

Russian Federation

Amnesty International's concerns and recommendations in the case of Mikhail Trepashkin

Summary and recommendations

Mikhail Trepashkin, a lawyer and former KGB and FSB (Federal Security Services) officer, was convicted of “divulging state secrets” and “illegal possession of ammunition” by a Russian military court in May 2005 and was sentenced to four years’ imprisonment. Amnesty International is concerned that Mikhail Trepashkin is being denied adequate medical treatment in the prison colony in which he is being held, and that he is being subjected to cruel, inhuman and degrading treatment by the prison administration as part of a wider effort to intimidate him into withdrawing his complaints against the Russian authorities relating to his criminal conviction and his treatment while a prisoner. Moreover, there are serious grounds to consider his prosecution was politically motivated, and that he was treated in a discriminatory fashion when he was rearrested following release on parole, apparently in violation of Russian procedure. Amnesty International is also concerned that Mikhail Trepashkin was subjected to cruel, inhuman and degrading treatment in pre-trial detention, and was subjected to intimidation in an attempt to persuade him to withdraw his complaints about the conditions of detention.

Given the serious grounds to believe there has been an injustice in Mikhail Trepashkin’s case, due to interference by the executive in the criminal justice system, Amnesty International is calling for a prompt, impartial and thorough investigation into such allegations and a full review of this case, to be conducted in accordance with international standards for fair trial. Amnesty International urges the Russian authorities to release Mikhail Trepashkin pending the re-examination of his case. Amnesty International also urges the Russian authorities to provide Mikhail Trepashkin with access to full and appropriate medical care immediately, and urges the Russian authorities to ensure that conditions of detention for all prisoners held in prison colony IK-13, including in the punishment cells, meet international standards, such as the *Standard Minimum Rules for the Treatment of Prisoners*. The Russian authorities should also ensure that prison authorities do not attempt to intimidate any prisoner into withdrawing complaints against the Russian authorities relating to their criminal conviction or their treatment while a prisoner. Any allegations of intimidation should be promptly, impartially and thoroughly investigated.

Grounds to consider the prosecution of Mikhail Trepashkin as politically motivated, alleged fair trial violations and concerns about conditions of pre-trial detention

According to information available to Amnesty International, Mikhail Trepashkin served in the Russian security services, the KGB and then the FSB, for some 20 years. In 1997 he was removed from his position by the agency for allegedly refusing to cover up a corruption case he had uncovered involving high ranking FSB officers. Mikhail Trepashkin subsequently went public with this information.

As a consultant to the independent commission set up to investigate the apartment block bombings in Moscow in 1999, chaired by Duma Deputies Sergei Kovalev and the late Sergei Yushenkov, Mikhail Trepashkin continued to investigate the affairs of the FSB. In particular, he was asked to investigate allegations of security service complicity in the bombings, which had been attributed by the authorities to Chechen separatists. Since mid-2002, Mikhail Trepashkin also acted as a legal representative for the family of one of the victims of the 1999 apartment bombings.

In January 2002 his house was searched (in Russian, *obysk*) by law enforcement officers and cartridges and documents relating to Mikhail Trepashkin's service in the KGB and FSB were allegedly found. A further inspection (in Russian, *osmotr*) of the house took place in February. According to Mikhail Trepashkin and his lawyer, the official record of the inspection has been fabricated to state that documents were found in Mikhail Trepashkin's home which were in fact not in his possession. They say that these documents appeared in the case materials only in December 2002, and formed the basis for his subsequent prosecution. In February 2002, Mikhail Trepashkin was summoned to the office of the Military Procurator for initial questioning as a suspect in a criminal case under "disclosure of state secrets" (Article 283, part 1 of the Russian Criminal Code), and "illegal acquisition, transfer, sale, keeping, transporting or carrying of firearms, parts of firearms, ammunition... explosive substances or explosive devices..." (Article 222, part 1). In July 2002 the first public hearing of the independent commission into the apartment block bombings took place in Moscow with a link to London participants. After this, according to his lawyer, Mikhail Trepashkin was called in for questioning on an almost daily basis. In March 2003 the charge of "abuse of office" (Article 285, part 3) was added to the investigation and Mikhail Trepashkin was charged under these three articles. Mikhail Trepashkin won an indefinite postponement of this case in September 2003 at the Supreme Court.

