

## **LOSING GROUND?**

# **Russia's European Commitments to Human Rights**

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This pamphlet is the third in the Foreign Policy Centre's 'Future of Russia' project which is built around seminars, lectures, publications, media contributions and larger conferences on the future of liberal and pluralist democracy in Russia. The project takes recent Russian developments and Russian perspectives as its departure point, but ground these in the broad principles of democracy and the commitments of Russia under its adherence both to the Council of Europe and OSCE founding documents. The main purposes of the Future of Russia Project are to expose to wider media scrutiny the reversal of hard won freedoms in Russia and to address the foreign policy dilemma faced by European leaders in relations with Russia as a result. That dilemma is how to protect and promote democratic principles in practice in the face of the visible retrenchment of basic freedoms in Russia, at the same time as advancing more traditional economic, security or geopolitical interests. The work of the Future of Russia Project is directed to making sound policy recommendations for action, followed up with appropriate public dissemination, especially through seminars and media coverage.

The Future of Russia Project features prominent figures from Russian progressive politics, as well as leading specialists and policy advisers from around the world. The project concentrates on the mechanisms by which Western governments, especially the UK, can revitalise the question of Russian democratic governance as one of the central issues of European politics today.

## EXECUTIVE SUMMARY

President Putin wants a stable Russia under a dictatorship of the law. Europe wants a stable Russia governed by a democratic rule of law. There is now a contest between Europe and Russia about this basic principle of governance. The main point of contention is whether popular sovereignty, decentralisation and personal liberties have intrinsic virtues compared with centralised administrative authority that privileges the state ahead of the individual's rights.

The battle is not simply a question of philosophical debate. Russia's membership of the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe means that it has an obligation to uphold the basic protections of civil liberties enshrined in the charter documents of these organisations.

For this European 'social contract' to be seen as working, the worth of the individual, and thus the protection of his or her human rights, must be a central organising principle. In practice, this would be a great advance for most Russians, who frequently express that the individual has never counted for anything in their country. For the Russians who survived Leninism and Stalinism, it is clear that Soviet rulers had prioritised ideology, state power and a largely corrupt power structure ahead of individual rights. The ideal advocated by the Council of Europe and the OSCE stands in marked contrast not just to the history of Russia but to its contemporary reality. Today's Russia sees a 'vertical of power' that increasingly leaves less room for the individual in favour of a more powerful central state - a dictatorship of the law. Given this structure, perhaps neither President Putin nor his government is ready to embrace the notion of human rights that the European institutions embrace as the legitimising force of politics.

This pamphlet analyses recent trends in three areas of human rights observance in Russia: the right to free and fair elections, freedom of expression and the right to a fair trial and access to court. Based on

this analysis, there is much evidence that the protection of human rights in Russia is being eroded.

The capacities of Russia's European partners to influence a reversal of this erosion are limited. Interventions by single states or by the Council of Europe and OSCE to improve the situation are met with hostility by a Putin administration invoking the inviolability of Russia's sovereignty. Faced with this long history of distrust, these organisations, especially OSCE, must work to build a new consensus on their aims and objectives which not only brings Russia back into the fold, but also renews the importance of the 'human dimension'. Europe must also devote more resources to promoting the Russian human rights ombudsman and his office. More international attention can help elevate his recommendations both in Russia and in Europe and could be the best platform to improve the current situation.

For their part, other states who are members of OSCE or the Council of Europe, should focus on enhancing their capacities in five principal areas of policy:

- ❑ public scrutiny of the Russian situation in the light of its commitments in European institutions
- ❑ use of high level channels and quiet diplomacy
- ❑ use of leverage available from multilateral lending agencies
- ❑ use of Western media and proxy organisations, such as NGOs and community groups, in order to open up debate about European interests in Russia's political developments
- ❑ increased direct and indirect support to champions of liberal pluralism in Russia.

Europe's enhanced response must vigorously address the wider conditions of Russia and not limit itself to the necessary public defence of Russia's democratic institutions. This can only require significant additional resources in analysis and public attention, ministerial time and financial resources.

## CONTENTS

INTRODUCTION: PUTIN'S PARADOX .....	1
RUSSIA'S TREATY COMMITMENTS AND FAILURES .....	4
OSCE .....	5
Council of Europe .....	9
THE RIGHT TO FREE AND FAIR ELECTIONS .....	11
Recent Trends .....	13
Criticisms from OSCE and the Council of Europe.....	14
THE RIGHT TO 'FREEDOM OF EXPRESSION' .....	17
Recent Trends .....	18
Criticisms from OSCE and the Council of Europe.....	20
THE RIGHT TO A FAIR TRIAL AND ACCESS TO COURTS.....	22
Recent Trends .....	23
Criticisms from OSCE and the Council of Europe.....	25
CONCLUSIONS .....	27
POLICY RECOMMENDATIONS .....	29
Confronting Russia through existing mechanisms .....	29
Reforming existing mechanisms .....	32



## Introduction: Putin's Paradox

Human rights are one of the key considerations that go into the formation of foreign policy. . . There is an increasingly clear link between respect for human rights, the rule of law and democratic norms on the one hand, and stability, prosperity and progress on the other.<sup>1</sup>

Europe has long desired a Russia that is both stable and governed by a democratic rule of law. It is for this reason that human rights remain a cornerstone of European policy towards Russia, especially in the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe. Russia's membership of these organisations confirms not only that it shares Europe's common values but that it has an obligation to uphold them.

For a European 'social contract' to work, the worth of the individual, and thus the protection of inalienable human rights, must be a given. This would be a great advance in practice for Russians, who can frequently be heard to say that the individual has never counted for anything in their country. For the Russians who survived Leninism and Stalinism, it is clear that Soviet rulers had prioritised ideology, state power and a largely corrupt power structure ahead of individual rights. The ideal advocated by the Council of Europe and the OSCE stands in marked contrast to today's situation in Russia where the 'vertical of power' of the government increasingly leaves less room for the individual in favour of a more powerful central state – a dictatorship of the law. It is clear, therefore that neither President Putin nor his government is ready to embrace the grand notion of human rights that the West embraces as the legitimising force in politics.

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<sup>1</sup> United Kingdom Foreign and Commonwealth Office, 'Human Rights: Annual Report 2003', Presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs, September 2003, p.15.

On these issues, Russia and the West have often found their relations encumbered by a lack of transparency. Moscow has seen Western priorities shift and clash, while veiling many of its own intentions and actions. Asked what concessions he might want from Moscow, one European official in Brussels replied: 'honesty'.

This complaint is frequently raised in connection with the situation in Chechnya, where the human rights abuses are both horrific and urgent. They include torture, inhumane treatment of prisoners, abuse within the army, hazing in the army (*dedovoschina*), 'disappearances', impunity for Russian soldiers, arbitrary and illegal detention, forced migration and restrictions on the freedom of movement and residence.<sup>2</sup>

These issues have led to significant and unresolved differences between Moscow on the one hand and, on the other, the Council of Europe and OSCE. Chechnya is undoubtedly the primary concern for independent observers of Russian rights. But that situation cannot be redressed without considering the less visceral but more widespread problems of access to justice, constraints on freedom of expression and the retrenchment of democratic norms that we address in this pamphlet. This is, in part, because there is considerable connectivity between the Chechen crisis per se and the larger crisis it has sparked within Russian political life. There is a strong argument that many of the issues of human rights abuse that have plagued Chechnya are essentially the same problems of Russia as a whole.

Perhaps more importantly still, it is arguable that problems common in Chechnya are spreading further afield. Unwarranted detentions and official impunity are reportedly proliferating, leading one activist to call Chechnya a 'spreading cancer at the edge of the Russian Federation'.<sup>3</sup>

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<sup>2</sup> Rachel Denber, "Glad to Be Deceived": the International Community and Chechnya', Human Rights Watch World Report 2004, [www.hrw.org/wr2k4/7.htm](http://www.hrw.org/wr2k4/7.htm).

<sup>3</sup> Interview with a Human Rights Watch staffer.

Significant structural flaws have hampered the development of more open relations between Russia and the rest of Europe. Russia has not fully engaged with the multilateral institutions that provide the framework for much European diplomacy. Yet Washington and European governments have often weakened that framework by dealing bilaterally with Moscow, especially on post-9/11 security.

