

PARDONS AND AMNESTIES IN RUSSIA
Clarifying the Differences

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I. The Story

On January 24, 2002, Vladimir Putin's press office announced that the Russian President had "approved" a bold proposal to pardon all incarcerated mothers. The announcement generated, among other things, expectations of an imminent release of a large number of women from prison, as well as hopes for an end to a *de facto* moratorium on pardons. Reuters, for example, reported incorrectly that the pardon had already "freed" 23,000 women and children.¹ This report confused the proposed pardon with the amnesty of November 2001, which itself has yet to yield large numbers of released prisoners. Moreover, Putin's "approval" of the proposal submitted by Anatoly Pristavkin, the former chairman of the President's Commission on Pardon, and Robert Tsivilev, the head of the President's new Pardon Administration, was only a statement of policy preference. It had no immediate legal consequences.

There are several reasons why it is unlikely that large numbers of convicted mothers will be pardoned in the next few months. But it is important, first, to understand the origins of these inflated expectations. They come from three sources: confusion about the new procedures for pardon, the intrigue surrounding the work of the former Commission on Pardon, and a misunderstanding of the relationship between pardons and the recent amnesty as well as other mechanisms for releasing prisoners in Russia. This article tries to clear up some of the confusion. It begins with the intrigue.

¹ January 24, 2002.

II. The Intriguing History of Pardons in Russia

It all started with Catherine the Great. During the reign of this first great “systematizer” of Russian government, an infamously ambiguous edict was issued in respect to a treasonous defendant: “Execute Not Pardon” (kaznit nelzya pomilovat).² The absence of any punctuation—neither period, comma, nor exclamation point—rendered Catherine’s order, issued in the military imperative, inscrutable. Was the defendant to be pardoned because the Empress commanded “Execute Not (!)” or was the defendant to be executed because the Empress commanded “Execute, (Do) Not Pardon”? The legend is that either one of Catherine’s scribes misplaced the comma, or Catherine herself, for whom Russian was not a native language, was responsible for the prosodic mess.³ In other words, great Catherine, lover of Voltaire (and, purportedly, also of Diderot), the deliverer of the enlightenment to Russia, injected eternal confusion into this aspect of Russian criminal justice—all on account of poor punctuation.

This is not trivial or simply historical arcana. For many Russians today, the phrase “execute not pardon” serves as a kind of synecdoche for criminal justice: whether or not you will be punished is determined by an erratic autocrat or a faceless bureaucrat. Either way, it is capricious. And the intrigue surrounding the work of the President’s Commission on Pardons in the late 1990s has done little to dispel these beliefs.

² See George Yaney, The Systematization of Russian Government (Yale, 1972), and John LeDonne, Ruling Russia : Politics and Administration in the Age of Absolutism, 1762-1796 (Princeton, 1984).

³ All historians of Russia know the story, but few are able to reliably document the story. See, for example, John T. Alexander, Catherine the Great: Life and Legend (Oxford, 1989).

Pardons in the 1990s.

Boris Yeltsin's Constitution of 1993 created a new institution for the administration of pardon policy within the executive: the Presidential Commission on Pardon. Previously, the power to pardon was embedded in the legislature (Supreme Soviet). Yeltsin staffed his commission with well-known human rights activists, former prisoners, and literary scholars. While the composition of the commission was well publicized, its proceedings remained secret. Only in 2000 did the commission produce its first public bulletin, describing procedures and personnel but noticeably failing to report decisions and results.

Rumors that prisoners had purchased pardons led to an informal moratorium on pardons in September 2000 and, shortly thereafter, the dismemberment of the "apparat" of the commission, effectively stopping its work. For a year, Pristavkin lobbied fitfully, and ultimately unsuccessfully, for the resurrection of the commission. In December 2001, Putin issued a decree abolishing the commission, replacing it with an "administration" (upravlenie) headed by Tsivelev, and introducing both new bodies and procedures for reviewing petitions for pardon.

The official reasons for this "reform" were that the Pardon Commission's work and decisions were hasty and cavalier: more than 300 cases were reportedly handled during one session. But the work of the old commission was also judged politically "adrift" (na potok). According to the minister of justice, it had begun to "usurp" some of the functions of the judiciary. This criticism may have been on the mark.⁴ The volume of

⁴ Some of the Commission's members in fact claimed that pardon was a better device for making decisions about parole, which in Russia are made by judges.

pardons became so great that the commission served, in effect, as a regulator of the prison population.⁵

Between 1995 and 2000, at least 25,000 people were released from prison by presidential pardon.⁶ Several unpublished reports suggest that in 2000 alone, nearly 12,000 individuals received pardons. One source, requesting anonymity, claims that 96 percent of all applications for pardon were granted that year. Although some members of the commission approached their work as a way of retroactively mitigating excessive sentences, it appears that pardons began to be applied indiscriminately to whole groups and classes of offenders. It is, therefore, understandable that Russian journalists and foreign observers had difficulty distinguishing pardons from amnesties.⁷ It was no longer clear what role each played in the politics of Russian criminal justice.

