

National Security, Civil Society, and Human Rights in Russia: Conceptual and Legal Framework

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The development of civil society and respect for human rights in Russia is closely connected with the character of Russia's security system. Official state policy impedes the development of civil society and human rights, perceiving them as threats to state security. Or it may accept and even stimulate development of civil society and human rights seeing them not as competitors, but as partners in maintaining national security, which is understood as the security of the individual, state, and society. For a long time, dominant approaches toward Russia's security impeded the development of civil society. The very existence of social structures and organizations that were not under the control of the totalitarian state and the ruling party contradicted their interests and was perceived as a potential threat to security. Indeed, it was a threat in the final analysis.

The state had a monopoly in the sphere of security, not only politically, but also theoretically. The concept of security was narrow; the main object was the security of the state, which in practice was the security of the ruling regime.

Not surprisingly, during perestroika and the first years of democratic reforms following the breakup of the USSR, Russian public opinion viewed state security highly negatively. It was perceived as something that should be done away with if society was to become democratic. That conviction emerged vividly during the years of perestroika, when the organs of state security came under severe criticism and were even discredited.

Against this background of criticism of Soviet security policy, however, a new process began—a rethinking of the very nature of security and a search for new approaches and strategies concerning it. Under conditions of democratization and political pluralism, this rethinking was occurring not only in the state agencies

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responsible for security but also outside them. It was reflected in the creation of a number of independent research centers specializing in security issues. Formed and staffed by experts in military issues, international affairs, and criminology, employees of law enforcement agencies, and former military officers, they began researching security issues and elaborating security strategies independently of the state. Their activities led to the breakup in the realm of the state monopoly on research and analysis in the realm of security, which resulted in a diversity of views and approaches to the problem.

Those organizations' activities, as well as individual research efforts, led to a public debate on Russian security policy in which political parties and movements played a considerable role. In the course of the debate, at least three different approaches emerged: the liberal-romantic, the statist-patriotic, and the realistic-pragmatic. They differ in how they conceive of Russia's national interests and how they assess threats to Russia's security.

The representatives of the three approaches also have different views on the role of state and society in the country's national security, as well as on the relationship between national security and human rights. The ultraliberals are inclined to give priority to the security of individuals and society. For the statist-patriots, the security of the state is paramount. Pragmatists try to reach and maintain a balance among the interests of the individual, state, and society and to ensure that there is equilibrium between human rights and national security.

Official Security Concept on Democratization and Civil Society

The elaboration of an official state concept of national security occurred at the same time as the public debate on it. Different stages were influenced by representatives of the various schools of security thought. As a result, the first official documents on Russia's post-cold war security were published in the mid-1990s. After a military doctrine that focused on military aspects of national security was approved by President Yeltsin in November 1993, the official approach to national security was presented in three documents: the July 1996 Presidential Message to the Federal Assembly of the Russian Federation entitled "On National Security"; the National Security Concept of the Russian Federation, which was approved by President Yeltsin in December 1997; and the new version of the National Security Concept signed by Acting President Putin in January 2000. These documents marked an important stage in the development of the theory and policy of national security in Russia. They express the official security strategy; make it possible to assess it from the standpoint of conditions for the development of democracy, civil society and human rights; and treat the individual, society, and state as equal parts of a national security triad.

In the Presidential Message, national security policy is treated as an active and constructive process that is "not restricted or reduced to defense." Rather, national security is linked to sustainable democratic development. It stresses that "ensuring security must be aimed not only at preventing threats, but also at implementing a set of measures directed at developing and strengthening the rights and liberties of the individual and of society's material and spiritual values."¹

The appendix to the draft of the Presidential Message clarified and interpreted the document's main ideas. It pointed out that "the main condition for development is the creation in Russia of an open society; this requires a combination of civil society, the rule of law, and a market economy."²

