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Past imperfect

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Twenty years after the fall of the Soviet empire, the Russian Federation is still dealing with its legacy in terms of rule of law.
By Rupert D'Cruz and Pavel Klimov



Fresh from the university bench, Pavel Klimov felt he could make a difference to a new-look Russia. Emerging from the debris of the old Soviet empire, he was part of a generation of young professionals who had finished university with the promise of a brighter future - following the end of the Communist era.

Now general counsel (Emea) at Unisys and treasurer of the British-Russia Law Association (BRLA), Klimov left the Moscow State Legal Academy in the early 1990s with change on his mind. However, he was soon brought back down to earth with an experience that goes to the heart of the rule of law in Russia.

"I didn't have to wait too long for my first reality check," recalls Klimov, describing the moment when the real Russia caught up with him. "I was travelling from the Siberian town of Kemerovo, where I was on business. Next to me on the plane was a businessman from Germany, who was heading back home to Frankfurt, having closed a big deal with a local bank.

"The flight was a direct five and a half hours to Moscow, but after 30 minutes we were descending. The plane didn't have enough fuel and had to land in a nearby city of Novosibirsk. In the hours between refuelling and reboarding I noticed I'd lost my travelling companion. When I enquired as to his whereabouts I was told that his documents were 'not in order' and that he has been taken to a local police station. My newly infused lawyer's instincts made me go search for and rescue my 'client'."

Klimov found his man in an airport police station and was told by the sergeant that the German had "violated the state border of the Russian Federation". After a long discussion the police officer finally explained that the man's Russian visa was only valid to visit Moscow, St Petersburg and Kemerovo, but he was in Novosibirsk. The officer wanted to fine the man the equivalent of \$10 (£5.99 at today's rates), even though he had been forced to land.

"It was ludicrous and you didn't have to be a lawyer to see that," says Klimov, who referred the officer to the recently adopted Russian Constitution that should have ensured the man's freedom. "The policeman said: 'I don't give a damn about your Constitution,' waving an earlier constitution from the Soviet era. 'I can't spread your Constitution on a piece of bread, but my "constitution" puts bread and butter on my family table every

night'."

A peculiarly Russian problem

Klimov says that, sad though it was, the officer was right, as were many traffic officers, for whom the 'constitution' was the Highway Code; firefighters, for whom the 'constitution' was the Fire Protection Code; tax inspectors, for whom the 'constitution' was the Tax Code, and so on. The altercation prompted Klimov into thinking about the rule of law and what it meant in modern Russia.

"How do you make the authorities - police sergeants, firemen and tax inspectors - live by one constitution, even if they can't 'spread' it on their daily bread? And if they continue to live by their 'private constitutions', what's going to happen to the rest of us with our rights, which are often ignored, in one constitution and our obligations in many others?" he asks. "How do we solve this peculiar Russian conundrum of, on the one hand, almost universal reverence and obedience to legitimate power and authority and, on the other, a no less prevalent impertinent attitude to law, which makes the law seem subservient and secondary to power, and which in turn creates an expectation that power isn't there to enforce the law, but used to enforce its authority?"

Need for ongoing legal reform

Almost two decades on, these issues are far from being a thing of the past in Russia. Many positive changes have, indeed, taken place, in particular over the past decade, including judicial and tax reforms and the introduction of new progressive commercial, labour and anti-monopoly laws, to name but a few.

There are more controls and checks on executive power and these are becoming more effective. The level of awareness and reliance on the law among the general population has grown dramatically. However, the task is far from completed and legal reform is one of the top priorities for President Medvedev's government.

The ministry of justice reforms agenda

Deputy Minister of Justice of the Russian Federation, Yuri Liubimov, was guest speaker at a seminar held by the BRLA and the Bar Council in London in September. In his speech to an audience of British and Russian legal and academic experts, Liubimov spoke about the challenges facing a country that has more than 300,000 national and regional laws that have been introduced in an ever-changing political and economic context across a vast geographical expanse.

Liubimov, who was appointed to post in August this year, stressed the Ministry of Justice's intention to place legal reform at the top of its agenda and identified the following five aims:

1. Developing a system of law that is simple, stable and - predictable

Liubimov noted that some laws were contradictory, unpredictable and therefore confusing, and that the volume of legislation was excessive. These features posed an unwelcome challenge, and were of concern, to foreign investors as well as to Russian citizens and businesses, all of whom presently have to negotiate their way around several hundred (in some cases thousands) of laws and by-laws. The legal framework needed to be reduced and simplified so that it could be easily understood by the general public and business alike. In recognition of this, it was proposed that the existing system of by-laws across - different regions would be replaced with one based firmly in national law, in relation to which there should be a clear criteria for decision-making by the judiciary. Work has already begun to address this issue, but Liubimov acknowledged that much more still needed to be done.

2. Developing a system of law that is known and accessible to the population as a whole

The Deputy Minister repeated an observation made by President Medvedev shortly before assuming office that legal nihilism had a long history in Russia. The Ministry of Justice proposed to change that custom through an education programme that made clear what the laws were and their benefits. A public information campaign had already begun that would offer accessible information on free legal aid and the structures of the legal system and allow transparency of information.

3. The elimination of corruption

This was a top priority for the Ministry of Justice and President Medvedev. The review of normative acts that had already begun would focus, among other things, on this issue. There was a need to fight a system of "exceptions to the rule" and to simplify the complex processes that facilitated this trend. To this end, some state functions were being transferred to jointly run state and private bodies, or exclusively to private bodies.

4. Enforcing court decisions

Until recently, between 20 and 30 per cent of court decisions were not being enforced. However, a revised bailiff system now - features new rules that are already making a difference. As one example, those owing money to the courts are now not allowed to leave the country until the relevant debt has been repaid.

5. Reforming the regulation of the Russian legal profession

In possibly his most interesting remarks (as far as lawyers are concerned, at least) Liubimov also expressed a desire to expand significantly the regulated sector of the legal profession in Russia. At present only advocates, of which there are - approximately 70,000, a small proportion of the legal profession as a whole, notaries and prosecutors are regulated. The vast majority of commercial lawyers are not regulated and there is a strong wish for that to change.

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