But if the international framework outside Russia is fragmented, its internal situation is also incoherent. Even if President Vladimir Putin is, on an optimistic reading, a 'derzhavnik, a statist, but an enlightened one', there are numerous concerns both inside the Kremlin and amongst observers that he is presiding over a state 'rotting from within from corruption and private greed'.<sup>4</sup> Although Putin has used the Beslan tragedy to legitimise a new round of centralising reforms, the framework of the Russian state remains fragile.

Indeed, Putin's reforms have placed his government at the centre of attention and have moved the judicial branch, legislative branch, the 'opposition' and the media from being outside of the Presidential system to being an integral part of it. Putin's clearly stated goal to establish a 'dictatorship of the law' relates strongly to his assertion that 'the stronger the state, the freer the individual'.<sup>5</sup> Observing the trends and reforms, however, many commentators disagree. In 2005, for the first time since the break-up of the Soviet Union, Russia slipped into the ranks of 'Not Free' countries in the estimation of Freedom House (Freedom in the World 2005). Designed to evaluate countries based on political rights and civil liberties enshrined in the Universal Declaration of Human Rights, the Freedom House index called this setback for Russia 'the year's most important trend'. The report cited 'increased Kremlin control of national television content and growing influence over radio and print media; the use and manipulation – bordering on outright control – of "alternative" political parties . . . growing encroachments against local government; and elections that were neither free nor fair'.<sup>6</sup>

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<sup>4</sup> Fiona Hill, 'Governing Russia: Putin's Federal Dilemmas', *New Europe Review*, January 2005, <http://www.brookings.edu/views/articles/hillf/20050104.htm>.

<sup>5</sup> Vladimir Putin, 'Open Letter to Russian Voters', *Izvestiya*, 25 February 2000.

<sup>6</sup> Freedom House, *Freedom in the World 2005*, December 2004, p.1.

This pamphlet addresses the competing tendencies of state control and respect for individual rights in Russia. It also considers how the international community should advocate rights and the rule of law when dealing with Moscow. To have a strong chance of success, rights-centred diplomacy requires a credible international framework to regulate states, and coherent states to protect individuals.

In analysing current policy choices, we will focus on two specific (but closely related) areas of concern:

- At the international level, a credible framework is being frustrated by Russia's troubled relationship with the two multilateral organisations in which it can be engaged directly on rights issues: the Council of Europe and OSCE;
- At the domestic level, to illustrate the main issues, we will examine Russia's failure to protect individual rights in three areas: (i) the right to free and fair elections; (ii) freedom of expression and (iii) access to court and a fair trial. In each case, we identify problems arising from Russia's international obligations in the Council of Europe and OSCE.

The pamphlet does not seek to duplicate comprehensive studies of Russia's human rights record.<sup>7</sup>

## Russia's Treaty Commitments and Failures

Russia is a signatory or successor to the obligations of key international human rights treaties. Coming out of the Soviet era, the government of the newly independent Russia and its parliament were intent on ensuring that the massive human rights abuses of the Soviet era were not repeated. Protections of various sorts conforming to high international standards were written into the 1993 Russian constitution and Russian law. Article 103 of the Constitution

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<http://www.freedomhouse.org/research/freeworld/2005/essay2005.pdf>.

<sup>7</sup> Please see reports by Human Rights Watch, Amnesty International, the International Helsinki Federation for Human Rights, among many others. See <http://hrw.org/doc/?t=europe&c=russia> and <http://www.amnesty.org/russia/>.

even provides for a Presidential Plenipotentiary for Human Rights, a post now held by one of Russia's liberal politicians, Vladimir Lukin. While human rights abuses have not been repeated on the scale seen in Soviet days, and are unlikely to be simply because the population would be unlikely to tolerate the same again, the legal and constitutional protections have not prevented serious abuses from occurring. Nor have they prevented the apparent entrenchment inside the government of serious abusive practices.

On the international stage, Russia's adherence to global treaty obligations has not provided any effective leverage for states critical of Russia's recent human rights record. For example, in spite of the fact that issues of human rights abuses in Chechnya have been placed on the agenda of the UN Commission on Human Rights several times, resolutions have failed to pass. Russia's status as a permanent member of the UN Security Council allows it to shield its human rights violations from serious UN inspection. The removal of this important mechanism for the protection of human rights, places more weight and emphasis on the Council of Europe and OSCE to affect change.

### OSCE

In the Conference on Security and Co-operation in Europe (CSCE) Final Act, signed in Helsinki in 1975, the Soviet Union agreed to:

Respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

. . . promote and encourage the effective use of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.

. . . recognise the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States.

. . . the right of the individual to know and act upon his rights and duties in this field.<sup>8</sup>

At the time the Final Act was signed, the USSR was pleased to be a partner in the CSCE. In fact, the Soviet Union had initiated the request for an all-European security conference. Originally, the CSCE gave the Soviets a new forum for arms control talks and agreements with the West in return for discussion on democratisation and human rights. However, during the 1980s, dissidents in the Eastern bloc were able to use the language of the Helsinki Final Act against the communist regimes. Today there is a lasting mistrust of the OSCE, successor to the CSCE, for the role the Final Act played in weakening Soviet power.

By signing the Charter of Paris on 21 November 1990 that set up the OSCE, the Soviet Union, and thus the Russian Federation, agreed to respect human rights as the 'essential safeguard against an over-mighty State'.<sup>9</sup> By linking democracy and the protection of human rights, Western governments had placed the 'human dimension' at the top of the OSCE agenda. Russian interests, however, have dictated that the OSCE privilege national sovereignty over human rights, and current tensions between the two camps are based around these issues.

Criticism from the OSCE on the actions of any member state is largely muted by the consensus principle which dominates decision-making at the Permanent Council meetings. The Permanent Council defines consensus as 'the absence of any objection expressed by a participating State to the taking of the decision in question. This principle reflects the Organization's co-operative approach to security, and the fact that all States participating in OSCE activities have equal status'.<sup>10</sup>

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<sup>8</sup> The Conference on Security and Cooperation in Europe Final Act, 1975, Chapter VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief.

<sup>9</sup> Conference for Security and Cooperation in Europe. Paris Summit. 19 – 21 November 1990. 'Charter of Paris for a New Europe'. <http://www.osce.org/docs/english/1990-1999/summits/paris90e.htm>.

<sup>10</sup> The Permanent Council of the OSCE. <http://www.osce.org/pc/>.

The 10 'Principles Guiding Relations Between Participating States' of the OSCE presented by the US Helsinki Commission on Security and Cooperation in Europe lists 'sovereign equality, respect for the rights inherent in sovereignty' as principle one and lists 'respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief' and 'equal rights and self-determination of peoples' as principles seven and eight, respectively.<sup>11</sup>

The Istanbul Summit Declaration of November 1999 evidences a new campaign to directly influence what the Russians believe to be a purely domestic issue. 'We agree that a political solution is essential, and that the OSCE would contribute to achieving that goal. We welcome the willingness of the OSCE to assist in the renewal of a political dialogue. We reaffirm the existing mandate of the OSCE Assistance Group in Chechnya'.<sup>12</sup> In late 2002, the Russian government refused to renew the mandate of the OSCE Assistance Group in Chechnya when the OSCE refused to accept the Russian government's insistence that the mission relinquish its human rights and political dimensions. The OSCE's refusal further discredited the institution for Russians and its 'intrusions into Russian sovereignty'.

Russia has also historically felt that the OSCE privileges the human dimension of its mandate at the expense of its politico-military and economic agendas. Unfortunately, Russia claims the OSCE to be an out-dated irrelevant institution. Federation Council International Relations Chairman Margelov suggested that 'NATO's preponderance in political-military issues, combined with the EU's weight on economic issues, has turned the OSCE's multidimensional approach to a geographically and functionally discriminating emphasis on democracy in the former Soviet space'.<sup>13</sup>

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<sup>11</sup> Organisation for Security and Cooperation in Europe. 'Principles Guiding Relations between Participating States'. <http://www.osce.org/work.cfm>.

<sup>12</sup> Istanbul Summit Declaration, 1999, Article 23.

