

## CONCLUSION OF THE SCIENTIFIC-LEGAL EXAMINATION

### **“On observance by Tagansky District Court of Moscow of the Constitution of RF, of norms of law of substance and remedial legal norms and of international law when considering the criminal case and passing the conviction related to Grabovoi G.P. on 7<sup>th</sup> July 2008”**

Scientific expert on political and legal issues Perets Vasily Ivanovich (here and after – “the scientific expert”), with experience in law enforcement bodies of the Russian Federation, professor of Higher Educational Institution, the scientific degree is confirmed by diploma IOP # 001419 of 19.11.1980, scientific specializations is in “Law, Policy and Religion of the Slavonic peoples”; independence of the expert is guaranteed by laws, on the basis of the contract with lawyer Tokarev E. V., exercising his right provided by part 3 of art. 86 of the Criminal Procedural Code of the Russian Federation (CPC of RF) with observance of the legislation of RF about scientific activities and scientific examination, in September-October 2008 carried out scientific-legal examination “On observance by Tagansky District Court of Moscow of the Constitution of RF, of norms of law of substance and remedial legal norms and of international law when considering the criminal case and passing the conviction related to Grabovoi G. P on 7<sup>th</sup> July 2008”.

For the purpose of the research the scientific expert received properly issued copies of materials of the criminal case of Grabovoi G.P. and of the sentence of Tagansky District Court of Moscow of 7<sup>th</sup> July 2008.

#### **Legal character of the Conclusion of the Scientific-Legal examination.**

Carrying out of **scientific examinations** in various fields of knowledge is stipulated by the legislation of the Russian Federation. Use of their results in criminal court proceedings is realized on the basis of article 84 of CPC of RF as “other documents”. The assessment of the conclusion is carried out according to the rules of article 88 of CPC of RF. The purpose of the current scientific-legal examination is to offer help to participants of criminal court proceedings in consideration and adjudication of the criminal case according to the norms of the Constitution and CPC of RF, prevention of legal errors and infringements, reduction of terms of proceedings on the criminal case while providing high quality of legal proceedings.

### **1. THE CONTENT OF THE SENTENCE**

On 7<sup>th</sup> July 2008 Grabovoi Grigoriy Petrovich was sentenced by Tagansky District Court of Moscow for commitment of eleven counts of swindle according to art. 159 part 4 of the Criminal Code of the Russian Federation; totally on committed crimes by partial addition of punishments Grabovoi G.P. was sentenced to punishment in the form of imprisonment for the period of 11 years in a general regime colony. On ten counts of the charge the court appointed additional punishment to the convicted in the form of the penalty totaled to 1 000 000 rubles. Civil suits of the victims were partially allowed for the amount of 274 900 rubles. The court also charged the convicted with procedural expenses in the amount of 36 878 rubles and 60 kopecks.

According to the court sentence, the charge of Grabovoi G.P. included the following components:

**The first component of the charge.** Grabovoi G.P. together with undetermined accessories created a system of psychological influence under the common name “Teachings of Grigoriy Grabovoi”, representing a complex of special techniques of influence on mentality and behavior of person, intended for groups of population experiencing nagging social-psychological trouble due to illness or death of close people, those who were in a state of stress with increased psychological vulnerability caused by a heavy life situation. The charge formula was taken from the Conclusion of the Complex Social-Psychological Examination (CSPE).

The scientific analysis of this part of the sentence underlined with assertion of existence of “Teachings of Grigoriy Grabovoi” testified to alleged theoretical development of the “systems of psychological influence on mentality and behavior of person”. However, neither the sentence, nor any other materials of the criminal case contained references to exact works of G.P. Grabovoi and other “undetermined accessories” which described these techniques, nor, in particular, the content of these techniques and mechanisms of influence on mentality of the person. The sentence mentioned that these methods included suggestion, conversion and other methods. However the authors of the Complex Social -Psychological Examination copied these methods from a book published more than 20 years ago. The book described in theory and in general possible ways of influence on mentality of person. The CSPE, which was evaluated by the scientific expert as nonprofessional, unscientific, and forged, lacked any attempt to adapt or “adhere” the methods described in the book to the activities of Grabovoi G.P. and seminars conducted by him.

**The second component of the charge.** For the purpose of self-interested realization of the “Teachings of Grigoriy Grabovoi” the convicted and undetermined persons created a stable organized group and, “operating since 2003 with a single intention they planned and developed the mechanism of commitment of crimes, distributed among themselves functions and roles, and also developed ways of concealment of the criminal activities and of preventing the law

