Human rights and legal change in the Russian Federation

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The human rights’ situation in the Russian Federation today is somewhat ambivalent. On the one hand, the country has known all the major institutions of an advanced democracy, including free elections, a wide range of political parties and a pluralist (though hardly independent) press, but, on the other hand, it is the scene of one of the worst humanitarian disasters and violations of basic human rights on the continent: the war in Chechnya (to which the contributions by Anna Zelkina and Diederik Lohman in this issue of the Helsinki Monitor testify).

Chechnya is a special case though. Under the conditions of war and ethnic hatred the violation of human rights has reached unprecedented dimensions, with indiscriminate killings, disappearances and arbitrary imprisonment and kidnappings. As real as the criminal activities of the Caucasian warlords are, Moscow cannot use this to justify the atrocities committed by its own armed forces as long as it does not establish a mechanism to prosecute effectively those guilty of these acts. Generally, Russia has made remarkable steps forward, given the fact that its democratic experience was practically nil. Regressive tendencies seem evident as well though. If one considers a strong civil society as a prerequisite of a viable Rechtsstaat, the situation in Russia seems distressing. Civil society is notoriously weak; weaker indeed than during the final episode of communism. In comparison with the shadowy, obscure, almost Byzantine political machinations of the last years of Boris Yeltsin’s presidency, including Vladimir Putin’s unexpected rise to the presidential throne, Mikhail Gorbachev’s times appeared as a wonder of openness. Characteristically, almost half of the Russians who responded to the question whether or not they felt they had more influence on government than during communist times, answered negatively: no, we don’t. As an introduction to this special issue of the Helsinki Monitor, we will sketch the political and legal conditions that, in our view, largely determine Russia’s ambiguous human rights record.

The political system
The state of democracy cannot only be measured by the presence (or absence) of formal democratic arrangements. Institutions do not make a democracy. In the case of the Russian Federation this seems all the more so. On the institutional level things have improved remarkably. The rights and freedoms of individuals have their proper place in the Constitution of 12 December 1993. Elections, at

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1 The total number of registered kidnappings throughout Russia increased from 100 in 1993, to 499 in 1994, 628 in 1995, 766 in 1996, 1140 in 1997, 1415 in 1998, and 905 in the first half of 1999, Kriminal’naia situatsiia na rubezhe vekov v Rossii, Moscow 1999, p. 32. Quite similar figures are reported for cases of unlawful deprivation of liberty.

least on the national level, are competitive; courts are independent; the press and other basic freedoms are guaranteed. However, apart from the often autocratic political style and intolerant rhetoric, 'real' politics is still highly 'informal', non-institutionalised and strongly 'personalised'. Russia's political culture is evidently antagonistic. There are few undisputed mechanisms for resolving conflict, few 'stable rules of the game'. Political prominence is easily won and lost — it largely depends on personal sympathies.

With few exceptions, political parties are weak. More often than not, they exist only as ad hoc coalitions (electoral blocks) created when elections are approaching. They make a poor countervailing force against those in power. Some parties are even mere extensions of the current national (or regional) leadership and which are meant to give it a solid backing in the legislature. This partly emanated from the extremely flexible electoral system created in the autumn of 1993 when elections for the State Duma, the newly created Lower House, had to be held in a hurry. Moreover, elections take place in a mixed system: party lists and an American-style district system. This allows for less of a grip by the political parties on their candidates than seems the case in less hybrid political systems. Otherwise, Russians generally have little confidence in the institutions by which they are governed, and the 'most distrusted of all institutions' are political parties. Former president Yeltsin and the president-elect Vladimir Putin, during the March 2000 election campaign, in which he actually did not run, capitalised on this broadly shared apolitical, if not anti-political attitude of the Russian population.

Economic and politic powers in Russia are closely knit. Lobby groups fight a vehement and malicious struggle for political influence, amongst themselves and against others. The re-election of Yeltsin as president in June 1996 was a relatively unique event — few leaders in post-communist Europe have succeeded in winning a second term. Yeltsin's victory, though, demanded the practically complete mobilisation of Russia's mass media (against his main opponent, the communist Gennadi Zyuganov) as controlled by those who believed they had a stake in his re-election. The elite in Russia today, coming from the old communist nomenklatura and the post-communist private sector, considers itself to be above the law, and seems to have a relatively underdeveloped social engagement (to put it mildly).

Russia's post-communist political system cannot easily be defined. 'It is a regime', to quote Shevtsova, 'in which elements of democracy, authoritarianism, post-totalitarianism, delegative democracy, bureaucratic-authoritarianism, oligarchic rule, sultanism, and even monarchy are intertwined.' State power is weak and arbitrary. It is ineffective, because it is fragmented — both horizontally and vertically, between powerful interests in Moscow itself, and between

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5 Shevtsova, op. cit., p. 288.