Interpretation and Accommodation in the Russian Constitutional Court

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Introduction

Assuming that the new constitutional documents in Central and Eastern Europe have institutionalized democracy, the rule of law and basic human rights, and basically are in line with international and European standards, the main problem is that of their implementation.¹ A condition of democracy, constitutionalism and the rule of law would emerge if constitutional/judicial review through constitutional courts or judicial review would ensure that the constitution is followed.

This would also be the case with the 1993 Russian Constitution. Whatever deficits it may have, a close reading of the original constitutional text makes it what Richard Sakwa once called a triumph of “ethical individualism”.² Although the Russian Constitution of 1993 is ambiguous³ in several aspects, especially in the area of federalism, and consequently gave rise to different readings from the very beginning, its main tenor is the emphasis on democracy and the value of the individual person. Articles 1, 2, 6 (2), 17 (1)(2), 18 and 55 of the Russian Constitution are especially important in this respect.⁴ In this sense, the 1993 Constitution can be seen as an instrument of change from an undemocratic or unstable system to a democratic and stable system with emphasis on respect for the individual.⁵

Such liberal romanticism, however, belongs to a bygone era in Russia. The text must be put in a concrete context. The problem that will be discussed in this chapter is how the constitutional text will be interpreted and applied by the Russian Constitutional Court in a very different political, legal and social situation.⁶

³ For this judgment see, for example, N. Varlamova, “Konstitutsionnaya model’ rossiiskogo federalizma”, Konstutionnoe pravo: sostebnoeuropeiskoe obozrenie 1999 No.4, 113-121; I. A. Umnova, Konstutionnye osnovy sovremenno rossiiskogo federalizma, Moscow 1998, 89; T.Ia. Khabrieva, “Doktrinal’noe i kompetentnoe tolkovanie Konstitutsii” in: Izvestiia vysshikh uchebnikh zavedeniiv Pravo orenie 1998 No.1, 22-34.
⁶ The institutional concept “court” is used here although the Russian Constitutional Court consists in reality of individual judges who may have different opinions; for
The political regime has changed under Putin through a number of legislative measures which, taken together, would imply a new constitutional order, although the 1993 Constitution itself has not been changed. This is particularly noticeable in the area of federalism. In the area of federalism, the Court has sustained federal statutes, but it has added that the separation of powers between federal authorities, especially the Presidency and the regions must be balanced, while gradually the federalist structure of the Russian Federation has been eroded.

Although constitutional development without a change of the text of the constitution is possible and often desirable in certain cases, the risk remains that the constitutional document loses its normative force and major discrepancies occur between the constitutional text, constitutional judicial practice, constitutional practice of other institutions, and constitutional reality. The constitutional and legal order could have been the decisive counterbalancing factor to a more authoritarian system, but it seems that the Russian Constitutional Court will not accept the role of being an obstacle to Putin’s centralizing legislative measures.

Putin himself, although declaring the dictatorship of law and being constitutionally endowed with the title of Guarantor of the Constitution, is not in every matter concerned with legality or constitutionality. Stability is his main concern. That the legislative organs have extended the tenure of the Constitutional Court Judges from twelve to fifteen years and then to an unlimited tenure up to seventy years of age would probably mean that Putin is concerned with their professionalism and well-being.

The sake of simplicity we will not deal with individual judges except in relation to dissenting opinions.

7 This could be seen for example in the Ruling of the Constitutional Court of the Russian Federation of 4 April 2002 No.8–P. (Cases are taken from the website of the Russian Constitutional Court, at <http://ks.rfnet.ru/>.)


9 This was said already in El’tsin’s time. See Epokha El’tsina. Ocherki politicheskoi istorii, Moscow 2001, 384.

10 L. Shevtsova, Putin’s Russia, Washington, DC 2003, 32.

11 Probably, for fear of not having got fifty percent of the voters to go to the polls, in which case the Prime Minister would become Acting President, he dismissed the then Prime Minister, Mikhail Kasianov, before the elections in 2004. Through this measure he partly eroded the significance of the constitutional practice of dismissing the Government after the elections, which the President had to do according to the Constitution.

12 Sobranie Zakonodatel’stva RF 2001 No.7 item 607; ibid. No.51 item 4824; ibid. 2005 No.15 item 1273.