enforcement bodies from their detection”. Absurdity and illogicality of such charge taken from the Conclusion of the forged Social-Psychological Examination was obvious. The scientific expert carried out special thematic study of the criminal case for the purpose of detection of proofs of existence of "undetermined persons" of the stable organized group. It appeared that all persons who cooperated with Grabovoi G.P. were well-known. They offered their help to the investigator, first of all for the purpose of defence of the accused. Neither the investigation, nor the court tried to determine any other «underdetermined persons» because none of such existed. Grabovoi G.P. both at the investigation and at the court asserted that he was the only author of the teachings on salvation and harmonious development. This assertion was confirmed by the materials of the criminal case. Grabovoi G.P. named well-known to the readers and the investigator the publisher of his books, their distributors, and organizers of the seminars. However neither the investigation, nor the court recognized them as "participants of the organized group". Thereupon the scientific expert simulated a situation of possibility or impossibility to establish those virtual people united into a stable organized group, which operated with a uniform intention, planned and developed a mechanism of commitment of crimes, and discussed measures on concealment of the crimes. As a result of the simulation a conclusion coinciding with the letter of scientists-psychiatrists from St.-Petersburg arose: as the experts who offered to the investigation and the court the cited above formula were not patients of psychiatrists they had to bear legal responsibility for the professional falsification. Criminal process prohibits imagination and "art" fiction. They would inevitably bring to falsifications and infringements of human rights.

It is worth mentioning that the analyzed absurdity in the bill of particulars was reduced to "an absolute" and was expressed in the formula: "At undetermined by the investigation circumstances ... Grabovoi G.P. entered a criminal conspiracy with undetermined persons." This meant that the state on the one hand admitted its inability to find criminals if they had really existed, on the other hand it acknowledged "extrasensory" abilities, i.e. gift of their investigators and public prosecutors to hear unheard and to see invisible. Smoothing the "achievements" of the investigation the court excluded from the accusation of the investigation the words "At undetermined by the investigation circumstances", however **essentially increased the charge that was inadmissible**. Thus the investigation accused Grabovoi G.P. of "entering a criminal conspiracy with undetermined persons", and the court ascertained that the defendant "created a stable organized group".

**The third component of the charge.** Having developed a system of psychological influence on person and having created a stable organized group of undetermined persons, having discussed with them the measures of concealment of crimes etc., Grabovoi G.P. conducted seminars and received money from deceived by him people for rising of the deceased relatives or treatment of seriously ill persons. In total the investigation detected eleven deceived people.

## 2. PROOFS

Based on the study of the copies of the criminal case the scientific expert found two groups of proofs related to the concrete circumstances to which "swindle" was applied by the investigation and the court:

### 2.1. Proofs of "non-guilty"

2.1.1. All information on the activities of Grabovoi G.P. including the lists of the people attending his seminars, electronic data carriers and registration data were at the disposal of the investigation and the court. Mass-media called people who suffered from the activities of Grabovoi G.P. to report about themselves. However of possible thousands participants of the seminars the investigation found only 10 persons, excluding the correspondent of "Komsomolskaya Pravda" Vorsobin V.V., who based on the assessment of the defence and supporters of Grabovoi G.P. used fraud as a principle of behavior. The defense doubted the truthfulness of the evidences of the victims.

2.1.2. Organization of the seminars, registration of payment documents, disposal of received to the accounts money were carried out either by public organizations or by legal entities. Grabovoi G.P. came to the seminars as a lecturer; he didn't negotiate the payment terms and didn't receive money from the participants of the seminars. The organizers of the seminars concluded agreements with the future seminar participants on the basis of a free will and wishes. Thus, they entered civil-law relations which could be stopped or argued any time and in the court as well. The agreements and other materials included the list of services covered by the seminar payment. They had a special provision that the seminars did not consider the issues of resurrection and that the specialized seminars on the issues of resurrection were conducted free of charge.

2.1.3. Besides documentary proofs, the court interrogated a number of witnesses of the defense from hundreds of those who applied to the investigator and the court with the demand to listen to them.

### 2.2. Accusatory evidences

This is the Conclusion of the CSPE and evidences of the victims. Some of the victims provided written proofs which, on the one hand, confirmed the fact that they had attended the seminars of Grabovoi G.P., on the other hand they

proved that there was no fraud but the fact of civil-law relations with the organizers of the seminars and payment of money for the determined list of services, which did not include resurrection. Actually the written proofs could be referred to proofs of “non-guilty”.

The court accepted the accusatory evidences without refuting the “not-guilty” evidences and their assessment that contradicted the principles of criminal court proceedings (art. 7 CPC of RF).

The case of Grabovoi G.P. acquired a political slant. His supporters organized meetings and hunger-strikes confirming that arrest of their leader was a response to foundation of political party "DRUGG" and the statement of Grabovoi G.P. about his intention to be a candidate to the post of the President of RF. Several scientists, well-known people of Russia, also supported Grabovoi G.P.

The criminal case included materials which assessed the supporters of Grabovoi G.P. as the most progressing religious sect which became international and actively participate in the policy, and materials about gathering by militia of information on political party "DRUGG".

The testimony of Grabovoi G.P. and other persons, the CSPE, information of mass-media, statements of representatives of churches contained information about religious character of his seminars. The teachings on resurrection also contained religious approaches. Neither the investigation nor the court carried out evaluation of lectures of Grabovoi G.P. at the seminars from this or any other point of view. His books were not examined. The Conclusion of the Complex Social-Psychological Examination contained only general charges and statements without the analysis of publications and lectures. Scientific religious examination, which was quite urgent, was not conducted. The results of this examination could confirm the religious character of activities of Grabovoi G.P. and the necessity to assess these activities in line with the Charter of Paris for a New Europe of 21.11.1990 and the Constitution of the Russian Federation guaranteeing full liberty of idea, conscience, religions and beliefs, expression of one’s opinion without threat to be arrested or held in custody.