<sup>13</sup> Campbell, Ben Nighthorse and Christopher Smith. 'Moscow Should Engage the OSCE in Resolving the Chechen Problem'. 10 February 2004. *Nezavisimaya Gazeta*. [www.cdi.org/russia/13feb04-16.cfm](http://www.cdi.org/russia/13feb04-16.cfm).

As Western states have pushed for the OSCE to tackle the 'human dimension', Russia, and much of the Commonwealth of Independent States (CIS), has reiterated its desire for the OSCE to favour security and antiterrorism tasks. Viewing these two issue areas as the areas where the CIS can benefit most from the OSCE, Russia has highlighted the OSCE's failure to respect 'such fundamental . . . principles as non-interference in internal affairs and respect for sovereignty'.<sup>14</sup> Reflecting Russia's stance on the OSCE, a RIA Novosti analyst wrote, 'Members are arbitrarily divided at OSCE forums into so-called problem and problem-free countries. As a result, the organisation is being increasingly used for propaganda purposes, when some countries "teach" others what they should and should not do'.<sup>15</sup> Persisting Russian beliefs that Russia is being unfairly chastised for its protection of human rights neither serves the situation in Russia nor the OSCE's reputation and ability to affect change.

Russia also sees the duty of European observers, especially those on the North Caucasus and the Chechen, Ingush and Dagestani sections of the Georgian-Russian border, as intrusions into Russian sovereignty. Calls for new 'politically unbiased criteria' for election monitoring have been coupled with threats from the Kremlin to reject the organisation's budget for 2005 and to slash its annual contribution to the OSCE from \$11.5 million to about \$4 million. In December 2004, Alexei Borodavkin, the State Duma's representative to the OSCE, complained of double standards and bias in its election monitoring. He was quoted by Radio Liberty as saying: 'The organisation has shown tendencies toward stagnation and regression, and bias, double standards and various kinds of imbalances have come to dominate'.<sup>16</sup>

Although the CSCE had two differing and competing aims from its birth in the 1970s, some states assumed its first principle – on

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<sup>14</sup> Fuller, Liz. 'Russia Renews its Criticism of OSCE' December 2004. <http://www.cdi.org/russia/334-14.cfm>.

<sup>15</sup> Simonov, Vladimir. 'Russia and the OSCE: Hopes and Disappointment'. 19 February 2004. RIA Novosti. [www.cdi.org/russia/20feb04-5.cfm](http://www.cdi.org/russia/20feb04-5.cfm).

<sup>16</sup> Vladimir Kovalyev, 'The Kremlin's Double Standards.' *The Moscow Times*, 3 February 2005, p. 8. <http://www.themoscowtimes.com/stories/2005/02/03/006.html>.

national sovereignty – to be the foundation of its future existence. Problems in OSCE-Russia relations therefore began when a bloc of Western countries advanced the human dimension over principles of national sovereignty. These changes have left Russia with its assertion over its 'near abroad', as well as several of its CIS neighbours, feeling unfairly persecuted by these fundamental changes.

### *Council of Europe*

Established in London on 5 May 1949, the Council of Europe has as its aim the achievement of a 'greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress'.<sup>17</sup> In the preamble, the founding states reaffirmed their devotion to this common heritage in the form of spiritual and moral values which are 'the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy'.<sup>18</sup>

The Council of Europe's Vienna Summit in October 1993 placed renewed emphasis upon the Council of Europe as the guardian of democratic security.<sup>19</sup> Looking to the accession of the former states of the Warsaw Pact, the Council of Europe saw itself as 'the pre-eminent European political institution capable of welcoming, on an equal footing and in permanent structures, the democracies of Europe freed from communist oppression'.<sup>20</sup> The Declaration also notes that

Such accession presupposes that the applicant country has brought its institutions and legal system into line with the basic principles of democracy, the rule of law and respect for

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<sup>17</sup> Council of Europe. Statute of the Council of Europe. London, 5.V.1949. Article 1(a), <http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm>.

<sup>18</sup> *Ibid.* Preamble.

<sup>19</sup> Council of Europe, 'About the Council of Europe', [www.coe.int/T/e/Com/about\\_coe/](http://www.coe.int/T/e/Com/about_coe/).

<sup>20</sup> Council of Europe. Vienna, 9 October 1993. The Vienna Declaration of the Council of Europe. [http://www.reform.org/TheReformMovement\\_files/article\\_files/Treaties/vienna.htm](http://www.reform.org/TheReformMovement_files/article_files/Treaties/vienna.htm).

human rights. The people's representatives must have been chosen by means of free and fair elections based on universal suffrage. Guaranteed freedom of expression and notably of the media, protection of national minorities and observance of the principles of international law must remain, in our view, decisive criteria for assessing any application for membership.<sup>21</sup>

This list of criteria hails from the Council of Europe's belief that democratic security is essential for European stability and peace.

The Russian Federation applied for membership of the Council of Europe in May 1992, but its application was suspended because of on-going concerns with the situation in Chechnya. Russia's membership procedure was only resumed in September 1995 following the July cease-fire. The Parliamentary Assembly of the Council of Europe (PACE) suspended Russia from voting because of Chechnya. In January 1996, PACE adopted Opinion 193 which paved the way for Russia's accession.

In joining the Council of Europe, Russia knew that it 'must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms'.<sup>22</sup> Although Russia felt that the OSCE had turned its back on its founding aims, the Council of Europe has, since its founding, aimed at promoting awareness of a European identity through the defence of human rights, parliamentary democracy and the rule of law. The Council of Europe's monitoring procedure of Russia thus began on 25 April 1996 and it is the duty of the Monitoring Committee to verify Russia's fulfilments of its obligations as a member state under the Statute of the Council of Europe, the European Convention for Human Rights and the other conventions it has ratified.

Although the Council of Europe is not as distrusted as the OSCE, it is the only organisation which has used the words 'war crimes' to identify the practices of both sides in the war in Chechnya. Upon

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<sup>21</sup> *Ibid.*

<sup>22</sup> Council *Ibid.* Chapter II - Membership, Article 3.

joining the Council of Europe in 1996, Russia ratified several key human rights documents, including The Convention for the Protection of Human Rights and Fundamental Freedoms, several protocols to the Convention for the Protection of Human Rights and Fundamental Freedoms, including Protocol 2, which confers upon the European Court of Human Rights competence to give advisory opinions.

The Council of Europe has expressed its concerns that Russia is moving away from recognising the supremacy of the European Convention on Human Rights since the CIS Convention on Human Rights was first signed in May 1995. In Resolution 1249 (2001), Coexistence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention on Human Rights, the Parliamentary Assembly expressed its concerns 'about the compatibility of the two conventions'<sup>23</sup> because of its stance that 'no regional human rights mechanism . . . should be allowed to weaken the unique unified system of human rights protection offered by the ECHR and its European Court of Human Rights'.<sup>24</sup>

Because the Council of Europe had always been based on the common values of individual freedom and liberty, Russia's accession to the Council of Europe demonstrates its commitment to these principles as a partner of Europe. It is this singular aim, and the dedication of all member states to it, that has kept the Council of Europe more balanced and has resulted in better relations between the Council of Europe and Russia.

## The Right to Free and Fair Elections

Article 32 of the Russian Constitution guarantees the right to self-determination by granting citizens the right to 'participate in the administration of the affairs of state both directly and through their

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<sup>23</sup> Council of Europe Parliamentary Assembly. Resolution 1249 (2001) Coexistence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention on Human Rights. Article 4. <http://assembly.coe.int/documents/adoptedtext/ta01/eres1249.htm>.

<sup>24</sup> *Ibid.* Article 5.

representatives<sup>25</sup> and to 'elect and to be elected to bodies'<sup>26</sup> of state and local governance.

In Article VIII of the CSCE Final Act of 1975, all participating states agree to 'respect the equal rights of peoples and their rights to self-determination. By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status'.<sup>27</sup>

The Paris Charter on Human Rights stresses democracy as the 'foundation for respect for the human person and the rule of law'. The right to self-determination runs throughout the Charter, but Russia specifically agreed that 'everyone has the right to participate in free and fair elections'.<sup>28</sup> Similar agreements were entered into in the Convention for the Protection of Human Rights and Fundamental Freedoms, when the signatories reaffirmed 'their profound belief in ... an effective political democracy'.<sup>29</sup>

The Council of Europe's Vienna Declaration, in accordance with the Statue of the Council of Europe, also requires that Russia's 'representatives ... have been chosen by means of free and fair elections based on universal suffrage'.<sup>30</sup>

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<sup>25</sup> The Russian Federation. The Constitution of the Russian Federation. Ratified 12 December 1993. Section One, Chapter 2 Rights and Liberties of Man and Citizen, Article 32(1). [www.departments.bucknell.edu/russian/const/ch2.html](http://www.departments.bucknell.edu/russian/const/ch2.html).

