



“The Ombudsman is Not Superman”:

**Examining the Role of the Human Rights Ombudsman in Protecting Freedom of Speech
in Russia and Turkey**

by Mariya Yefremova

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Central European University
1051 Budapest, Nador utca 9.
Hungary

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Executive Summary

On August 23, 2013 Russian Ombudsman for Human Rights Vladimir Lukin stated that “the Ombudsman is Not Superman”, ascribing what he felt was and was not his given role¹. The question that I address in my thesis is what the role of the Ombudsman can be in the countries of Russia and Turkey, specifically in regards to protecting freedom of speech. The reason I chose these two countries for a comparison of such a role is due to the fact that Turkey and Russia are among the top ten countries with the most cases before the European Court of Human Rights regarding freedom of speech issues and face much of the same political problems². Despite the fact that Russia has been a Council of Europe member since 1996 and Turkey has been a Council of Europe member since 1949, neither country has yet to adopt the protection of rights and liberties that are currently prescribed³. By examining the reasoning behind the establishment of the Ombudsman institution, the powers various countries have given to the role, the history of the Ombudsman in Russia, and the opportunities for the Ombudsman in Turkey, I examine what could be done to combat a climate of impunity, political unaccountability, and apathy in Russia and Turkey. I particularly examine ways in which freedom of speech can be better protected by the Ombudsman, what the need for the Ombudsman is, what human rights protections and

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Sergei Rogoshin, 'The Ombudsman is not Superman', *Московский Комсомолец* (23 August 2012) <<http://www.mk.ru/social/interview/2012/08/27/741093-ombudsmen-eto-ne-supermen.html>> accessed 29 November 2013

2 European Court of Human Rights, Official website <hudoc.echr.coe.int/> accessed 29 November 2013

3 J.P. Massias. 'Russia and the Council of Europe: Ten Years Wasted?', Research Programme Russia, Institut Français des Relations Internationales, January 2007, 1-18

remedies he could provide, and how his role could be expanded in the future. I have conducted my research by examining the current political climate regarding the freedom of speech in Russia and Turkey, specifically issues like xenophobia, terrorism, and corruption. Looking at the similarities between Turkey and Russia regarding current freedom of speech issues, I have recommended that Turkey carve out the same role for its Ombudsman as Russia, despite the fact that Turkey does not have a history of an Ombudsman yet. My research was grounded in literature on the role of Ombudsmen in various countries, books discussing the benefits of freedom of speech, news as well as opinion articles on freedom of speech problems in Russia and in Turkey, NGO websites, independent reports, international conventions, case law, documentary films, and interviews conducted on a trip made to Russia.

Introduction

Freedom of Speech

Freedom of speech is protected as one of the core human rights. One of the main political and civil rights, freedom of speech is one of the easiest rights to protect in theory; states do not have to ensure it, they have no 'positive duties' to provide it, rather, they hold 'negative duties' not to infringe upon it. Constitutions, bills of rights, international conventions, and documents like the Universal Declaration of Human Rights and the European Convention on Human Rights and Fundamental Freedoms all protect freedom of speech against state control as well as repression.

In his book *Freedom of Speech*, researcher, lawyer, and Professor Eric Barendt provides a comprehensive examination of freedom of speech in society and its historical as well as philosophical benefits and necessities. Barendt's first argument is based upon “the importance of open discussion to the discovery of truth”, harkening back to the philosophy of John Stuart Mill⁴. This argument bases itself on the premise that even if speech is 'objectively' false, it is wrong to suppress it because those who hold 'true' beliefs “will no longer be challenged and forced to defend their views”⁵. In other words, we can never be sure of our truths until we are called upon to defend them. This in turn is based upon the idea that we can determine truth by seeing the flaws and errors in our various positions and of constantly refining our thinking. The suppression of speech is therefore wrong as it “creates a suspicion of authority and destroys tolerance”⁶. Thus, it is better to allow 'false' speech because to do otherwise might lead people “to believe the truth

4

Eric Barendt, *Freedom of Speech* (Second Edition, Oxford 2005) 8

5 Ibid

6 Eric Barendt, *Freedom of Speech* (Second Edition, Oxford 2005) 9

of the suppressed speech, which they would otherwise ignore or reject”⁷. Suppression also proves dangerous as it creates martyrs out of dissenters and the 'false' speech they propagate may thrive underground and “surface later in a more dangerous form”⁸. By allowing speech freely, we are at least able to counter it. This argument also relates to good governance. For example, a government may implement policies that it considers for our benefit. However, as we are unable to challenge the benevolence of their policies, they may not prove to be the policies that would benefit us in the end.

Barendt also provides the argument that we need free speech to foster our personalities and our growth. Suppression of speech is wrong for this reason because it robs us of the tools we need to make up our minds and build our character. Barendt also presents Joseph Raz's argument that freedom of speech validates lifestyle choices in a democracy, religious or sexual for example. This way, freedom of expression provides acceptance and tolerance in a society. Suppression of speech in such a society would therefore serve as an indictment of the lifestyle choices that individuals make

Barendt lays out Ronald Dworkin's arguments in favor of free speech as the key to a 'constitutional conception of democracy', where everyone has the right to participate in public discourse and debate, including members of both minority groups and minority parties. Defamation against public officials, hate speech, and “extremist speech challenging the legitimacy of existing institutions” should not be suppressed because they would inhibit the public discourse necessary for a functioning democracy⁹. The other argument put forth in favor of

7 Ibid

8 Ibid

9 Eric Barendt, *Freedom of Speech* (Second Edition, Oxford 2005) 20

free speech concern the evils of regulation and the suspicion of government to suppress speech for the negative consequences it may have on a society rather than the negative consequences it will have for that particular government. This argument bases its premise on the idea that governments “are naturally inclined to suppress speech they dislike”¹⁰.

Barendt stresses that “an assumption underlying arguments for free speech is that human beings are in general able to consider rationally the ideas put to them and determine appropriately their consequent behavior”¹¹. Barendt also lays out all the various aspects to the freedom to speech. Speech may refer to either the speaker, the audience, or the general public. In discussing the interests of the speaker or the audience, we may discuss either the actual interest in communication of a specific idea or information, the general interest a person or a group has in the communication of that type of idea or that type of information, and the interest “ascribed by the law or the courts to that person”¹². Article 10 of the ECHR, for example, protects the interests of both speaker and recipient. Another example can be the balance of a newspaper readership (the audience) that may have an interest in reading issues relating to foreign affairs and the newspaper's interest (as the speaker) in disseminating information about football to their readers. In such contexts, the protection of freedom of speech falls to the editor or owner of that newspaper. However, Barendt stresses the public interest when applying a free speech rule.

Barendt argues that since there is not much very much benefit to freedom of speech when those who speak are saying the very same thing, diverse viewpoints and voices are important factors in free speech. Initiatives to promote pluralism, subsidize writers and artists, and establish

10 Eric Barendt, *Freedom of Speech* (Second Edition, Oxford 2005) 38

11 Eric Barendt, *Freedom of Speech* (Second Edition, Oxford 2005) 33

12 Eric Barendt, *Freedom of Speech* (Second Edition, Oxford 2005) 23

broadcasting are thus all expressions of free speech. As freedom of speech is vital for a thriving democracy, the fact that freedom of speech is so often infringed upon in Russia and Turkey prevents either country from developing a strong civil society, a more accountable government, and an improved economy. Freedom of speech fosters debate, dialogue, and decision-making in a country. All of these are hindered in both Russia and in Turkey. By suppressing speech, Russia and Turkey keep their countries from modernizing politically and economically. Dialogue is closed, opportunities are not explored, and the youth do not grow. The institution of the Human Rights Ombudsman, by virtue of its independence, can address infringements against freedom of speech without getting too mired in the inefficiencies of government. The institution is a way to address those infringements without having to battle the whole of the executive, judicial, and legislative branches.

Chapter 1: Russia

Russian Reform

In an article titled *Go, Russia!* Prime Minister Dmitry Medvedev wrote that modernization is absolutely necessary for the survival of Russia, making the point that governance had to improve, technological innovations created, and corruption and authoritarianism must be eradicated. The term ‘modernization’ became a sort of mantra in Russia afterwards. As writer Lev Gudkov explains, “the ruling party promoted the campaign slogan ‘conservative modernization’, the Russian Orthodox Church opened discussion of modernization and morality’, the police authorities debated modernization of the Ministry of the Interior”¹³. This was in 2009. In 2008, Vladimir Putin stressed modernization as part of the 2020 ‘Government Strategy’. It is now 2013 and nothing has modernized in Russia since then and nothing really meant to modernize, as Medvedev did not have institutional changes in mind when he spoke of modernization and reform. The current political system in Russia “is not simply conservative (resisting change and incapable of innovations). It primarily functions to curb, block and even paralyze other social subsystems, including the economy, science, education, telecommunications, civil society and public life, all for the sake of preserving the current power structure”¹⁴. Throughout Russian history, modernization initiatives have been minimal at best,

13 Lev Gudkov, “The Nature and Function of ‘Putinism’”, in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 61

14 Ibid

and absent or blocked off at worst. Thus, though Medvedev spoke of change, no holistic or systemic approach was discussed to address any of the problems. The vicious cycle in Russia is as follows: “the more the system fears independent political activities from below, the more it centralizes decision-making and blocks transparency; the more narrow the circle of loyal and trusted becomes; the more privileges its members receive; the more corruption grows at the top, the more disillusion spreads at the bottom and popular trust in the authorities wanes...the weaker the authorities become¹⁵. The system as it stands now is far from being reformed.

Why was there such a stress for modernization and reform when Medvedev took over in the first place? The introduction of sovereign democracy in Russia occurred after the 2004 Orange Revolution in Ukraine “as a strategy aimed at legitimizing the Russian authoritarian centralized political system”¹⁶. The Orange Revolution was a threat to the regime because it showed “for the first time that a regime change through mass revolt was possible in an ex-Soviet country”¹⁷. Thus a guise of democracy was brought to the discussion, a guise of modernization and reform without any actual change in the status quo.

Russia Inc: the Vertical Power Structure

As seen in China, a country can modernize economically without any political change accompanying it, like stronger political institutions or the rule of law. Putin’s vertical power structure has thus been presented as a sovereign democracy in Russia and touted as

15 Lena Johnson and Stephen White, *Waiting for Reform Under Putin and Medvedev* (Palgrave Macmillan) 4

16 Lena Johnson and Stephen White, *Waiting for Reform Under Putin and Medvedev* (Palgrave Macmillan) 5

17 Nicolas Hayoz, “Globalization and Discursive Resistance: Authoritarian Power Structures in Russia and the Challenges of Modernity” in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 26

modernization by his regime. Its power structure today is “similar to the Communist Party’s Structure in the former Soviet Union, where the hierarchical power of the party was legitimized by the communist ideology”¹⁸. The current government today runs much more like a company than a government. 'Russia Inc' is “based on a mix of power networks, organizational power and distribution policies, and it tries to integrate them as elements of a discourse or a doctrine”¹⁹. Just as it was once under the Soviet Union, Russia Inc operates on the “construction of centrally controlled bureaucratic hierarchies in all social spheres”²⁰. Putin maintains his power by controlling society “its media, its economy, its civil society and its dynamics by political means, bureaucracy and courts”²¹. The judicial system does nothing to curb the executive as it was set up in 2003 to be quick and easy rather than independent and fair. Therefore, instead of looking to the Constitution, Strasbourg, or the European Convention on Human Rights, judges create their own interpretations or simply follow the government's in upholding the status quo. As prominent lawyer Kirill Koroteev writes, “statistics show that the prosecutor’s office gets the outcome it asks for in 95% of cases of judicial review of individual or regulatory acts of the executive, and

18 Nicolas Hayoz, “Globalization and Discursive Resistance: Authoritarian Power Structures in Russia and the Challenges of Modernity” in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 21

19 Nicolas Hayoz, “Globalization and Discursive Resistance: Authoritarian Power Structures in Russia and the Challenges of Modernity” in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 22

20 Nicolas Hayoz, “Globalization and Discursive Resistance: Authoritarian Power Structures in Russia and the Challenges of Modernity” in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 25

21 Nicolas Hayoz, “Globalization and Discursive Resistance: Authoritarian Power Structures in Russia and the Challenges of Modernity” in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 29

none of these verdicts is ever overturned. Of the 5% of cases that go against the prosecutors, 20% of the verdicts are later overturned”²².

Secrecy Versus Transparency in Russia

Just as Putin took control over the mass media, the judicial system, elections, parliament, and NGOs, “the secret police went from being a tool of power to becoming the actual power defining political tasks and taking decisions”²³. The FSB today is “the body responsible for national strategic planning and domestic and foreign policy”. Unlike military or security agencies in other countries, it is an actual part of the government that “defines and decides political tasks”²⁴. Thus, “the practices and illegal activities of the secret police-provocations, false trials, sensitive and illegal information sources, undercover agents and so forth-take place in a situation in which the same agency is in power, so its methods are extraordinarily well protected from the law”²⁵. The law is therefore seen by the Russian people as illegitimate by protecting the FSB. Power is thus regarded as being both invisible and omnipresent in Russia. Vital political, economic, and government decisions are “made privately and secretly, and are only later officially formulated, passed by the State Duma, and made public through the mass media,

22 Kirill Koroteev, 'Sentence First, Verdict Afterwards' *OpenDemocracy Russia* (1 August 2013) < <http://www.opendemocracy.net/od-russia/kirill-koroteev/sentence-first-verdict-afterwards>>accessed 29 November 2013

23 Lena Johnson and Stephen White, *Waiting for Reform Under Putin and Medvedev* (Palgrave Macmillan) 6

24 Lev Gudkov, “The Nature and Function of 'Putinism'”, in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 75

25 Lev Gudkov, “The Nature and Function of 'Putinism'”, in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 76

politicians, and law enforcement agencies”²⁶. The fact that the government operates on a non-transparent basis makes it impossible to have a public debate and effect policy changes that actually stem from the people. Change requires public participation, an independent mass media, and independent parliament, and a diverse party system. Instead the current system is regurgitated-passed down through the school, the press, and the state media.

