

From *Partiinost* to *Zakonnost*: The Languid Creation of Legal Consciousness in Russia

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In the United States, we tend to take “legal consciousness” for granted. The law protects us and defends our liberties in a just and reliable way. Sure, we laugh about the proliferation of lawyers, moan about lawsuits, and cringe at the politicization and publicity of some high-profile criminal and civil cases, but on the whole we respect the law and the judicial system that underlies it. We trust that the system is fair and that it will serve our best interests. The situation is much different in the Russian Federation. Laws were abused and/or ignored by Soviet leaders throughout the Soviet period, and no semblance of trust developed among the citizenry; rather, apathy or ridicule of the law was the norm.¹

For Russia to evolve into a democratic state that respects and upholds civil liberties, Russian citizens must develop and sustain legal consciousness (*pravosoznanie*). Legal consciousness, to my mind, refers not only to one’s respect for the law, but to an innate confidence in the law’s protective powers and due process. In short, it is a belief that the judicial system will defend the citizen’s rights and assist her when violation of the law occurs. Unfortunately, legal consciousness is still undeveloped in Russia, as numerous interviews and polling data reveal. Only 2 percent of respondents in one survey felt fully protected by the law, whereas 70 percent felt “somewhat” protected by the law, and 13 percent felt no protection whatsoever. Moreover, 65 percent of respondents reported having had their rights violated, especially in the area of employment and compensation; the frequency of such violations was blamed on the citizenry’s overall passivity and ignorance about the laws on the books. They also report skepticism and cynicism about the law and its application.

Cynicism about the Russian judicial system is prevalent because persons and institutions in power continue to abuse it or acquire immunity from it. Recent court decisions illustrate this phenomenon quite vividly. In summer 2002, the Supreme Court upheld the conviction of naval journalist Grigory Pasko for trea-

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son in conjunction with his reporting and “intention” to pass to Japanese journalists classified information about environmental violations by the Pacific Fleet. Pasko has now been sentenced to four years of hard labor in a penal colony, after already spending one and a half years in pretrial detention in Vladivostok, between 1997 and 1999. [Author’s note: As this issue went to press, we learned that Pasko had been freed by a Russian court in Ussuriysk; he said he would fight to prove his innocence.] In another decision, a military court acquitted six men accused of killing the journalist Dmitri Kholodov, who was investigating allegations of corruption in the army’s intelligence service. Kholodov received a phone call alerting him to a briefcase at a train station that contained evidence about the

scandal. On retrieving and opening the briefcase, an explosion killed him.

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In both cases, the military was “immune” from the law, partly because classified information that was involved could not be adequately examined and discussed in the trial, and partly because high-ranking individuals were implicated. In the Pasko case, some Russian

citizens maintain that because the defendant was serving in the navy at the time and therefore subject to naval legal codes and rules, his actions were indeed criminal and should be punished. Others, especially human rights activists, are now citing this case as “Exhibit A” in demonstrating that the presumption of innocence is a concept still unknown in Russian courts. The Kholodov case is murkier and even more unsettling. It has been reported that former defense minister Pavel Grachev ordered his staff to “take care” of journalists who criticized the military, and that some interpreted that as condoning cold-blooded murder. In any event, the message to Russian journalists is loud and clear—investigate politically sensitive crimes at your own risk.

The Prominence of the Procuracy

Historically, politics and personalities, not the law, have directed the judicial system. The main player in Russia’s legal system has been the Procuracy—the prosecution sector of the Russian government. In Imperial Russia, the Procuracy served the tsar and played a supervisory role until the reign of Alexander II, who introduced many judicial reforms, including trial by jury, the presumption of innocence, rights to defense, and others. The Procuracy lost its supervisory powers in administering the law, and pretrial investigators took over the responsibility for criminal investigations. The judicial system borrowed many aspects of the French legal system. However, when juries acquitted radical revolutionaries, the imperial regime became disillusioned with an independent judiciary and gradually scaled its independence back. The Bolsheviks abolished imperial institutions

and created their own people's commissariats. Eventually, rampant crime and corruption compelled the new leaders to rethink their new structure and return to the Procuracy its former supervisory status in 1922.