<sup>26</sup> *Ibid*, Article 32(2).

<sup>27</sup> The Conference on Security and Cooperation in Europe Final Act, Chapter VIII. Equal rights and self-determination of peoples. Helsinki 1975

<sup>28</sup> Conference for Security and Cooperation in Europe. Paris Summit. 19 – 21 November 1990. 'Charter of Paris for a New Europe'. Human Rights, Democracy and Rule of Law. <http://www.osce.org/docs/english/1990-1999/summits/paris90e.htm>

<sup>29</sup> The Council of Europe. CETS no. 005. Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11. Preamble.

<sup>30</sup> Council of Europe. The Vienna Declaration of the Council of Europe.

### *Recent Trends*

The Russian electoral system, still evolving in the context of a state Constitution twelve years old, is for the most part a sound one. Yet a number of actions by the Putin Administration and its supporters in recent years have created concerns in Russia and elsewhere in Europe that the essentially democratic character of the system, the right of the population to vote officials in or out based on an informed choice, has been seriously eroded.

One of the moves most often cited is the decision by Putin to abolish direct elections for the posts of governor of the 89 regions of the Russian Federation. Though he did this in the wake of the Beslan terrorist attack, Putin's assault on regional governors began in 2000 when he convinced them to give up their seats in Russia's upper house of the parliament. By 2004, Putin had smashed the regional governors as an independent force through meddling in campaigns, pressure on the media and the misuse of administrative resources. After announcing the September 2004 reforms which were approved on 8 December 2004, the executive branch gained further control over the regions. Through the bills entitled On the General Principles of the Organisation of Legislative, Executive Bodies of the Subjects of the Russian Federation and On the Basic Guarantees of the Electoral Rights and the Right to Participate in Referendums of the Citizens of the Russian Federation, candidates for regional governor will be submitted by the President to the regional parliaments. Should a regional parliament twice refuse to endorse the President's candidate, the president has the right to dissolve the regional parliament and appoint an interim head of the regional executive. The president may also dissolve the regional assembly should it fail to correct contradictions between its own regional legislation and the federal legislation.

More alarming though than the move against the governors has been the changes to laws or regulations concerning political parties in a situation where the President's party, or governing coalition, United Russia, controls 300 of the 450 seats in the Duma, a constitutional majority of 66.7 per cent, and where Putin won 70 per cent of the

vote in the Presidential election on 14 March 2004. On 10 November 2004, the State Duma adopted a law on the registration of political parties in order to move to a fully proportional system. This law will increase the minimum number of registered members of a political party from 10,000 to 50,000. Furthermore, political parties must have at least 500 members in over half of the Federation's 89 regions and have at least 250 in the remaining regions in order to register. This provision will sharply curtail the development of local or regional political activism geared at local, regional or minority interests. In order to enter the 2007 Duma elections, political parties will have to register these numbers by 1 January 2006.

#### *Criticisms from OSCE and the Council of Europe*

The OSCE, through its Office for Democratic Institutions and Human Rights (ODIHR), observed both the parliamentary elections in December 2003 and the presidential elections in March 2004. Its Election Observation Mission Report on the Russian Federation's Elections to the State Duma argued that:

the election failed to meet a number of OSCE commitments for democratic elections, most notably those pertaining to: unimpeded access to the media on a non-discriminatory basis, a clear separation between the State and political parties, and guarantees to enable political parties to compete on the basis of equal treatment.<sup>31</sup>

The OSCE, however, did state that the elections were generally well-administered. While these problems were reported in many parts of Russia, their scope varied. There were numerous cases of officials who continued to work in their official capacity during the campaign and of cases where senior officials, 29 of whom were candidates on the United Russia proportional list, used state administrative resources in their campaign. There were also complaints from some

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<sup>31</sup> OSCE/ODIHR Election Observation Mission Final Report. 27 January 2004. Russian Federation Elections to the State Duma 7 December 2003. p. 1.

regions that 'candidates were prevented from obtaining suitable spaces for meetings and rallies, or were denied equal conditions to hold campaign meetings'.<sup>32</sup>

Prior to the 2003 elections, the Parliamentary Assembly of the Council of Europe (PACE) warned it would 'need to be convinced of the establishment of radio and television channels free of influence of the state and regional government, and of the impartiality of the media in the forthcoming parliamentary and presidential elections'.<sup>33</sup> Despite this warning in 2002, there were numerous complaints about curtailed media freedoms throughout Russia in the election campaigns. Regional media faced various obstacles including unwarranted inspections in Ufa, the forced closure of TV Signal in Kazan upon the Orders of the Fire Inspectorate, and increased costs for paid political advertising. The Council of Europe's Ad Hoc Committee to observe the parliamentary elections in the Russian Federation concluded, 'the clear bias shown by State owned or controlled TV over the entire period of the campaign and before cannot be ignored and remained a major failing of the system'.<sup>34</sup>

In its Recommendations, the Mission called upon federal and regional authorities to ensure that administrative resources would not be used in any election campaign and urged the media to provide neutral and equal campaign coverage. The Mission also recommended federal authorities to 'transform state broadcasters into an independent public service media that will provide citizens with impartial and politically balanced information on elections contestants'.<sup>35</sup>

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<sup>32</sup> *Ibid.* p. 10.

<sup>33</sup> Council of Europe Parliamentary Assembly. Recommendation 1553 (2002). Honouring of obligations and commitments by the Russian Federation. <http://assembly.coe.int/Documents/AdoptedText/ta02/EREC1553.htm>

<sup>34</sup> Council of Europe Parliamentary Assembly. Ad Hoc Committee to observe the parliamentary elections in the Russian Federation (7 December 2003). Doc. 10032 Report. 22 January 2004. <http://assembly.coe.int/Documents/WorkingDocs/Doc04/EDOC10032.htm>.

<sup>35</sup> OSCE/ODIHR Election Observation Mission Final Report. 27 January 2004. Russian Federation Elections to the State Duma 7 December 2003. pp. 25, 28.

Having sent another Election Observation Mission to Russia for the presidential election in March 2004, the OSCE reiterated many of its criticisms from the parliamentary elections. The high approval rating for President Putin was tarnished in the eyes of the OSCE Mission by a 'dearth of meaningful debate and genuine pluralism' and the failure 'to meet an important commitment concerning treatment by the state-controlled media'.<sup>36</sup> The PACE Ad Hoc Committee which observed the presidential elections agreed, arguing that the requirement to collect two million signatures for presidential candidates was 'an unreasonable hurdle'.<sup>37</sup> The Committee also observed a clear media bias for President Putin which was exacerbated by his decision not to participate in televised debates and noted

According to the independent media monitors, the presidential election in 2004, as compared to the previous elections in 2000, meant a deplorable step towards further degradation and discrediting elections as an institute of democracy. While in the election campaign of 2000 less than one third of the total airtime was allotted to Mr Putin, four years later that share increased by almost 50%.<sup>38</sup>

The Head of the OSCE/ODIHR Mission reported, 'this election cannot be seen as a fundamental test of the Russian democratic system'.<sup>39</sup>

With fewer parties in power, it is increasingly easy for the populace to become distrustful of the government; similarly, fewer opposition parties give Putin's United Russia increased access to administrative resources that can be used to disrupt free and fair elections. Of

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<sup>36</sup> OSCE/ODIHR Press Statement 15 March 2004. 'Russian Election Generally Well Administered but Lacking Elements of a Genuine Democratic Contest'. <http://japan.usembassy.gov/e/p/tp-20040316.html>.

<sup>37</sup> Council of Europe Parliamentary Assembly. Ad Hoc Committee to observe the Presidential election in the Russian Federation (14 March 2004). Doc. 10150 Report. 26 April 2004. Section II. Election Campaign, Article 7. <http://assembly.coe.int/Documents/WorkingDocs/doc04/EDOC10150.htm>.

