him, and their statements contradicted those made by some of his co-accused. However, the *Prokuratura* gave more credit to statements made by the co-accused without providing any sound justification;
 - The main witness, Mr. Belyash, recognised during previous court hearings that he could make false statements against any person with whom he had had bad relationships.

Then, the Court gave the floor to Mr. Aleksei Sokolov's lawyers for their concluding pleadings.

One of his lawyers, Mr. Roman Kachanov, requested the acquittal of Mr. Aleksei Sokolov. He repeated some of Mr. Sokolov's arguments and added that:

- Mr. Sokolov's co-defendants were held in the same cell on several occasions after the re-opening of the three criminal investigations, in violation with domestic laws - which gave them the opportunity to coordinate their statements;
- They were not warned about the criminal liability faced for false testimonies.

Mr. Valeri Shukhardin also requested the acquittal of Mr. Aleksei Sokolov and, in addition to the above arguments, asserted that:

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- Mr. Belyash, who testified against Mr. Aleksei Sokolov, characterised his earlier statements as truthful only in part and probably exaggerated;
 - Some of the co-defendants asserted that they were ill-treated or tortured and forced to write confessions;
 - A witness for the defence, Mr. Antonov, stated that he had witnessed a conversation between some of the defendants and heard that their statements had been given following instructions given by high officials in exchange of their early release on parole and the improvement of their conditions of detention;
 - Another witness detained, Mr. Roshkovan, stated that since 2006 he had been physically coerced by officials and asked to provide a statement incriminating Mr. Aleksei Sokolov in any offence in exchange for his early release on parole;
 - The principle of the separation of witnesses during interrogation was not complied with throughout the investigation, as all witnesses were interrogated in the presence of other witnesses.

Mr. Edelev, as Mr. Aleksei Sokolov's social advocate, also requested the acquittal of Mr. Aleksei Sokolov, referring to the unreliability and insufficiency of evidence provided for his conviction. Ms. Sokolova refused to take the floor.

All the other co-accused pleaded guilty or refused to speak. Some of them asserted that they had not been subjected to any form of pressure. Their lawyers asked the court to reduce their client's sentences, as requested by the *Prokuratura*.

The Court then gave the opportunity to each of the accused to make a rejoinder¹³.

Mr. Aleksei Sokolov and his lawyers reiterated some of the above arguments concerning Mr. Sokolov's innocence, and referred to the absence of any evidence on his relation to the alleged crimes in the criminal case-files.

After the closure of the pleadings, the defendants were given the opportunity to make concluding remarks.

Mr. Aleksei Sokolov requested the court to acquit him and summarised the arguments set forth in his pleadings. Some of the co-defendants only asked the court for indulgence.

The Judge declared that the verdict would be made public on May 13, 2010, and closed the hearing for deliberation.

The verdict

On May 13, 2010, on the sole basis of statements of the co-accused in this case who were

13. A rejoinder is a pleading made by a defendant in response to the plaintiff's replication.

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already serving prison sentences for other crimes, the City Tribunal of Bogdanovich sentenced Mr. Aleksei Sokolov to five years of imprisonment, to be served in a high security penal colony, for “theft” and “aggravated robbery”.

An appeal was lodged on the same day before the Regional Court of Sverdlosk.

III. Respect of fair trial and due process standards

Under international law, including under Article 14 of the International Covenant on Political Rights (ICCPR), to which the Russian Federation is a party, all persons charged with a criminal offence have the right to be tried by an independent, impartial and competent tribunal established by law. Neither the judiciary nor the judges of which it is composed can be subordinate to any branches of the State¹⁴.

The conduct of the Court in the proceedings against Mr. Aleksei Sokolov calls into question its independence and impartiality. During the hearings, decisive weight was reportedly given to evidence provided by co-defendants who were already serving prison sentences for other crimes, and the Court based its decision to convict Mr. Aleksei Sokolov mostly on the evidence provided by these co-accused, even though defence lawyers had presented credible evidence seriously undermining the veracity and validity of such evidence.

Another substantive element of fair trial concerns the conduct of the State prosecuting authority. Prosecutors must perform their functions impartially and with objectivity. Article 13 of the United Nations Guidelines on the Role of Prosecutors provides, “in the performance of their duties, Prosecutors shall:

- (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
- (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect”.

Prosecutors should not initiate or continue prosecution, or should make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded¹⁵.