The Past, the Present, and the Future in Russia

The Russian public knows what a functioning democracy looks like. They know what checks and balances are. They know what a thriving political opposition sounds like. They know what an organized civil society can be. They know how an independent judiciary functions. They know what an independent and outspoken media reports. They are also all too aware that “their country does not live up to Western standards of democracy”. They know elections are about keeping the status quo. About 90 percent “believe that their public officials are corrupt”. However, they seem both to “know about it and accept it, seeing no alternative and having no resources or channels to influence the situation”²⁷.

This was not always so. In the 80s and 90s Russians saw a possibility of reform and change. *Perestroika* was a time of possibilities. A democratic system of checks and balances and strong institutions could have been set up. As the documentary *My Perestroika* chronicles, Perestroika began with the fight against alcoholism, then became about *glasnost* (openness), and

26 Ibid

27 Nicolas Hayoz, “Globalization and Discursive Resistance: Authoritarian Power Structures in Russia and the Challenges of Modernity” in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 26

then privatization. Borya, a teacher in Russia explains in the documentary “in 1984, we left for the army from one country and returned two years later to a totally different country”. He says of Gorbachev, “I thought they would shoot him. All of a sudden, I realize this new guy is speaking without notes! Speaking like a human being!” This was a change all Russians felt when everything they had grown up around, was suddenly shattering. “As a conformist, I only felt the changes when I was told 'everything isn't what you were taught! Open your eyes! Look around! ' That was the beginning of *Perestroika*” Lyuba, another Russian teacher, explains on when she felt the change occur. “They taught us one thing but the truth was completely different”; for Lyuba this was as groundbreaking as arguing about Lenin with her mother. For them, the changes were as simple as walking down Arbat Street in Moscow and seeing punks, hippies, and artists freely walking without being arrested. “You could listen to whatever you want. No one would punish you for it” Ruslan, a Russian musician, explains. People could also finally leave the *Komsomel*, which is what Borya and Lyuba did. The joke of the documentary is that as Yeltsin called for protests in August of 1991 and as tanks were rolling on the White House in Moscow with 20,000 people gathered there, all Russians could see on television was Swan Lake. “I had the feeling of wanting to unite myself with the people around me who were strangers, but who felt the way I did” Lyuba says of the mobilization Russians experienced during the coup. “I concretely remember that pure feeling of freedom” she went on to explain of her three days of protests at the White House.

However, that feeling of pure freedom soon vanished. As the studies conducted by the Moscow Levada Center confirm, by the late 90s and 00s, Russians saw their country as completely different from the countries in Europe; it was found that three out of five Russians

consistently believed over the last decade that Russia should follow a 'special path' different from other countries, a 180 from the negative attitudes Russians felt about the backwardness of the country in the 80's and 90's²⁸. The 'special path' archetype is static and it implies acceptance of the situation in Russia today because it is defined as "our way". This special path means that in Russia today even "the most mundane and common becomes inaccessible and can be accessed only through special means (contacts, favours, bribes)"²⁹. Any relationships that may be equal "are subjected to vertical, hierarchal and authoritative relationships"³⁰. As a result, when asked what the leading characteristic of a Russian is, 'patience' is named consistently as the most important³¹. The unique Russian path really is a method for the Russian government to cordon off the outside world and compensate for its lack of legitimacy.

Nationalism

This special path discourse was achieved politically through notions of patriotism and nationalism, by creating an us versus them dichotomy. This dichotomy is used to defend the status quo. The problem is that a change in status quo would mean that those who currently wield power in Russia would lose it. They refuse to give an inch, knowing full well the country is not even close to reaching its full potential. However, they defend their positions as true 'patriots'.

28 Boris Dubin, "The Myth of the Russian Unique Path and Public Opinion" in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 81

29 Boris Dubin, "The Myth of the Russian Unique Path and Public Opinion" in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 85

30 Boris Dubin, "The Myth of the Russian Unique Path and Public Opinion" in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 87

31 Boris Dubin, "The Myth of the Russian Unique Path and Public Opinion" in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 91

In March of 2013 Russia's Prosecutor, General Yuri Chaika, reported that between 2004 and 2012 the number of crimes committed in Russia linked to political extremism increased fivefold. The most common cases? Incitement to ethnic hatred³². Liberal Democrat Nikolai Dyegtaryov swore to "rid Moscow's markets of migrant traders" and Nikolai Levichev of Just Russia has made several appeals to the Moscow Police to "clamp down on ethnic minority crime". Communist Party candidate Ivan Melnikov has even promised extra rights and privileges only to 'native' Muscovites. Even opposition leader Alexei Navalny embraces a nationalist sentiment, participating and giving regular speeches during National Unity Day celebrations (in force in Russia since 2005)³³. This rampant xenophobia stems from a battle for both power and votes. According to the Levada Center, in July 2013, for the first time since polling began, migrants were identified by Muscovites as the main problem facing their city and according to a recent ROMIR study, 70% of Muscovites support the slogan 'Russia for the Russians'³⁴. Additionally, 69 % of people in Russia believe that the presence of migrants is excessive³⁵.

In October of 2013, violent protests erupted in Moscow and quickly around Russia following the murder of a Russian, which was blamed, on a man alleged to come from the Caucasus. Again and again Russia's problems, in particular crimes, are scapegoated on migrants

32 Emil Pain, 'From Protests to Pogroms' *OpenDemocracy Russia* (27 August 2013) <<http://www.opendemocracy.net/od-russia/emil-pain/from-protests-to-pogroms>> accessed 29 November 2013

33 Daniil Kotsyubinsky, 'Messiah or False Prophet' *OpenDemocracy Russia* (13 August 2013) <<http://www.opendemocracy.net/od-russia/daniil-kotsyubinsky/messiah-or-false-prophet>> accessed 29 November 2013

34 Emil Pain, 'From Protests to Pogroms' *OpenDemocracy Russia* (27 August 2013) <<http://www.opendemocracy.net/od-russia/emil-pain/from-protests-to-pogroms>> accessed 29 November 2013

35 Sean Guillotine, 'Corruption, Not Migrants, Is Russia's Problem' *The Nation* (20 August 2013) <<http://www.thenation.com/article/175815/corruption-not-migrants-russias-problem#>> accessed 29 November 2013

resulting in rampant violence. There are over 10 million legal and an estimated 3 million illegal immigrants living in Russia today and they are one of the most exploited groups, about 2/3 earning between \$300 and \$600 a month to survive in Moscow and some even living as slaves³⁶. As writers Irina Busygina and Mihail Filippov argue, “the Russian state in its present form is unpredictable, inefficient, deeply corrupt...and not a credible guarantor of private property rights”³⁷. If anything migrants are currently sustaining the Russian state, rather than harming it.

Putinism

The center of power in Russia today lies within the state, “more precisely in its executive branch” and citizens are more often than not thought of as ‘subordinates’ rather than voters³⁸. The various governing regions in Russia are not independent; orders come from the top down and local power is thus rendered meaningless, as a region is “no longer a self-regulatory system when conflict management and resolution move to the centre, to which players appeal instead of solving conflicts themselves”³⁹.

The executive branch wields great power in Russia as the legislative branch wields little.

The Duma was an institution that had considerable power after the adoption of the 1993 Constitution. When Putin took hold, its power slowly withered and today it is “among the

36 Ibid

37 Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 11

38 Nicolas Hayoz, “Globalization and Discursive Resistance: Authoritarian Power Structures in Russia and the Challenges of Modernity” in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 31

39 Nikolai Petrov, 'Modernization and the Russian Regions' in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 203

world's weakest assemblies”⁴⁰. The members of the State Duma are also members of big business and the over-representation in government creates protection for the business sphere rather than protection for the welfare of the people. Created in 2001 to support Putin, United Russia has also had “an absolute majority of the seats in the State Duma since 2003”⁴¹. They now recruit elected officials in the executive and legislative branches as well as the national and local levels. In 2006, the United Russia Supreme Council decided that “the entire party electoral list had to include 20 percent quota of young people” placing even more government loyalists into the regime early⁴². In addition to Nashi and Molodaya Gvardiya, the youth in Russia have been used to garner support for Putin and allow the status quo to be passed down to even further generations. Activists have called members of Nashi *nashisty*, a combination of the word “our” and *faschisty*, the Russian word for fascists.

It must be stressed, however, that Putinism is not the same system as Soviet Communism nor is United Russia just as the Soviet Communist Party once was. The Party used to control everything-absolutely everything from the political sphere to sports to music. Russia today is more despotic than authoritarian and does not have even close to the same amount of control the Soviet Union had. It does not use terror nor massive repression. Its control of the media varies; it is strongest in television broadcasting and nonexistent online. There is no “system of state and ideological control that permeates all areas of social life and controls vertical and horizontal mobility” and Putin is just an official from the intelligence and law enforcement agency “who

40 Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 8

41 Clementine Fauconnier, 'United Russia's Political Recruitment in the Russian Regions and the Strengthening of the Power Vertical: The Case of the Novgorod Region' in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 171

42 Ibid at 179

came to power after a series of bargains within the establishment and who was not regarded as a charismatic leader until he was in power”⁴³. What Putin has been able to do well, however, was reinforce the lie that through him, Russia can maintain prosperity, stability, and predictability.

In democratic systems, an opposition is there if the government is becoming too chaotic, delaying a policy process, is too full of paralysis, or is not compromising enough. This is why under Putin’s regime, only some issues are dealt with efficiently, it is the ones that he feels motivated to deal with. His divide and rule tactic meant that he does not want to be seen as “doing things the way that Yeltsin did”⁴⁴. Yeltsin issued many presidential decrees and fought to have them accepted by the bureaucracies who were supposed to implement them. Instead Putin affected change during his presidency not made by decrees (especially because the policies he wanted to change could only be changed through the amendment or annulment of existing legislature), but instead, he created policy changes through legislation presented to the parliament by the government that he signed off on⁴⁵. As Prime Minister, he “introduced structural and procedural changes to the way in which policy was made” so that he would affect the changes he wanted without needing to commit himself to anything too strongly, instilling a 'governing light' sort of strategy⁴⁶.

43 Lev Gudkov, 'The Nature and Function of 'Putinism'', in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 69

44 Stephen Fortescue, “The Policy Making Process in Putin's Prime Ministership”, in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 123

45 Ibid

46 Stephen Fortescue, “The Policy Making Process in Putin's Prime Ministership”, in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 124

*Religion in Russia*⁴⁷

Another institution in Russia upholding the current status quo is the Church. Although in theory, the church is separate from the state, in reality that is far from the truth. Even though Russia is a secular state, the preamble to the law on religion in the Russian Constitution states that Christianity, Islam, Judaism, and Buddhism are the country's four traditional religions, but the Russian Orthodox Christian Church has a “special place in Russia's history and culture”. The Orthodox Church today wields the political and civil power and has a great impact on both freedom of speech and freedom of expression. In Russia,

Orthodoxy, like Communism later, was nationalized a long time ago. By the middle of the 19th century it had become a surrogate religion, more like a national ideology. The Orthodox Church remained in this position – somewhere between a faith and an ideology – during the Soviet period, although it was consigned to a reservation. However as soon as an opportunity arose to leave the reservation, the Church broke free and occupied all the available spiritual space⁴⁸.

In the 90s, the Church could not look to its members for funding, as the average Russian had no money to provide to the church, so instead it looked to the state. The Church thus ”exchanged political support for material assistance. After a short while, however, it also began to demand access to political and administrative levers of influence”⁴⁹. As Sergei Lukashensky writes, when communism fell and the churches' main goals were restoring churches, “the start of the 1990s was the one and only period that the principle of freedom of religion and conscience was fully respected in Russia. It was a time when representatives from religions of every variety had the

47 Topic explored in CEU course on Freedom of Religion

48 Vladimir Pastukhov, 'Pussyteria, or the Awakening of Russia's Conscience' *OpenDemocracy Russia* (11 July 2012) <<http://www.opendemocracy.net/od-russia/vladimir-pastukhov/pussyteria-or-awakening-of-russia-s-conscience>> accessed 29 November 2013

49 Sergei Lukashevsky, 'How God Came to Vote for Putin: the Background to Pussy Riot' *OpenDemocracy Russia* (27 August 2012) <<http://www.opendemocracy.net/od-russia/sergei-lukashevsky/how-god-came-to-vote-for-putin-background-to-pussy-riot>> accessed 29 November 2013

opportunity to build churches, register regional offices, to freely enter schools hospitals and prisons”⁵⁰. Then, in the mid 1990s, the Russian Orthodox Church “began to lobby for a new law on freedom of conscience. This law proposed to 'put a barrier' in the way of 'destructive sects', though the definition of this was wide enough to include religious dominations with large worldwide followings (for example, the Hare Krishnas, Jehovah's Witnesses and neo-Pentecostals)”⁵¹. The law complicated the process of registering new religions that “meant that registering a new religious organization was near-impossible, permission to build non-Orthodox places of worship was only granted in exceptional circumstances, and churches, hospitals and prisons were closed to all 'non-traditional' religious organizations”⁵². Vladimir Putin began his presidency promising to help 'traditional' religions. The National Security Concept of 2000 outlined a policy in the area of “spiritual and moral education” which would include “counteracting the negative influence of foreign organizations and missionaries” after which several foreign pastors and Catholic priests were expelled from the country and religions that were not approved were made to subside in the activities even further. With the lack of focus on religion in Russian's mentalities and with a view of churches as architecturally beautiful or historically important, Russians played little attention to how the line between church and state has been eroded in Russia. Thus, when the Orthodox Church took over abandoned churches used as warehouses, cinemas, and cultural centers and then demanded that all building that were formerly part of monasteries be given to it, few blinked an eye. The Orthodox Church went as far

50 Sergei Lukashevsky, 'How God Came to Vote for Putin: the Background to Pussy Riot' *OpenDemocracy Russia* (27 August 2012) <<http://www.opendemocracy.net/od-russia/sergei-lukashevsky/how-god-came-to-vote-for-putin-background-to-pussy-riot>>accessed 29 November 2013

51 Ibid

52 Ibid

as to ask that religious icons that were now in museums be returned to the Church. As Lukashevsky writes, “though the premise itself was entirely reasonable, the methods and language adopted by the Church were more akin to the practices of wild Russian business (including violent takeovers), than they were to notions of Christian humility”⁵³.