<sup>38</sup> *Ibid.* Section III The Media. Article 18.

<sup>39</sup> OSCE/ODIHR Press Statement 15 March 2004. 'Russian Election Generally Well Administered but Lacking Elements of a Genuine Democratic Contest'. <http://japan.usembassy.gov/e/p/tp-20040316.html>.

increasing worry to European organisations is the fact that Putin's regime has not only confirmed Russian elections to be free and fair, where the OSCE and COE have disagreed, but it is also defending dishonest elections in the former Soviet Union, most recently seen in the presidential election in the Ukraine. As Putin's reforms continue to amass power for his regime and for United Russia, the lack of accountability has led to an increased number of abuses of power.

## The Right to 'Freedom of Expression'

The Russian Constitution identifies four facets to the right to freedom of expression and claims:

Everyone shall have the right to freedom of thought and speech. No one may be coerced into expressing one's views and convictions or into renouncing them. Everyone shall have the right to seek, get, transfer, produce and disseminate information by any lawful means. The freedom of the mass media shall be guaranteed. Censorship will be prohibited.<sup>40</sup>

These rights are also enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms under the Council of Europe. Article 1 obliges Russia to respect human rights in general while Article 10 relates to the freedom of expression and guarantees the universal right to freedom of expression: 'This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers'.<sup>41</sup>

In the Helsinki Final Act of 1975, the USSR agreed to 'Article VII Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief reaffirms these rights'. The Paris Charter on Human Rights further ties the Russian government to freedom of expression. Signing the Charter affirmed

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<sup>40</sup> The Constitution of the Russian Federation. Section One, Chapter 2 Rights and Liberties of Man and Citizen, Article 29 (1,3,4,5).

<sup>41</sup> The Council of Europe. CETS no. 005. Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11. Article 10(1).

Russia's belief, 'without discrimination . . . [to] freedom of expression'.<sup>42</sup> The Vienna Declaration of the Council of Europe also focussed on the right of expression as one of the common values of Europe.

From these three documents, it is clear that freedom of expression protects firstly the freedom of thought and speech and the expression of them. It also protects those who disagree with the government and the media outlets and others in the information business.

### *Recent Trends*

When Putin came to power in 1999, he inherited a Russia with vigorous public debate in the media, amongst various political parties and to some extent in a developing community of non-governmental organisations (NGOs). In 2001, President Putin agreed that 'the continued development of independent media is a cornerstone of democratic societies',<sup>43</sup> but by 2003, he argued, 'we have never had freedom of speech in Russia, so I can't understand what I'm impeding'.<sup>44</sup>

Despite promises to secure media independence, Putin's reforms have changed the media environment in Russia, which now suffers from a lack of debate and muted voices. The high-profile cases of Andrei Babitsky, Nana Lezhnava, Anna Politkovskaya and Raf Shakirov, who was forced to resign as the Editor-in-Chief of Izvestiya for its coverage of the government's response to the siege, managed

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<sup>42</sup> Conference for Security and Cooperation in Europe. Paris Summit. 19 – 21 November 1990. 'Charter of Paris for a New Europe'. Human Rights, Democracy and Rule of Law. <http://www.osce.org/docs/english/1990-1999/summits/paris90e.htm>.

<sup>43</sup> Russia-European Union Summit. Joint Statement by V. Putin and G. Persson. 17 May 2001. <http://www.eu2001.se/eu2001/news/news-read.asp?informationID=15028>.

<sup>44</sup> Vladimir Putin. Speech and Replies to Questions by President of the Russian Federation Vladimir Putin at Columbia University, New York. September 26, 2003. Daily News Bulletin, Ministry of Foreign Affairs of the Russian Federation, Information and Press Department. <http://www.in.mid.ru/bl.nsf/0/5ef2058ecef102b643256db000487335?OpenDocument>.

to attract the West's attention even as the world focused on the tragedy in Beslan. But the freedom of expression in Russia has been on the decline in the past few years, and the main subjects on the backlash have been journalists, NGOs and politicians that have been critical of Chechnya and corruption.

Despite the fact that five of the six national newspapers and periodicals are private, the takeover of the TV channel NTV, the closure of the TVS channel and the closure of several independent analytical programmes on national television underscore the fact that only 25 per cent of Russia's 750 TV stations are private. It is also important to note that even the private channels of information are regularly influenced by the government through its ownership of federal and local-level commercial structures. The State also maintains ownership of the largest radio stations, Radio Mayak and Radio Rossii and the news agencies ITAR-TASS and RIA-Novosti.

With Kremlin control secured over the main national television stations, a plurality of views and debate has all but left Russian stations. Many programmes will conform with the government's position even when not forced to do so in order to avoid the messy repercussions. Of further worry is the fact that many of the private sources of information are difficult to access, existing in specific localities.

Those journalists who refuse to bow to Kremlin pressures have faced physical violence, intimidation, arrest and murder. According to the 2004 Annual Report of Reporters Without Borders, five journalists were killed, one went missing, two were imprisoned, two were kidnapped, 12 were arrested and 24 were physically attacked in 2003.<sup>45</sup> 2004 was not any easier for independent journalists. Paul Klebnikov, the American who had launched Forbes magazine's Russian edition was apparently targeted because of his extensive reporting on organised crime. When intimidation does not work, journalists, especially in regional media outlets, can also be subject to prosecution in libel and criminal proceedings.

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<sup>45</sup> Reporters without Orders. 2004 – Annual Report: Russia. [http://www.rsf.org/article.php3?id\\_article=10229](http://www.rsf.org/article.php3?id_article=10229).

In President Putin's state-of-the-nation speech in May 2004, he signalled his upcoming attack on Russia's community of NGOs. Just days after accusing them of 'receiving financing from influential foreign foundations' and serving 'dubious groups and commercial interests',<sup>46</sup> attacks began on humanitarian organisations in Chechnya and state-run media featured denunciations of human rights groups. By the end of 2004, numerous NGOs had been ransacked. 'Investigations' stretched from Tatarstan, to the Soros Institute in Moscow.

#### *Criticisms from OSCE and the Council of Europe*

The Council of Europe's Parliamentary Assembly, in Document 9396 and in Resolution 1277 of 2002, noted it was 'alarmed by the harassment of journalists, which clearly violates the fundamental freedom of expression'.<sup>47</sup> Document 9396 also expressed the Council of Europe's serious concerns 'at recent events affecting the Russian media, which could be interpreted as encouraging measures to restrict freedom of the press'. Fearing the 'apparent end of independent television broadcasting in Russia' the Council of Europe 'expects the Russian authorities to take measures enabling the plurality of the media to be preserved and strengthened'.<sup>48</sup>

In 2002, PACE also reported on the concerns of 'Human Rights NGOs . . . as regards the increasing pressure of the Federal Security Service on Society, especially on the media'.<sup>49</sup> Problems for NGOs have ranged from open intimidation to difficulty in re-registering and to tax pressures.

<sup>46</sup> [http://president.kremlin.ru/eng/speeches/2004/05/26/1309\\_type70029\\_71560.shtml](http://president.kremlin.ru/eng/speeches/2004/05/26/1309_type70029_71560.shtml).

<sup>47</sup> Council of Europe Parliamentary Assembly. Document 9396 and Resolution 1277 (2002) Honouring of obligations and commitments by the Russian Federation. <http://assembly.coe.int/Documents/AdoptedText/ta02/ERES1277.htm>.

<sup>48</sup> Council of Europe Parliamentary Assembly. Doc. 9396. Honouring of obligations and commitments by the Russian Federation: Report. 26 March 2002. Article 8 (xi). [http://assembly.coe.int/Documents/Working\\_Docs/doc02/EDOC9396.htm](http://assembly.coe.int/Documents/Working_Docs/doc02/EDOC9396.htm).

<sup>49</sup> *Ibid.* Section III (60).

