

CONFERENCE REVIEW NOTES

LEGAL POLICY, PERSPECTIVES OF THE RULE-OF-LAW AND MARKET ECONOMY IN RUSSIA: The Annual International Conference 'Development of Russian Law-VIII'

MARIANNA MURAVYEVA,
Higher School of Economics
(St. Petersburg, Russia)

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The Faculty of Law of the University of Helsinki is committed to diversity in approaches to studying various legal systems in the context of comparative law. The annual conference on the Development of Russian Law was launched in 2008 by the initiative of the Faculty to further develop knowledge and critical thinking about Russian law during its period of transition and modernization. The conference takes place every year and it brings together legal practitioners and scholars from Russia, Finland and other countries to discuss pressing matters of Russian law, legal reforms and legal practice. In previous years, the conference's themes included discussions of legal reforms, the justice system, the Russian legal profession, human rights, and civil and business law.¹

This year's program was designed to bring together scholars from different disciplines to offer various points of view on how Russian legal policies are formed, what they mean at the practical level of legal work, the extent to which the rule-of-law is a viable concept for Russian law and legal practitioners and how they all function within the deep economic crisis that the Russian market economy and Russian legal system are experiencing. It included seven sessions with 21 papers focusing on various aspects of present-day developments in Russian public and

¹ See 38(3–4) Review of Central and East European Law (2013) (special issue with articles based on conference's presentations).

private law, namely *Rule-of-Law, State and Society in Contemporary Russia; Economic Crimes: What Does it Cost?; Markets, Business and Corporate Law: Challenges under Recession; Constitutional Court, Rule-of-Law and Constitutionality in Russia; Welfare State, Market Economy and Current Crisis; Russia and the European Court of Human Rights: Assessing Recent Developments; Law and Economic Crisis: Interconnections and Dependencies*.

The conference's format allowed both academics and practitioners, mainly from Finland and Russia, to present their ongoing research and analysis of recent and current issues in law-making and the application of law in an atmosphere of constructive discussion and critical thinking, together with an audience which included legal practitioners from Finnish law firms, undergraduate and postgraduate students of law and other disciplines, representatives of public agencies, and colleagues from a number of Finnish and Russian universities. These discussions covered themes of constitutionalism, rule-of-law in application in a wide variety of areas ranging from the environment to customs regulation, very recent developments in law-making, including the decisions of the Constitutional Court [hereinafter CC] and the European Court of Human Rights [hereinafter Eur. Ct. H.R.], and the role of legal regulation, policy and jurisprudence in the current economic crisis.²

1. Rule-of-Law and Constitutionalism: How Do They Interconnect in Russia?

Russian law has been facing a number of issues in the context of modernization and market economy development. One of the most discussed themes has been the rule-of-law and its application after the 1990⁵. A very recent discussion in the academic literature on the emergence of the rule of law between Kathryn Hendley and Pär Gustafsson revealed both deep misconceptions and serious disagreements about the current situation of Russian courts and legal reforms. While Gustafsson argued, in essence, that rule-of-law did not quite make it to Russia, Hendley pointed out the need for analysts to get rid of the myths of the 1990⁵ and to provide more systematic and nuanced study of the experiences of Russians, both individual citizens and business entities, in their use of the courts and the ways they employ various justice institutions to serve their needs.³

In her remarks welcoming participants to the conference, *Jarna Pateman (Vice-Dean of the Faculty of Law, University of Helsinki, Finland)* noted that while the concept of the rule-of-law is now an accepted element of legal scholarship as a measure of democracy,

² Full conference programs, papers abstracts and speaker's biographies can be accessed on the conference's webpage at <<http://www.helsinki.fi/oikeustiede/ajankohtaista/2015/development-of-russian-law-VIII.htm>> (accessed Dec. 10, 2015).