The interests of the individual and society are also considered in the security policy's final goal: "The main objective of ensuring the Russian Federation is the creation and maintenance of such an economic, political and military-strategic state in the country as would create favorable conditions for development of the individual, state, and society."³ In addition, "Ensuring the security and development of citizens and society" was declared "the main task of the national security policy for 1996–2000," along with the strengthening of the Russian state, its current geopolitical boundaries and territories, and guaranteeing Russia a worthy role and place in world politics.⁴

As for the interrelationships between the individual, state, and society, the Presidential Message stated that "maintaining the country's national security is impossible without the active participation of public organizations and citizens in this process, which requires creating special mechanisms of 'democratic participation'" (8).

The official National Security Concept of the Russian Federation also welcomes the participation of the political parties in the formulation of national security strategy, declaring that "the wide participation of political parties and social organizations in the elaboration of a strategy for ensuring national security" is one of the factors that are conducive to "maintaining the national security of the Russian Federation and its progressive development in the 21st century."⁵

The concept demands the collaboration of the state, society, and citizens in the sphere of national security. It points out that "the maintenance of the national security of the Russian Federation by means of the joint activities of the state and its social institutions as well as of citizens taking part in revealing and preventing different threats to the security of the individual, state, and society and countering them" is "an essential and indispensable condition of the efficient defense of Russia's national interests"(10).

Among the areas where the security interests of the individual, state, and society obviously coincide, the concept mentions fighting crime and maintaining social order and environmental security, and openly calls for society's support of the former. According to the concept, under certain conditions the development of civil society may create threats to state security. This may occur when the activities of social organizations acquire the qualities of ethno-egoism, ethnocentrism, and chauvinism, which lead to the aggravation of intranational relations, the growth of separatism, and the breakup of the singular legislative space.

The elaboration of the conceptual basis of the Russian Federation's national security took place in an atmosphere of democratic euphoria that was present from the end of the 1980s to the beginning of the 1990s, when the previous security policies were reassessed and violations of liberties and rights under the Soviet regime were condemned. As a result, society's attention to human rights issues grew dramatically; all of which affected the security thinking of the new Russian elites as well as the process of elaborating the new security doctrine.

National Security and Human Rights

Human rights has become one of the main issues of the new security concept as was revealed in the conceptual understanding of national security, as well as in new legislation dealing with relationships in the sphere of security.

In the course of academic and political debate on the security issues of the Russian Federation, a new, broader, and more complex understanding of security was adopted. The National Security Concept states that “the Russian Federation’s system of national interests is determined by the totality of the basic interests of the individual, society, and state.” At the same time, the concept departs from the idea that “in the current stage the interests of the individual consist of the actual guarantees of constitutional rights and liberties, personal security, and spiritual and intellectual development.” Likewise, the interests of society include strengthening democracy. Thus, human rights and liberties are treated as two of the most important objects of national security policy. As the 12 June 1996 Presidential Message to the Federal Assembly put it,

Assuring the national security of the Russian Federation—this is the activity of the state, the whole society, and each citizen in particular, and is aimed at defending national interests and national values and their augmentation. It, however, is not restricted or reduced to their defense. Moreover, the idea of national security is closely linked to, and is inseparable from, the concept of sustainable democratic development, and is, at the same time, the condition for its fulfillment. . . . In this connection, guaranteeing security should be aimed not only at preventing threats, but also at implementing a set of measures designed to develop and strengthen the rights and liberties of the individual.

The issue of guaranteeing human rights and civil liberties in implementing national security policy is tackled by the National Security Concept in a narrow and more specific sense. It stated that in the course of ensuring national security, citizens’ rights and liberties should be unconditionally guaranteed. This principle of obedience to the rule of law is considered to be the primary means by which the respect and observation of human rights can be ensured.