### 3. ANALYSIS OF THE LEGISLATION

The criminal case of Grabovoi G.P. is of international character. It caused protests among people who lived in the other states and believed in his teachings and honesty. For the purpose of determination of legality of conviction of Grabovoi G.P. the scientific expert considers it to be necessary *to analyze norms of the Constitution of RF and the principles of court proceedings which should be followed by the investigation and the court.*

The following provisions of the Constitution of RF and principles of the CPC were of the prime importance :

#### 3.1. The Constitution of RF

A, Russia is a democratic law-bound state. Man, his rights and freedoms are the supreme value (articles 1, 2).

B. The universally-recognized principles make a part of the legal system of the Russian Federation. The rights and freedoms of man and citizen are recognized for citizens of Russia (part. 4 of article 15 and part 1 of article 17). This means that investigation and court should institute criminal proceedings, consider and adjudicate in line with international legal norms in particular contained in The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights.

C. The rights and freedoms of man and citizen determine the essence, meaning and implementation of laws, the activities of the legislative and executive authorities, local self-government and shall be ensured by the administration of justice (article 18).

D. Having recognized the Russian Federation a democratic law-bound state, the Constitution of Russia fixed the rights of it’s citizens to freedom and personal immunity (art. 22), sanctity of their home (art.25), freedom of conscience, religion, ideas, and speech (art. 28, 29), to state, including judicial, protection (art 45, 46), to a presumption of innocence (item 49), etc..

#### 3.2. The Criminal-Procedural Code

Constitutional norms are reproduced in the “**Principles of the Criminal Court Proceedings**” contained in chapter 2 of CPC. For example, part 2 of art 50 of the Constitution reads, “In administering justice it shall not be allowed to use evidence received by violating the federal law”. CPC is a federal law. It in part 3, art.7 it reproduced the basic idea of the cited above article of the Constitution, “Violation of the norms of the present Code by the court, by the prosecutor, by the body of inquiry or by the inquirer in the course of the criminal court proceedings shall entail recognizing the proof obtained in this way as being inadmissible”.

The cited data showed that the Constitution and CPC of the RF contained a system of principles and norms providing an opportunity to ensure the rights and freedoms of citizens in criminal court proceedings. At the same time, researchers from various states often asserted that in the former republics of the USSR, including Russia, legislation differed from the practice of its application. In particular, some researches showed that that *Constitutions, and legislation of*

*separate, nowadays the independent states, were the front doors distracting declarations; that the laws were applied selectively, the courts depended on the executive power.* They, especially at the bottom level had common corporate interests with the Office of Public Prosecutor and militia and acted as a united force against the rights and freedoms of citizens due to valid reasons, accidentally or selectively got into the orbit of criminal justice. In these cases, according to researchers, **man was almost doomed: – any infringements of the Constitution and the criminal court law would be concealed by the court sentence decided on behalf of the state.**

Scientific analysis showed that legislation of the Russian Federation provided the inquirer, the public prosecutor and the court with the opportunity to institute, investigate and adjudicate criminal cases justly, with observance of democratic principles and norms. The further depended on legal practice, which was influenced by the criminal-court policy of the state, the place of law-enforcement system and court in the state mechanism, development and influence of public institutions on them.

#### 4. EXAMINATION OF MATERIALS OF THE CRIMINAL CASE

According to art. 296 of the Criminal-Procedural Code of the Russian Federation, the court shall pass the sentence on behalf of Russia. Part 1 of art 297 of CPC stated that “The court sentence shall be legal, substantiated and just”, i.e. it should meet the requirements of Criminal- Procedural and Criminal Codes of the Russian Federation. These codes are based on the Constitution of RF and the international legislation recognized by Russia, which is included in the national system of law. Therefore the court sentence is legal, substantiated and just if it corresponds to CPC and first of all to the Constitution of the Russian Federation and the international legal norms. Scientific assessment of legality of the major procedural documents should be given from this point of view.

##### 4.1. Pre-investigation check of materials related to Grabovoi G.P.

The reason for pre-investigation checks was information of mass-media on conduction by Grabovoi G.P. of paid seminars on rising of children who died as a result of capture by terrorists of school in c. Beslan and conduction of operation on rescue of the hostages. Actually they checked both the activities of Grabovoi G.P. and activities of persons who cooperated with him. Based on materials collected by the Office of Public Prosecutor of the Central Administrative District of Moscow and the City Office of Public Prosecutor of the capital it was determined that neither Grabovoi G.P. nor his assistants and partners (Kalashnikov A.V., Eryomina A.A., Tsaplina O.A, and others) committed any crimes, went to Beslan, or promised to revive the children. The results of the check with different degree of detailed elaboration were reflected in the resolution on rejection of institution of criminal proceeding issued by the deputy of the Public Prosecutor of the Central Administrative District of Moscow of 30.09.2005 (v. 1, p. 49-51) and the similar resolution of the deputy of the public prosecutor of Moscow of 23.01.2006 referring to point 2 of part 1 of art. 24 of CPC of the Russian Federation (absence of the corpus delicti).