³ Pär Gustafsson, *The Emergence of the Rule of Law in Russia*, 14(1) *Global Crime* (2013); Kathryn Hendley & Peter Murrell, *Revisiting the Emergence of the Rule of Law in Russia*, 16(1) *Global Crime* (2015).

the question remains: whose law or what law are we talking about when we analyze it, especially in connection with systems and societies still on the way to democracy and undergoing institutional transformation and modernization? This might be the case for Russia, whose legal language is rather confusing over the translation of the rule-of-law.⁴ At the same time, Russian law has maintained its formality and positivist nature from traditional Russian legal thinking with a propensity to be exploited by the authorities as an instrument of power. *Marianna Muravyeva* (*Higher School of Economics, St. Petersburg, Russia, and University of Helsinki, Finland*) suggested looking at the ways of interpretation of legal norms used by the judges, especially those of the CC, to provide a judgment required by the authorities in the current political situation. Russian judges traditionally have been trained to operate within what might be called a conservative jurisprudence technique for the interpretation of law that employs narrow interpretation and reduces legal text to its literal meaning. Using Ruling of the CC No. 21-P of July 14, 2015 [hereinafter Ruling No. 21-P], on the compliance with the decisions of the Eur. Ct. H.R., Muravyeva highlighted that judges chose to interpret the text of the European Convention on Human Rights [hereinafter ECHR] and the Constitution of the Russian Federation following a very narrow level of generality and looking at the text of the Constitution as a rulebook to argue for Russian 'legal sovereignty.' More detailed empirical research into the language of decisions of the CC, provided by *Aryna Dzmitryieva* (*European University at St. Petersburg, Russia, and University of Eastern Finland*), pointed to several types of argumentation used by the judges, all of which could be considered 'conservative.'

The 'legal sovereignty' concept promoted by the CC has been considered a very important cornerstone of Russia's, and more specifically Putin's, political regime. This concept is closely connected with the concept of 'sovereign democracy' developed and constructed by political scientists, legal researchers and politicians in the mid-2000⁵. *Katja Ruutu* (*University of Helsinki, Finland*) placed these discussions in the context of what is widely considered to be a current conservative turn away from democracy, highlighting the contradiction between almost absent mentions of democracy *versus* adherence to the 1993 Constitution with its principles of universal human rights and respect for international law. In her opinion, the wider level of president Putin's project relating to the new concepts has been linked to the mixture of foreign politics vocabulary with its domestic political meanings. Because of the lack of conceptual reforms in Russian domestic politics, the key concepts 'sovereignty,'

⁴ Generally it is translated as '*verkhovenstvo prava*' with variations such as '*gospodstvo prava*,' '*verkhovenstvo zakona*' or '*pravlenie prava*' (see *Мишин А.А.* Конституционное (государственное) право зарубежных стран: Учебник [Mishin A.A. *Konstitutsionnoe (gosudarstvennoe) pravo zarubezhnykh stran: Uchebnik* [Avgust A. Mishin, Constitutional (State) Law of Foreign Countries: Textbook]] (Yustitsinform 2015); *Кашкин С.Ю., Калинин П.А.* Глобализация господства права: влияние на Россию и страны Европейского союза // Век глобализации. 2008. № 1 [Kashkin S.Yu., Kalinichenko P.A. *Globalizatsiya gospodstva prava: vliyaniye na Rossiyu i strany Evropeiskogo soiuza // Vek globalizatsii*. 2008. No. 1 [Sergey Yu. Kashkin & Pavel A. Kalinichenko, *Globalization of the Rule-of-Law: Influence over Russia and the EU Member Countries*, 2008(1) Age of Globalization]]).

'indivisibility' and 'territorial integrity' which have typically been used in the foreign politics of Russia, have started to be used also at home, but their domestic political implications have remained confused.

Crucial Ruling No. 21-P was also discussed, in more depth, by *Grigory Vaypan* (*Lomonosov State University, Moscow, Russia, and Harvard University, USA*) and *Sergey Golubok* (*practicing attorney, St. Petersburg, Russia*) in terms of its consequences for the application of international law and decisions of the Eur. Ct. H.R. to Russia, but from very different points of view. Golubok's analysis presented Ruling No. 21-P as a blatant violation of *pacta sunt servanda* principle of general international law. The CC ruled that it would be ultimately for itself to allow, or not, for the enforcement of the judgments of the Eur. Ct. H.R. in Russia:

If the Eur. Ct. H.R., interpreting the ECHR in relation to the case under ruling, uses an unusual or different interpretation of the ECHR's text or interpret it contrary to the ECHR's objectives and goals, then the State, in relation to which the decision is made, has a right to refuse to implement the decision as it goes beyond the scope of responsibilities originally assumed by the State when the Convention was ratified (Ruling No. 21-P, para. 3).