However, on 22 October 2003, one week before Mikhail Trepashkin was due to appear in court representing one of the victims of the 1999 apartment bombings, he was arrested and taken into custody. Mikhail Trepashkin had been due to be the only 'independent' person to appear in the court and was due to put forward information relating to alleged FSB involvement in the bombings. On 22 October Mikhail Trepashkin was stopped by traffic police on a motorway near Moscow. He was arrested following a check on his car, as a gun had allegedly been found. Mikhail Trepashkin was taken into police custody (IVS) at the Internal Affairs Directorate in Dmitrov and criminal proceedings were initiated under "illegal acquisition, transfer, sale, keeping, transporting or carrying of firearms, parts of

firearms, ammunition... explosive substances or explosive devices...” (Article 222, part 1 of the Criminal Code). Moreover, Mikhail Trepashkin and his lawyer were not informed about one of the court hearings regarding the legality of his detention that took place on 31 October 2003, and were therefore unable to attend. At this court hearing the judge ruled to release Mikhail Trepashkin on bail, finding that the criminal investigation against Mikhail Trepashkin was unlawful as it had been undertaken without court sanction (Russian criminal procedure requires the permission of a court to undertake investigative actions against a lawyer). However, this decision was overturned on 5 November by the Dmitrovskii court.

Mikhail Trepashkin was then transferred to a pre-trial detention facility (SIZO) in the town of Volokolamsk, Moscow region before being transferred to the Matrosskaia Tishina SIZO in December 2003. His description of conditions in these detention facilities, supported by further information Amnesty International has received, suggests that conditions in these places of detention amounted to cruel, inhuman and degrading treatment or punishment. We understand that the conditions of detention are documented in Mikhail Trepashkin’s application to the European Court of Human Rights. According to Mikhail Trepashkin, he was subjected to intimidation by the administration of Matrosskaia Tishina SIZO, in an effort to persuade him to withdraw his complaint to the European Court of Human Rights concerning the conditions of detention.

On 1 December 2003 a preliminary hearing into the charges of divulging state secrets and illegal possession of ammunition had taken place at Moscow District Military Court. The court ruled to replace Mikhail Trepashkin’s undertaking not to change place of residence without informing the authorities, with pre-trial detention. Therefore when the Dmitrov City Court refused the procurator’s request to extend his pre-trial detention in connection with the second criminal case relating to possession of firearms, he nevertheless remained in detention in connection with the first criminal case. He was subsequently convicted of Articles 283 part 1 “divulging state secrets” and Article 222 “illegal possession of ammunition” by the Moscow district military court on 19 May 2004. All the hearings against Mikhail Trepashkin took place in a closed court, apart from the verdict which was rendered in public. He was sentenced to four years’ imprisonment in an open colony. The charges under Article 285 part 3 were re-qualified from part 3 to part 1 and then withdrawn. Mikhail Trepashkin’s lawyer has alleged that these latter charges were included in the case in order to intimidate Mikhail Trepashkin, as the charges carried a maximum possible sentence of 10 years’ imprisonment. Mikhail Trepashkin and his lawyer continue to insist that the cartridges were planted during the January 2002 search and that many of the documents allegedly found during the search had never been in his possession and that the other documents he kept at home did not contain state secrets.

Amnesty International understands that the International Commission of Jurists requested permission to observe the trial but were either refused or their request remained unanswered. On 12 January 2004, Mikhail Trepashkin’s lawyer filed a request with the Moscow District Military Court regarding the admittance of independent observers – Russian or international – to monitor the trial. The court denied this request, calling the trial “closed”

in accordance with Article 241, part 2 1) of the Russian Code of Criminal Procedure which permits this for cases where a “hearing of the criminal case in court could lead to divulgence of a state or other secret protected by federal law”, as an exception to the general rule that court hearings are to be public. According to the lawyer, all the hearings in the case were closed, because one of the charges against Mikhail Trepashkin was under Article 283. However it would appear that other charges in the case, under Articles 222 and 285, would not require closed hearings. According to Mikhail Trepashkin’s defence lawyer, the fact that the hearings were closed caused difficulties in providing adequate defence for Mikhail Trepashkin, as she was unable to take any documents from the court room.