##### 4.2. Legality of institution of criminal proceedings

On 17th March 2006 the first deputy of the Public Prosecutor of Moscow cancelled the resolution on rejection of institution of criminal proceedings related to Grabovoi G.P., Kalashnikov A.V. and others, and sent the materials for additional check. Without any new checking actions on 20.03.2006 the deputy to the Public Prosecutor Moscow issued a resolution on institution of criminal proceeding and committed the Office of Public Prosecutor of the Central Administrative District of Moscow with conduction of preliminary investigation.

The bases for institution of criminal proceedings were as follows:

a) promise of Grabovoi G.P. to mothers to rise their deceased in Beslan children. On the date of institution of criminal proceeding they established that Grabovoi G.P. did not go to Beslan, did not promise to mothers of Beslan to raise from the dead the children, and did not receive money from them. On the contrary, he paid for their trips to Moscow;

b) payment of money on the basis of the civil-law agreement by correspondent of the newspaper “Komsomolskaya Pravda” Vorsobin V.V. for participation in the seminar with the subsequent personal meeting with Grabovoi G.P. as if for the purpose of revival of a made-up person. Later on this circumstance was rejected by the content of the agreement and other documents. Besides, swindle assumes a fraud or breach of confidence of the victim. Vorsobin V.V. used fraud and money of the editorial office for the meeting with Grabovoi G.P. and collection of a sensational material for the newspaper. It meant that he was an interested person and he was not offered any physical, property or moral damage. **The mentioned above facts gave the grounds to assess institution of criminal proceedings as forged.** The resolution on institution of criminal proceedings was a political-legal act which granted the right to the investigation publicly on behalf of the state to carry out criminal prosecution against Grabovoi G.P., to study and check all his life in search of "dark stains". That according to part1, art 21 of CPC of RF inevitably brought to other violations of the law and the principles of criminal court proceedings stated in chapter 2 of CPC of RF.

**Institution of criminal proceedings on the forged bases should have one result: recognition inadmissible of all subsequently received proofs**, in line with part II, article 50 of the Constitution of RF and part III of art. 7 of CPC. However, as it will be shown later, each subsequent procedural document had "it's own" violations of the law. These violations were accumulated overlapping and supplementing one thing with another. This gives grounds for general assessment of the criminal case as forged.

#### **4.3. Legality of arrest of Grabovoi G.P. on suspicion of commission of a crime**

Falsification of the bases for institution of criminal proceedings resulted in illegality of arrest of Grabovoi G.P. as a suspect on 6<sup>th</sup> April 2006. However the arrest outraged art. 22 of the Constitution of RF and articles 46 and 92 of CPC. Grabovoi G.P. was arrested by a formed in advance investigation-operational group at night that is a violation of part 3 of art. 164 of CPC. He was interrogated at night. Moreover, Grabovoi G.P. after arrest and transportation to militia department was interrogated as a witness that was a violation part 4 of art. 92 of CPC (from 02:10 a.m. till 03:45 a.m.) The investigation deliberately deprived him of the right to have a defender and to give evidences taking into account the interests of his own defence. Only after that interrogation, at 03:55 a.m., procedural documents on the arrest were issued. The basis for the arrest mentioned in the proceedings was that *the witnesses and victims pointed at Grabovoi G.P. as a person who committed the crime*. The word "pointed at" was used in the plural and was a falsification. In the resolution on arraignment of Grabovoi G.P. issued the next day, on 7<sup>th</sup> April 2006 (v. 1, page 236) and filed to the court petition on selection of a preventive punishment in the form of imprisonment the investigation referred to one person, Vorsobin V.V., who used a fraud and provocative actions in relation to Grabovoi G.P. It should be mentioned that the situation with Grabovoi G.P did not fall at all under the action of norms of chapter 12 "Detention of the suspect" of CPC. His participation in the crime had been checked for many months that obliged the investigating body in case the grounds were available to solve the issue on arraignment and choice of preventive punishment. However, the investigating body chose the way of illegal arrest of Grabovoi G.P. The inquirer violated part 4 of art. 7 of CPC that stated that the inquirer's resolutions "shall be lawful, substantiated and motivated".

#### **4.4. Legality of the search in the apartment of Grabovoi G.P.**

The Search in the apartment of Grabovoi G.P. violated articles 23 and 25 of the Constitutions of RF, art. 163 part 3, art. 182 and 183 of CPC, it was carried out **at night without the court ruling** and mentioned objects to be detected by the investigators. By the time of the search the investigation had been conducted for 17 days. They had enough time to receive the approval of the search by the court. There were no exceptional circumstances which could not be delayed (art. 165, part 5 of CPC of RF). The analysis of the situation and the resolution on conduction of the search proved that the search was formal and carried out against art. 6 of CPC and could have resulted in psychological pressure upon Grabovoi G.P. and his family members. Nothing was detected and withdrawn during the search.