As Vladislav Inozemtsev writes in “Russian Orthodoxy: Rendering Unto God...but Caesar Pulls the Strings”, at the beginning of the 1980's, about 8% of the population of Russia described themselves as members of the Orthodox Church. Today, that figure is over 70%. As *My Perestroika* stresses, the 90s was a difficult time for Russians not just economically, with people relying on rationed coupons for their food, but emotionally and spiritually as well. People learned for the first time that everything they were taught was a lie and they sought meaning anywhere they could find it. That is when the Church became popular. It was a form of consolation. Thanks to the political power behind it, the Church has been able to change the cultural, political, and social climate to its control today.

Russian Orthodox Bishop Kirill has publicly stated that “we must completely forget the current term a 'multifaith country' – Russia is an orthodox country with national and religious minorities”. He even developed an 'Orthodox human rights doctrine' attempting to prioritize the rights of society over those of the individual⁵⁴. In the midst of protests in Russia against Putin

53 Ibid

54 Vladislav Inozemtsev, 'Russian Orthodoxy: Rendering Unto God...but Caesar Pulls the Strings' *OpenDemocracy Russia* (22 July 2011) <<http://www.opendemocracy.net/od-russia/vladislav-inozemtsev/russian-orthodoxy-rendering-unto-god...but-caesar-pulls-strings>> accessed 29 November 2013

and the stolen elections, Kiril was quoted as saying that “Orthodox people don't go to demonstrations”, sending a clear message to the Russian people.⁵⁵

Politicians today are seen as the yes men for the church. Church members are living in luxury in Russia, which has brought many scandals. Priests also “dictate fashion in literature Komi Republic Shostakovich's opera Balda (based on Pushkin's *The Priest and the Fool*) has been withdrawn. The priests are demanding that Grandfather Frost be 'christened' and that comic museums such as the Baba-Yaga Museum in Kirillov (Vologda region) should be closed”⁵⁶. They go toe to toe with the scientists who speak out against the Church's downgrading of science, and they even propose that “theology should be elevated to the status of a scientific discipline according to the State Commission of Academic Degrees and Titles system of classification”⁵⁷. The Church has even tried to bring criminal charges against artists who organized the exhibits “Beware religion!” and “Forbidden Art-2006” which spoke out against the commercialism of the Church⁵⁸. What Pussy Riot did was speak that which could not be spoken; they rebelled not just against the state, but the Church, and their union. For this, they were made example of; there were “no appeals for clemency, as might have been dictated by Christian precepts”, condemnation instead was brought against them by the Church⁵⁹.

55 Dzyadko Tikhon, 'The Russian Orthodox Church: from Farce to Tragedy?' *OpenDemocracy Russia* (3 May 2012) <<http://www.opendemocracy.net/od-russia/tikhon-dzyadko/russian-orthodox-church-from-farce-to-tragedy>>accessed 29 November 2013

56 Ibid

57 Ibid

58 'Forbidden Art-2006 Exhibition Organizers Pay Fine', *OpenDemocracy Russia* (12 July 2010) <<http://en.ria.ru/russia/20100712/159769504.html>>accessed 29 November 2013

59 Ibid

Opposition

On December 5, 2011 7,000 people took part in demonstrations in Moscow against the parliamentary elections. The next day, 250 people were arrested, troops were called in to ‘maintain order’ and the police beat protestors. A reporter for the *Kommersant* was even beaten reporting on the events. In St. Petersburg, 200 people were arrested. Protests took place around Russia with 50,000 taking part in a demonstration by the Kremlin. A manifesto was created in Moscow demanding elections be held again with viable opposition members, that the head of the Central Election Committee be dismissed, and that all those arrested following the protests, including opposition leader Alexei Navalny, be released. Demonstrations were held in 100 Russian towns and in Russian embassies across the world. Golos was one of the few election monitoring organizations who stated openly that the elections were neither free nor fair, saying there had been “significant and massive violations of many key electoral procedures’, including multiple voting, the improper use of absentee ballots, violations of procedure in the course of voting outside polling stations, forced participation insufficient openness in the work of the electoral commissions” among others⁶⁰. Another organization, Citizen Observer, suggested, “United Russia might actually have won no more than 30 percent of the vote”⁶¹. Deputy Prime Minister Vladislav Surkov said the violations weren't “industrial-sized” and much too exaggerated by those who were either “legal nihilists” or “illiterate”⁶². The Head of the Central Electoral Commission, Vladimir Churov, claimed “fake polling stations had been set up

60 Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 243

61 Idem

62 Jonathan Earle, 'Surkov and Prokhorov Spin Election' *The Moscow Times* (7 December 2011) <<http://www.themoscowtimes.com/news/article/surkov-and-prokhorov-spin-election/449395.html#ixzz2kMSm99tk>> accessed 29 November 2013

beforehand in private apartments in order to provide fabricated evidence”⁶³. Putin blamed Hilary Clinton and the West for instigating the protests sending “a signal” to “some actors” in Russia⁶⁴. In total, there were 120,000 Muscovites on Bolotnaya Square in December 2011 and between 120,000 and 200,000 in February 2012⁶⁵. Throughout all the protests, Putin was unfazed not only in refusing the demands of the protestors, but even mocking them referring to their symbolic white ribbons as condoms and to the protesters as the monkeys from the Jungle Book⁶⁶. Putin even sentenced Navalny to five years in prison, released him pending appeal the next day (when the opposition protested too loudly), allowed Navalny to appear on television, then described his astonishment at Navalny’s severe sentence⁶⁷. Following these events, two human rights advocates, Irina Yasina and Svetlana Sorokina, announced their withdrawal from a human rights council led by Medvedev, saying their work with the authorities convinced them “respect for the rights and freedoms of citizens is not a priority activity of the Russian president and his team”⁶⁸.

Elections in Russia today exist only to “produce the right results” as opposition parties are systematically disadvantaged. To imagine a party opposed to United Russia that may gain power is difficult. Beyond a certain size, every organization turns into a risk for Putin and his

63 Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 244

64 Ellen Barry and David Herszenhorn, 'After Russian Vote, Putin Claims Clinton Incited Unrest' The New York Times (8 December 2011) <http://www.nytimes.com/2011/12/09/world/europe/putin-accuses-clinton-of-instigating-russian-protests.html?_r=0>accessed 29 November 2013

65 Daniil Kotsyubinsky, 'Messiah or False Prophet' *OpenDemocracy Russia* (13 August 2013)<<http://www.opendemocracy.net/od-russia/daniil-kotsyubinsky/messiah-or-false-prophet>> accessed 29 November 2013

66 Ibid

67 Ibid

68 Ellen Barry and David Herszenhorn, 'After Russian Vote, Putin Claims Clinton Incited Unrest' The New York Times (8 December 2011) <http://www.nytimes.com/2011/12/09/world/europe/putin-accuses-clinton-of-instigating-russian-protests.html?_r=0>accessed 29 November 2013

power system. This may have been one of the many reasons behind the recent foreign agent law, labeling organizations that receive outside funding as “foreign”, or as many Russians may read it, “spies”. As Kirill Koroteev, a Russian lawyer who has worked with the Memorial Human Rights Centre has written, the foreign agents law is affecting “even those organizations that are not registered and not fined. They have to spend their meager funds on legal defence; public officials have become suspicious of them and refuse to cooperate with them, meaning they lose existing sources of funding”⁶⁹. There has only been only one NGO which has registered itself as a foreign agent with the Justice Ministry under the new law, and that has been the organization Assisting the Development of Competition in CIS Countries.⁷⁰ It lobbies for anti-trust legislation, as well as maintains partnerships with lawyers and executives in CIS countries⁷¹. As a result of this law, Golos, which spoke out against the fraudulent elections was ordered by the Justice Ministry to stop all of its activities for six months and an organization called For Human Rights has been ordered to vacate its office. One NGO in Kostroma and two LGBT organizations in St. Petersburg have also been fined⁷². The main criticism of the law coming from NGOs has been that the term “political activity” is too vaguely defined and that the label “foreign agent” has

69 Kirill Koroteev, 'Sentence First, Verdict Afterwards' *OpenDemocracy Russia* (1 August 2013) <<http://www.opendemocracy.net/od-russia/kirill-koroteev/sentence-first-verdict-afterwards>>accessed 29 November 2013

70 'First 'Foreign Agent' NGO Registers Under New Law' *Moscow Times* (1 July 2013)<<http://www.themoscowtimes.com/news/article/first-foreign-agent-ngo-registers-under-new-law/482491.html#ixzz2hmePSXhu>>

71 Ibid

72 Kirill Koroteev, 'Sentence First, Verdict Afterwards' *OpenDemocracy Russia* (1 August 2013) <<http://www.opendemocracy.net/od-russia/kirill-koroteev/sentence-first-verdict-afterwards>>accessed 29 November 2013

the connotation that the organizations are working as spies for foreign governments⁷³. The main problem around this law is the prevalence of GONGOS, or government-sponsored non-governmental organizations, such as Nashi. Some GONGOS “act as the thuggish arm of repressive governments...Putin has “denounced foreign-funded support for political reform by groups such as NED as subversive and anti-Russian”⁷⁴. This has been another step in Putin's strategy to deny civil society organizations in Russia their autonomy and instead, for state-driven and state sponsored organizations to support the status quo. Putin has even gone after the after the independence of academics, the Russian Academy of Sciences, which has been an independent institution which selected its own members, conducted its own work, and chose in secret its own President since its founding⁷⁵. State officials will now decide its funding; its research and members will now be appointed by the government⁷⁶.

The case of Mikhail Khodorkovsky is now infamous worldwide. Khodorkovsky was one of the richest men in in the world and had made his billions of the oil resources in Russia. He told the *Times* of London that Russia has a managed democracy, which means “theoretically you have a free press, but in practice there is self-censorship. Theoretically you have courts; in practice the courts adopt decisions dictated from above. Theoretically there are civil rights

73 'First 'Foreign Agent' NGO Registers Under New Law' *Moscow Times* (1 July 2013)<<http://www.themoscowtimes.com/news/article/first-foreign-agent-ngo-registers-under-new-law/482491.html#ixzz2hmePSXhu>>

74 Moises Naim, 'What is a GONGO?' *Foreign Policy* (18 April 2007) <http://www.foreignpolicy.com/articles/2007/04/18/what_is_a_gongo?wp_login_redirect=0>accessed 29 November 2013

75 Aleksandr Chuikov, 'Revolt of the Professors' *OpenDemocracy Russia* (3 September 2013) <<http://www.opendemocracy.net/od-russia/aleksandr-chuikov/revolt-of-professors>> accessed 29 November 2013

76 Ibid

enshrined in the constitution; in practice you are not able to exercise some of these rights”⁷⁷. He criticized state corruption at a meeting with Putin in February 2003. Arrested that fall, he has been imprisoned for trumped up charges since. It was thought that in Russia, after Khodorkovsky, no billionaires would be willing to support human rights organizations, but that has not been the case. Michael Prokhorov, another Russian billionaire and owner of the New Jersey Nets, established a new Russian political party called the Party of Civic Platform⁷⁸. Similarly, when *Novaya Gazeta* writer Anna Politkovskaya was murdered, billionaire Alexander Lebedev, owner of the critical newspaper, suggested the government was at fault and has since then run in political opposition⁷⁹.