By Ruling No. 21-P, according to Golubok, the Russian constitutional judges sent a very clear message to all other Russian municipal courts and other state agencies, such as the police, investigators, and penitentiary services, to the effect that the Eur. Ct. H.R.'s rulings might be disregarded with impunity, especially in so far as measures beyond payment of just satisfaction are concerned.

By contrast, Vaypan viewed Ruling No. 21-P as a part of a pragmatic conversation between supranational and national courts taking place all over Europe. From his point of view, Ruling No. 21-P rather reflects an ongoing conversation about the hierarchy of legal norms and pragmatic side of compliance with the decisions of supranational judicial bodies. However, in the substance of its decision, the CC failed in its arguments trying to make the case for possible non-compliance with the decisions of the Eur. Ct. H.R. because its rationale was contradictory to other judgments issued by the CC. Vaypan argued that this would lead to a hard time for the CC when it faces the need to justify, according to its own principles and precedents, a particular instance of non-compliance with an Eur. Ct. H.R.'s judgment in an actual future case.

In the light of this discussion, non-compliance becomes an important legal and political issue in regard to Russia. *Ausra Padskocimaite* (*Uppsala University, Sweden*) and *Maria Issaeva* (*Threefold Legal Advisors LLC, Moscow, Russia*) analyzed possible explanations and scenarios of non-compliance with the decisions of the Eur. Ct. H.R. for Russian legal system at the domestic and international level. Padskocimaite offered an explanation of 1,500 non-executed judgments by Russia and revised its status of

'failed compliance' case. Using quantitative and qualitative analysis of unexecuted cases, Padskocimaite reveals a very complex situation of (non)compliance, in which it depends on the type of the remedial measure that is required. Siding with the experience of Russian lawyers on the ground (notably, Maria Issaeva and her team), she traces the path the decision has to take to the Russian domestic legal system to be executed. What comes to light, that while Russian authorities always pay a monetary compensation, implementing remedial measures are more problematic. Thus in Art. 1 of the Protocol No. 1 to the ECHR (protection of property) and Art. 8 of the ECHR (right to respect for private and family life) cases, remedial measures had more chances to be incorporated into Russian domestic law. By contrast, in Art. 11 (freedom of assembly and association) cases, Russia consistently ignored remedies. Padskocimaite's analysis provides a good insight into the hierarchy of rights Russia is viewing as existing and what rights the authorities find more important in the international context.

Maria Issaeva's offered her view as to why Russia is difficult to deal with in regards of effectiveness of the Eur. Ct. H.R.'s decisions. Issaeva points out that perception of human rights in Russia is rather peculiar and rooted in the Soviet era more than in modern discourses about human rights. Rights are rather associated with social status than with an individual and this gives a completely different understanding of priorities among Russians as to what they see as an important goal to fight for. To bring in such concepts as universality and indivisibility of human rights Russia needs a specific 'marketing strategy' which would allow to create a link between their role in society and human rights. Being a legal practitioner, Issaeva suggests enforcing a positive image of human rights versus its current negative perception in society, that is, instead of arguing that human rights are about violations to offer an idea that human rights are about elevation and improving an individual's position in society. This, in her opinion, with due cooperation of the Eur. Ct. H.R. and the Russian state, as well as wise strategizing by legal practitioners might bring better awareness of the potential of human rights for all social groups.

On-the-floor discussion of the issues of constitutionality and rule-of-law in connection with the CC, its recent decisions and compliance with international law highlighted the need of a more nuanced and subtle analysis of Russian law in the context of its legal tradition, political system, and comparative legal framework to be able to place the Russian legal regime among others without marginalizing it. Russia's legal system has reached the point when it needs to face some controversial issues and make hard choices about functioning within the European legal space and international law depending on what kind of values it cares to pursue. Still operating on such notions as 'constitutionality,' Russia chooses to stand up for its 'sovereignty,' while trying to find a way to protect its political and economic interests (or, at least, what Russian government considers as its interests) and yet comply with the scope of the responsibilities it has assumed in the Constitution and international treaties.

