BOOK REVIEW


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The rule of law is one of the most important elements in the protection of human rights. It figures highly on the agenda of the human dimension of the OSCE and it is one of the main subjects during the annual Human Dimension Implementation Meetings. If deficiencies exist, or are felt to exist, this can be a good indication of the human rights situation in a given country. As a result, several states are often the object of criticism in this field, in particular from NGOs but also from the governmental side when the human dimension is under consideration. As laws and regulations are generally laid down on paper, their interpretation takes the form of court verdicts and the people concerned are directly affected, and so the legal situation of a country can very well serve as an objective criterion.

As within the OSCE, NATO and the EU-solidarity generally overrides the desire to criticise members of one’s own organisation, such criticism is generally aimed at Russia and other states emanating from the former Soviet Union. Now there is certainly enough reason for concern in various fields. But in order to make a point, the dark side has to be highlighted, and there is little use for grey, let alone white tones. This seldom leads to a balanced view.

Fortunately, the academic world is able to go into more detail and can help to get a better perspective. For a more comprehensive view of the situation in Russia (and elsewhere), the developments over the past few years have to be taken into account, as well as looking at what has been achieved, albeit perhaps too little. The Soviet heritage, the uncertainty of the Gorbachev era, the political chaos of the Yeltsin period and the way the law is currently enforced under Putin all have to be considered. Seen from a human rights perspective, certainly not all is well. But the situation needs a more balanced appraisal than is sometimes found.

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This is the primary virtue of the book edited by Ferdinand Feldbrugge, Russia, Europe, and the Rule of Law, which at the same time is Volume No. 56 in the series Law in Eastern Europe. It contains a selection of papers on legal topics discussed at the VIIth World Congress organised by the International Committee for Soviet and East European Studies (ICSEES) together with the Deutsche Gesellschaft für Osteuropakunde, which was held in Berlin from 25 to 30 July 2005 under the title Europe — Our Common Home?

As is inevitable with books containing the result of a congress or conference, the subjects dealt with are varied and cover a wide range of issues. This is also the case with this book, but there are still many common elements. This is quite clearly pointed out by the editor in his own contribution entitled The Rule of Law in Russia in a European Context. Although he has modestly placed this article at the end of the book, the reader would be well advised to read this chapter first, before starting with the other contributions. Here the articles in the book are put in their proper perspective, which are the legal developments in (mainly) Russia and their political implications, in relation to the West, but also in relation to the past. We cannot understand the legal situation in Russia without taking into account the historical dimension and the political reality. Or without asking the question which captions one of the sections: Why is Russia not more like us?

It is therefore useful to the student of the legal situation in Russia that many articles describe the developments during the last fifteen years — and sometimes beyond. A number of them deal with organisational issues. Gordon B. Smith writes about the Procuracy, its situation under Yeltsin and now under Putin and concludes that the way the latter has supported the procuratorial activities offers an alternative face — Putin, the jurist — that has largely been ignored by Western commentators and the media and which furthers the development of the rule of law in Russia. Two authors devote their attention to the Russian Constitutional Court, Anders Fogelklou (Interpretation and Accommodation in the Russian Constitutional Court) and Alexei Trochev (‘Tinkering with Tenure’: The Russian Constitutional Court in Comparative Perspective.). Though the Constitutional Court differs in many respects from what is usual in other countries, both articles show that its importance cannot be underestimated.

Others deal with the existing situation on the ground, as it is one thing to have laws and regulations, sometimes quite another how they are put into practice. The contributions on Informal Practices in Russian Justice: Probing the Limits of Post-Soviet Reform by Peter H. Solomon, Jr. and Lay Justice in Rostov Province by Stefan Machura and Olga Litvinova are examples of this. Also dealing with practical problems is Susan Heuman in her contribution on Law, Citizenship, and Rights of Non-Russian Nationalities, Past and Present. It is a subject which, although of course legally defined in the first place, has a direct bearing on the individual — and this is not always easy in a state with many nationalities and a different tradition to that in the West — and whose identity is still not clear after the end of the Soviet era.