While Putin may not have directly ordered the deaths of Anna Politkovskaya in 2006 and Natalia Estimirova in 2009, Putin has allowed a political climate that had produced these murders. He's even encouraged them. As journalist Oleg Kashin describes in the documentary *Putin's Kiss*, “there is a thing called 'a signal' in the Russian political language. The President can just give a hint without giving an official command. The vertical power structure will see it as a signal to take it seriously”. According to Kashin

It goes without saying that it is a very advantageous situation for the government, when, upon going to bed, no one knows whether they will live through the next day. The coercive atmosphere that has existed since 2000 has been cultivated by the Russian government—this is easy to determine from the public appearances of Vladimir Putin and his colleagues, and from the general tone of public discourse. It wasn't like this before in

77 Michael Werbowksi, 'Op-Ed: What do Jullian Assange and Mickhail Khodorkovsky Have in Common?' *DigitalJournal* (11 December 2010) <<http://digitaljournal.com/article/301320>>accessed 29 November 2013

78 Clare O'Conner, 'Billionaire Nets Owner Prokhorov to Enter Politics...and Take On Putin?' *Forbes* (16 May 2011) <<http://www.forbes.com/sites/clareoconnor/2011/05/16/billionaire-nets-owner-prokhorov-to-enter-politics-and-take-on-putin/>>accessed 29 November 2013

79 Aleksandr Lebedev, 'Entered a Needle into Anna Politkovskaya and Metal Into Her Opponents' *Novaya Gazeta* (10 August 2006) <<http://2006.novayagazeta.ru/nomer/2006/77n/n77n-s46.shtml>>accessed 29 November 2013

Russia, but now it's considered the norm to physically threaten your opponent for anything deemed inappropriate by a representative of "the powers that be." That's what the new anti-LGBT laws are geared toward⁸⁰.

Coercion "is on the rise and will continue to escalate" according to Lev Gudkov⁸¹. There will be more "ballot rigging and political trials, and the pursuit of complete supremacy over the Russian population (campaigns against espionage, extremism, falsifiers of history, abuse of the Internet, tax evasion, etc) will not subside"⁸². Medvedev and Putin don't want to change the system. Corruption cannot be eradicated until an independent court system is established. An independent court system may hold the leadership accountable and they do not want that. An independent media would shed light on corruption, but may connect it to current politicians. A legislature which will "scrutinize the government would be more effective, but it might also uncover spending scandals and reject ministerial proposals"⁸³. The people at the top of the current vertical power chain are not there because of their skills, but because of their loyalty and they have no desire to make way for those with the skills necessary. This is one reason why the current system is drawing away its youngest and brightest that don't see very many opportunities in Russia⁸⁴.

80 Tanya Domi, 'Exclusive: Russian Journalist Oleg Kashin on Putin's Politics, Anti-Gay Laws and Sochi Olympics' The New Civil Rights Movement (17 August 2013) <<http://thenewcivilrightsmovement.com/exclusive-russian-journalist-oleg-kashin-on-putins-politics-anti-gay-laws-and-sochi-olympics/news/2013/08/17/73101>> accessed 29 November 2013

81 Lev Gudkov, 'The Nature and Function of 'Putinism'', in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 67

82 Ibid

83 Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 245

84 'Russian Brain Drain as Young People Look West' EuroNews (29 November 2011) <<http://www.euronews.com/2011/11/29/russian-brain-drain-as-young-people-look-west/>> accessed 29 November 2013

*Russian Documentaries: Speaking Truth to Power*⁸⁵

One of the most powerful tools of education, the documentary, is dying out in Russia today⁸⁶. As Olga Sherwood writes, “in the first years of *perestroika*, documentaries for Russians and foreigners alike were all about opening up previously forbidden topics. The future beckoned, the archives were opened and wounds were laid bare”. Russians no longer make documentaries challenging the status quo and this job instead is relegated to those outside Russia. There have been four documentaries in the last few years that have really questioned what is happening in Russia. These are *Putin's Kiss*, *My Perestroika*, *Winter, Go Away*, and *Tomorrow*.

Putin's Kiss is one of the most powerful documentaries detailing the climate around freedom of speech today. It chronicles the story of Masha Drokova who starts out being an ardent leader in the Nashi youth movement. She makes headlines when Putin gives her a kiss and participates in the movement as a spokesperson, garnering great publicity and encouraging other youth to get involved. However, Masha begins to have doubts. She is put off by the organization of the movement and by the way it attacks the opposition, both politically and personally. When she broadens her social and political associations, to those Nashi does not approve of, to those it deems “political prostitutes, “enemies” and “traitors”, she is told, “either you are with us or you are against us” and she slowly becomes ostracized. When her newfound friend and famous journalist Oleg Kashin is beaten within an inch of his death, she fears for her life herself. His lungs collapse. His jaw is broken. He is literally silenced. Masha feels compelled to leave the political world.

⁸⁵ Topic explored in CEU course on Documentary Cinema and Human Rights

⁸⁶ Olga Sherwood, 'The Russian Documentary: an Endangered Breed' OpenDemocracy Russia (12 January 2011) <<http://www.opendemocracy.net/od-russia/olga-sherwood/russian-documentary-endangered-breed>>accessed 29 November 2013

My Perestroika also sheds light on Russia today. In the interaction between Borya and Lyuba, two Russian schoolteachers, we see the cynicism of the Russian public today. “I don't want to vote. The Moscow Archbishop is going to vote. Who in the world will he vote for? Such a mystery! I'd rather vote for the American President,” says Borya. “Nobody is asking us,” replies Lyuba. “Well, nobody here is asking us”, Borya retorts. “I voted for Zhirinovsky because I don't like people telling me who to vote for,” admitted arcade worker Olga, talking with her hairdresser, adding, “they already chose without us. They tell us we have a democratic government...I think back to the elections in the 90s--it was real. Whoever got the most votes, he would be President. That was the only time it was like that. I only appreciate it now”. Andrei, who owns his own business in Russia laments, “it was a joke, but not at all funny. They're trying to come up with a position for him, so that he'll always be with us” on Putinism. Ruslan, a musician thinks about what has changed in Russia over the years and replies “nothing. More food, jeans, gum”. To Borya, a lot has changed. “No one will ever teach patriotism in our school,” he reflects adding that Russia is no longer ruled by the general secretaries of the Communist party. “It needed to be destroyed and thank God it was. Of course what Putin says is disgusting. It makes me sick. Back then, you not only felt sick, you wanted to die. So when you compare it with that, everything is fine. Of course these kids don't understand that and thank God they won't”. However, he fears being told, “history should be taught like this or like that. The war must be discussed like this or like that” and thinks “maybe it will die out with Putin. Maybe it won't.” However, Borya does highlight the hopes that Russians have that there will be more freedom in the future. “With the Internet it is impossible to have a monopoly on everything. Information is everything,” he points out. That is the bright hope at the end of the documentary.

As the internet can stay free in Russia and as long as there is access to information, there many still be hope.

Winter Go Away! chronicles the 'Winter of Protest'. It begins with an introduction to today's Russia with Vassily and Vitaly drinking vodka, discussing how everything from 1917 has been both literally and figuratively thrown away. They explain, "we need opposition-people who won't put up with it". In *Winter*, we hear the stories of the election monitors. As people are bussed to vote fraudulently, activists film their arrivals. We witness the farce when the Chief of Commissions disappears when asked to provide names of voters. We hear the frustrations of the observers when they plead, "we just want the law followed". When asked why, one painfully screams out "we're citizens!" The yell echoes later in the documentary when the protesters are told by police their actions are illegal. "Where do you want us to be?" they ask. The police reply "home" to which they also painfully scream "we're citizens. We're just talking. Shame on you". One pro-Putin youth activist explains her actions saying, "right now my life is good. I don't want to risk it getting worse". Yet we also see those fighting for change, one activist admitting, "I had a choice between the protest and my husband. I chose the protest".

Tomorrow also opens with opposition to the new Russia, with two artists from activist group Voina stealing groceries because they see Russia as a "country of thriving theft" where the President steals elections and the politicians are corrupt and steal from the people. In *Tomorrow*, we see those living in conditions of absolute poverty, even dumpster diving, highlighting Russia's status as the country with the second largest inequality today⁸⁷. A frightening moment is when Voina activists Oleg and Natalia's apartment is searched and Natalia asks for the investigative

87 Thomas Remington, *The Politics of Inequality in Russia* (Cambridge 2011)

officer's name and he refuses to give it to her. We later see a frightening altercation as they protest and Natalia is arrested with her child. “Men, let go of this woman. She has a child”, the crowd chants. An officer places a hand over the camera and we hear Oleg screaming, “they are breaking my hand”. We then find out “the child was sent to the hospital with a suspected concussion”. The most poignant moment of *Winter* is an engaging conversation between a man from Tarstand and a protestor. They begin a conversation when he sees her sign. After disagreeing for a while, he asks “OK, you're against Putin, who are you for?” and she answers, “Gennady Zyuganov” and he replies, “I am too”. The moment highlights the necessity of freedom of speech and freedom of expression in a democratic society.

Chapter 2: Turkey

Turkey Today

The main issues facing Turkey today are the Kurdish peace process, the discontent against the government which was voiced during the Gezi Park protests, growing polarization in society, a persistent debate on pluralism versus majoritarianism, a lack of media freedom, and a lack of financial government accountability⁸⁸. Wiretapping has also been a great issue, since despite constitutional protections against it, reports indicate that “every day, up to 50,000 phones—both

88 Yavuz Baydar, 'The EU's Mixed Report on Turkey' Al Monitor (16 October 2013) <<http://www.al-monitor.com/pulse/originals/2013/10/progress-report-shows-relations-eu-turkey.html#ixzz2kvDYtrBH>> accessed 29 November 2013

mobile and land-line—are legally tapped, and 150,000 to 200,000 interception requests are made each year”⁸⁹.

As Emma Sinclair-Webb, researcher at Human Rights Watch Turkey explains, “justice for the crimes of the 1990s is an important element among the human rights steps to resolve the Kurdish issue” and thus central to the peace process⁹⁰. As “ending decades of impunity for security forces and other public officials for the serious human rights violations perpetrated in the 1990s will take a real commitment from the government” and the government is not committed to doing so now, we can expect more instability in the near future⁹¹.

The responses of Turkey today to Kurdish separatism and other movements for constitutional change have resulted in cases before the EctHR on freedom of expression in which Turkey has been found guilty of violating Article 10 of the Convention in all but three cases. The court considered the cases in the context of “pluralism, tolerance and broadmindedness”⁹². The court found again and again in relation to Turkey “the highest protection, higher than given to speech attacking individuals or politicians, is for criticism of governments and their policies” and the public must therefore “be free to scrutinize government actions, and governments, given their dominant position, must be prepared to accept criticism without resorting to criminal

89 Freedom House, ‘Turkey: Freedom of the Press 2013’ Report, 731

<<http://www.freedomhouse.org/report/freedom-press/2013/turkey>> accessed 29 November 2013

90 Human Rights Watch, ‘Turkey: Justice Central to Kurdish Peace Process’, (25 April 2013)

<<http://www.hrw.org/news/2013/04/25/turkey-justice-central-kurdish-peace-process>> accessed 29 November 2013

91 Human Rights Watch, ‘Turkey: Justice Central to Kurdish Peace Process’, (25 April 2013)

<<http://www.hrw.org/news/2013/04/25/turkey-justice-central-kurdish-peace-process>> accessed 29 November 2013

92 H. Davis, “Lessons from Turkey: Anti-Terrorism Legislation and the Protection of Free Speech”. *European Human Rights Law Review* (2005)

sanctions”⁹³. It is up to the government to show restraint, especially when other mediums for a reply are available.

The crackdown of the government on Kurdish activists has been widely criticized. In December 20, 2011, the Anti-Terror Unit of the Istanbul Police Force arrested 44 Kurdish and pro-Kurdish journalists. The act was seen at the time as part of a “nationwide crackdown against Kurdish and pro-Kurdish civilians, most, if not all, of whom have no links to terrorism or the plotting of violent acts”⁹⁴. According to the government, the KCK is a front for the Kurdistan Workers’ Party (PKK), which has been outlawed for going against the state ever since 1984. Those on trial include writers, journalists, academics, and other literary professionals⁹⁵. The issue of the language of the trials themselves has even garnered controversy, when over 700 people participated in a 68-day hunger strike demanding the right to defend themselves in their Kurdish mother tongue⁹⁶.

In addition to arrests of Kurdish journalists, several Kurdish newspapers have been suspended. In March 2012, the High Criminal Court suspended Özgür Gündem for one month after it ran a headline about Kurds that read “Revolt Speaks”⁹⁷. The police raided the offices of the Gün publishing company and confiscated all the newspaper copies. The editor, Reyhan Çapan, was sentenced to a year and three months in prison. Demokratik Vatan was given a one

93 H. Davis, “Lessons from Turkey: Anti-Terrorism Legislation and the Protection of Free Speech”. *European Human Rights Law Review* (2005)

94 PEN International, ‘News: Turkey: One Journalist Released but 22 Other Remain Detained in Kurdish Press Trial’, (3 October 2013) <<http://www.pen-international.org/newsitems/turkey-one-journalist-released-but-22-others-remain-detained-in-kurdish-press-trial/>> accessed 29 November 2013

95 Ibid

96 PEN International, ‘News: Turkey: One Journalist Released but 22 Other Remain Detained in Kurdish Press Trial’, (3 October 2013) <<http://www.pen-international.org/newsitems/turkey-one-journalist-released-but-22-others-remain-detained-in-kurdish-press-trial/>> accessed 29 November 2013

97 Freedom House, ‘Turkey: Freedom of the Press 2013’ Report, 731
<<http://www.freedomhouse.org/report/freedom-press/2013/turkey>> accessed 29 November 2013

month suspended sentence for “spreading terrorist propaganda through the publication of pro-Kurdish stories”⁹⁸. On a television debate Erdoğan stated that journalists should “ignore the conflict between the Turkish army and the PKK, especially regarding the number of Turkish casualties, on the grounds that such coverage amounted to propaganda for terrorism”⁹⁹.