In 2003, PACE again noted in Recommendation 1589 (2003) Freedom of expression in the media in Europe 'the number of journalists attacked, or even murdered in the Russian Federation is alarming'. The Recommendation then labelled 'unacceptable' that Grigory Pasko, a Russian journalist, had gone to prison for his work. The Assembly concluded by asking all European states 'to stop immediately all forms of legal and economic harassment of dissenting media' and 'to ensure the plurality of the media market'.<sup>50</sup>

After expressing its concern over the way the media was used to support both United Russia in the Parliamentary elections and President Putin in his bid for re-election in 2004, PACE singled-out Russia in Article 5 of its Recommendation 1641 (2004) Public Service Broadcasting and recommended 'specific measures to ensure that a legislation in this area [public service broadcasting] . . . is adopted as soon as possible . . . in Russia'.<sup>51</sup>

After the Beslan school siege and the coverage of the events in the Russian media, attention turned on the developments in the relationship between the government and the media that the situation exposed. After the government was found to have provided insufficient and incorrect information to the media, 92 per cent of the public believed that information had been concealed.<sup>52</sup> According to Russian legislation, there are two restrictions on the work of journalists, neither of which are applicable to the situation in Beslan. Furthermore, while Article 10(2) of the Council of Europe does carry the caveat that 'the exercise of these freedoms . . . may be subject to . . . restrictions',<sup>53</sup> these relate to national security concerns and the

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<sup>50</sup> Council of Europe Parliamentary Assembly. Recommendation 1589 (2003) Freedom of expression in the media in Europe. Articles iii. And viii. <http://assembly.coe.int/documents/adoptedtext/ta03/erec1589.htm>.

<sup>51</sup> Council of Europe Parliamentary Assembly. Recommendation 1641 (2004) Public Service Broadcasting. <http://assembly.coe.int/Documents/AdoptedText/TA04/EREC1641.htm>.

<sup>52</sup> Ekho Moskvyy Radio Station interactive poll republished by OSCE. Organization for Security and Cooperation in Europe, The Representative on Freedom of the Media, Miklos Haraszti. Report on Russian media coverage of the Beslan tragedy: Access to information and journalists' working conditions. 16 September 2004. p. 10.

<sup>53</sup> The Council of Europe. CETS no. 005. Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11. Article 10(2).

protection of other rights only. According to the OSCE report on Russian media coverage of the Beslan tragedy, 'There are no other restrictions in the legislation.' Militiamen or security services staff who tried to interfere with reporting 'are even legally objectionable on the basis that they prevent journalists from exercising their profession'.<sup>54</sup>

## The Right to a Fair Trial and Access to Courts

Article 19 of the Russian Constitution lays the foundation for legal rights by guaranteeing 'All people shall be equal before the law and in the court of law'.<sup>55</sup> Articles 22 and 46 – 54 detail the various rights of justice, including the guarantee of protection of rights and liberties in a court of law,<sup>56</sup> the right to have one's case reviewed by the court and a judge,<sup>57</sup> the right to legal counsel,<sup>58</sup> the benefit of doubt favours the defendant<sup>59</sup> and the right of persons to seek protection by the law for crimes and abuses of power.<sup>60</sup> The Russian Constitution, therefore, protects the access to justice from the moment of wrong-doing and detention to the final appeal.

Similarly, Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms categorically list the judicial mechanisms to ensure human rights are properly addressed. Article 6(1) states, '. . . everyone is entitled to a fair and public hearing

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<sup>54</sup> Organization for Security and Cooperation in Europe, The Representative on Freedom of the Media, Miklos Haraszti. Report on Russian media coverage of the Beslan tragedy: Access to information and journalists' working conditions. 16 September 2004. p. 10.

<sup>55</sup> The Constitution of the Russian Federation. Section One, Chapter 2 Rights and Liberties of Man and Citizen, Article 19(1).

<sup>56</sup> *Ibid.* Article 46(1).

<sup>57</sup> *Ibid.* Article 47(1).

<sup>58</sup> *Ibid.* Article 48 (1).

<sup>59</sup> *Ibid.* Article 49(3).

<sup>60</sup> *Ibid.* Article 52.

within a reasonable time by an independent and impartial tribunal established by law'.<sup>61</sup>

In the Charter of Paris, Russia committed to uphold democracy. 'Democracy, with its representative and pluralist character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially. No one will be above the law'. Through the Charter, Russia also agreed that 'no one will be subject to arbitrary arrest or detention, subject to torture or other cruel, inhuman or degrading treatment or punishment'. Conversely, 'everyone also has the right to fair and public trial if charged with an offence'. Thus through its OSCE and Council of Europe commitments, Russia has agreed to 'ensure that everyone will enjoy recourse to effective remedies, national or international, against any violation of his rights'.<sup>62</sup>

### *Recent Trends*

The high-profile Yukos case is merely the best known instance where the Kremlin has asserted its influence over the judiciary. 'Spy mania' cases, such as those against Igor Sutiagin and Valentin Danilov, where pressure is exerted to preserve 'sensitive' topics via dubious charges and few acquittals, show the degree of the judiciary's dependence on the executive. Few cases could underscore this alliance better than that against Mikhail Khodorkovsky. After Beslan, Putin proposed another reform to establish executive control over the judiciary.

The Kremlin-backed judicial reform bill sent to the Federation Council in October 2004 would give the president and the Federation Council the right to appoint 11 of the 21 members of the Supreme Qualification Collegium, which hires and fires members of the

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<sup>61</sup> The Council of Europe. CETS no. 005. Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11. Article 6(1).

<sup>62</sup> Conference for Security and Cooperation in Europe. Paris Summit. 19 – 21 November 1990. 'Charter of Paris for a New Europe'. Human Rights, Democracy and Rule of Law. <http://www.osce.org/docs/english/1990-1999/summits/paris90e.htm>.

country's Supreme and federal courts. The measure will allow the president to nominate 10 judges, who would then be approved by the Federation Council, which usually endorses Putin's decisions. Additionally, the president would continue to directly appoint one representative while the speaker of the Federation Council would appoint the 10 public members. By reducing the number of members from 29 to 21 and by granting the Federation Council and the president a hold over the Collegium, many fear as Sergei Pashin, a former federal judge, asserts, 'The Kremlin's influence on the judiciary is becoming absolute'.<sup>63</sup>

Numerous cases of senior judges, like Olga Kudeshkina's, a former Moscow city Court judge who was allegedly fired after refusing to obey informal orders from the executive, are coming to light. Because the appraisal system of judges is based on the number of judgments that endures against the number that is overturned, there are numerous accusations of 'telephone justice,' whereby judges receive instructions in order to be sure they are acting in accordance with the appeal court and/or Prokuratura.

Transparency International's Corruption Perceptions Index ranked Russia 90<sup>th</sup> of 146 states surveyed and ranked Russia 21<sup>st</sup> (worst) of 21 states surveyed in the Bribe Payer's Index.<sup>64</sup> Indem, an anti-corruption think tank surveyed 2000 people across Russia in 2004 and found that local courts were named among the most corrupt official bodies and were deemed to be less corrupt only after law enforcement agencies, local administrations and parliament. After the Beslan school siege, Putin attacked the judicial and law enforcement systems for their levels of corruption; Putin criticised judges for being influenced by oligarchs.<sup>65</sup>

Should the New Criminal Procedure Code, which entered into force on 1 January 2004, be carried out in all cases fully it would vastly improve the judicial process. The Criminal Procedure Code allows

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<sup>63</sup> Finn, Peter. 'Putin Close to Winning New Power over Judiciary' *The Washington Post* 2 October 2004. p. A15.

<sup>64</sup> <http://www.transparency.org>.

<sup>65</sup> Abdullaev, Nabi. 'Putin Tells Judiciary to Clean up its act'. *The Moscow Times* 1 December 2004.

only 48 hours for the detention of an individual. Recent European Court of Human Rights decisions have criticised the excessive length of procedures and detainments. Additionally, the long process of introducing juries to the Russian Federation is nearly complete and will extend to the North Caucasus in 2007. This will help alleviate corruption in the legal process and the large case backlogs and trial delays which are problematic throughout Russia. Unfortunately, trial by jury is only available for a small number of the most serious offences despite the fact that the majority of the public favours them. The remaining cases are tried by single judges, who are very likely to convict a defendant. In judge-only trials, conviction rates average more than 99 per cent while juries convict between 80 – 85 per cent of the time.<sup>66</sup>

As of 28 November 2004, a total of 20 judgments had been delivered on Russian cases brought before the European Court of Human Rights (ECtHR), of which 19 were findings of violations. By October 2004, the ECtHR had received more than 19,000 complaints against the Russian Federation and the Court has found over 60 of the 240 complaints communicated to the Russian government to be admissible. In a positive signal, Dr Jeffrey Kahn asserts that ECHR law has influenced Russia. In addition to a moratorium on the death penalty, 'ECHR legislation was being increasingly cited in Russian legal opinions'.<sup>67</sup>

#### *Criticisms from OSCE and the Council of Europe*

In 2002, PACE noted, 'The courts, which should be the main mechanism for protecting human rights, are often short of staff and financial resources, and public lacks confidence in the judicial

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<sup>66</sup> *The Economist* 'Security Cases in Russia.' 10 June 2004. [http://www.economist.com/printedition/displayStory.cfm?Story\\_ID=2752962](http://www.economist.com/printedition/displayStory.cfm?Story_ID=2752962).