Amnesty International is concerned therefore that there are serious grounds to believe that Mikhail Trepashkin was arrested and convicted following an unfair trial under falsified criminal charges which may be politically-motivated. The timing of the criminal investigations against him, the timing of his arrest on charges relating to possession of a gun, for which he was subsequently acquitted, alleged fabrication of charges against him, procedural violations during the pre-trial detention period and being tried in a closed military court, together make a strong argument that Mikhail Trepashkin is a victim of political persecution from some parts of the Russian law enforcement system, in order to prevent him continuing his investigative and legal work related to the 1999 apartment bombings in Moscow and other cities.

The right to a fair trial and to freedom from torture and ill-treatment are basic human rights. The right to a fair trial includes the general rule that hearings would be open to the public. The Human Rights Committee has stated that the publicity of hearings is an important safeguard in the interest of the individual and of society at large (General Comment 14). ICCPR Article 14.1 states that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society”. Given the fundamental nature of the right to a fair trial, it is for the Russian authorities to justify that the grounds on which a public hearing was denied were legitimate, and that the restriction of the right was strictly necessary. It would appear that the closed nature of all the hearings in the case, not only those concerning Article 283, does not meet the test of necessity and proportionality.

Similarly, while in exceptional cases civilians can be tried in a military court, the requirement under international law that courts and tribunals be competent, independent and impartial applies to all courts, including military courts. We note that the Human Rights Committee has stated that trying civilians in military courts “could present serious problems as far as the equitable, impartial and independent administration of justice is concerned” and has stated that “the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in article 14 [of the ICCPR]”. Amnesty International has questioned whether the court which heard the case against Mikhail Trepashkin met the international standards of independence and impartiality; whether the case against Mikhail Trepashkin was “very exceptional”, and whether the

military judges in the court were autonomous of their superiors when hearing the case and passing verdict.

Following his conviction on 19 May 2004, Mikhail Trepashkin remained in pre-trial detention, awaiting the hearing in the second criminal case against him, which took place on 15 April 2005. The Dmitrov town court found Mikhail Trepashkin guilty of unlawful possession of firearms in connection with the second criminal case, and sentenced him to two years' imprisonment. However, on 1 July 2005 the Moscow regional court reversed this conviction and fully cleared Mikhail Trepashkin of this charge. Mikhail Trepashkin had consistently protested his innocence and claimed that the gun was planted during the search of his car. On 27 July 2005, Mikhail Trepashkin was transferred to open prison colony IK-13 near Nizhnii Tagil, Sverdlovsk region.

Apparently discriminatory treatment following release on parole

On 19 August 2005 a district court in Nizhnii Tagil granted Mikhail Trepashkin parole (in Russian *uslovno-dosrochno osvobozhdenie*). Mikhail Trepashkin had served one-third of his sentence which under Article 79 of the Russian Criminal Code is the minimum amount needed to be served for those convicted of crimes classified as of minor or medium seriousness. The decision entered into force on 29 August, and he was released on 30 August. According to Mikhail Trepashkin's lawyer, the parole decision contained no specific conditions that Mikhail Trepashkin would have to fulfil.

On his arrival in Moscow on 31 August Mikhail Trepashkin announced he would continue his research relating to the apartment bombings and on 2 September at a press conference he announced that he was forming a committee of lawyers. Also on 31 August the acting procurators of Nizhnii Tagil and Sverdlovsk region applied to the Nizhnii Tagil City Court to quash the order for parole; the application was made outside the 10-day time limit established by Russian law. They argued that there should be a renewal of the time limit for appeal, on the grounds that there was a delay in their receipt of documents from the court.

On 16 September the Regional Court (third instance court) of Sverdlovsk region upheld the position of the Office of the Procurator, and reversed the parole decision. The papers were sent back to the first instance court for a re-hearing of the parole application. However, on 18 September before this re-hearing had taken place, Mikhail Trepashkin was detained at his home in Moscow by law enforcement officers who were not police officers, and taken by car to Ekaterinburg pre-trial detention facility, without a warrant for his arrest and without permission from a court to hold him in pre-trial detention facility. On 21 September he was transferred to the IK-13 prison. He was initially held in the punishment cell (ShIZO) as part of the routine procedure for intake of new inmates, and then was moved to normal prison accommodation. The re-hearing of the parole application took place on 24 November, at which parole was denied, and since then, Mikhail Trepashkin has remained at the prison colony. According to Russian law, Mikhail Trepashkin can apply for parole not earlier than six months after the previous parole hearing.

