Press Freedom in Russia: Does the Constitution Matter?¹

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My title asks whether the 1993 Constitution has helped to protect the exercise of press freedoms² in the Russian Federation. The answer must be “No”, although as a result of very recent developments it is possible that a more nuanced answer to this question might soon be required. Certainly, however, to this point very little evidence exists of examples where the Constitution, despite explicit guarantees in Article 29 of freedom for the news media, as well as for individuals, to seek, receive, and disseminate information by any lawful means, has been applied to shield the press from arbitrary or manipulative interferences.³ At the same time, a voluminous record of such interferences has been assembled,⁴ including numerous highly-visible and well-documented examples that have attracted global attention.⁵ Examples include the maintenance or acquisition of state ownership or control of national broadcasting, including the hostile takeovers several years ago of private broadcasters, physical attacks on journalists, and the active use of criminal and civil defamation laws, including rap-

¹ This essay is based on a paper of the same title read at the National Convention of the AAASS, Boston, MA, December 2004. Information in the paper concerning certain developments has been updated to mid-April 2005.

² Throughout, I will use the terms “press” and “news media” interchangeably to refer to print and electronic media organizations engaged in the gathering, editing, and dissemination of information to broad audiences. The term “press freedoms” covers the legal rights of news media entities to engage in these activities independently, without arbitrary interference by governmental institutions or private parties.


⁴ See, for example, the results of monitoring activities of organizations such as the Center for Journalism in Extreme Situations <http://www.cjes.ru/about/?lang=eng> and the Glasnost’ Defense Foundation <http://www.gdf.ru/monitor/index.shtml>.

⁵ Among numerous international non-governmental organizations that have monitored and regularly protested developments in Russia are the Committee to Protect Journalists (see <http://www.cpj.org>) and Reporters Without Frontiers (see <http://www.rsf.org>).

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idly escalating damages awards in civil cases, against the news media. Of particular significance is the ample evidence demonstrating the Putin administration's active involvement in efforts to control certain media entities or individual journalists.  

The absence of the Constitution from all this cannot, however, be attributed entirely to governmental and third party intervention. Instead, with the exception of certain isolated examples, the judiciary in the Constitution's first decade did not recognize a constitutional dimension in news media activity or its regulation, and this remains the prevailing pattern. This absence of judicial recognition is significant for two reasons: first, because of the role assigned to the courts in the Constitution's scheme for protection of fundamental rights and second, because the nature of the Putin administration's style of governance does not rule out such development.

As to the first of these, if press freedoms do have a constitutional dimension, the starting point is Article 29 of the Constitution. It states in full:

(1) Everyone shall have the right to freedom of thought and speech.
(2) Propaganda or agitation exciting social, racial, national, or religious hatred and enmity is not permitted. Propaganda of social, racial, national, religious, or linguistic supremacy is prohibited.
(3) No one may be compelled to express his opinions and convictions or to renounce them.
(4) Everyone shall have the right to seek, get, transfer, produce and disseminate information by any lawful means. The list of information constituting a state secret is determined by federal law.
(5) The freedom of the mass media shall be guaranteed. Censorship shall be prohibited.

The potential effectiveness of Article 29 is anchored in the normativity provisions of the Constitution—in other words, those that identify the legal effect and status of constitutional norms. According to Articles 15(1) and 18, the Constitution's provisions are binding, operate with direct effect, and are supreme in the Russian Federation's hierarchy of sources of

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