III. Pardons, Amnesties, and Russian Penal Policy

Overcrowding in Russian jails and the awful conditions in prisons cast a long but thin shadow over Russian criminal justice policy. The Russian government, like the Soviet Union before it, has regulated prison population growth mainly by declaring periodic amnesties. Between 1997 and 2000, the legislature announced three, the last of which triggered the release of approximately 50,000 defendants from pre-trial detention centers and another 150,000 from prisons. But even this massive release did not solve the problem of prison overcrowding. The perceived insolubility of the incarceration problem

⁵ The number of pardons doubled in the period 1997-2000—that is, in the years prison overcrowding became most acute.

⁶ At a recent press conference on the death penalty, Pristavkin claimed that between 1990 and September 2000, 57,000 pardons were issued. February 4, 2002 strana.ru “vmesto uprazdnennoi Komissii po pomilovaniiu sozdaetsia ekspertnyi sovet pri prezidente”.

⁷ Russian journalists confused the two regularly. See, for example, “Putin Amnistiroval vsekh materei,” 26.01.2002 lenta.ru

put pressure on other agencies—courts and the pardon commission, for example—to accommodate these concerns in their own decisions.

The Amnesty of November 2001

In November 2001, the Duma declared yet another amnesty, this one targeting juvenile and female offenders. The legislature’s act made all pregnant women and those over 50 years of age eligible for the amnesty. Other women were eligible if they had served at least half of their sentence, had no prior custodial sentences, and had not committed an offense punishable by more than six years in prison. All juveniles not yet sentenced and charged with anything less than an “exceedingly grave” crime also were deemed eligible. It appeared, therefore, that large numbers of women and juveniles could potentially be released. The Ministry of Justice estimated that 10,000 juveniles and 14,000 women would be released as a result of this most recent amnesty.⁸ The President’s approval of a bold statement about the need to pardon mothers was issued shortly after the announcement of the amnesty.

Predicting Impact: The Size of the Prison Population

If the ministry’s predictions are correct, 37 percent of the population of incarcerated women and children will be released from prison.⁹ But it is impossible to predict actual numbers since most amnesties do not reach their targets. The prosecution

⁸ See “Deputaty amnistirovali nesovershennoletnykh I deputatov,” 30.11.2002, www.strana.ru Barannikov, the SPS deputy reporting the bill in parliament, claimed, erroneously, that 9 percent of the total prison population would be eligible for the Amnesty.

⁹ According to Ministry of Justice data reported in the press, there were, as of December 1 2001, 45,900 women and 18,900 juveniles in custody.

service (procuracy), which is responsible for final decisions in individual cases, often finds reasons not to release prisoners.¹⁰ And there are commodious provisions for deciding to exempt prisoners from the amnesty based on assessments of their comportment while in custody.¹¹ In addition, being “amnestied” does not necessarily mean being released from prison. In Russia, amnesties apply to persons sentenced to any form of punishment—incarceration, fines, or probation. It is often people in the later categories that are “amnestied.” For example, in Stavropol, between December 1, 2001, and February 1, 2002, a total of 911 prisoners were “amnestied,” but only 171 (19 percent) were released from custody; 740 simply had their remaining period of probation reduced.

Unfortunately, there are no reliable national figures on the total number of juveniles or women released from custody as a result of this most recent amnesty. In the Nizhegorod region, where Vera is working with law enforcement agencies to reduce overcrowding in pretrial detention centers, 328 individuals have already been released (74 from the jail), but it not possible to ascertain the composition of either group. The amnesty period will be over at the end of May; only then will we be able to assess its impact.

¹⁰ The Ministry of Justice predicted that the 1999 Amnesty would release 94,000 prisoners. In fact, only 20,000 people were released.

¹¹ M.Iu. Tsarev, a “coordinator” in the Nizhny project on pre-trial detention, wrote a splendid analysis of the provisions exempting prisoners from eligibility.