#### **4.5. Legality of the arraignment**

Resolution on arraignment of Grabovoi G.P. was issued on 7<sup>th</sup> April 2006, next day after his arrest. During the period from the moment of his arrest till arraignment of Grabovoi G.P. only two investigatory actions were carried out: confrontations of the arrested with Kalashnikov A.V. and Vorsobin V.V. who were not interrogated preliminary that was a violation of art. 192 of CPC of RF. The resolution mentioned one "criminal" episode, i.e. stealing in the form of fraud by breach of confidence of 39 100 rubles from the correspondent of the newspaper "Komsomolskaya Pravda" Vorsobin V.V.. Forged one day earlier episode on rising from dead by Grabovoi G.P. of children who perished as a result of act of terrorism in Beslan was not included in the arraignment. The analysis of legislation and judiciary practice gave grounds to assess the resolution on arraignment of Grabovoi G.P. of 07.04.2006 as forged.

##### **The grounds were as follows:**

4.5.1. Grabovoi G.P. in his evidences named the official site of the black-list of journalists which included the surname of political analyst Vorsobin V.V. due to provocations, slander, stirring of international hatred. Vorsobin V.V. didn't hide his negative attitude to Grabovoi G.P. and his activities during interrogations and expressed it exactly in one of his articles devoted to the hero of his creation, "How I wanted to imprison Grigoriy Grabovoi". The investigator ignored this information.

4.5.2. In a course of the pre-investigation check Vorsobin V.V. in his explanation of 06.10.2005 submitted to the investigator of the Office of Public Prosecutor the Central Administrative District of Moscow Breev M. S. stated,

a) for the purpose of check of the information about revival of children of Beslan, he several times visited seminars of Grabovoi G.P. However nothing was said at the seminars about revival. Some people whose telephone he found in Internet helped him to organize a meeting with Grabovoi G.P on the issue of revival. Neither court nor the investigator checked these explanations. Vorsobin V.V. did not repeat them at the subsequent interrogations;

b) Vorsobin V.V. received 39 100 rubles in the editorial office of the newspaper “Komsomolskaya Pravda” for the purpose of journalist’s investigation. Vorsobin V.V. once again repeated the fact of receipt of money in the accountant’s office of the newspaper for the purpose of handing it over to Grabovoi G.P. estimating the actions of Grabovoi G.P. as obviously fraudulent. Vorsobin V.V. explained that due to non receipt of money in the accountant’s office of the newspaper he postponed attendance of the seminar for one week (v. 1, pages 56, 58).

4.5.3. In the explanation of 14.10.2005 the source of the origin of money for payment was not mentioned (v. 1, pages 185-187). When Vorsobin V.V. gave evidences as the witness and victim he changed his previous explanations and asserted that he paid for the seminar his personal money and as such essential material damage was caused to him. The analysis of materials of the criminal case and of investigatory situation made it possible to draw a conclusion that Vorsobin V.V. did not need that lie. This lie was required for the investigation including the circumstance which could be applied to fault, i.e. essential material damage. Anyway, inquirer Breev V.V. “did not pay attention” to the contrast change of evidences of Vorsobina V.V.. This change of evidences helped to turn the provocation of one person with the help of the inquirer into a crime of another person. Investigatory practice of the Russian Federation requires obligatory clarification by the inquirer of the motives of change by the person of his evidences. The court should have determined the reason of not performance by the inquirer of his procedural duties. However the court didn’t do it (v. 2, pages 1-12 etc.).

4.5.4. Swindle is supposed to be a fraud or breach of trust. Vorsobin V.V. for participation in the seminar of Grabovoi G.P. used a fraud and the money editorial office allocated for organization of the provocation. Based just on this reason he could not be recognized as a victim. Moreover Vorsobin V.V., as it had been mentioned before, didn’t suffer any physical, property or moral damage. There were no bases provided by the law for recognition him as a victim (art. 42 of CPC). On the contrary, Vorsobin V.V. prepared not confirmed by the facts sensational material which, quite probably, promoted his and “Komsomolskaya Pravda”’s popularity. He received a substantial reward that was reflected in the materials of the criminal case (the difference between the amount received at the accountant’s office and a part paid for participation in the seminar). Therefore “swindle” could not be applied to the episode Vorsobin – Grabovoi and serve the basis for the accusation; moreover it could not be applied without the preliminary decision on the issue on rejection of criminal prosecution against Vorsobina V.V..

4.5.5. The mentioned above substantiations made it possible for the scientific expert **to qualify the Resolution on arraignment of Grabovoi G.P. as forged**. Falsification of the accusation made it possible to choose a preventive punishment for Grabovoi G.P. in the form of custody and prolong it regularly for 2.4 years, and to violate “legally” constitutional rights of Grabovoi G.P., and of many other involved in the criminal trial without any grounds people participating in protest actions, hunger-strikes, and to pay inquirers, public prosecutors, judges, and other persons high salaries at the expense of the budget (people), to distract great forces of the law enforcement bodies from struggle against murders, corruption, and heavy crimes. The process of “investigation” and court consideration of the criminal case of Grabovoi G.P. proved that legislation of RF did not become yet a reliable filter for the access to public service of only people-legalists with government thinking.