In the present case, several judicial guarantees to which Mr. Aleksei Sokolov was entitled were not observed, in particular the following:

1) *The right to be presumed innocent until proven guilty* according to law is an absolute right, which may never be the object of a derogation, restriction or limitation¹⁶. It places

14. See Article 14 of the ICCPR. On the right to a fair trial, see also case of the European Court of Human Rights, Judgment, July 16, 1971, *Ringeisen v. Austria*, Application No. 2614/65 para. 95; and Inter-American Commission on Human Rights, Report on Terrorism and Human Rights, OAS Doc. OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., October 22, 2002, para. 229.

15. See OP 14 of the UN Guidelines on the Role of Prosecutors.

16. See Human Rights Committee, General Comment No. 29, para. 11, and General Comment No. 32, para. 6; Inter-American Commission on Human Rights, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116,

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the burden of proof of criminal conduct on the prosecution; guarantees that guilt cannot be presumed unless the charge has been proven beyond reasonable doubt; and ensures that the accused has the benefit of doubt. During the hearings, Mr. Aleksei Sokolov was not presumed guilty and the burden of proof was placed on him as the judge posed undue obstacles to the defence in presenting its case.

2) *The right to defence requires that the accused be granted prompt access to his or her lawyers, and to be able to meet with them in private.* It includes the right to communicate and consult with them without interception or censorship and in full confidentiality¹⁷.

3) *The right to equality of arms in criminal proceedings* requires procedural equality between the accused and the prosecution. The right requires that at no stage of the proceedings must any party be placed at a substantial disadvantage *vis-à-vis* the opposing party, and that the accused has the same legal powers as the prosecution to compel witnesses to appear and to examine and cross-examine them. However, as pointed above, throughout the proceedings one of Mr. Sokolov's lawyers reported that all the requests formulated by his client, i.e. request for a public hearing, for the obtaining of copies of the files of the criminal case, were denied by Judge Pichulin. Moreover, the *Prokuratura* did not present any credible evidence to support its accusations against him. These accusations were based solely on elements of the witnesses of Mr. Aleksei Sokolov's co-accused, who were given the opportunity to coordinate their statements, and who were interrogated in presence of other witnesses. Some of these statements, however, were deemed to be contradictory by Mr. Aleksei Sokolov, and Mr. Belyash, one of these co-accused who testified against him, even characterised his earlier statements as truthful only in part and probably exaggerated. All these elements were however disregarded. The Judge disregarded the evidence presented by the defence lawyers and relied solely upon the testimonies brought against him by his co-accused.

4) *The right to a public hearing* was also violated on several occasions, as hearings on August 4, 2009 and October 21, 2009 were held in camera (see above).

Doc. 5 rev. 1 corr., October 22, 2002, paras. 247, 253 and 261; and Inter-American Commission on Human Rights, Report No. 49/00 of April 13, 2000, Case No. 11.182, Rodolfo Gerbert Asensios Lindo et al. (Peru), para. 86.

17. See OP 18 (3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and OP 8 of the UN Basic Principles on the Role of Lawyers.

IV. Other activities of the judicial observation mission: although permitted, the visit in detention of Mr. Sokolov was prevented

1) March 2, 2010, 5:00 pm: meeting with the Judge

During the meeting with the Judge to discuss the status of the judiciary and the administration of justice, Mr. Arman Danielyan was given a written permission to meet with Mr. Aleksei Sokolov in detention. The visit was scheduled to take place on March 3, 2010 at the temporary detention facility of the city of Sukhoi Log. The Judge had been duly informed about the objectives and the dates of the observer's mission by a fax sent on March 1, 2010.

2) March 3, 2010, 9:30 am: Attempted visit to Mr. Sokolov in detention

On March 3 early in the morning, Mr. Aleksei Sokolov was transferred to the pre-trial detention facility in the city of Kamyshlovo. According to Mr. Aleksei Sokolov's lawyers, prison administration officials were manifestly forewarned about the visit, as transfers usually take place in the afternoon.

The lawyers explained to Mr. Danielyan that given the situation, the meeting with Mr. Aleksei Sokolov at the pre-trial detention centre could not take place on March 3, since prisoners admitted to a new facility had to undergo all sorts of formalities on the first day of their transfer, and since prisoners were not allowed visits after 3:00 pm.

V. Update of the situation as of July 2011

On August 26, 2010, Mr. Sokolov was transferred to the FGU IZ-54/1 remand centre in Novosibirsk (Siberia). On his arrival, he was allegedly beaten up by prison guards and placed in solitary confinement for several hours.