In addition to protesters and journalists, lawyers have also been arrested in Turkey. In January 2013, police conducted house searches and arrested 12 lawyers as part of a police operation all across Turkey of investigation into those “suspected of links with the armed outlawed Revolutionary People’s Liberation Party-Front (DHKP-C), which has carried out attacks on police and military targets, and against politicians”. However, all of the lawyers arrested were those who have defended human rights in Turkey, particularly against police misconduct¹⁰⁰.

Freedom of Speech

Laws have been used to limit freedom of speech rights in Turkey rather than protect them. A 2004 press law has placed prison sentences in lieu of fines for media violations. A 2011 amendment to the law had also made it possible for television broadcasts to be suspended and stations to be fined or closed by the Prime Minister or any other minister¹⁰¹. Article 301 of the Penal Code states that “denigration of the Turkish nation” can be punishable with up to two years

98 Ibid

99 Freedom House, ‘Turkey: Freedom of the Press 2013’ Report, 731

<<http://www.freedomhouse.org/report/freedom-press/2013/turkey>> accessed 29 November 2013

100 Human Rights Watch, ‘Turkey: Nine Human Rights Lawyers Imprisoned’ (22 January 2013)

<<http://www.hrw.org/news/2013/01/22/turkey-nine-human-rights-lawyers-imprisoned>> accessed 29 November 2013

101 Freedom House, ‘Turkey: Freedom of the Press 2013’ Report, 731

<<http://www.freedomhouse.org/report/freedom-press/2013/turkey>> accessed 29 November 2013

in prison. The Article has been used to imprison journalists who have spoken out against the genocide of Armenians in 1915, the usurpation of Cyprus, and the brutality of the security force¹⁰².

Due to Law No. 5651, Turkey has about 30,000 websites on a blocked list This has had a chilling effect on many users and some information, particularly of LGBTQ content, has become very difficult to access. Websites “deemed to insult Mustafa Kemal Atatürk, the founding father of Turkey” have been especially blocked¹⁰³. Google received 148 requests to remove 426 videos, “all due to alleged criticism of Atatürk, the government, or national identity and values. Google took down 63 percent of those videos”¹⁰⁴. The largest problem with the requests has been the lack of transparency; as a result, appeals could not be made on the decisions. The courts have also “indefinitely blocked access to the websites of several alternative news sources that report news on southeastern Turkey and Kurdish issues, such as Atilim, Özgür Gündem, Azadiya Welat, Keditör, Günlük Gazetesi, and Firat News Agency”¹⁰⁵. According to TIB statistics as of May 2009, “the courts are responsible for 21 percent of blocked websites, while 79 percent are blocked administratively by the TIB”¹⁰⁶. There are no more statistics available since 2009, as Turkey has stopped releasing them to the public, closing off transparency much like Russia.

Many users have had to pay fines or even serve in prison for the comments they've made on social media. Pianist Fazil Say was one of the more famous cases, receiving a ten month

102 Ibid

103 Freedom House, ‘Turkey: Freedom of the Press 2013’ Report, 731
<<http://www.freedomhouse.org/report/freedom-press/2013/turkey>> accessed 29 November 2013

104 Ibid

105 Freedom House, ‘Turkey: Freedom of the Press 2013’ Report, 729
<<http://www.freedomhouse.org/report/freedom-press/2013/turkey>> accessed 29 November 2013

106 Ibid

sentence for religious defamation by making a joke on Twitter about a call to prayer only lasting 22 seconds. Online users are also “prosecuted for posts that can be deemed as insulting state authorities”; one 17-year-old received a suspended sentence of about a year for insulting the Prime Minister on Facebook¹⁰⁷. The EctHR ruled in *Ahmet Yildirim v Turkey* that blocking Google sites was against Article 10 of the Convention. However, just like Russia, that pays the fines necessary to appease the ECtHR, but does not change its governance, Turkey did not do a thing to change its policies.

Freedom of Expression in Turkey: the Case of PEN

In 2012, ten books were banned in Turkey adding the total count of books banned in the country to 400. In addition, 46 publications were confiscated, included among there were 12 newspapers. The reasons given for the banned books and the confiscations were a wide array of topics such as “Kurdish issues, the Armenian genocide, or any subject deemed offensive to Islam or the Turkish state”. Publications were banned under orders from a variety of different ministries and offices. In 2012, Turkey had more imprisoned journalists than any other country in the world¹⁰⁸. In November of 2012, as an effort of PEN International, twenty writers from around the world gathered in Turkey to call on the President, the government, and the people to stand in solidarity with the writers and journalists of Turkey and their right to freedom of expression.

107 Freedom House, ‘Turkey: Freedom of the Press 2013’ Report, 735

<<http://www.freedomhouse.org/report/freedom-press/2013/turkey>> accessed 29 November 2013

108 Ibid

In January 2013, the Istanbul's Public Prosecutor's office began a criminal investigation against the board of PEN Turkey for its June 2012 article on the state of freedom of speech in Turkey. PEN Turkey's board members were charged with insulting state authorities under Article 301 of the Turkish Penal Code, which "makes it illegal to insult the Turkish Republic, the Turkish ethnicity, or Turkish government institutions"¹⁰⁹. On December 25, 2012, a police officer even came to the PEN Turkey offices in Istanbul demanding a list of information on all of PEN Turkey's board members. On January 10, 2013 PEN Turkey put out the following statement:

As the Turkey Centre of the international writers association PEN, we strongly condemn and meet with consternation the [news] that our esteemed composer and pianist Fazıl Say has been called up to court. The international community has been put on alert in the face of fascist developments in Turkey. In the official statement we submitted as the board, we outlined that the above words were an expression of thought and a criticism, that they were not intended as being aimed as an insult. We emphasized that the right to criticize, a constitutional and legal right, was being exercised. As a result, it was requested that a decision not to prosecute would be given¹¹⁰.

In November of 2013 Norwegian PEN issued a statement decrying a court ruling in the MLCP case where journalists Fusun Erdoğan, Bayram Namaz, Sedat Senoglu, Ibrahim Cicek, Ziya Ulusoy and Arif Çelebi were sentenced to life imprisonment¹¹¹. The journalists were accused of being members of a Marxist organization. Norwegian PEN stated that Erdoğan accused the leader of MLCP because she founded the radio station Özgür Radyo, which is critical of the

109 PEN International, 'PEN International Condemns Investigation Against PEN Turkey for Criticizing the State' (10 January 2013) <<http://www.pen-international.org/newsitems/pen-international-condemns-investigation-against-pen-turkey-for-criticising-the-state/>> accessed 29 November 2013

110 PEN International, 'PEN International condemns investigation against PEN Turkey for Criticizing the State, 10 January 2013.<http://www.pen-international.org/newsitems/pen-international-condemns-investigation-against-pen-turkey-for-criticising-the-state/>

111 PEN International, 'Fusun Erdoğan and Five Other Turkish Journalists Get Life Sentences' (6 November 2013) <<http://www.pen-international.org/newsitems/press-release-fusun-erdogan-and-five-other-turkish-journalists-get-life-sentences/>> accessed 29 November 2013

government. Norwegian PEN also stood with the European Federation of Journalists in issuing a statement to the Prime Minister that “Journalists are not terrorists”¹¹².

As of today, PEN International’s records show more than 70 journalists and writers awaiting trial and the Committee to Protect Journalists has identified 76 journalists imprisoned¹¹³. The Turkish authorities have been as antagonistic to the CPJ as then have to PEN. In both written and public statements, they have accused Turkey’s press freedom reports of being exaggerated, disputing “the numbers of imprisoned journalists, asserting that most of the detainees are being held for serious crimes that have nothing to do with journalism”¹¹⁴.

The Media in Turkey

The Gezi Park protests this spring, just like the protests on Bolotnaya Square, were the largest protests Turkey has seen in years. Unlike in Russia, however, the protests in Turkey turned much more violent. The police misused tear gas against the protesters who were first only opposing turning the park into a mall. The police then misused plastic bullets and water cannons to quiet the protests as they spread. As a result, hundreds were injured and five people died¹¹⁵. According to the Turkish Medical Association, 11 people had lost an eye as a result of the plastic

112 International Federation of Journalists, ‘Journalists are Not Terrorists-Urgent Appeal of Life Sentences Given to Turkish Journalists’ (05 November 2013) <<http://www.ifj.org/en/articles/journalists-are-not-terrorists-urgent-appeal-of-life-sentences-given-to-turkish-journalists>> accessed 29 November 2013

113 PEN International, ‘The Assembly of Delegates of PEN International, Meeting at its 79th World Congress’ (12 September 2013) <<http://www.pen-international.org/wp-content/uploads/2013/10/Turkey.pdf>> accessed 29 November 2013

114 Committee to Protect Journalists, ‘Turkey’s Press Freedom Crisis: the Dark Days of Jailing Journalists and Criminalizing Dissent’ (New York, October 2012) 8 <<http://www.cpj.org/reports/Turkey2012.English.pdf>> accessed 29 November 2013

115 Human Rights Watch, ‘Turkey: End Incorrect, Unlawful Use of Teargas’ (17 July 2013) <<http://www.hrw.org/news/2013/07/16/turkey-end-incorrect-unlawful-use-teargas>> accessed 29 November 2013

bullets¹¹⁶. Such methods are a violation of international law, such as the UN Principles on the Use of Force and Firearms, which state that the police must use discretion when responding to a crowd and they must respond with proportionality rather than excess to any threat of violence, without making the situation even worse¹¹⁷.

The protests shed great light on the media issues in Turkey today. Much like when Russian protesters gathered outside the White House for a coup during *Perestroika* and the television stations broadcast Swan Lake, as protestors gathered in Gezi Park, the television stations broadcast a documentary on penguins, highlighting the “role of Turkey’s media conglomerates in subverting press freedom” today.¹¹⁸ Turkey and Russia share their biggest similarity in the large sphere of the state media. Putin has ruled by making the Russian people numb to social and political issues, maintaining his power by “discrediting or displacing the opposition from the public sphere in combination with suppressing or restricting alternative sources of influence, using the tactics of demobilization, and keeping people in a state of apathy and alienation, thereby accelerating social fragmentation and individualism”. He has done so with “major media outlets (TV and large-circulation newspapers such as *Komsomolskaya Pravda*, *Moskovskii Komsomolets* and *Arumenty i fakty*)”¹¹⁹. What one hears again and again when asking the Russian people to discuss politics or social issues is the lack of desire to discuss

116 Ibid

117 Ibid

118 Baydar, Yavuz, ‘In Turkey, Media Bosses are Undermining Democracy’ *The New York Times* (19 July 2013) <<http://www.nytimes.com/2013/07/21/opinion/sunday/in-turkey-media-bosses-are-undermining-democracy.html?pagewanted=all&r=1&>> accessed 29 November 2013

119 Lev Gudkov, ‘The Nature and Function of ‘Putinism’, in Lena Johnson and Stephen White (eds), *Waiting for Reform under Putin and Medvedev* (Palgrave Macmillan 2012) 71

or even think about the political sphere. Similarly, the Turkish people have been presented the same news from the same sources as to squelch opposition.

Turkey's mainstream media today is owned by businessmen from the telecommunications, banking, and construction fields. There is limited to no coverage of economic corruption and the stories that are more critical of the government are rarely reported by the mainstream media, thus having little to no impact. After an October 2011 meeting between Prime Minister Recep Tayyip Erdogan and various media owners about how to cover news on terror, mainstream TV outlets began practicing a self-censorship heavily. When 34 Kurdish villagers were bombed by Turkish fighter jets just two months later, for example, these very same outlets did not report the story.

The State of Journalism in Turkey

Most of the jailed journalists in Turkey today are Kurds. *The Daily Milliyet*, bought in 2012 by the Demiroren Group, printed minutes of the talks between Kurdish politicians and the jailed Kurdish rebel leader Abdullah Ocalan. Milliyet columnist, Hasan Cemal, defended the paper's saying: "It's one thing to publish a newspaper. It's another to rule the country. The two should not be mixed". Erdogan responded by condemning the paper and journalism in general. Cemal was then placed on forced leave. When he returned, he wrote an article on media freedom and was told it could not be published by the paper's owner. He resigned. When the magazine *NTV Tarih* had a cover story in its July issue about Gezi Park's past history, the company's management not only canceled the issue, but also discontinued the publication altogether.

Reporting on the PKK can too often be seen as aiding and abetting it. For journalists conducting their work -receiving tips, assigning stories, passing on information to other journalists-can be seen as a terrorist activity, especially when “conducting interviews with the wrong people—from KCK representatives to the government’s own security officials—is used as evidence of a crime”¹²⁰. Too often the only thing the journalists are guilty of is who they associate with, as “one journalist is declared a suspect and then a second journalist is implicated for communicating with the first”¹²¹. As Hakan Altınay, chairman of the Open Society Foundation-Turkey has stated, “the prime minister’s tone is an important factor. He has told us what newspapers he wants us not to read. He has told media owners they should fire reporters and columnists they disagree with—and many owners have done so”¹²². Erdogan has again and again silenced criticism and promoted self-censorship.