2. Legal Protection, Rule-of-Law and Market Economy: Figuring out the Way for Laws to Be Applied

The issues of constitutionality and 'legal sovereignty' contribute to a discussion of Russian courts and very recent court reform that has a profound influence on all spheres of Russian life, in particular on business and the economy. Russia's domestic legal situation is problematic, especially in view of recent legal reforms which changed the court system, by merging the Supreme Commercial Court [hereinafter SCC] into the Supreme Court [hereinafter SC], thus giving the latter the last word on commercial disputes and also changing the structure and jurisdiction of lower courts concerning civil, criminal and administrative procedure cases. Before the merger, the Russian system of commercial courts was considered as the most effective judicial forum for individual businesses and corporations to challenge abuses and arbitrary treatment by the State and / or corrupt or over-reaching bureaucrats. This court reorganization also changed the environment for both domestic and international arbitration, and also, possibly, the relationship between them.⁵

Sergey Usoskin (Senior Associate at Ivanian & Partners, Moscow, Russia) provided a revealing analysis of the structural problems of domestic arbitration in Russia in the context of its future in light of these major developments. Since 1993 Russia has had a good record as to enforcement of domestic awards, 90 percent of which have been enforced where an application for enforcement is lodged. At the same time, there is a current reform of arbitration law being considered by the Russian parliament in a wake of the liquidation of the SCC and transmission of the court's jurisdiction over supervision of arbitration-related cases to the SC. Usoskin argued that the most expected outcome of this pending reform would be an increased level of trust by state courts in the arbitration proceedings. At the same time, since the abolition of the SCC, there has been a change, in a favorable direction, to the overall approach to arbitration in general on the part of many Russian companies. The corollary result to this institutional change is that fewer commercial cases are being referred to the Russian court system.

Another consequence of these changes in the Russian court system is what *Kirill Koroteev (Head of Legal Department of the NGO 'Memorial', Moscow, Russia)* called a 'degradation' of Russian administrative law, meaning a negative impact on the cassation process in civil cases. Based on his assessment of the practice of the Administrative Division of the SC that has also taken a jurisdiction over commercial

⁵ Kathryn Hendley, *Too Much of a Good Thing? Assessing Access to Civil Justice in Russia*, 72(4) *Slavic Review* (2013), available at <https://media.law.wisc.edu/m/xy2my/slavic_review_2013.pdf> (accessed Dec. 10, 2015); Alexei Trochev, *Suing Russia at Home*, 59(5) *Problems of Post-Communism* (2012) doi:10.2753/PPC1075-8216590502; Mikhail Antonov, *Foreign Court Decisions, Arbitral Awards and Sovereignty in Russia*, 38(3-4) *Review of Central and East European Law* (2013), available at <<http://www.hse.ru/pubs/share/direct/document/103474087>> (accessed Dec. 10, 2015). doi:10.1163/15730352-00000006

and arbitration cases instead of the SCC since 2014, Koroteev argued that the approach of the Administrative Division lacks any regard for ensuring the consistent application of law by the lower courts. Only a tiny proportion of cases is heard on the merits and public authorities / state bodies also have much better chances to have their cassation appeals heard and have the lower courts' judgments against them overruled than do individuals and legal persons (business entities). Almost all the cases selected for hearing and judgment concern a limited category of issues: social benefits and housing, keeping land and real property registries, bailiffs' decisions in enforcement proceedings, and interlocutory rulings of lower courts on procedural matters. Accordingly, the SC gives little or no guidance to lower courts, government officials, and the citizenry at large on the application of law in other fields. In other words, the SC turns into a body with high selectivity in its choice of cases and one reluctant to interpret the legal practice and legal norms.