The document underlines that “the national security system of the Russian Federation is being created and is developing in accordance with the Constitution of the Russian Federation, and federal laws,” and that

the prerogatives of the composition and structure of the organs and forces that maintain national security are determined by the laws of the Russian Federation. The creation of organs and forces for maintenance of the national security of the Russian Federation that are not established by any laws is prohibited along with the use of illegal means of maintaining national security.

In addition, “the observance of the Constitution of the Russian Federation and legislation of the Russian Federation while implementing activities directed at maintaining national security” is, first and foremost, in the series of “basic principles of maintaining the security of the Russian Federation.” Among those principles is also the principle of “observing norms of international law and Russian law when measures of a coercive nature (including the use of military force) are taken.”

Human rights is mentioned in the parts of the concept concerned with fight-

ing crime, with information security, and so on. As for the latter, the document states that

Russia's national interests in the information sphere dictate the necessity of concentrating the efforts of society and of the state on resolving such tasks as observation of the citizens' constitutional rights and liberties in the area of receiving and exchanging information, . . . [and] guaranteeing the citizens' rights to obtain reliable information.

"The alterations and additions" introduced into the National Security Concept by the January 2000 presidential edict have changed neither the character of the document nor major concrete statements referring to the relationships

between national security, democracy, and human rights. It is confirmed that Russia's national interests consist of "preserving the stability of the constitutional order . . . and of completing the process of establishing a democratic society. . . ." "The observation of human rights and liberties" is seen as one of the components of Russia's national interests

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in the international sphere.⁶

However, while affirming the policy of building a democratic society, the concept points out that "the deepening of the crisis in internal political, social and spiritual spheres may lead to the loss of democratic achievements" (6). And while touching on the international activities aimed at defending human rights, the concept declares that "double standards are unacceptable" in this area.

The new version of the concept places emphasis on the defense of the individual, state, and society from terrorism as well as their protection "from dangers emerging during combat activities or as a consequence of such activities" as important components of Russia's national interests" (5).

Finally, the concept states that the system of maintaining the national security of the Russian Federation is being created and is developing in accordance with the Constitution of the Russian Federation and federal laws (12).

The Legal Background

These ideas are specified in laws on national security. In 1990, several laws regulating relations in the area of security were approved. Parliament's position is formulated quite clearly in the documents. The Law of the Russian Federation "On Security" defines security as "a situation where the vital interests of individual, state, and society are protected from internal and external threats." It points out that the basic objects of security include: (a) the individual and his rights and liberties; (b) society and its material and spiritual values; and (c) the state and its constitutional order, sovereignty and territorial integrity.⁷

It also proclaims as the basic principles of security maintenance the following: "legality; the necessity of maintaining a balance among the vital interests of the individual, state, and society; the mutual responsibility of the individual, state, and society in assuring security; integration with the international security forces." Article 7 of the law "On Security" states that, "while assuring security it is impermissible to restrict the rights and liberties of citizens, except for those cases that are directly provided for by law." This article outlines the responsibility of officials who exceed their prerogatives in the course of activities aimed at security maintenance.⁸

The law "On Federal Organs for State Security" states that "legality and the preservation of the human rights and civil liberties and humanism" are among the major principles of the organization and activities of the institutions of state security. Article 5 of this law is dedicated to the observation of human rights and civil liberties. It declares that the state guarantees that the federal organs of state security observe human rights and liberties in their activities. It prohibits the "restriction of human and civil rights and liberties, with the exception of cases established by the Laws of Russian Federation."⁹

The rights of citizens to report violations of their rights to the state security, attorney, or court and to demand compensation for damages caused by illegal activities of the federal organs of state security and its officials while on duty, "to get clarifications, as well as information, from the federal organs of state security in case of restrictions of their rights and liberties in accordance with the laws of the Russian Federation" are also established in this law. Also, the law "On Security" demands that "in case of violation of human rights and civic liberties," the chief of that organ, prosecutor, or judge should take "measures to reestablish these rights and liberties, to compensate the damage and to bring to justice those responsible for such violations."¹⁰ The law also stipulates that officials of government organs of state security face administrative, criminal, and other penalties for abusing their power or otherwise exceeding their official prerogatives.¹¹ These principal statements, with some editorial corrections, are included in the newly passed law "On the Organs of the Federal Security Service in the Russian Federation."¹²