4.5.6. After 7<sup>th</sup> April 2006 the charge of Grabovoi G.P. was repeatedly changed. Resolution on arraignment of Grabovoi G.P. of 09.06.2006 and the following resolutions of 15.06.2006 and of 17.01.2007 contained essentially different assessments of the “criminal” activities of Grabovoi G.P. Resolution of 17.01.2007 without notes testified by the investigator and the accused had a **correction of the date** of this important procedural document. The accusation was based on the conclusion of the forged “Complex Social-Psychological Examination”. Its analysis is following below.

#### **4.6. Legality of preventive punishment in the form of imprisonment chosen for Grabovoi G.P.**

When making a decision on custody of Grabovoi G.P. as a preventive punishment the investigator and the court didn’t specified concrete actual circumstances being the basis for the conclusion that is was necessity to isolate the accused from the society. They just formally and unsubstantially referred to the bases and circumstances listed in the law which should be considered when choosing the preventive punishment for each accused. Such accusatory approach contradicts articles 2, 17, 18 of the Constitutions and 99, 108 of CPC of RF and permitted to hold unsubstantially Grabovoi G.P. in custody. In the petition to the court for appointment of a preventive punishment of 07.04.2006 the investigator **made one more falsification**. He stated that Grabovoi G.P. was accused of commitment of a deliberately heavy crime. Actually the arraignment of Grabovoi G.P. was based on commitment of a crime of average weight in accordance with part 2 of art. 159 of the Criminal Code of RF (v. 1, page 248).

The investigator and the court in procedural documents on prolongation of terms of detaining formally referred to their own primary and subsequent decisions, actually to themselves, asserting that the reasons for the preventive punishment and far-fetched bases did not disappear.

#### **4.7. Legality of appointment and carrying out of the Complex Social-Psychological Examination (CSPE)**

Analysis of the CSPE is provided in the Conclusion of Scientific Legal Examination “On legality of appointment and conduction of the Complex Social-Psychological Examination on the criminal case of Grabovoi G.P.” Of 24.03. 2008, which is enclosed. In particular, one of the deductions of the Conclusion was that **the examination was forged**. Its illegal appointment and non-professional implementation had grave consequence, a new application to actions of Grabovoi G. of part 4 instead of 2 of art. 159 of the Criminal Code of RF and numerous prolongations of the terms of custody based on the motives of weight of the committed crime. Carried out analysis showed that art.285 of the Criminal Code of RF could be applied to the actions of the investigator who organized the CSPE. The document prepared by the experts neither by form nor by content **could be considered as the conclusion of court examination. It was based on outrages violations of laws and, no doubt, will occupy a special place in forensic-court practice as full ignoring of the established procedures, rules, methods, forms, ignorance of the general requirements applied to an expert research developed by practice.**

The scientific expert, in addition to already conducted examination, studied materials, which could answer a question, how the authors of the CSPE became forensic experts on the case of Grabovoi G.P. For this purpose the scientific expert studied the copies of reports of public prosecutors. It was clear from the correspondence that in relation to activities of Grabovoi G.P. cooperation of the Office of Public Prosecutor and Prokopishin R. A., future court experts, the senior scientific researcher without a scientific degree of the Institute of Psychology and Kudejarova N.Y., PhD in historical sciences, the senior scientific researcher of the Institute of Latin America, had begun long before the institution of the analyzed criminal case. There were no direct answers in the criminal case about the month and the date of beginning of this cooperation. Therefore as readout date we will consider the date of 28. 10. 2005 when investigator Breev wrote a letter addressed to the director of the Institute of Psychology of the Academy of Sciences of Russia requesting to conduct a social-psychological research (v 1, page 202). This letter was not sent to the head of the Institute but handed in directly to Prokopishinu R. A. on 28.10. 2005 (v. 1, page 203). The criminal case didn't contain the answer why a history expert Kudejarova N.Y. was appointed an expert of this group of experts. However the further documents referring to pre-investigation period correspondence with the Moscow city Office of Public Prosecutor mentioned her name. The letters of the Office of Public Prosecutor to Prokopishin R. A. and Kudejarova N. Y. were sent directly to them but not through the heads of the Institutes. It is worth noticing that in pre-investigation period the future experts answered public prosecutors not in the form of letters-answers, but in the form of memorandums. This fact could testify to their dependence, formal or informal subordination. (v. 1, page. 199, 201, 203, etc.) . One memorandum addressed to the head of the department of the Office of Public Prosecutor of Moscow in which R.A.Prokopishin and N.Y.Kudejarov informed the official that “there is quite a possible version that Kalashnikov A.V. possesses real possibilities of management of this group”. In the materials of CSPE the mentioned group turned into the stable organized criminal group headed by Grabovoi G.P. and a participant Kalashnikov A. V. (v. 1, pages 203-204). Analysis of materials of the criminal case proved that the change of the point of view of the future experts could be caused not only by non-professionalism, but by the influence of the public prosecutor's power on them, search of the ways of isolation of Grabovoi G.P. from the society.