On the same day, his lawyers were informed that Mr. Sokolov was ordered to serve his sentence in Siberia, in a region that is more than 2,000 kilometres away from Yekaterineburg, where he was held until then and where his family lives. This decision was issued by the Russian Prison Service.

According to Mr. Sokolov's lawyer, this order would aim at making it more difficult for Mr. Sokolov to communicate with his family and lawyers.

On September 26, 2010, Mr. Sokolov was allegedly beaten up by the Director of the remand centre in Novosibirsk during his transfer to the Krasnoïarsk region. He was then placed in solitary confinement where he was forced to sign a statement specifying that he attacked the Director of the remand centre.

1) The verdict in appeal

On August 18, 2010, Mr. Sokolov was sentenced in appeal by the Regional Court of Sverdlovsk to three years in prison in a high security penal colony. He was to serve one year and a half in prison

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due to the time he had already served in the framework of the previous remand detention.

On November 15, 2010, Mr. Sokolov lodged a second appeal. The appeal was also sent to the Supreme Court of the Russian Federation.

On May 13, 2011, the Sosnovoborski Court of Krasnoyarski region (the closest tribunal from the place of detention of Mr. Aleksei Sokolov) decided to reduce the detention term of Mr. Sokolov by two months.

2) Requests of release on parole

On November 14, 2010, the Court of the City of Sosnovoborsk in the Krasnoïarsk region refused the request for release on parole lodged on November 12, 2010 by Mr. Sokolov's lawyers. The Parole Board expected indeed to hear Mr. Sokolov admit responsibility for his supposed crimes before releasing him on parole. But Mr. Sokolov never recognised the crime for which he was sentenced.

The lawyer of Mr. Sokolov appealed on the request of release on parole in December 14, 2010 to the Regional Court of Krasnoïarsk. On April 13, 2011, this request was denied by the Regional Court of Krasnoïarsk.

On July 27, 2011, this court eventually released Mr. Aleksei Sokolov on parole.

3) Complaints against the transfer of Mr. Sokolov in Krasnoïarsk, Siberia

In addition, on January 21, 2011, the Court of the City of Yekaterinburg reviewed another complaint filed in parallel by Mr. Roman Katchanov, one of the lawyers of Mr. Sokolov, against the decision to transfer Mr. Sokolov in the region of Krasnoïarsk to serve his sentence. In order to justify this transfer, the Directorate of Executions of Sentences produced a document that supposedly references alleged threats made against Mr. Sokolov in his previous detention centre in Yekaterinburg, from persons who signed confessions against him. During the public hearing, these persons had however declared that they had no aggressive or negative attitudes towards Mr. Sokolov. But the Court of the City of Yekaterinburg only took into account the arguments of the Directorate, and the complaint filed by Mr. Kachanov was therefore disregarded.

On May 5, 2011, the Leninsky District Court of Yekaterinburg confirmed the decision of January 21, 2011, justifying the transfer of Mr. Sokolov in the region of Krasnoïarsk. As of June 2011, Mr. Sokolov remained detained at the colony 40 of Sosnovoborsk (OIK-40, LIU-3, 662500, Krasnoïarsk Region, Sosnovoborsk, Zavodskaja Street, 5, # 214).

The defence argued that Mr. Sokolov remained in an atmosphere of informative blockade in Sosnovoborsk, and highlighted an explicit will of the prison administration to cut off all the information sources to Mr. Sokolov, such as radio, television, access to the library and phone calls.

Recommendations

In the light of the above, the Observatory for the Protection of Human Rights Defenders recommends:

1. To the competent authorities of the Russian Federation:

- To guarantee in all circumstances the physical and psychological integrity of Mr. Aleksei Sokolov, as well as all human rights defenders in the Russian Federation;
- To carry out prompt, effective, thorough, independent and impartial investigations into the above-mentioned acts of ill-treatment against Mr. Sokolov, the result of which must be made public, in order to bring all those responsible before a competent, independent and impartial tribunal and apply penal, civil and/or administrative sanctions as provided by law;
- To put an end to all acts of harassment, including at the judicial level, against Mr. Aleksei Sokolov as well as against all human rights defenders in the Russian Federation, and ensure in all circumstances that they be able to carry out their work without unjustified hindrances;
- To conform in all circumstances with Russia's international and regional obligations regarding the protection of human rights and fundamental freedoms, and in particular with the article on the freedom of expression and the right to a fair trial contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the International Covenant on Civil and Political Rights;
- To conform in all circumstances with the provisions of the Declaration on Human Rights Defenders adopted by the United Nations General Assembly on December 9, 1998, and in particular:
 - with Article 1, which specifies that "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels",
 - and with Article 12.2, which specifies that "The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration";
- To conform in all circumstances with the provisions of the Declaration of the Committee of Ministers of the Council of Europe on the protection of human rights defenders and the promotion of their activities, and in particular:
 - with Article 2.i), in which the Committee calls on member States to "create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities, on a legal basis, consistent with international standards, to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the European Convention on Human Rights;
 - with Article 2.vi), in which the Committee calls on member States to "ensure that their legislation, in particular on freedom of association, peaceful assembly and expression, is in conformity with internationally recognised human rights standards and, where appropriate, seek advice from the Council of Europe in this respect";