Changes in the commercial arbitration regime are further complicated by additional amendments in Russian corporate and business law, which as *Svetlana Chekhovskaya (Higher School of Economics, Moscow, Russia)* pointed out, do not reflect the needs of business community. The amendments to the Civil Code and the Federal Law on joint-stock companies (in force from July 2015) as well as Federal Law on bankruptcy⁶ brought changes in the types of legal entities (now they are divided into corporations and unitary legal entities) and established different legal regimes for public and non-public corporations, including different requirements to its documents, decision-making and reporting procedure (such as a two signature rule). These put additional pressures on medium-size and small businesses, while prioritizing big corporations (often so called state corporations). While the whole idea of these amendments was to create a more flexible business environment attractive for investors, in practice it weakened legal protection of investors in Russia.

A similar complex set of changes unfolded with the new Russian customs law and policy regime, as it acted to adapt to the sanctions and economic recession during 2014 and 2015. *Anna Petrik (Higher School of Economics and Deloitte CIS, Moscow, Russia)* provided the highlights of the formation of Eurasian Economic Union [hereinafter EEU] in 2015, which is a Customs Union between Russia, Belarus, Kazakhstan, Armenia and Kyrgyzstan. The new legislation provided special economic territories with positive customs benefits to boost Russia's national economy and yet maintain a protectionist regime. Somehow all the new special territories (called

⁶ Федеральный закон от 26 декабря 1995 г. № 208-ФЗ (в ред. от 29 июня 2015 г.) «Об акционерных обществах» [*Federal'nyi zakon ot 26 dekabrya 1995 g. No. 208-FZ (v red. ot 29 iyunya 2015 g.) 'Ob aktsionernykh obshchestvakh'*] [Federal Law No. 208-FZ of December 26, 1995 (with amendments of June 29, 2015), 'On Joint-Stock Companies']; Федеральный закон от 26 октября 2002 г. № 127-ФЗ (в ред. от 13 июля 2015 г.) «О несостоятельности (банкротстве)» [*Federal'nyi zakon ot 26 oktyabrya 2002 g. No. 127-FZ (v red. ot 13 iyulya 2015 g.) 'O nesostoyatel'nosti (bankrotstve)'*] [Federal Law No. 127-FZ of October 26, 2002 (with amendments of July 13, 2015), 'On Insolvency (Bankruptcy)']].

priority social-economic development territories or TOR) happen to be in Siberia and the Far East, including the free port of Vladivostok.⁷ The legislation provided several advantages for the investors, namely, non-application of non-tariff measures to foreign goods and the non-application of prohibitions and restrictions to the goods of EEU and non-payment of customs duties and taxes, when goods are placed and used within the special economic territory. The TORs are also supposed to support non-raw materials export to reduce dependence on oil and gas exports. However, the legislation does not provide any extra protection for investors, leaving them on their own in case of policy changes or changes in the status of a TOR. At the same time, as a response to the sanctions environment, Petrik thinks this policy to be adequate.

Liberalization of the Russian natural gas market might be seen as another solution to the economic crisis and the sanctions against Russia. *Rodion Ishutov* (*Federal Antimonopoly Service of the Russian Federation*), however, insisted that European liberalized natural gas market model, which has undergone several stages of reformation, is not appropriate for further market reforms in Russia in times of crisis. There is a contradiction between long-term contracts, which are traditionally regarded as a guarantee of stable gas supplies and price stability, and liberal ideas of fully opened and flexible gas market with free price formation. Long-term contracts and regulation of natural gas prices seem also to be more effective for energy security purposes. Therefore, this is but one particular example in the sphere of legal regulation where the choice of the best legal initiative in the current circumstances may not necessarily be based on EU experiences and models.

At the same time, *Natalia Malgina* (*University of Helsinki and Hedman Partners, Finland*) argued that such European initiatives as the General Construction Agreements which are widely used in Finland could be useful in terms of risk management for the construction industry in Russia. Malgina's assessment was that there are not any obvious drawbacks to Russian use of this model, and the problem appears to be almost entirely a lack of familiarity with it on the part of Russians engaged in this industry. More generally, the discussion of whether, how and why Russia should or should not adapt legal norms from other countries, if its law is consistent with European or Western legal values, had a constant presence in how speakers and the audience measured the status of rule-of-law in Russia.