#### 4.8. Legality of the bill of particulars

The bill of particulars was based on the falsifications considered before. It abounds in contradictions, discrepancies and did not meet the requirements of the law. The names of material evidences and documents did not correspond to the content of the bill of particulars. There were references to the proofs which were not available in the criminal case. Material evidences differed from their description, were not properly packed and their authenticity was doubtful.

#### 4.9. Observation of art. 49 of the Constitution of RF

Part 1 of art. 49 of the Constitution of RF stated that “Everyone accused of committing a crime shall be considered innocent until his guilt is proved according to the rules fixed by the federal law and confirmed by the sentence of a court which has come into legal force”. This constitutional provision was outraged before the institution of criminal proceedings and throughout its investigation and consideration by the court. Mass-media in hundreds of reports almost simultaneously, as if on command from the same centre, picked up the themes: “Grabovoi is a swindler”, “Grabovoi revives the dead”. Representatives of the authorities took part in this campaign as well. This was an obvious influence on the court and formation of negative public opinion against Grabovoi G.P. that resulted in violation of art. 49 of the Constitution of RF.

#### 4.10. Guarantee of right to defence for Grabovoi G.P.

Violation of the right of Grabovoi G.P to defence provided by articles 45-48 of the Constitutions and art 16 of CPC of RF took place at all stages of criminal court proceedings. Information on some of them was mentioned above. Moreover the investigator and the court without any grounds rejected almost all petitions of Grabovoi G.P. and his lawyers. Dozens petitions were filed in relation to the bill of particulars which included violations. The petitions demanded exclusion of inadmissible proofs and references to documents which were not available in the criminal case, contradictory statements, non-described and not registered properly proofs, etc. The court dismissed the petitions based on the motives of their subsequent assessment in the retiring room when they were preparing the sentence. However the analysis of the sentence

showed that no discussion and solution of problematic issues declared by Grabovoi G.P. and his defenders preceded passing of the sentence.

Several scientific examinations containing the systems analysis of criminal case including violations of the law were conducted on the current criminal case. The Conclusions of the scientific expert raise a question, for example, if the norm of the law exactly and unequivocally demanded to act quite a definite way why either the investigator or the court acted another way. Escaping from answering the questions he public prosecutors and the court based on far-fetched motives refused to file the Conclusions of the scientific examinations to the criminal case.

The subject of the considered criminal case was essentially touched upon by two judgments of **arbitration courts** which considered civil-law controversies. The court judgments stated violations of the Constitution and laws of RF by the investigator in the process of investigation of the criminal case of Grabovoi G.P. including those which were related to falsification of Complex Social-Psychological Examination. Tagansky District Court of Moscow refused to file to the criminal case the judgments of the Arbitration courts that meant that it didn't want the truth. Meanwhile both the Conclusions of scientific-legal examinations and judgments of the Arbitration courts are "other documents" and are subject to filing to the criminal case with the subsequent assessment by the court in line with articles 47, 53, 84, 240 of CPC because they contain information which is a subject to substantiation on the criminal case (art 73 of CPC). **Refusal to file the Conclusions of the scientific examinations and the judgments of the arbitration courts contradicted the purposes of criminal court proceedings and was a tool of concealment of falsifications; it created for the court an opportunity to escape from giving answers to concrete questions. The court limited itself to general phrases "the investigation did not violate the requirements of CPC".**

## 5. SCIENTIFIC-LEGAL ANALYSIS OF THE COURT SENTENCE

The verdict of guilty of Tagansky District Court of Moscow repeated the conclusions of the investigation, including conclusions of the forged Complex Social-Psychological Examination to which the court referred as the first, main proof of the guilt of Grabovoi G.P. Moreover, the court stated that "This examination was conducted according to the requirements of the criminal-procedural law ..." For clearness let's cite the requirements of the law. So, the order of appointment of court examination is defined by art 195 of CPC of RF. The investigator shall acquaint the accused and his defender with the resolution on the appointment of a court examination and shall explain to them their rights, stipulated by Article 198 of CPC of RF including the right to file an objection to the expert or a petition for performing the court examination in another expert institution; to lodge a petition for an involvement in the capacity of experts of the persons he names, or for the performance of the court examination in the concrete expert institution; to file a petition for an introduction into the resolution on an appointment of a court examination additional questions to the expert. The investigator concealed from the accused and his defenders the fact of appointment of Complex Social-Psychological Examination and by that completely deprived them of the rights listed above. Thus it violated both articles 195 and 198 of CPC of RF and the principles of criminal court proceedings (articles 6, 7, 9, 10, 11) including constitutional principle of the right to protection (Constitution art 45, art. 16 of CPC of RF). Just on this only basis the Conclusion of the Complex Social-Psychological Examination as a proof should be recognized as inadmissible (part 3 art. 7 of CPC) therefore it cannot be used in administering of justice (part 2 of art. 50 of the Constitution of RF).