Last year, the Council of State even went so far as to ban the use of the word 'guerrilla' on television in regards to the PKK, saying it would “legitimize the terrorists and terrorism”¹²³. Journalists have been charged under the Penal Code’s Article 220.6 with “committing a crime on behalf of an organization,” Article 220.7 for “aiding and abetting an organization knowingly and willingly,” Article 220.8 for “making propaganda for an organization”, Article 309.1 for “attempting to change the constitutional order by force,” Article 314.2 for “being a

120 Committee to Protect Journalists, ‘Turkey’s Press Freedom Crisis: the Dark Days of Jailing Journalists and Criminalizing Dissent’ (New York, October 2012) 11
<<http://www.cpi.org/reports/Turkey2012.English.pdf>> accessed 29 November 2013

121 Ibid

122 Committee to Protect Journalists, ‘Turkey’s Press Freedom Crisis: the Dark Days of Jailing Journalists and Criminalizing Dissent’ (New York, October 2012) 10
<<http://www.cpi.org/reports/Turkey2012.English.pdf>> accessed 29 November 2013

123 Committee to Protect Journalists, ‘Turkey’s Press Freedom Crisis: the Dark Days of Jailing Journalists and Criminalizing Dissent’ (New York, October 2012) 9
<<http://www.cpi.org/reports/Turkey2012.English.pdf>> accessed 29 November 2013

member of an organization”, Article 2.2 for “committing a crime on behalf of an organization,” and Article 7.2 for “making propaganda for a terrorist organization”¹²⁴. We know their greatest offense was reporting the truth, contrary to what the government wishes.

Chapter 3: The Ombudsman Institution

The Role of the Ombudsman

The position of the Ombudsman first originated in Sweden in 1713 when its King appointed an official called the Chancellor of Justice to address complaints made against the royalty in Sweden¹²⁵. In 1809, the Swedish Parliament made a provision for the office of the Ombudsman who would then help oversee and regulate the actions of the executive branch. The role of the Ombudsman therefore originated first as a check on power. Although the position of the Ombudsman spread throughout Scandinavia, it didn't make any ground in the rest of the world until after World War Two and then after the Soviet Collapse¹²⁶.

The basic premise of the Ombudsman's office is that “a government office should be established to handle citizen complaints against the government itself”.¹²⁷ The Ombudsman's “primary goals and objectives are to redress or amend public grievances and to protect and

124 Committee to Protect Journalists, “Turkey’s Press Freedom Crisis: the Dark Days of Jailing Journalists and Criminalizing Dissent” (New York, October 2012) 13

<<http://www.cpj.org/reports/Turkey2012.English.pdf>> accessed 29 November 2013

125 N. Abedin, 'Conceptual and Functional Diversity of the Ombudsman Institution: A Classification', *Administration and Society*, 43.8 (2011), 896

126 N. Abedin, 'Conceptual and Functional Diversity of the Ombudsman Institution: A Classification', *Administration and Society*, 43.8 (2011), 898

127 Ibid

defend human rights in a broad sense of the term”.¹²⁸ According to Time magazine, the Ombudsman is the “People's Watchdog”.¹²⁹ The International Bar Association describes the Ombudsman system as one in which there is “an office made by the Constitution or through the legislature which is headed by an independent public official who is then accountable to the said legislature or Parliament¹³⁰. The Ombudsman then receives either direct complaints or complaints made by a member of the legislature or Parliament against the misconduct of public officials, agencies, or employees. The classic role of the Ombudsman has included the power to investigate, make recommendations, and issue nonbinding reports, but several countries have carved out more powerful hybrid roles for their ombudsmen.

The role of the Ombudsman carries from country to country. Some countries have one Ombudsman while others have a commission of several. Some have been given “the responsibility of a national mechanism for the implementation of a state's international human rights obligations”.¹³¹ There are Ombudsmen who protect first generation rights, Ombudsmen who protect second-generation rights, and even Ombudsmen who protect third generation rights, like the right to a good environment. Some ombudsmen can “recommend that the state accede to or ratify human rights treaties” and some can make “make law reform proposals and may even become involved in the amendment process”.¹³² Ombudsmen institutions may be able to “engage in human rights research, to conduct studies, and to engage in human rights

128 N. Abedin, 'Conceptual and Functional Diversity of the Ombudsman Institution: A Classification', *Administration and Society*, 43.8 (2011), 900

129 Ibid

130 Ibid

131 Ibid

132 L.C. Reif. 'Transplantation and Adaptation: the Evolution of the Human Rights Ombudsman', *Third World Law Journal*, 31. 2 (2011), 269- 310, at 308

education”.¹³³The powers of the Ombudsmen can include “taking cases to constitutional or administrative courts, prosecuting public officials, lobbying government bodies to implement human rights treaties, and monitoring the state's implementation of its international human rights obligations, law reform activities, and human rights research and education enhance the ombudsman's core investigatory mandate”¹³⁴.

Under the United Nations standards for national human rights institutions, called the “Paris Principles”, Ombudsmen play a vital role in strengthening human rights. The NHRI accreditation process as set up in 1994 under the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, “grants its highest accreditation only to human rights ombudsman institutions”.¹³⁵The Council of Europe and the OAS strongly support Human Rights Ombudsmen. The Council of Europe has an Ombudsman itself, there is an International Ombudsman Institute, and the U.N. World Bank, and IMF all have Ombudsmen.

In “Transplantation and Adaptation: the Evolution of the Human Rights Ombudsman”, Linda Reif argues that a Human Rights Ombudsman should have jurisdiction over “all of the government department, agencies...the police, armed forces, immigration and refugee departments, prisons, detention centers, young offender centers and other facilities where persons are held involuntarily”¹³⁶. Besides civil and political rights, “economic, social, and cultural rights

133 L.C. Reif. 'Transplantation and Adaptation: the Evolution of the Human Rights Ombudsman', Third World Law Journal, 31. 2 (2011), 309

134 L.C. Reif. 'Transplantation and Adaptation: the Evolution of the Human Rights Ombudsman', Third World Law Journal, 31. 2 (2011), 310

135 L.C. Reif. 'Transplantation and Adaptation: the Evolution of the Human Rights Ombudsman', Third World Law Journal, 31. 2 (2011), 291

136 L.C. Reif. 'Transplantation and Adaptation: the Evolution of the Human Rights Ombudsman', Third World Law Journal, 31. 2 (2011), 301

should also fall within the institution's mandate” especially because rights protections here are vital as they are non-justiciable and “the human rights ombudsman may be the only venue for members of the public to complain about their violation”¹³⁷. Human rights Ombudsmen around the world now have mandates fighting corruption, “ensuring ethical conduct by elected public officials”, protecting the environment, protecting privacy, protecting children, ensuring freedom of information, and overseeing health care systems”¹³⁸. This can work hand in hand with freedom of speech protection. Many ombudsmen have the powers to inspect closed facilities, to bring abstract or concrete review actions before constitutional courts, to participate in administrative court proceedings, or to prosecute or recommend the prosecution of public officials”¹³⁹. This is vital for Russia, where prosecution of public officials is difficult and investigation of intimidation practices or outright attacks on journalists or bloggers too often go unpunished.

Many Human Rights Ombudsmen can launch investigations on their own motion. These function well as the Ombudsmen do not need for the complaints to come to them; instead they can be proactive and raise the actions themselves first. They can do so by monitoring the media “for reports of behavior that may constitute the target of an own-motion investigation”¹⁴⁰. Own motions investigations are also effective in addressing large-scale systematic problems, as a pattern of complaints may point to a problem in the system. Many Ombudsmen can “contest the constitutionality of government action”¹⁴¹. Others can argue that “the government has acted unconstitutionally by its failure to legislate” and some “can request the interpretation of

137 Ibid

138 Ibid

139 Ibid

140 Ibid

141 L.C. Reif. 'Transplantation and Adaptation: the Evolution of the Human Rights Ombudsman', Third World Law Journal, 31. 2 (2011), 304

constitutional provisions”¹⁴². As Reif argues, giving Human Rights Ombudsmen litigation power is an efficient way of “achieving timely decisions on constitutional and administrative legal questions”. These powers would be a great force in Russia and Turkey.

Some Ombudsmen, like the one in Argentina, have resources for radio or television shows. “These programs are capable of widely disseminating information about their work on human rights throughout the country”.¹⁴³ This is a great way of encouraging freedom of speech by introducing a variety of voices and fostering both pluralism and diversity. These could be great sources of freedom of speech protection in both Russia and Turkey, both of which attempt to hamper diversity rather than celebrate it. As television plays a great role in the societies of both states, addressing this medium can effect considerable change.

As Linda Reiff points out, “breaches of human rights laws, whether domestic or international obligations, have always been part of the Ombudsman’s mission”; it is thus up to the Ombudsmen to make sure the state is complying with its duties. Human rights Ombudsmen themselves need to institute “operating practices that further their ability to protect and promote human rights”.¹⁴⁴ They need not be Supermen, but they can have great power within their respective countries to encourage more accountability, transparency, and dialogue vital for human rights protections in Russia and in Turkey, especially in regards to freedom of expression.

142 L.C. Reif. 'Transplantation and Adaptation: the Evolution of the Human Rights Ombudsman', Third World Law Journal, 31. 2 (2011), 305

143 L.C. Reif. 'Transplantation and Adaptation: the Evolution of the Human Rights Ombudsman', Third World Law Journal, 31. 2 (2011), 308

144 L.C. Reif. 'Transplantation and Adaptation: the Evolution of the Human Rights Ombudsman', Third World Law Journal, 31. 2 (2011),

Effective Ombudsman

Portugal and Spain were the first countries to establish Human Rights Ombudsmen. The Ombudsmen there, in addition to their traditional roles, also had the power to bring actions before their constitutional courts. In Portugal, the Provedor de Justiça can instigate two actions before the Constitutional Court- an action to determine whether the laws are unconstitutional and illegal and an action assessing whether the government failed to comply with the Constitution by not enforcing the binding legislative measures that are constitutionally necessary¹⁴⁵.

In Spain, the Ombudsman was given express responsibility of defending fundamental rights. The Spanish Constitution appointed the Spanish “Defenseur del Pueblo” in 1978¹⁴⁶. The Defensor del Pueblo can bring two actions before the Constitutional Court; an action challenging the constitutionality of legislative action, i.e. abstract review, as well as concrete review. Sweden passed legislation in 1986 making it the duty of an Ombudsmen to protect human rights, ensuring “the fundamental rights and freedoms of citizens are not encroached”¹⁴⁷. France created the Defenseur des Droits in their 2008 constitutional reforms. Denmark and Luxembourg gave their Ombudsmen human rights monitoring responsibilities under the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁴⁸. Where the role of the Ombudsman is deemed to work well also is in the U.S.¹⁴⁹ There, the ombudsman is appointed by an elected official who is himself elected and thus accountability rests with the people and transparency can be easier to attain. In Namibia, the Ombudsman

145 Ibid

146 Ibid

147 Ibid

148 Ibid

149 Ibid

oversees human rights, corruption, and environmental protection, and can “refer matters to other public officials for prosecution, bring court proceedings to halt government action and challenge the validity of laws, and provide legal assistance to persons engaged in constitutional human rights litigation”¹⁵⁰. In Greece, the Ombudsman has jurisdiction over violations of children's rights.

The first Ombudsman in a post-Soviet country was appointed in Poland. Under Poland's communist regime, a Commissioner for Civil Rights Protection was set up in 1987. He was “to safeguard citizens rights and freedoms found in the Constitution” and has the power to bring actions before the constitutional court as well as the administrative courts. For a country where access to justice is so hard to gain, such a power is insurmountable.

*The Right to Reply: an Ombudsman's Niche*¹⁵¹

Austria, Denmark, France, Germany, Greece, Finland, the Netherlands, Norway, Spain, and Sweden all have constituted the right to reply. The right to reply is a reasonable alternative to defamation and libel laws. Instead of disputing the speech in a private manner through mediation or in a setting like the courts, the right to reply fosters a societal dialogue and a democratic process that is more speech-friendly. In Russia, press outlets are sued time and time again for defamation or libel when they print stories against the government shedding light on corruption, nepotism, and other various political abuses. When the government opposes such investigative journalism it fines the newspapers or radio stations or attempts to limit their financial or

150 Ibid

151 From CEU Course on Media Freedom

circulation powers. What we see too often are cases in the European Court on Human Rights where the government sues the media outlets or excessively fines them and the ECHR then has to step in to say such a limitation cannot exist in a free and democratic society¹⁵². A way to avoid this battle and help foster democracy would be to institute the right of reply in Russia. The freedom of speech of the press and the freedom of speech of the individual do not have to be in opposition to one another in regards to the right to reply; they can work hand in hand. In “A Reply to ‘the Right of Reply’”, Stephen Garbaum argues that the right to reply has two goals, the first being protecting the reputation of people and the second being a free flowing exchange of ideas¹⁵³. The Human Rights Ombudsman institution can be one that balances both these rights.

Chapter 4: The Ombudsman in Russia and Turkey

The Establishment of the Ombudsman in Russia

When setting up its Ombudsman, Russia looked to Poland and Slovenia, but adopted one to “fit its own particular environment”. Under the Soviet Union, a system existed to make complaints against public officials and agencies called the *Prokuratura*, a branch of the executive. A Procurator General of the USSR was established under the Soviet Constitution who was a supervisory official. The office was made in response to several post-Soviet problems, the most prominent among them the biased court system and the “prosecutorial bias of the Office of

152 Discuss this in CEU paper

153 S. Garbaum, ‘A Reply to ‘The Right of Reply’’, 76 *George Washington Law Review*, 1065 (2008)

the Prosecutor General”¹⁵⁴. The office “conducted general supervision over state agencies to ensure that all acts of the agencies and officials were in accordance with the law” and it also “supervises the administration of criminal justice”. Since it worked as both the “guardian of the state and protector of individual rights”, it did not function well. Within the first month of creating the office of the Ombudsman, one thousand letters were received, ranging from complaints of “verdicts passed in criminal and civil trials to unsubstantiated arrests, conditions in detention centers, unlawful dismissals, and problems related to housing”¹⁵⁵.