The legislation contains more specific ideas that demand respect for human rights and prohibitions that are connected with the country's tragic experience in this regard. For instance, while declaring and legalizing the activities of the secret agents of the special services (whose rights, by the way, are also guaranteed by law), the law puts forward some of their specific responsibilities, including those dealing with respect for human rights. The law prohibits secret agents from providing subjective, incomplete, false, or slanderous information.¹³

Theory and Practice

From the preceding sections, it is obvious that the current conceptual and normative bases of state national security have a liberal-democratic character and are aimed at guaranteeing respect for human rights and civil liberties. This separates the human rights situation in contemporary Russia from that in the Soviet Union. Still, the practice in this area is far from being ideal.

The Commission on Human Rights the Russian Federation pointed out that there are clear “tendencies in the state development of Russia which do not coincide with the vectors of democracy and a social state based on the rule of law in the field of human rights.”¹⁴ It also declared that “phenomena that directly threaten human rights and liberties are growing in society.” Among such developments, the commission underscored

the increasing militarization of society, which is reflected in the growth of official and unofficial military and paramilitary formations, force structures with unclear functions, destinations, and subordinations. The secret services’ sphere of activities and prerogatives is widening, and they themselves are returning to the Soviet model, with the lack of civilian oversight and closed budgets. Force is used to resolve internal problems. . . . Under the pretext of fighting crime, there is a trend towards the broadening of force structures and of law enforcement agencies’ prerogatives at the expense of constitutional rights and guarantees of citizens’ rights. (80–81)

How are human rights being violated, then, regardless of their official enshrinement in the laws? There are different factors: the nature and character of the politics of the ruling regime, the secret services officers’ corporative-bureaucratic interests and professional ethics, and society’s control over state security policy and the activities of the secret services. The secret services’ principles of “conspiracy and of the combination of overt and covert methods and means” approved by the law create objective preconditions for human rights violations.¹⁵ This can be avoided by creating in the secret services a professional ethic of self-restraint and respect for law and human rights, and by instituting civilian control over them.

During the first years after the breakup of the USSR, a great deal of attention was paid to the issue of control over the security services. Society and the democratic forces tried to establish control over the system. People from outside were put into leadership positions. The archives were opened, and former officers of those agencies publicly expressed their views on various issues. Society scrutinized the security services, as was fully justified by the country’s previous experience, and the problem of control was reflected in the laws and concepts of security.

However, the situation had changed somewhat by the end of the 1990s. Civilian control over the security services is being discussed less and less, and the tone of discussion is not as sharp. To some degree, this is because of the changes in the political system of Russia after October 1993 that were laid out in the constitution that year: the strengthening of executive power and weakening of the legislature, which led to weak parliamentary control over the security services. It is characteristic that the 1995 law “On the Federal Security Service Organs of the Russian Federation,” omits the idea that “the FSB reports and is under the control of the highest organs of state power and administration of the Russian Federation,” as it was formulated in the 1992 law “On the Federal Organs of State Security.”¹⁶

The 1992 Law “On the Federal Organs of State Security,” part 5, “On the Control and Overview of the Activities of the Federal Organs of State Security” put parliamentary control first and described its forms in detail, the same part 5 of

the 1995 law “On the Organs of the Federal Security Service of the Russian Federation” was condensed three times, in comparison with its predecessor, and placed presidential control first.¹⁷ Not only that, but the 1998 Law “On Fighting Terrorism,” which contains the possibility of broadly restricting human rights and liberties “in the zone of counterterrorist operations,” does not even mention parliamentary control. Article 26 of that law states that “control over fighting terrorism belongs to the President of the Russian Federation and the Government of the Russian Federation.”¹⁸

However, the developments of recent years show that, although there are no absolute guarantees against human rights violations in the course of ensuring Russia’s national security, society and its citizens can actively influence the situation in this regard and demand that laws on human rights are respected.