<sup>67</sup> Kahn, Dr. Jeffrey. 'Russia's "Dictatorship of the Law" and the European Court of Human Rights'. Law and Security Issues. <http://www.sant.ox.ac.uk/russian/law.shtml>.

system'.<sup>68</sup> In the 2002 Chamber Judgement in the Case of *Kalashnikov v. Russia*, the European Court of Human Rights unanimously agreed that there had been: 'a violation of Article 3 (prohibition of inhuman or degrading treatment), a violation of Article 5(3) (right to stand trial within a reasonable time) and a violation of Article 6(1) (right to a fair hearing within a reasonable time)'.<sup>69</sup>

In Resolution 1418 (2004) The circumstances surrounding the arrest and prosecution of leading Yukos executives, the Parliamentary Assembly expressed its concern 'by the shortcomings of the judicial process in the Russian Federation revealed by the cases of several former Yukos executives'.<sup>70</sup> Committed to the rule of law as one of its core values, the resolution reminds that the rule of law 'requires the impartial and objective functioning of the courts and of the prosecutors' offices, free from undue influences from other branches of government'.<sup>71</sup>

Following a list of serious shortcomings, PACE called 'upon the Russian authorities to vigorously pursue and implement reform of the legal and judicial system and of law enforcement agencies with a view to strengthening the Rule of Law and the protection of human rights'.<sup>72</sup> The Council of Europe's list of shortcomings and recommendations to the Russian Federation is based on their conclusion that, 'On balance, the findings put into question the fairness, impartiality and objectivity of the authorities which appear to have acted excessively in disregard of fundamental human rights'.<sup>73</sup>

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<sup>68</sup> Council of Europe Parliamentary Assembly. Doc. 9396. Honouring of obligations and commitments by the Russian Federation: Report. 26 March 2002. Section III (35). [http://assembly.coe.int/Documents/Working\\_Docs/doc02/EDOC9396.htm](http://assembly.coe.int/Documents/Working_Docs/doc02/EDOC9396.htm).

<sup>69</sup> European Court of Human Rights. Chamber Judgment in the Case of *Kalashnikov v. Russia*. No. 373, 15.7.2002. Press release issued by the Registrar. <http://www.echr.coe.int/Eng/Press/2002/july/Kalashnikovjudypress.htm>.

<sup>70</sup> The Council of Europe Parliamentary Assembly, Resolution 1418(2004) The circumstances surrounding the arrest and prosecution of leading Yukos executives. Article 1. <http://assembly.coe.int/Documents/AdoptedText/ta05/ERES1418.htm>.

<sup>71</sup> *Ibid* Article 2.

<sup>72</sup> *Ibid* Article 16(i).

<sup>73</sup> *Ibid* Article 7.

## Conclusions

As we have demonstrated, there is a considerable body of evidence pointing to a worsening of the rights situation in Russia. Putin's 'dictatorship of the law', instead of being designed to ensure the democratic rule of law and protection of the principles of human rights, was designed to combat corruption and establish a 'vertical of power' to reform Russia. Putin's response to human rights concerns in Chechnya, an issue he believes to be paramount to national security, have been met with outrage and hostility and has coloured his response to Western concerns over human rights and individual security throughout Russia. In his meeting with the UN Commissioner for Human Rights on 10 February 2005, President Putin said that Moscow would only listen to 'objective criticism' of its human rights record and told her that 'Russia upholds, without fail, all fundamental human rights standards and all of its international obligations in this area'.<sup>74</sup>

In the post 9-11 world, the Putin administration has had significant success convincing Western leaders that the war in Chechnya is yet another front in the war on terrorism. After the 9/11 attacks, Putin allowed the US to station troops in Central Asia. In addition to this act, the West's criticism of Russia became increasingly muted with the Moscow theatre and Beslan school sieges. The West's, especially the United States', position on human rights became increasingly difficult with the detainment of prisoners on Guantanamo Bay and the war in Iraq. Russian sentiments against Western intrusions were bolstered by these double standards.

By being so eager to develop good relations with President Putin, Western leaders, American President George W. Bush and British Prime Minister Tony Blair in particular, removed issues of human rights from bilateral relations at an early stage. For this reason, human rights concerns need to be addressed in the multilateral context. Having allowed President Putin to centralise power at the

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<sup>74</sup> BBC News, 'Putin firm on Russia human rights' <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/4255319.stm>.

expense of human rights for so long, it is apparent that the core values of President Putin and Europe no longer match.

Until leaders, in bilateral contexts, are willing to promote human rights to the Russian government and tie the protection of these rights to concrete consequences, multilateral organisations will be able to do little to improve Russia's human rights abuses. Although it would appear that European governments are slowly turning against Putin's policies, a stronger bilateral stance needs to be taken. In short, all multilateral initiatives must have the vocal and sustained backing of member governments so that these initiatives are advanced in bilateral relations as well.

Bilateral relations have removed emphasis from the West's collective notion that the protection of human rights is the basis for legitimacy in government and the rule of law. Not surprisingly, bilateral relations, which had not pressed these issues, remained strong while Russia's relations with Western organisations which do highlight these issues have weakened. Russia's relations with the Council of Europe and the OSCE have suffered as Putin's reforms have made clear that he sees the rule of law as a legitimate check on the values inherent in human rights. Bilateral relations have ignored human rights to such an extent that some activists now warn 'the Russian government may come to expect nothing less than international disengagement on human rights more generally in Russia'.<sup>75</sup> While this may currently be the case, it is becoming increasingly apparent that the West will be less generous in ignoring human rights in its relations with Russia if these reforms are part of a larger trend away from the democratic rule of law. The situation in Chechnya may be tolerable to Europe and the US in the post 9/11 context on the war against terror, but it is doubtful that larger trends against democratic rights will be classified in the same vein.

If Putin's Russia is ready to embrace democracy and human rights as its legitimising feature, these recent trends must be reversed.

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<sup>75</sup> Denber, Rachel. "Glad to Be Deceived": the International Community and Chechnya' Human Rights Watch World Report 2004. [www.hrw.org/wr2k4/7.htm](http://www.hrw.org/wr2k4/7.htm).

Since his election in 2000, President Putin has emphasised reforms which aim to increase federalism and strengthen central control. While change must happen from within, the international community can help create a system that encourages such reform. The OSCE and the Council of Europe should work to show Putin's government that stabilising a democratic rule of law through increased respect for human rights can not only make for better Russian relations with the West, but will also create a more stable Russia.

## Policy Recommendations

To achieve this goal, Western governments should follow two tracks of activity in dealing with Russia:

- ❑ An enhanced approach to existing mechanisms for monitoring and promoting rights; and
- ❑ A creative but determined approach to reforming those mechanisms, and specifically the OSCE.

### *Confronting Russia through existing mechanisms*

Russia depends on Europe and this is a unique chance to exert influence both multilaterally and bilaterally. As human rights issues are only recently re-entering the debate in bilateral relations this provides yet another chance for these multilateral organisations to gain prominence in these issue areas. Not only is it important for Russia to be a partner of the West, it is important for Europe that Russia is a strong, stable partner with shared values.

An earlier FPC pamphlet argued that the UK should focus on five areas of policy:

- ❑ Enhanced public scrutiny of the Russian situation in the light of its commitments in European institutions
- ❑ use of high level channels and quiet diplomacy
- ❑ use of leverage available from multilateral lending agencies

- use of Western media and proxy organisations, such as NGOs and community groups, in order to open up debate about European interests in Russia's political developments
- increased direct and indirect support to champions of liberal pluralism in Russia.