Under the Soviet system, the Procuracy served the state and the CPSU (Communist Party of the Soviet Union). Soviet judges would frequently clear their decisions with the local Communist Party boss. Although the Soviet Constitution guaranteed many rights and protections, in practice they were often disregarded and abused. General Secretary Joseph Stalin made a mockery of the law, using the Procuracy—and his procurator general, Andrei Vyshinsky—to eliminate political opposition through the infamous show trials, forced confessions, and executions. Vyshinsky wrote a magnificent propaganda piece in 1939 entitled “Crime Recedes in the USSR,” arguing that crime had climbed steadily in Imperial Russia and then declined precipitously after the Bolshevik Revolution. It is ridden with lies and goes so far as to suggest that Soviet criminals were treated much better than their capitalist counterparts. The construction of the Volga and Belomor Canals, according to Vyshinsky, “was of vast educational value” for the criminals employed and it “changed their whole outlook on life.” Indeed, it cost their lives. Here is Vyshinsky’s flattering portrayal of the Procuracy:

Another striking example of how things have changed with regard to crime in the USSR is the frequency with which *offenders appear voluntarily* before the prosecuting authorities—the Procurator’s Office—and narrate their crimes, admitting their guilt and asking that they be helped to lead a life of honest toil. . . . For instance for twenty days in April of 1937, *600 criminals voluntarily* appeared in Moscow alone to make a clean breast of their offenses.¹

Under Leonid Brezhnev, efforts to protect the citizens’ basic civil rights (freedom of speech, press, and association) were codified in the 1977 Constitution, yet dissidents who questioned or criticized the Soviet regime were put on trial for “anti-Soviet agitation and propaganda” and frequently sent to psychiatric wards for “rehabilitation.” The 1966 trial of authors Andrei Siniavsky and Yuli Daniel—who wrote political satire and published it underground—was emblematic of this trend. Indeed, all Soviet leaders maintained the Procuracy’s preeminent status and structure. The Procuracy even supervised the KGB’s investigations. In criminal cases, the procurators investigated the serious cases themselves and supervised the investigations of lesser crimes conducted by the MVD (Ministry of Internal Affairs, or police). The Procuracy, not the courts, had exclusive authority to approve nonconsensual searches, arrest warrants, and wiretaps. Perhaps most insidious was the practice of prosecutors’ supervising the trial judges, who merely completed the work of the prosecutors at the trial instead of acting as impartial interpreters and servants of justice. Often prosecutors did not even show up at trial.

With the collapse of the Soviet Union in 1991, the Soviet Procuracy was abolished and the Procuracy of the Russian Federation was created. Thousands of employees lost their jobs, yet many were rehired by the “new” Russian Procuracy. Despite various attempts throughout the 1990s to curb the Procuracy’s power and limit its role to prosecuting cases, its supervisory power remained intact and it successfully resisted threats to its status. With the enactment of legal reforms

permitting the judiciary to hear appeals and providing for defense counsel at the pretrial stage, a stronger judiciary is evolving. With the adoption of the Criminal Procedure Code, the role of the Procuracy is diminished. It is hoped that Russia's inquisitorial system will be brought more into line with the adversarial system of justice practiced in Great Britain and the United States, whereby prosecutors and defense attorneys have equal status and the judge serves as a neutral arbiter.