The birth of the office was a result of Boris Yeltsin's desire to position himself as a democratic leader. This began in 1990 during the first Congress of People's Duties when a proposal was made to establish a Human Rights Committee in Russia. Yeltsin approached Sergei Kovalev, a well-known dissident who had been jailed for his activism. Together, they put together a well-respected committee. It was under this committee that the office of the Human Rights Ombudsman was first created in Russia. The powers that Yeltsin and the committee entrusted to the Ombudsman were within the traditional role of the Ombudsman; to receive complaints and help address any human rights violations, to put pressure on state institutions to install more human rights legislation, and to serve as a force for educating the public on the field of human rights and remedies available to them should they experience any violations. The committee drafted a Declaration on the Rights and Liberties of the Human Being and the Citizen,

154 E. Gilligan, 'The Human Rights Ombudsman in Russia: the Evolution of Horizontal Accountability', *Human Rights Quarterly*, 32 (2010)

155 E. Gilligan, 'The Human Rights Ombudsman in Russia: the Evolution of Horizontal Accountability', *Human Rights Quarterly*, 32 (2010)

which passed through Parliament in 1991¹⁵⁶. Article 40 of the Declaration stated that the Ombudsman would have parliamentary control over the “observance of human rights and civic freedoms in the RFSR¹⁵⁷. Despite Yeltsin's political instability and despite his move to disband the Parliament, he signed a decree five days prior to the dissolution to establish a Human Rights Commission. He also offered Kovalev the job of being Russia's Human Rights Ombudsman, even without a parliament and without a constitutional law backing the role. Kovalev accepted, though he was ambivalent about the role (as he expressed in his April 1992 address to the UN Human Rights Commission).

The Russian Human Rights Commission was divided into two parts: a public body and an administrative body. Prominent human rights activists were recruited into the public arm of the commission (people like Mikhail Molostvov, Boris Zolotukhin, and Elena Bonner). Alexander Chebotarev was chosen to manage the “Ombudsman task force”. The task force included nineteen people, five of whom were lawyers, along with help from the Russian-American Project Group, established by Andrei Sakharov. The committee felt as soon as they filled the proper positions and roles in the office, they could then establish “a system of regional ombudsmen across the federation”¹⁵⁸.

However, when Yeltsin sent troops to attack Chechnya in 1994, Kovalev in his new role as Ombudsman, together with the efforts of his office, wrote impassioned pleas asking when the war would stop. He received no answers and his attempts and propositions of dialogue were

156 S. Remington, 'The Russian Parliament: Institutional Evolution in a Transitional Regime, 1989-1999' 101 (Yale 2001)

157 Ibid

158 E. Gilligan, 'The Human Rights Ombudsman in Russia: the Evolution of Horizontal Accountability', *Human Rights Quarterly*, 32 (2010)

thwarted. Following these developments, Kovalev was fired, both as a result of the political situation and division on support for the Chechen war and the facts that he opened an Ombudsman's Mission in the Northern Caucasus and took part in resolving a major hostage crisis in the city of Budennovsk¹⁵⁹. Without Kovalev's powerful persona, the role of the Ombudsman was hanging in suspension.

Oleg Mironov was chosen as the new Human Rights Ombudsman as a result of a political tug and pull in Parliament. Far from being a dissident, he was a law professor and former police investigator. When he became Ombudsman, he had no staff, no office, and no funds. The office received 7,000 complains in its first year, the most relating to civil rights, then labor relations, housing, was veterans' compensation, and armed forces' compensation.

Mironov was a problematic voice of human rights. He ardently supported the war in Chechnya and publicly made statements claiming “there was no humanitarian crisis in the region¹⁶⁰”. However, as Russia was dealing with great economic problems at the time, Mironov was the right person to respond to the socioeconomic complaints of the public. When his first report came out, “Russian inflation had reached 84 percent with the price of food items rising by approximately 100 percent” after the collapse of the financial markets in August of 1998¹⁶¹. The report reflected the hardships faced by Russian peoples, the “slow speed of legal reform, the rights of internally displaced persons, forced migrants, and asylum seekers, the rights of children and state orphans” and a system that had produced “millions of pensioners and socially

159 Evgeny Finkel, 'Defending Rights, Promoting Democracy: the Institution of Ombudsman in Poland, Russia, and Bulgaria' (The Hebrew University of Jerusalem Department of Political Science) 23 <<http://www.ef.huji.ac.il/publications/finkel.pdf>> accessed 29 November 2013

160 E. Gilligan, 'The Human Rights Ombudsman in Russia: the Evolution of Horizontal Accountability', *Human Rights Quarterly*, 32 (2010)

161 Ibid

vulnerable groups unable to afford food products”¹⁶². He took control of his role as Ombudsman by serving the people through “appeals, inquiries, and public pressure across a broad range of government agencies”¹⁶³.

By 1999, the Russian Human Rights Ombudsman's office received 22,000 complaints. By 2001, the office expanded its role. A Secretariat office and Executive office was established. A Department on the Restoration of the Rights of Citizens was formed. Departments were also set up for Rights Education, Information, and External Networks and Press Relations. A hotline was installed “for legal consultation as well as reception hours for personal consultation”¹⁶⁴. The office became more and more effective. It also broadened its reach further entering the arena of freedom of expression. The role of Human Rights Ombudsman also changed Mironov and the stand he once took. By 2001, Chechnya was featured in his reports and he was facilitating mediation between the Russian government and the Chechen separatist leader, Aslan Maskhadov, showing the Ombudsman is capable of changing through his work and his role in rights protection in Russia. Mironov was able to structure his office to respond to people's complaints efficiently “through negotiations with a number of government agencies, through the court system, through personal appeals to initiate or change legislation, and through shaming”¹⁶⁵. However, just as he was beginning to take charge of his role, ten members of his staff in the *Rossiskaia Gazeta* wrote a public letter against him. “They wanted me to become a marionette in

162 Ibid

163 Ibid

164 Ibid

165 Ibid

their hands, but I would not...the office makes no sense whatsoever without its independence”, Miranov recalled¹⁶⁶. In February of 2004, Miranov ended his six-year term as Ombudsman.

The Current Ombudsman

Today, the role of Ombudsman in Russia is filled by Vladimir Lukin. He is the third Ombudsman for Human Rights in Russia and was appointed on February 13, 2004. Given Lukin's professional and personal history, Lukin was the right man for the position. Lukin's father was one of the founding members of the Komsomol and was accused and then arrested for being a spy for Japan¹⁶⁷. Lukin's mother was arrested trying to attain justice for his father. When working as a writer for a Czechoslovakian journal in Prague in 1968, Lukin himself opposed sending Soviet troops to the Czech Republic, and was thus ordered to return to Russia and was prevented from leaving the country for the next years, feeling firsthand the brunt of freedom of speech censorship. That does not mean, however, that in regards to impartiality, Lukin has been the model example for a separation of real politic and human rights advocacy. Lukin's background is political and he can rightly be regarded as a politician in Russia. Lukin discusses press conferences with ease and navigates the political sphere in a manner conducive to himself. This is not to say that Lukin does not position himself as a defender of human rights, but that he does so without making too many waves for the state itself or for his own role.

166 Ibid

167 'Prominent Russians: Vladimir Lukin' Russia Today < <http://russiapedia.rt.com/prominent-russians/politics-and-society/vladimir-lukin/> > accessed 29 November 2013

This is not to say that Lukin has been silent. On the contrary, he has spoken out against the arrest of activists on Bolotnaya Square stating they must be freed¹⁶⁸. He has even drafted an amnesty bill on the Bolotnaya case that has garnered 35 signatories in the government¹⁶⁹. He has stated the holding conditions of those arrested have been below the acceptable human rights standards. He has shed light on the health concern that they have been packed together and those with tuberculosis have been placed with those not yet exposed, making it more likely to spread. They have not been allowed to sleep an adequate of hours and they have not been fed properly, amounting to almost tortuous conditions¹⁷⁰. Lukin has also turned to a Doctor asking to determine if there has been a violation of sanitary code in keeping them in glass booths without any ventilation. As a solution, Lukin has proposed that during trial, those accused sit in place of the jurors as to not be exposed to further health problems.

Lukin has also said that the conditions in which illegal immigrants and migrants have been kept in Russia have been abysmal. He said the sanitary conditional in the camps are unacceptable, especially the toilet facilities and the lack of access to water¹⁷¹. Lukin has filed suit in the Constitutional Court on behalf of other NGOs against the ‘foreign agent’ law, saying the term ‘political activity’ is too broad. Lukin has spoken out on the Pussy Riot case as well, except when they first committed the act he called them hooligans. Since then, he has played a large role in speaking out on Masha’s behalf during her hunger strike to better prison conditions and during

168 Website of the Human Rights Ombudsman, ‘Vladimir Lukin Advocates Amnesty for Those Charged in ‘Bolotnaya case’ and for Business People’ (22 May 2013) <<http://hro.org/node/16603>> accessed 29 November 2013

169 Ibid

170 Website of the Human Rights Ombudsman, ‘Federal Ombudsman Asked to Improve the Conditions of the Defendants in the Bolotnaya Case’ (26 July 2013) <<http://hro.org/node/17067>

171 <http://hro.org/node/17179>> accessed 29 November 2013

her transfer, when her whereabouts were unknown. Lukin has also spoken out against the LGBTG propaganda law, though he made clear he does not support homosexuality.

From 2005 to 2008 when Lukin stepped into his position, the “majority of letters, telephone conversations, and consultations” Lukin's office received was of complaints about civil and social rights¹⁷². Certain issues were recurrent, such as “the long duration of trials, failure to notify participants of the time and place of trials in a timely manner, and the impartiality of judges with regard to political questions and bribery”, at the core of the problematic governance in Russia¹⁷³. This year, Lukin’s office has received complains. He has stated publicly that 2012 was the hardest year in his role¹⁷⁴.

In a survey conducted by Emma Gilligan across seven regions in Russia and one thousand participants, Russians were asked two questions. The first, “what comes to mind when you hear about the office of the Russian human rights ombudsman?” 26.2 percent had never heard of it, 22.2 percent answered that it was a place you could complain to about state human rights violations, 19.4 percent said that it was a free government institution that helps you solve problems, and 15.4 percent said that it was an institution attempting to build a human rights culture in Russia. The second question was “if the state violated your human rights, to whom would you send an appeal?” 23.6 percent of people said “no one”, 15.7 percent said judicial structures, 15.1 percent said the procurator-general, 8.1 percent said “I don't know”, 7.8 percent

172 E. Gilligan, 'The Human Rights Ombudsman in Russia: the Evolution of Horizontal Accountability', *Human Rights Quarterly*, 32 (2010)

173 E. Gilligan, 'The Human Rights Ombudsman in Russia: the Evolution of Horizontal Accountability', *Human Rights Quarterly*, 32 (2010)

174 Website of the Human Rights Ombudsman, 'Vladimir Lukin Advocates Amnesty for Those Charged in 'Bolotnaya case' and for Business People' (22 May 2013) <<http://hro.org/node/16603>> accessed 29 November 2013

said the police, and 7.3 percent said the office of the human rights ombudsman. As Gilligan's research shows, there must be more education about the Human Rights Ombudsman in Russia and the role that the office can play in protecting their rights if they have been violated.

The Role the Ombudsmen in Russia and Turkey Can Have

The Russian Constitution

The legal role of the Human Rights Ombudsman can be found in the Federal Constitutional Law on the Commissioner for Human Rights in the Russian Federation¹⁷⁵. Article 1 establishes the duty of the Russian Human Rights Ombudsman; he shall "facilitate the restoration of violated rights, the improvement of legislation of the Russian Federation on human and citizens' rights and the bringing of it into accordance with universally recognized principles and norms of international law, the development of international co-operation in the field of human rights, legal education on questions of human rights and freedoms, and the forms and methods of defending them". In that sense, the role of the Ombudsman entails a multitude of functions, such as research, recommendations, implementation, and governance.

Article 2 establishes his independence. Article 3 articulates that the office of the Ombudsman does not take away from other institutions that are already in place to protect peoples' rights, like the courts for example, instead the office works to compliment those other

¹⁷⁵ Russian Federation, *Federal Constitutional Law on the Commissioner for Human Rights in the Russian Federation* <<http://www.anticorruption.bg/ombudsman/eng/readnews.php?id=6085&lan>> accessed 29 November 2013

organs. Article 5 establishes that funding shall exist for the Ombudsman's office in the Russian budget.

Article 9 creates the oath for the Ombudsman which the Ombudsman states: "I swear to defend the rights and freedoms of man and the citizen, to fulfill conscientiously my duties, governed by the Constitution of the Russian Federation, the legislation of the Russian Federation, justice and the voice of conscience". The concept of being 'the voice of conscience' for himself, for his country, is thus integral to the role of the Ombudsman. Article 10 establishes that the Ombudsman's appointment is for 5 years and he cannot serve more than two terms in a row. Article 11 establishes that the Ombudsman cannot be a politician nor a part of the government nor can he be engaged in any paid or unpaid work other than "teaching, scientific, or other creative activity" which does limit his role to a more academic rather than legal ones. Article 15 puts under the Ombudsman's jurisdiction not just Russian citizens but also foreign citizens living in Russia.