These recommendations remain important, but the UK by itself has limited leverage. Russia's ability to silence the UN and several of its Western (state) partners, places more importance on the Council of Europe, the European Union and the OSCE. Unfortunately, the OSCE's sustained focus on Russia and the CIS has made Russia suspicious of the OSCE's motives, aims and conclusions. The Council of Europe, in marked contrast, is seen as having a more balanced perspective and is not perceived as being so hostile. Similarly, the Council of Europe's wider interest in human rights has made criticisms that, at least, touch on all major issue areas, from Chechnya to the democratic rule of law.

Because Russia is preoccupied with challenges to its national sovereignty, it is important for the West to show Russia that there is a clear link between human rights and the democratic rule of law on the one hand and stability and progress on the other. It is equally important, however, for Western organisations, specifically the Council of Europe and the OSCE to show Russia that Western values are the foundation for their relations. Just as the West asks Russia to fortify these values at home, so it must acknowledge that the path to meeting all commitments on the democratic rule of law and human rights is long, and cannot be traversed in ten years.

In short, Russia and the OSCE and Council of Europe must both be engaged in the process of shaping and determining the aims and scope of their relationship. While Russia could start this process by guaranteeing a private media and by working to combat corruption and executive influence of the judiciary, these multilateral organisations must prove to Russia that some part of its own agenda will be addressed as well.

Both sides must work together to create a situation that benefits both and addresses concerns from both sides. As Congressman

Christopher Smith and Senator Ben Nighthorse Campbell argued in *Nezavisimaya Gazeta* in February 2004

it is also in Russia's interest that its neighbours become stable and prosperous democracies. Rather than being viewed as a challenge to Russia's interests, OSCE principles and standards – which Moscow helped shape throughout the years – should be seen as essential tools in strengthening security at home and abroad.<sup>76</sup>

Distrust of or inadequate access to the aims and guarantees of the OSCE and Council of Europe could be minimised by making the principles and mechanisms of both organisations more accessible, especially on the regional level. In Document 9396 of PACE, the Assembly recommended to the Council of Ministers that 'appropriate information on the Organisation's principles should be available to all parts of society'.<sup>77</sup> In particular, better knowledge of the European Court of Human Rights, its areas of competence and rulings would be extremely useful. In binding Russia to Europe and European norms, Putin has also accepted the ECtHR's jurisdiction on judging Russia's compliance with human rights obligations. This is a very positive sign which should be encouraged at every step.

Since May 1998, Russia has had a human rights ombudsman overseeing the situation throughout Russia. Both Oleg Mironov, who served as ombudsman from 1998 to 2004, and Vladimir Lukin who has served since 2004 have criticised the human rights situation in Russia. Between them, they have criticised and reported on violations in the penal system, a poor quality of life, Chechnya and media freedom, to name a few. Mironov, acknowledged that the number of complaints his office received had topped 3,000 per month.<sup>78</sup> To improve the protection of human rights, both the OSCE

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<sup>76</sup> Campbell, Ben Nighthorse and Christopher Smith . 'Moscow Should Engage the OSCE in Resolving the Chechen Problem'. 10 February 2004. *Nezavisimaya Gazeta*. [www.cdi.org/russia/13feb04-16.cfm](http://www.cdi.org/russia/13feb04-16.cfm).

<sup>77</sup> Council of Europe Parliamentary Assembly. Doc. 9396. Honouring of obligations and commitments by the Russian Federation: Report. 26 March 2002. Section II Article 5 (i). [http://assembly.coe.int/Documents/Working\\_Docs/doc02/EDOC9396.htm](http://assembly.coe.int/Documents/Working_Docs/doc02/EDOC9396.htm).

<sup>78</sup> Urikhyan, Armen. 'Ombudsman Mironov Faults Russia's Human Rights Record' *Vremya MN* 8 February 2003. [www.cdi.org/russia/johnson/7059-10.cfm](http://www.cdi.org/russia/johnson/7059-10.cfm).

and the Council of Europe should provide aid (both financial and practical experience) to the Ombudsman's Office. Russia, in turn, should work to implement the suggestions outlined in the ombudsman's reports.

#### *Reforming existing mechanisms*

There is much to be achieved through a constructive and gradualist approach to existing mechanisms for dialogue with Russia. Yet it would be a mistake for Europeans to defend the status quo rather than consider reforming some of these frameworks. If Russia has turned against the OSCE, many in the West have also come to see the organisation as outmoded. An approach to Russia that does not involve some discussion of institutional reform will thus lack credibility.

European leaders should thus accept the challenge Russia has laid down to the OSCE, and offer high-level, clearly structured talks on its reform. A process similar to the UN's 'High-Level Panel' might lay the path to intergovernmental negotiations. But, as a quid pro quo for this openness to change, Europe and the US should ensure that they open up a much more robust and consistent dialogue with key interlocutors in Russia in a way that is more likely to have an effect than current half-hearted approaches. The reform process should be an opportunity to stress and defend that dimension, allowing for real debate with Russia.

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As the title 'Kremlin Echo' suggests, there are various interpretations of the effects of Vladimir Putin's policy on the rule of law in Russia, not only from abroad, but within the Kremlin walls as well. Andrei Illarionov, an Economic Advisor to President Putin, gave several scathing criticisms of Putin's reforms before he stepped down as Putin's personal representative to the 'Group of Eight' on 4 January 2005. His interview on 30 December 2004 on Ekho Moskvoy Radio has been translated by the Federal News Service and has been reprinted by permission of the Federal News Service and Ekho Moskvoy Radio.

In the preface, Andrew Jack explores President Putin's contest with Yukos as he tries to reassert his power over a broken system. Konstantin Sonin, in his piece entitled 'Putin's Rule of Law is Mere Rhetoric' analyses Putin's recent political reforms, and its repercussions on the Russian economy and Constitution.

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Whatever the motivations, the curbs on press freedom and the weakening of the multi-party system cannot be allowed to stand. Russia is a 'weak authoritarian state with nuclear weapons'. The Putin Administration must move quickly to enforce rule of law and protect individual civil rights. The UK should apply whatever leverage it possesses (including through multilateral economic co-operation agreements) to vigorously promote the protection of the hard-won rights and freedoms in Russia.

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He argues for a robust and intrusive campaign of 'de-proliferation'- making states surrender such materials. He pleads for more attention to failed and failing states (Russia, Pakistan) than to rogue states (Iran, North Korea), on the grounds that each failing state is like hundreds of actors with too wide a variety of motives and too low a visibility for them to be easily deterred. On the other hand, rogue states- which have singular and effective governments- might be deterred.

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## **THE BEIJING CONSENSUS**

Joshua Cooper Ramo

Spring 2004

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The former Foreign Editor of Time magazine, Joshua Ramo, argues that there is a new 'Beijing Consensus' emerging with distinct attitudes to politics, development and the global balance of power. It is driven, the author argues, by a ruthless willingness to innovate, a strong belief in sovereignty and multilateralism, and a desire to accumulate the tools of 'asymmetric power projection'. Though it is often misunderstood as a nascent superpower, China has no intention of entering an arms race. Instead, it is intent on projecting enough 'asymmetric power' to limit US political and military action in its region. Through fostering good international relations, it is safeguarding the peaceful environment needed to secure its prosperity, and deterring the attempts of some on the fringes of US politics to turn it into a pariah. Ramo argues that China offers hope to developing countries after the collapse of the Washington consensus. It provides a more equitable paradigm of development that countries from Malaysia to Korea are following. Based on more than a hundred off the record discussions, The Beijing Consensus captures the excitement of a country where change, newness and innovation are rebounding around journal articles, dinner conversations and policy-debates with mantra-like regularity.

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Nicholas J Wheeler and Tim Dunne

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It debunks some of the myths surrounding the issue, arguing that an 'ethical foreign policy' can be pragmatic, does not necessarily involve the sacrifice of national interests, and is not always as self-evident as critics suggest. Dunne and Wheeler's audit of Labour's record is broadly positive though it concludes that British involvement in the invasion of Iraq was not justifiable. Finally, Moral Britannia? sets out ten lessons to rescue the ethical foreign policy and re-establish relations with the rest of the world based on internationalist values and multilateralist institutions.

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