Russia's New Criminal Procedure Code

The new Criminal Procedure Code, passed by the Russian parliament and signed by President Putin in December 2001, came into effect 1 July 2002. The new UPK, as it is more commonly known, creates the necessary framework in which legal consciousness can begin to emerge in Russia. The new code, which replaces the Soviet code dating back to 1960, has been among President Putin's key legislative priorities, and he and his legal reform architect, Dmitri Kozak, worked hard to push it through the Duma. The new code curtails the power of the Procuracy considerably and returns the responsibility for the administration of justice to the courts and to the judges. The 1993 Constitution provided for this, but there was no way of implementing it until the new procedural code was passed. Now the judiciary instead of the Procuracy will have the authority to order arrests and seizures. Procurators are now required to attend trials and face defense attorneys who have equal status. For the first time, procurators are required to inform suspects, victims, and defendants of their rights, including the right to remain silent or seek counsel.

Trial by jury for heinous crimes is to be put into practice after 2003 in all eighty-nine regions of the Russian Federation, which will bolster the development of an adversarial system of justice. Many judges and lawyers in the nine pilot regions that have held jury trials since 1993 have had positive things to say about the system and its impact on fostering respect for the law in Russia. Limitations on the implementation of these reforms appear to be primarily financial and not attitudinal; many regional courts support the move toward an independent judiciary.

Glimmers of Hope

Although it will take much more time to develop, let alone sustain, legal consciousness in Russia, much has been accomplished in the past ten years. Now that the legal framework is in place, international support for Russia's judicial reforms is strong, and Russia's own national interests will be served as its new legal culture takes root. Foreign investment in Russia will improve with enhanced respect for and reliance on the law. As uncertainty about living and working in Russia and paying hefty bribes for services subsides, the economy will benefit and new jobs will be created. Perhaps most important, a new generation of Russian legal scholars and law enforcement officials is emerging and being trained in the 1993 Constitution and in new criminal, civil, and procedural codes that differ considerably from the codes and *modus operandi* of the Soviet era.

Russian colleagues in Siberia and the Far East have commented about the slow

but steady movement in the courts to hear cases that would not have been heard ten years ago. For example, two military conscripts who are members of Jehovah's Witnesses refused on religious grounds to take up arms in combat training and requested alternative forms of service. Their case is pending and is noteworthy because, according to one colleague, "ten years ago these conscripts would have been arrested and imprisoned."

In another instance, a Russian ensign who served in combat in Chechnya was accused of stealing knives, munitions, and clothing. When he returned home, his former commander decided to deduct the costs of those items from his salary. The ensign complained to the military court that the commander had no evidence of his having stolen the items. The local court heard the case and the ensign won. "Ten years ago," a colleague said, "ensigns could not lodge complaints because such matters were handled exclusively by high-ranking military officers."

Finally, one man's dog was attacked and killed on the street by another dog. The owner of the dog that was killed went to court to ask for compensation. The case is pending and is unique because "such cases simply were not considered a few years ago."

Changing the legal culture in Russia requires time, commitment, and public and political will. Moreover, it means undoing not only decades but centuries of disrespect and apathy toward the law. The path from *partiinost* (party-mindedness) to *zakonnost* (legality) has been fraught with difficulties, but it is my conviction that the "party is over" and the Russian people are now embarking on the most important journey in their quest for democracy: the creation of *zakonnost* and *pravosoznanie*.

NOTES

I wish to thank my Russian colleagues, in Irkutsk and Khabarovsk, for conducting polls and sharing results and personal views of legal consciousness in Russia. Some excellent sources were used in the preparation of this essay: Scott Boylan and Catherine Newcombe, *Short History of the Russian Procuracy*, published in December 2001 by the Criminal Division of the U.S. Department of Justice; and Irina Dline and Olga Schwartz, "The Jury is Still Out on the Future of Jury Trials in Russia," *East European Constitutional Review* 11 (winter-spring 2002). Fascinating first-hand observations of court proceedings in Russia in recent years are contained in Scott Boylan's "Coffee from a Samovar: The Role of the Victim in the Criminal Procedure of Russia," *U.C. Davis Journal of International Law and Policy* 4, no. 1 (winter 1998).

1. Andrej Vishinsky, *Crime Recedes in the USSR* (Moscow: Foreign Languages Publishing House, 1939), 19.