⁷ Федеральный закон от 29 декабря 2014 г. № 473-ФЗ (в ред. от 13 июля 2015 г.) «О территориях опережающего социально-экономического развития в Российской Федерации» [*Federal'nyi zakon ot 29 dekabrya 2014 g. No. 473-FZ (v red. ot 13 iyulya 2015 g.) 'O territoriyakh operezhayushchego sotsial'no-ekonomicheskogo razvitiya v Rossiiskoi Federatsii'*] [Federal Law No. 473-FZ of December 29, 2014 (with amendments of July 13, 2015), 'On the Territories of Priority Social-Economic Development']; Федеральный закон от 13 июля 2015 г. № 212-ФЗ «О свободном порте Владивосток» [*Federal'nyi zakon ot 13 iyulya 2015 g. No. 212-FZ 'O svobodnom porte Vladivostok'*] [Federal Law No. 212-FZ of July 13, 2015, 'On the Vladivostok Free Port']].

3. Where Are the People? Market Economy and Welfare State in the Neo-Conservative Era

The above-mentioned attitude of the SC and other courts (including commercial arbitration), together with changes in civil and business law, has a profound impact on the economy and its agents, which in its turn heavily impacts Russian population and its welfare. The SC and lower courts fail to provide proper protection, especially in cases involving corporations and individuals or groups of individuals in the situation of acute economic crisis. *Dawid Bunikowski (University of Eastern Finland)* focused on the clash of interests between big oil and gas corporations and the rights of the indigenous populations in the Russian North using the Sami people as a case study. Bunikowski points out that reasons behind Russia not ratifying Convention Concerning Indigenous and Tribal Peoples in Independent Countries⁸ might not be the reluctance to provide such as protection: the Russian Constitution and special federal laws guarantee protection of small nations. However, Russian economic growth heavily depends on natural resources, notably gas and oil, most of which are situated on the territories inhabited by the indigenous populations. While oil and gas corporations are obliged to sign agreements with the indigenous populations of the territories they develop under the law that should regulate the exploitation and usage of natural resources and provide sustainable development they are often reluctant to do it because of its cost.⁹

A somewhat similar situation can be seen in the forest sector. *Alexandra Shtromberg (University of Helsinki, Finland)* looked at so-called 'forest crimes' in Karelia for 2012–15 to find out that new changes in the forest legislation and abuse of forests introduced by the Criminal Code in August 2014 had in some ways worsened the situation. These changes made 'forest crimes' (illegal acquisition, storage, transportation, reprocessing of *a fortiori* illegal timber) environmental rather than economic crimes, which, in fact, opened a variety of possibilities for corporations (including state owned ones) to continue operate in the shadow economy sector rather than developing a consistent policy on forest management and environment in territories, where forests not only comprise the basic foundation of trade and economy, but also the natural and inalienable part of the local population's lifestyle.

The Russian variant of the market economy has been closely connected with the notion of a welfare state, which Russia has tried and is trying hard to maintain.

⁸ Convention Concerning Indigenous and Tribal Peoples in Independent Countries, Jun. 27, 1989, C169, at <<http://www.refworld.org/docid/3ddb6d514.html>> (accessed Dec. 10, 2015).

⁹ On this see in detail *Новикова Н.И.* Коренные народы российского Севера и нефтегазовые компании: преодоление рисков // Арктика: экология и экономика. 2013. № 3 [Novikova N.I. *Korennye narody rossiiskogo Severa i neftegazovye kompanii: preodolenie riskov* // *Arktika: ekologiya i ekonomika*. 2013. No. 3 [Natalya I. Novikova, *Indigenous Peoples of Russian North and Oil and Gas Companies: Overcoming the Risks*, 2013(3) Arctic Region: Ecology and Economy]], available at <[http://www.ibrae.ac.ru/docs/3\(11\)/102_111_ARKTIKA_3\(11\)_09_2013.pdf](http://www.ibrae.ac.ru/docs/3(11)/102_111_ARKTIKA_3(11)_09_2013.pdf)> (accessed Dec. 10, 2015).