Therefore, the problem of national security and human rights is not one of choice of priorities. It is rather a problem of balance, how to guarantee national security without violating human rights; how to realize fully human rights, while simultaneously ensuring national security. The question is also how to harmonize democratic demands and principles with the professional imperatives of the secret services (which is a problem not only for Russia).

In general, over the last few years an understanding of the necessity of a balanced approach to the relationship between the security of the individual, state, and society has emerged, both among Russian political elites and in society. This approach can be found in Russian conceptual documents and legislation on national security. However, we should not perceive the real situation in this area through an idealistic lens, and we must remember that programmatic declarations are usually divorced from reality. In practice, where security is concerned there is a considerable atavism in the relations among the individual, state, and society in Russia. In this area as in general, “Russia’s longtime ‘statist’ traditions continue to prevail.”¹⁹

It is necessary to overcome the notion, deeply rooted in public conscience, that there is a contradiction between the security of the individual and that of the state. It is necessary to realize instead the idea of the state’s responsibility toward, and the practical care of, the security of the society and citizens, on the one hand, and the interests of the citizens and institutions of civil society in maintaining state security, on the other.

The current official National Security Concept and legislation provide opportunities for this. But of course, good intentions declared in programs are not sufficient. The realization of these possibilities demand the conscious activities of citizens and civil society. Systematic efforts on the part of the society and secret services officers are needed, so that a balance and between security interests and human rights can become reality in Russia.

NOTES

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4. Poslanie Prezidenta Rossiiskoi Federatsii, "O natsional'noi bezopasnosti," 7.
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6. Kontsepsiia natsional'noi bezopasnosti Rossiiskoi Federatsii, *Diplomaticheskii vestnik* 2 (February 2000): 4.
7. Zakon Rossiiskoi Federatsii, "O Bezopasnosti," *Rossiiskya Gazeta*, 6 May 1992, 5.
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9. Zakon Rossiiskoi Federatsii, "O Federal'nikh organakh gosudarstvennoi bezopasnosti," *Vedomosti S'ezda narodnikh deputatov RF i Verkhovnogo Soveta RF* 32 (1992): 2410.
10. Zakon Rossiiskoi Federatsii, "O Bezopasnosti," 5.
11. Zakon Rossiiskoi Federatsii, "O Federal'nikh organakh gosudarstvennoi bezopasnosti," 2411.
12. See Federal'nii Zakon, "Ob organakh federal'noi sluzhby bezopasnosti v Rossiiskoi Federatsii," *Sobranie zakonodatel'stva Rossiiskoi Federatsii* 15 (1995): 2326–27.
13. Ibid., 2338.
14. O sobludenii prav cheloveka i grazhdanina v Rossiiskoi Federatsii v 1994-1995 godakh, Doklad Komissii po pravam cheloveka pri Presidente Rossiiskoi Federatsii (Moscow: Iuridicheskaya literatura, 1996), 80.
15. Federal'nii zakon, "Ob organakh federal'noi sluzhbi bezopasnosti v Rossiiskoi Federatsii," 2326.
16. Ibid.; Zakon Rossiiskoi Federatsii, 2410.
17. Federal'nii zakon, "Ob organakh federal'noi sluzhby bezopasnosti v Rossiiskoi Federatsii," 2340; Zakon Rossiiskoi Federatsii, "O federal'nikh organakh gosudarstvennoi bezopasnosti," 2419–20.
18. Zakon Rossiiskoi Federatsii, "O bor'be s terrorizmom," *Rossiiskaia gazeta*, 4 August 1998, 4.
19. Mirovaia ekonomika i mezhdunarodnie otnoshenia 5 (1997): 91.