**The judicial body which trampled on public morals and named black white cannot be called as the court the high mission of which is to administer justice.** Actually the investigator acquainted the accused and his defenders with the resolution about appointment of CSPE of 14. 04. 2006 in June 2006, simultaneously giving them for acquaintance the Conclusion of this examination (v. 3, pages 206 – 283). According to part 3 of art. 88 of CPC the investigator was obliged to recognize the Conclusion of CSPE as an inadmissible proof. However in response to petitions-protests of Grabovoi G.P. and his defenders (v. 3, pages 202-203, etc.) issued a resolution "On complete rejection of the petition" (v. 3, pages 204, 278) without explaining the reasons of non-observance of the law. At one of the web-sites legal experts called similar behavior "kitchen psychology of the mighty boastful Russian boyarynia deciding the destinies of serfs". However investigator is an official representative of a law-bound state obliged to exactly observe and respect laws, and if violated them to explain the accused what force majeure brought to violation of his rights and eliminate immediately to these violations. "Kitchen psychology" and "official swagger" is refusal from civilization and morals; together with an arbitrary use of power they are inadmissible in criminal-court relations. Unfortunately, the inspector didn't see distinctions between his own kitchen and the public service, i.e. activities on behalf of the state body. The court consecrated by the name of Russia dangerous for people "creativity" of investigation.

### **The scientific expert would like to draw attention to two more circumstances:**

5.1. Having a set task to conduct a Complex Social – Psychological Examination, the scientific-methodical bases for which are not developed yet the experts either executed the order non-professionally or did not understand the difference between psychology and psychiatry, expert examinations and investigation actions, and rights of expert and rights of the



investigator, including issues related to interpretation of the law, articles applied to the of actions of the accused. Thus the experts not being psychiatrists widely used in their Conclusion psychiatry methods and, in particular, Criteria of Classification of mental and behavioral disorders MKB-10 and a chapter from the book of a foreign author "Mentality and its treatment: psychoanalytical approach" published in 1984. At the same time the experts did not provide any documents confirming their expertise for giving answers to the questions asked by the investigator in the resolution on appointment of the CSPE.

5.2. Instead of the expert research the experts conducted having substituted the investigator, their own investigation. They brought to the criminal case materials no one knew where they were taken from, named accessories of Grabovoi G.P., 's and officials who were "sympathizing" him, provided their own interpretation of laws etc. In the memorandum addressed to the Head of the Department of Office of Public Prosecutor of Moscow of 20.12.2005 Prokopishin R. A and Kudeyarova N.Y. informed that they were conducting detection and documenting of "organizational structure" of the group of Grabovoi G.P. "uncovering its functions and sub-divisions, defining exactly involved in the group participants", "the scale and the networks of the sub-divisions". The public prosecutor was not surprised and scared that the psychologist and the historian developed large-scale illegal detective work and he did not reject their further services. At that time the main conclusion of the "experts-detectives" was as follows: the organized group acted "using the image of Grabovoi G.P. as a "trade mark" of their organization". Actually the official investigator interrogated only 11 victims and all "detective" work carried out Prokopishin R. A. and Kudeyarova N.Y. by their own unknown to anyone methods. Therefore the scientific expert was not able to define where at least small truth was. Was it really in the court sentence according to which Grabovoi G.P. appeared as the organizer of the group or in the analyzed letter of the "detectives" appointed by the public prosecutor, according to which Grabovoi G.P. was a victim?

The court did not carry out legal assessment of violations of the Constitution of RF and falsifications. Moreover it recognized the CSPE as lawful. The court ascertained on page 58 of the sentence: "No violations took place when the criminal proceedings were instituted" "the Court did not find any confirmations to the arguments of defence that the preliminary investigation was conducted with gross violations of CPC ...". The court hide contradictions in explanations and evidences of Vorsobin V.V.. The sentence of the court is also contradictory: first it ascertained that Grabovoi G.P. committed crimes being a member of an undetermined organized group, however further it mentioned several times his , "accomplices" Kalashnikov A.V. and other persons who were relieved of criminal responsibility due to lack of corpus delicti (pages 2, 3, 56, 58 etc. of the sentence). **Thus, a terrible case for democracy and constitutional system of rights and freedom of Russian citizens took place. The court fearlessly called white what was obviously black. Actually the court on behalf of Russia assessed outrageous violations admitted by the investigations as lawful.**

## 6. CONCLUSION

The Analyzed sentence of Tagansky District Court of Moscow is a judicial document. However it could not be an act of justice. *In a law-bound state any even the most severe criminal should have the right to consideration of his case in accordance with the established by the law procedures and as such to a sentence which is no doubt legal and impartial. Only in this case each citizen of Russia could be guaranteed protection from the willfulness of the authorities.* Investigation of the criminal case with use of falsifications and abuse of power and justification by the court on behalf of Russia of violations of Russian Constitution and laws instead of strict response brought to an illegal sentence relating to Grabovoi G.P.

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