Russian (ex-Soviet) attitudes to welfare state were modern and liberal and aimed at the protection of those in the situation of risk and need. Recently, however, Russian government rhetoric has started to employ the 'traditional values' discourse trying to reduce (though unsuccessfully) welfare state to traditional family economy.¹⁰ The economic crisis, together with re-traditionalization of certain values, has prompted social security reform to meet the state goals in trying to reduce budget expenses in the social sphere. *Ekaterina Tarnovskaya (Higher School of Economics, Moscow, Russia)* presented the results of her assessment of the consequences of the amendments to the Federal Law on the social security system in force from January 2015.¹¹ These changes are very significant as they shift from the concept of 'difficult life situation' to the notion of 'client's necessity' to receive social services. What is even more significant, the new Federal Law also shifted the choice to define those in 'need' onto the local level, which, on one hand, supposedly makes the system flexible, but, on the other hand, creates uneven protection to various categories and gives local governments wide discretion to minimize social services based on other considerations such as balancing the local budget. There is a clear idea for the state to excuse itself from the burden of social benefits and shift those responsibilities and services as much as possible to the 're-traditionalized' family.

Traditional values have also become an often used argument in respect to reproduction rights and body politics in the last five or so years. Mostly women faced stricter control and moral blame for using reproduction technologies and contraception. Women are supposed to provide a 'natural' reproduction for the demographically damaged state.¹² *Ekaterina Mouliarova (Lomonosov Moscow State University, Russia)* unpacked the whole contradictory discourses about the unnaturalness of surrogacy through her analysis of surrogacy laws in Russia. While in this particular respect Russia more or less has complied with applicable international laws and standards, Russian surrogacy laws rather create additional legal problems than solving existing ones. Thus, there is no legal certainty for a couple that they will receive a child after it is born since the law protects the interests of a surrogate mother who is supposed to give her consent after the birth. Therefore, there is no legal certainty for a surrogate mother that a couple will take a child, and there is no legal

¹⁰ See Marianna Muravyeva, *Traditional Values and Modern Families: Legal Understanding of Tradition and Modernity in Contemporary Russia*, 12(4) J. Soc. Pol'y Stud. (2014), available at <http://jsps.hse.ru/data/2014/12/30/1103682869/JISP_12_4_Muravyeva.pdf> (accessed Dec. 10, 2015).

¹¹ Федеральный закон от 28 декабря 2013 г. № 442-ФЗ (в ред. от 21 июля 2014 г.) «Об основах социального обслуживания граждан в Российской Федерации» [*Federal'nyi zakon ot 28 dekabrya 2013 g. No. 442-FZ (v red. ot 21 iyulya 2014 g.) 'Ob osnovakh sotsial'nogo obsluzhivaniya grazhdan v Rossiiskoi Federatsii'*] [Federal law No. 442 FZ of December 28, 2013 (with amendments of July 21, 2014)], 'On the Social Security System of the Russian Federation']].

¹² Здоровье и интимная жизнь: социологические подходы: Сб. ст. [*Zdorov'e i intimnaya zhizn': sotsiologicheskie podkhody: Sb. st.*] [Health and Intimacies: Sociological Approach: Collection of Articles] Elena Zdravomyslova & Anna Temkina, eds.) (European University at St. Petersburg Press 2011).

certainty about financial and damage issues related to surrogacy treatments, as the law does not provide for a standard contractual form in surrogacy treatments. With this significant lack of legal protection, moral issues come in handy to compensate for this deficit in regulation.

Assuming protectionist paternalistic policies, the Russian state also exercises neo-conservative ideas in what traditionally used to be a liberal market that is advertizing. Using the principles of economic analysis of law, *Ilya Ruzanov (Samara State University, Russia)* highlighted the complicated relationships between the State and market economy in relation to competition issues, making the case that the advertisement market in Russia is in fact significantly overregulated. The State assumes a position of a competent parent over incompetent children (consumers) often banning provocative and explicit adverts, including those using images of state officials or 'sacred' cultural images. Instead of letting consumers and agents to sort out their differences in court, the authorities assumed the power to decide what should suit business and consumers better. Ruzanov's analysis in a way summed up the recent shift from neo-liberal to neo-conservative, in which the State by overregulation of economy and the social sphere put constraints on the freedoms of expression and other fundamental human rights, violations of which have been actively debated.