IV. Putin's Pardon Policy

New Bodies and Procedures for Pardon

Putin's December 2001 decree replaced the Presidential Commission with regional commissions located administratively under the provincial governors. The commissions are supposed to be non-governmental and staffed principally by prominent members of the public.¹² Their role is consultative: they are to review applications and make "recommendations" to the governor, who then may forward them to the President for consideration.¹³ Decisions to pardon, as well as the deliberations and recommendations of the regional commissions, are to be made public.

The regional commissions have only recently been established in all of Russia's 89 regions. There have been no national reports of their pardon practices, but it appears that in those regions where commissions have met, the rate of recommendation for release is quite low. For example, a report from Novgorod indicates that of 13 applications considered at the first meeting of the regional pardon commission, not one prisoner was recommended for release. The first meeting of the commission in Saratov yielded positive recommendations for two of 21 petitions.¹⁴ An interim report in March found that in only 14 of 148 cases were prisoners recommended for release. The conservatism of the new commissions is not surprising in light of the institutional and criminological context of pardon politics.

¹² The Minister of Justice recently insisted that Commissions must consist of 11 members, two thirds of which should come from non-governmental organizations. Nevertheless, there are press reports of regional commissions consisting of 9 and 13 individuals.

¹³ Ministry of Justice officials claim that they are to review recommendations by regional commissions before the President receives them.

¹⁴ Kommersant-deili, March 12, 2002.

The Political and Criminological Context of Pardons

Russia has discovered that it is beset by a wave of “juvenile delinquents” (besprizorniki).¹⁵ According to some government estimates, the number of such unsupervised juveniles is three million.¹⁶ The press, if not also the public, associates crime with the besprizorniki, and not since the 1920s has there been such a public concern about marauding gangs of delinquent or truant juveniles.¹⁷ Putin’s government appears to be genuinely alarmed. A recent meeting of the President’s Security Council resolved that the problem with delinquents represents a “threat to national security.”¹⁸

The mounting concern with crime and its connection with delinquency alone give strong reasons to anticipate further caution in the work of pardon commissions. Rates of property crime among juveniles and women appear to be quite high, and the predominance of members of the public on the commissions could well reduce the level of sympathy for such offenders.¹⁹ In addition, pardon commissions have little incentive to be indulgent of female and juvenile offenders. There are so few incarcerated mothers in relation to the number of delinquents that it is unreasonable to expect pardon commissions to release convicted mothers on the premise that familial supervision will reduce delinquency, as some journalists have suggested.

¹⁵ In Russian, as in English, the word “delinquent” does not have a necessary criminological connotation. “Besprizorniki” might thus be better rendered as “unsupervised youths.”

¹⁶ “V Rossii 4 ministerstva zanimaiutsia besprizornikami, no on ne smogli dazhe soshitat’ bezdomnykh detei,” www.strana.ru January 14, 2002.

¹⁷ In December, the mother of one of the drivers for the NPSF was killed by a juvenile gang.

¹⁸ Elena Korop, “Siroty Kremlevskie,” *Izvestiia*, January 15, 2002.

¹⁹ Data I obtained from researchers at GUIN show that, as of January 1, 2000—that is, just prior to the Amnesty of 2000—there were 40,053 women in prison in Russia. The Amnesty of 2000 would likely have led to the release of many women and juvenile offenders. Therefore, the fact that by December 2001, the number of incarcerated females was substantially higher than two years ago, suggests that: a) patterns of offending among females remain very high; and/or b) custodial sentencing practices are wholly unaffected by the implied penology of the legislature.

A second reason to expect low rates of pardon is that Putin is sending mixed signals. Although he publicly embraced the liberal Pristavkin-Tsivilev proposal, he also sent one of his deputy chiefs of staff to a Ministry of Justice meeting in order to warn against the “uncontrolled release” of prisoners. The Ministry of Justice, which endured great criticism in the wake of the abolition of the Presidential Commission on Pardon last year, has now an extra incentive to be very cautious about promoting pardons; it also has an organizational means by which to shape the process.²⁰

A third factor that might reduce the incidence of pardons pertains to the organization of the commissions. The only strong interest in a liberal pardon policy is that of the federal government—since it alone finances prisons. Local governments, by contrast, increasingly bear the brunt of costs of post-release treatment of prisoners, especially since probation services are not funded. In short, localizing decisions about pardon is likely to counterbalance the national interest in release.

Finally, the novelty of the commissions, and the promised transparency of their deliberations, will invite closer public, and especially journalistic, scrutiny. The fact that their decisions must be published might make the commissions more cautious about granting pardons in closely debated cases.

²⁰ It appears that either by convention or decree, regional directors of the Departments of Justice will be members of the Pardon Commissions.