"The requirement of "knowledge in the field of human and citizens' rights protection" is extremely broad and open to almost any interpretation. These criteria can easily lead to politicization of the office or even to the election of incompetent ombudsman, with no provision of the law to prevent this. Although the ombudsman is elected by the Duma, the candidates can be proposed not only by the Duma members or the Council of Federation but also by the President. This provision can seriously compromise the separation of powers, since the President can influence the election process and try to get his "yes-man" into office"¹⁷⁶.

176 E. Gilligan, 'The Human Rights Ombudsman in Russia: the Evolution of horizontal Accountability', *Human Rights Quarterly*, 32 (2010)

What it also establishes is that the Human Rights Ombudsman can “propose amendments to the legislation, though he cannot initiate legislative process” and he can also “appeal to the Constitutional Court, but in this regard is no different from all Russian citizens”¹⁷⁷.

The Turkish Constitution

In Turkey, the creation of an Ombudsman has been established under the Constitution. The best role that the Ombudsman there would be able to fulfill is based on current traditional and hybrid Ombudsmen roles. According to the Turkish institution, “everyone has the right to obtain information and appeal to the Ombudsman”¹⁷⁸. The question now is how that will be put forth.

As Deniz Ergürel, secretary general of Turkey’s Media Association explains, Turkey still has the same Constitution that was written after the military coup. Turkey is therefore in need of “a more liberal, democratic, and diverse constitution. The current constitution was created during hard times and contains contradictory issues, including where freedom of expression is concerned. And we need better, more democratic anti-terror laws”.

The CPJ has proposed that the Turkish government establish constitutional reforms to protect press freedom and freedom of expression in accordance with international law, specifically the European Convention on Human Rights and “reject all efforts to constitutionally limit press freedom”. It also stressed the need for the EU to make Turkey's ascension into the Union based upon a requirement of commitment to freedom of speech and freedom of

177 E. Gilligan, 'The Human Rights Ombudsman in Russia: the Evolution of Horizontal Accountability', *Human Rights Quarterly*, 32 (2010)

178 E. Saygin, 'Turkey's Ombudsman: A Real Ombudsman?', Ataturk University, 1-21

expression. In reforming the Constitution and its Provisions, a larger role may be carved out for the Ombudsman in protecting human rights, specifically freedom of expression.

Technology and the Ombudsman

One of the greatest tools an Ombudsman can have at his disposal is the internet and an easy to use website. About 67,982,547 people in Russia use the internet today, around half the population¹⁷⁹. Almost half of Turkey's population also uses the internet, at 36,455,000 people¹⁸⁰. As Linda Reif points out, "a human rights ombudsman's reports and website are easy methods to provide useful information and assistance to the public. Annual reports and special reports can provide information on the important investigations undertaken by the Ombudsmen, which may increase public understanding of the Ombudsman's role and the number of future complaints to the office".¹⁸¹ The reports can change people's perceptions of the usefulness of the ombudsman's office and persuade the government to change law and policy. Websites that "demonstrate the framework of the institution and what types of complaints it can investigate" are particularly helpful as are websites that "act as a means for members of the public to submit complaints".¹⁸²

Russia excels in this regard. Currently, filing a human rights complaint with the Ombudsman in Russia on the website is simple, both in access and ease of use. After accessing the official site, ombudsmanrf.org, one is able to select on a request entry and enter a complaint

179 Internet World Stats, 'Europe Internet Usage Stats', <<http://www.internetworldstats.com/stats4.htm>> accessed 29 November 2013

180 Ibid

181 E. Gilligan, 'The Human Rights Ombudsman in Russia: the Evolution of Horizontal Accountability', *Human Rights Quarterly*, 32 (2010)

182 E. Gilligan, 'The Human Rights Ombudsman in Russia: the Evolution of Horizontal Accountability', *Human Rights Quarterly*, 32 (2010)

by simply providing one's name, address, email, contact, and the complaint (which can stretch to many pages). In this sense, the Ombudsman is the most accessible person to reach now in regards to seeking human rights protection; the question then is what happens once a citizen reaches him.

One way to make citizens feel empowered online when seeking aid is to give them the tools they will need. When running for Moscow Mayor, Alexei Navalny set up a website where Russians can upload photos of potholes to the site and immediately get a properly-worded legal letter to send to local authorities to which the local authorities are legally required to respond to by fixing the potholes¹⁸³. By so doing, Navalny has cleverly yet simply come up with solutions to everyday problems, reaching to Russians everywhere, even outside of Moscow. He has similarly garnered both attention and support by launching a site for contacting authorities in regards to repairing homes that have not been repaired for decades¹⁸⁴. In addition, he has set up a monitoring system for politicians, with a network that reports when a luxury car has been bought while roads are being ignored. He has also set up a system where people can download his newspaper online and distribute it themselves anywhere. Were the Human Rights Ombudsmen in Russia and in Turkey to utilize their role in such a way, problems can be solved more quickly and efficiently by the people themselves.

183 Mikhail Longinov, 'Aleksi Navalny Takes on 'the Fools and the Roads' OpenDemocracy Russia (5 August 2013)<<http://www.opendemocracy.net/od-russia/mikhail-loginov/aleksei-navalny-takes-on-%E2%80%98fools-and-roads%E2%80%99>> accessed 29 November 2013

184 Ibid

Conclusion

Considerations

Vladimir Lukin has stated that one of his main goals is to better Russians' understanding of their rights and the law. However, he has also been ambivalent about how much effect he can have. When asked about how he sees his own role as Ombudsman in Russia, Lukin replied that the Ombudsman is not Superman. When Lukin attempted to establish a relationship between his office and the Ministry of Justice and the Duma, he was rejected by both. In addition, new criminal and civil codes were implemented to not include the obligation of supervisory courts to respond to his office. Lukin has said that his petitions “were often shrugged off by various departments”¹⁸⁵. On a recent trip to Russia, I conducted an interview with Sergei Lukashevsky, Director of the Sakharov Center in Moscow. When asked about the role of the Ombudsman and how effective Lukin has been to NGOs working in Russia and freedom of speech issues, he explained that everyone and anyone working in the field turns to Lukin on a regular basis. Yet, there is not much he can do within the current vertical power system that is at the core of the problems in Russia. However, Lukashevsky did stress that publicity works and is one of the weapons at Lukin's disposal as well as the disposal of the NGO sector in Russia. For Lukashevsky, the reason why the Sakharov Center has been able to do the work that it has, conduct the events that it has, and offer the human rights education that it has, is because it is too well known to block. Doing so would cause too big a stir internationally. For Lukashevsky, it is also the same reason why Memorial and organizations like it in Russia today can conduct their

185 E. Gilligan, 'The Human Rights Ombudsman in Russia: the Evolution of Horizontal Accountability', *Human Rights Quarterly*, 32 (2010)

work; they are too big and too internationally well renowned to stop. Of course he suspects the state of surveillance his Center and others like it, but he knows the government will not stop its activities, not anytime soon at least. This is one hope for Russia. Public image and public shaming is one of the few tools left and are vital to the role of the Ombudsman. Joseph Brodsky said that if one wants to be influential of talking about human rights abuses in Russia, one should talk about Russia's actions as being uncivilized and not to the standards of Europe. Russia proudly sees itself as the cornerstone of civilization and much in keeping with Europe¹⁸⁶. To be called out again and again of falling short of those standards is still a weak spot for the country.

Former Russian Ombudsmen Sergei Kovalev and Oleg Mironov were removed from their positions for speaking out against Russia's waging of war in Chechnya. Although they lost their positions, they fulfilled the role of the Human Rights Ombudsman to the best of their abilities. Vladimir Lukin is trying to do as much for human rights as he can, while still maintaining his position. Although this keeps him in his role speaking out against what he feels he can speak out against politically, it makes him not very useful from a human rights perspective, at least not as useful as he could be. In a recent TV interview while running for Mayor, Sergei Mitrokhin was asked what image of himself he would like to promote. His reply was that he saw himself as Batman, flying in to save Muscovites as soon as they call on him"¹⁸⁷. When politicians in Russia see themselves as Batman and Putin sees himself as a Sultan, an Ombudsman who strives to be Superman would not be very far fetched. The Ombudsman need not be Superman however, but the Ombudsman's greatest power is his voice. To ever remain silent in that role is an abdication

186 Conversation with Professor Aron Neier, Sciences Po Paris, November 26, 2013

187 Anastasia Valeeva, 'Scenes From an Election Campaign' OpenDemocracy Russia(16 August 2013) <<http://www.opendemocracy.net/od-russia/anastasia-valeeva/scenes-from-election-campaign>> accessed 29 November 2013

of his role. Former Ombudsman Sergei Kolayev who is 83 today and who is now the head of Memorial, Ludmilla Alexeiva, who is 86 today and who is now head of the Moscow Helsinki group, and Mikhail Khodorkovsky, who is now sitting behind bars seem to be the only people today who truly question the regime with power and force. The question is what will happen when they are gone? Will there be someone who could counter with such force? The Ombudsman institution could provide that power; if there is a candidate bold enough to exercise it.

Recommendations

To make recommendations, it is important to understand the history of an institution in which various human rights abuses take place. Examining the history of the institution of the Human Rights Ombudsman, I recommend that freedom of expression protection fall under the auspices of the Human Rights Ombudsmen in Russia and in Turkey.

In Russia, these responsibilities would include making sure police misconduct is investigated and prosecuted, corruption charges are investigated, political prisoners be freed, violence against writers, journalists, and bloggers be investigated and punished. The Ombudsman can be brought in as intermediary in courts for freedom of expression cases, especially given the fact that judges more often than not hand down the verdicts that the government wants. This would lessen the amount of false trials. If the people cannot turn to the courts for justice, they may then turn to the Ombudsman. He may be given the power to bring abstract or concrete review actions before constitutional courts, to participate in administrative court proceedings. The Ombudsman may be given the power to request monitoring information of the FSB. Doing

so, the Ombudsman can examine cases to make sure they are not brought about as a result of coercions and also increase transparency. The ombudsman may also increase transparency by being given the role of sitting I and reporting on private Duma decisions. Doing so would thus also help create more dialogue, debate, and speech in Russia. The Ombudsman may also be given the power to defend expression against religious intervention, facilitating a greater divide between church and state in Russia. The Russian Ombudsman may also be given the task of ensuring governmental ethical conduct by investigating corruption and prosecuting public officials or recommending their prosecution.

To balance the political climate in Russia, the Ombudsman may be given power to address the claims and accusations of the GONGOS in Russia and lobby against their actions. Like various Ombudsmen in other countries, the Russian Ombudsman may also be given the right to make law reform proposals and become involved in the amendment process.

The Ombudsman in Turkey could be given the power of review in all cases of bloggers, writers, publishers and journalists being sentenced to make sure than none are being sentenced for political reasons, rather than legitimate concerns of safety or violence. Moreover, the Ombudsman in Turkey could be given the power to give recommendations to the government on the release of those who are already imprisoned based on political reasons, violating their freedom of speech and freedom of expression. In addition, the Ombudsman in Turkey can be given the power to address unnecessary pre-trial detentions and review cases before trials so that further freedom of speech and freedom of expression violations could be prevented.

The Ombudsman can also have the responsibility to review the cases of individuals prosecuted on terrorism charges by participating in protests that are seen by the government as

supporting the Kurdistan Workers' Party. The ombudsman may also be given the authority to suspend ongoing prosecutions against protestors under those laws.

In Turkey, unlike in Russia, harassment of the press is much more common than any violence against journalists. They are rarely attacked nor killed¹⁸⁸. Thus, the Ombudsman's role in Turkey must be more focused on the censorship of the government rather than the need for investigating physical attacks. However, the Ombudsman in Turkey, just as in Russia should be able to address police brutality against those who exercise their right to freedom of speech and to assembly. In particular, the Ombudsman could hold accountable police officers that do not comply with basic human rights protections, as witnessed during the Gezi Park protests. As the European Court of Human Rights ruled in *Abdullah Yaşa and Others v. Turkey*, the improper firing of tear gas by Turkish police directly at protestors, injuring a 13 year old, is a violation of human rights, and there must be stronger safeguards in place¹⁸⁹. The ombudsman can be one safeguard.

Both the Ombudsman in Russia and the Ombudsman in Turkey should have jurisdiction over “all of the government department, agencies...the police, armed forces, immigration and refugee departments, prisons, detention centers, young offender centers and other facilities where persons are held involuntarily”¹⁹⁰. Both may be given the role of monitoring how well their states lives up to their human rights obligations; especially regarding freedom of speech issues, the

188 Freedom House, “Turkey: Freedom of the Press 2013’ Report, 731

<<http://www.freedomhouse.org/report/freedom-press/2013/turkey>> accessed 29 November 2013

189 Human Rights Watch, ‘Turkey: End Incorrect, Unlawful Use of Teargas’ (17 July 2013)

<<http://www.hrw.org/news/2013/07/16/turkey-end-incorrect-unlawful-use-teargas>> accessed 29 November 2013

190 L.C. Reif. 'Transplantation and Adaptation: the Evolution of the Human Rights Ombudsman', Third World Law Journal, 31. 2 (2011), 301

European Convention on Human Rights specifically. Both Ombudsmen may be given the task of furthering freedom of expression education. Both Human Rights Ombudsmen should hold their governments accountable for failing to legislate or examine freedom of expression issues properly.

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