Amnesty International is concerned that the procedure followed during Mikhail Trepashkin's re-arrest by law enforcement officers not from the police, without a court warrant, appears to have violated Russian law and that therefore the detention was arbitrary. Given the perception that Mikhail Trepashkin was subject to unusual treatment, it is arguably for the Russian authorities to show that the treatment was both legal and not politically motivated.

Cruel and inhuman treatment of Mikhail Trepashkin while in prison colony IK-13

Mikhail Trepashkin suffers from bronchial asthma, with asthma attacks on a daily basis, itching dermatosis and has pain in the area of his heart. However, according to him and his lawyers, he has not been provided with adequate medical treatment by the administration of prison colony IK-13. He reportedly developed itching dermatosis when he spent 13 days in the punishment cell (ShIZO) on arrival at the prison colony in July, as part of the routine procedure for intake of new inmates. Conditions in the punishment cell at that time were reportedly extremely poor, with little food, and only one cup of tea per day as drink, forcing him to drink unclean water from the tap in the cell. Mikhail Trepashkin also states that he has increased difficulties breathing and his asthma has become more severe, since his transfer to prison colony IK-13. He suspects the water and air in the prison colony are contaminated by heavy metals from the industrial site next door to the colony. Reportedly other prisoners in the colony have also developed skin conditions which Mikhail Trepashkin attributes to the poor quality of the water in the prison colony.

Mikhail Trepashkin has faced restrictions on his right to leave the prison colony to seek medical attention, despite being held in an open colony, which means that prisoners should be allowed to leave the confines of the colony to purchase food, medicine and other items in the nearby town. In particular from 21 September until 20 October 2005 Mikhail Trepashkin reportedly was refused permission to leave the colony in order to have a medical examination and purchase medicine. Only on 20 October was Mikhail Trepashkin finally allowed to leave prison colony IK-13, and was seen by a doctor in Nizhnii Tagil. The doctor diagnosed Mikhail Trepashkin as suffering from a moderate form of bronchial asthma with periods of increased severity as well as itching dermatosis. The doctor recommended for him to be admitted to a hospital for constant monitoring and treatment. However, instead, prison colony guards accompanied him once to a chemist in the town to buy medicine. Reportedly, this treatment was inadequate but Mikhail Trepashkin has not been permitted to purchase more medicine and has not received any further medical care.

According to information received by Amnesty International, on 17 January 2006 Mikhail Trepashkin was placed in a punishment cell for three days, allegedly for having raised his voice at the prison doctor. Mikhail Trepashkin had asked the doctor to provide him with adequate medication. The punishment cell, according to Mikhail Trepashkin's lawyer, was in a new building which was not adequately heated. Therefore conditions in the punishment cell were very cold, reportedly well below the 16 degrees minimum prescribed by Russian regulations, as there were sub-zero temperatures outside at the time, as low as minus

35 degrees centigrade. On 31 January Mikhail Trepashkin was again placed in a punishment cell for five days, for being an “inveterate violator” of the prison regime. He had allegedly sworn at a representative of the office of the procurator on 26 January. Reportedly he was placed in a punishment cell a third time on 17 February for three days, allegedly for having sent letters containing complaints about his treatment out of the prison colony without going via the prison administration. Such treatment would appear to put Mikhail Trepashkin in danger of suffering from hypothermia which can have serious adverse effects and can lead to breathing difficulties in persons with asthma. The organization is concerned therefore that placing Mikhail Trepashkin in such conditions appears to be in direct contradiction of the prison administration’s duty of care towards Mikhail Trepashkin by endangering his health. Amnesty International is particularly concerned at allegations that the prison administration is using the punishment cell as part of a wider effort to intimidate Mikhail Trepashkin into withdrawing his complaints against the Russian authorities relating to his criminal conviction and his treatment while a prisoner.

Amnesty International considers that such treatment of Mikhail Trepashkin amounts to cruel, inhuman and degrading treatment. Placing prisoners in poorly heated punishment cells for days at a time constitutes a breach of Russia’s obligations under international law and standards. The UN Standard Minimum Rules on the Treatment of Prisoners, Article 10, state that “All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”