Meeting Summary: Russia and Eurasia Programme

Russian Constitutional Reform: Myth and Reality

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Although the current Russian constitution was adapted under extraordinary circumstances in 1993, namely when the turf battles between President Yeltsin and the parliament escalated, it seems remarkably stable: The only official change was undertaken in 2008 when the presidential term was extended to six years and the parliamentary term reduced to four. However, by distinguishing between constitutional text and practice, it becomes clear that the idea of a strong constitution is an illusion: the constitutional reality has changed tremendously in the last 20 years.

Several counter-constitutional reforms have taken place in the last ten years. The principle of federalism, anchored in the constitution, has been undermined by the reconstruction of the electoral system and the appointment (instead of election) of governors. Moscow controls 75% of the regions’ budgets. Also, the judiciary has become increasingly dependent on the executive. Courts reform placed the chairman of the courts under the control of the presidential administration. The relationship between state and church has become interdependent and freedom of press is not guaranteed as the government controls and essentially censors the mass media.

Due to these developments, the founding fathers of the constitution are now its strongest critics. The trend of counter-constitutional reform continued until the end of 2011 when protesters demanded reform. However, the government tries to satisfy demands with window-dressing. The system of elected governors will be reintroduced, but the Kremlin has consolidated its power in the regions to such an extent that elected governors will not endanger its power position.

The actual problem with the constitution is more far-reaching. If such serious deviations could have taken place, the constitution itself has inherent shortcomings. It has a declaratory rather than legally binding character and does not define constitutional principles precisely enough. It leaves too much room for interpretation and allows only limited competences for the constitutional court.

On a more optimistic note, it has to be mentioned that the current constitution represents a milestone in the history of Russian constitutionalism. But compared with Western constitutional reality, it still has a long way to go.

**Questions and Discussion**

The constitution was adopted in a major crisis in December 1993 which was perhaps the wrong historical moment for a new constitution. At this time, there was no national consensus behind the constitution and the events of 1993
significantly damaged its credibility. But the adoption of a bad constitution is better than not having a constitution at all and with time, the constitution and the principle of constitutionalism has become accepted among society. The important step now is to move from a formal acceptance of the constitution to the actual realisation of what it contains. Possibly, this will be a revolutionary rather than evolutionary process.

The constitutional authorities could not intervene in the process of counter-constitutional reforms as it happened outside their sphere of influence. The constitutional authorities are only allowed to investigate explicit anti-constitutional laws but all major counter-constitutional reforms are enforced by administrative regulations rather than by law. Furthermore, Russian law offers so much room for interpretation that the opposite of the law’s intention could actually be enforced. Hence, only 10% of the cases can be taken into consideration by the constitutional court. It is isolated from the major debates, which further undermines its authority.

On the topic of state-church relations, the speaker argued that an important shift has taken place. During Soviet times, the church was part of the ideological system and has been always manageable and instrumental. Nowadays, the Orthodox Church has a strong influence on the government which becomes dependent on the church as a supplier of ideological promises which the government cannot make anymore. The current patriarch is the strongest leader in Russia nowadays and at the same time the most dangerous political player. In its struggle for influence, the Orthodox Church mobilises orthodox fundamentalists instead of heading towards reform.

A participant asked whether Russia’s claim that its constitution does not allow extradition is actually true with regard to reported extraditions to Central Asia. The speaker replied that a provision against extradition exists, but is applied purely instrumentally in cases where it appears useful to decline extradition such as when the British government requested the extradition of a suspect in the poisoning of Alexander Litvinenko.

Asked whether Ukraine is moving closer to Russia’s system of governance, the speaker said that some years ago, it seemed unrealistic that Ukraine could monopolise power in the same way it has been done in Russia. However, some bold steps towards this direction have been made recently and President Yanukovych’s power is limited only by the power of the oligarchs.