4. To Conclude: Does Russian Law Challenge Rule-of-Law Principles?

The majority of speakers were quite critical of the nature of legal developments in the 2014 and 2015 Russia. However, critical thinking is a necessary component of academic research, without which it is rather impossible to see problems and offer solutions for future developments. Many speakers are also legal practitioners and for them law enforcement and practical attitudes to law are as important as the ability to relate to academic analysis of legal developments. *Andrey Zaoztrovsev (Higher School of Economics, St. Petersburg, Russia)* was very pessimistic about rule-of-law in contemporary Russia, offering a concept of a 'predatory state' that does not protect businesses and property and acts as a main bandit on the highway taking whatever it fancies. Zaoztrovsev used a concept of 'Muscovite matrix' developed by Stefan Hedlund¹³ to show a continuity and deep roots of disrespect to property rights and widespread corruption which prevents Western-style market economy to establish itself in Russia. Presenting a contrary view, *Rebekah Everett (University of Kent, the UK)* following the framework developed by Karl Polanyi and Joel Hellman pointed out that Russia's economic institutions were too underdeveloped to undertake the

¹³ Stefan Hedlund, *Vladimir the Great, Grand Prince of Muscovy: Resurrecting the Russian Service State*, 58(5) *Europe-Asia Studies* (2006). doi:10.1080/09668130600732175

rapid economic transition many assumed it would. While arguing along similar lines as Zaostrovstev that Russia's difficulty in transitioning to a market economy stems from the cultural, political, and social absence of a market economy during most of Russia's recent history, her analysis of Russia's recent record indicates that crises in 1998 and 2008 did in fact assist in the process of partial market reform and institutional development. As to the contemporary crisis, her conclusions are somewhat more reflective, suggesting that the current crisis does, in fact, have the potential to strengthen economic institutions, Everett also suggested that a rapid transition to market economy, per Polanyi, always goes through partial reforms and trial and error to find the right way.

In terms of positive developments in how Russian businesses could influence governmental policies through amending legislation and making a market economy work, Zoya Kotelnikova (*Higher School of Economics, Moscow, Russia*) offered the results of an empirical research project studying counterfeit markets and changes in dealing with illegal economies. The 2000^s saw progressive dynamics in counterfeit markets in Russia, including a decrease in total volumes of counterfeiting, enhancing product segmentation and changes in the structure of forgery business. These economic modifications were coupled with numerous changes in the regulation of intellectual property relations [hereinafter IPR] and law enforcement practices. Special laws on IPR were abolished since January 1, 2008, in order to be included in Part Four of the Civil Code of the Russian Federation, implying the consolidation of IP legislation. Additionally, legal penalties for the illegal use of registered trademarks were increased in all legal Codes. This all became possible due to cooperation between the legislature and business interests affected by counterfeit activities, especially brand manufacturers. While this might be considered as a very small step towards rule-of-law and market economy forces harmoniously working together, it shows that these steps are possible and are being taken by various actors.

The University of Helsinki Faculty of Law conference provided an excellent opportunity for Russian academics and practitioners to get together with Finnish and other international counterparts and present their work in an environment that is both supportive and intellectually challenging. Helsinki's Faculty of Law and our collaborative partner the Russian Higher School of Economics, express our appreciation both to presenters and other participants and attendees. Building on this experience, the University of Helsinki Faculty, the Higher School of Economics, and other potential partners are engaged in active discussions about how to broaden and deepen this effort. Returning to the theme raised near the beginning of this article, there is a great need to increase our attention both to the experience of Russians in using their legal system and to the outputs of this system – Russian court decisions in particular – which will provide useful data for academic analysis and practitioner input that will hopefully strengthen rule-of-law institutions in Russia.

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Information about the author

Marianna Muravyeva (St. Petersburg, Russia) – Professor at Department of Sociology, National Research University – Higher School of Economics (16 Soyuzna Pechatnikov str., St. Petersburg, 190121, Russia; e-mail: muravyevam@gmail.com).