.....
2. To the Delegation of the European Commission in Moscow and to the embassies of the member States of the European Union in Moscow (on the basis of the European Union Guidelines on Human Rights Defenders), **to the embassies and parliamentarians of member States of the Council of Europe** (on the basis of the Declaration of the Committee of Ministers and Resolution 1660 of the Parliamentary Assembly of the Council of Europe respectively), and **to the Organisation for Security and Cooperation in Europe - OSCE** (on the basis of the 1990 Copenhagen Document):

- To observe the possible upcoming hearings before civil and criminal jurisdictions;
- To draw up a public report, if possible jointly, on possible violations and matters for concern noted during the appeal hearings;
- To communicate such matters for concern to the Russian authorities;
- To ensure the follow up of the situation in the framework of their respective activities.

3. To the Council of Europe Commissioner for Human Rights:

- To intervene on the basis of this information, so that Mr. Sokolov can be completely discharged and acquitted;
- To continue to meet with and support the Russian civil society involved in - and following - Mr. Aleksei Sokolov's case, and to draw up a public report on the situation;
- To approach the competent authorities in the manner he deems appropriate, in order to help them to find solutions, in accordance with their obligations, to the judicial harassment to which Mr. Aleksei Sokolov is subjected;
- To continue to work on the issue of human rights defenders in close cooperation with the other international institutions and organisations, in particular the OSCE Office for Democratic Institutions and Human Rights (ODIHR) Focal Point for Human Rights Defenders, the European Union and the Special Rapporteur of the United Nations on Human Rights Defenders, and with other existing mechanisms.

4. To the United Nations Special Rapporteur on the situation of human rights defenders:

- To raise and regularly follow-up the case of Mr. Aleksei Sokolov with the Russian authorities, including by requesting comprehensive replies to the issues raised in her communications;
- To request a standing invitation to the Russian authorities, so that a country visit on the situation of human rights defenders in the Russian Federation can be carried out.



International Federation for Human Rights

Establishing the facts

Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

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FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

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FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

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Created in 1985, the World Organisation Against Torture (OMCT) is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 297 affiliated organisations in its SOS-Torture Network, OMCT is the most important network of NGOs working for the protection and the promotion of human rights in the world.

Based in Geneva, OMCT's International Secretariat provides personalised medical, legal and/or social **assistance to victims of torture** and ensures the daily dissemination of **urgent interventions** across the world, in order to prevent serious human rights violations, to protect individuals and to fight against impunity. Moreover, some of its activities aim at protecting specific categories of vulnerable people, such as women, children and human rights defenders. OMCT also carries out campaigns relating to violations of economic, social and cultural rights. In the framework of its activities, OMCT also **submits individual communications and alternative reports** to the United Nations mechanisms, and actively collaborates in the **respect, development and strengthening of international norms** for the protection of human rights.

OMCT has either a consultative or observer status with the United Nations Economic and Social Council (ECOSOC), the International Labour Organisation, the African Commission on Human and Peoples' Rights, the *Organisation Internationale de la Francophonie*, and the Council of Europe.

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The Observatory for the Protection of Human Rights Defenders: a joint programme of FIDH and OMCT

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they face. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims. The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With this aim, the Observatory seeks to establish:

- a mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- the observation of judicial proceedings, and whenever necessary, direct legal assistance; international missions of investigation and solidarity;
- a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- the preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- sustained action with the United Nations in particular with the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by OMCT and FIDH: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger. This system, called Emergency Line, can be reached through:

Emergency Line:

Email: Appeals@fidh-omct.org

Tel: + 33 1 43 55 25 18 Fax: + 33 1 43 55 18 80 (FIDH)

Tel: + 41 22 809 49 39 Fax: + 41 22 809 49 29 (OMCT)