

**The Role of International Mechanisms in  
Promoting the Cultural Rights of National  
Minorities in a Changing Russian Federation  
(2000-2011)**

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## **Declaration**

I, Federica Prina, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

## ABSTRACT

The thesis analyses how, if at all, accession to international standards makes a difference to national minorities in Russia in the advancement of their cultural rights, focusing on the period 2000-2011. It further analyses the factors that influence particular forms of implementation of international standards. The study uses data from semi-structured interviews, as well as from legislation, legal judgements and Council of Europe documents. It focuses on three minorities as case studies: the Karelians, Mordovians and Tatars.

The research is divided into three parts: 1) *Practice and Law*, investigating how the specific characteristics of the Russian domestic legal environment and of the relevant international standards generate a particular type of dynamics between the two; 2) *Homogenisation*, examining whether international standards can suspend or reverse Russia's culturally homogenising tendencies since the 2000s; 3) *Exclusion*, investigating to what extent, if at all, international standards may modify the dynamics of majority-minority relations by facilitating the introduction of a form of participation that is *effective*, in the area of decision- and policy-making on minorities' cultural rights. The thesis concludes that the role of international standards in the area of minorities' cultural rights is restricted in scope in Russia. Two sets of reasons are identified. First, specific features of Russian politics and society: (i) Russia's selective implementation of international law; (ii) the alternation of localism and centralism; (iii) Russia's homogenising centralisation and 'managed diversity'; (iv) the absence of guarantees for the upholding of minorities' participatory rights, resulting in fictitious forms of participation. The second set of reasons relate to the complexities and weaknesses of international standards on minority rights themselves.

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## ABBREVIATIONS

|        |  |
|--------|--|
| ACFC   | Advisory Committee on the Framework Convention for the Protection of National Minorities |
| AFUN   | Association of Finno-Ugric Peoples of Russia   |
| ECHR   | European Convention on Human Rights  |
| CEEC   | Committee of Experts on the European Charter on Regional or Minority Languages           |
| CERD   | Convention on the Elimination of All Forms of Racial Discrimination                      |
| ECtHR  | European Court of Human Rights   |
| ECRML  | European Charter on Regional or Minority Languages                                       |
| EGE    | Unified State Examination ( <i>Edinyi Gosudarstvennyi Ekzamen</i> )                      |
| FCNM   | Framework Convention for the Protection of National Minorities                           |
| FSB    | Federal Security Service   |
| ICCPR  | International Covenant on Civil and Political Rights                                     |
| ICESCR | International Covenant on Economic, Social and Cultural Rights                           |
| IGO    | Inter-Governmental Organisation  |
| NCA    | National Cultural Autonomy   |
| NGO    | Non-Governmental Organisation  |
| OSCE   | Organisation on Security and Cooperation in Europe                                       |
| PACE   | Parliamentary Assembly of the Council of Europe  |
| RCC    | Russian Constitutional Court   |
| RSC    | Russian Supreme Court  |
| RSFSR  | Russian Soviet Federative Socialist Republic   |
| UDHR   | Universal Declaration of Human Rights  |
| UN     | United Nations   |
| UNESCO | United Nations Educational, Scientific and Cultural Organization                         |
| USSR   | Union of Soviet Socialist Republics  |

## NOTES ON TRANSLITERATION

The following transliteration system is used (with the exception of commonly used spelling in English, such as in ‘Yeltsin’)

| <b>Cyrillic<br/>alphabet</b> | <b>Latin<br/>alphabet</b> |
|------------------------------|---------------------------|
| а                            | a                         |
| б                            | b                         |
| в                            | v                         |
| г                            | g                         |
| д                            | d                         |
| е                            | e                         |
| ё                            | e                         |
| ж                            | zh                        |
| з                            | z                         |
| и                            | i                         |
| й                            | i                         |
| к                            | k                         |
| л                            | l                         |
| м                            | m                         |
| н                            | n                         |
| о                            | o                         |
| п                            | p                         |
| р                            | r                         |
| с                            | s                         |
| т                            | t                         |
| у                            | u                         |
| ф                            | f                         |
| х                            | kh                        |
| ц                            | ts                        |
| ч                            | ch                        |
| ш                            | sh                        |
| щ                            | shch                      |
| ъ                            | “                         |
| ы                            | y                         |
| ь                            | ’                         |
| е                            | e                         |
| ю                            | yu                        |
| я                            | ya                        |

*Russia cannot afford to ignore its nationalities*<sup>1</sup>

## 1. INTRODUCTION

Russia is both diverse and homogeneous. While it counts over 170 national minorities<sup>2</sup> - from Koreans to Finns, from Tatars to Armenians - people who describe themselves as ‘Russians’<sup>3</sup> are the clear majority of the population (79.8%).<sup>4</sup> And while in 2010 there were over 16 million Muslims<sup>5</sup> in Russia, in addition to people affiliated to numerous other faiths, Russians tend to identify with the Russian Orthodox faith. The Russian language is spoken by nearly the entire population (98.2%). Hence, there is a multiplicity of ethnicities sharing the country with ethnic Russians - with a corresponding plurality of cultures, traditions and languages - but combined they occupy only a relatively small space in the cultural life of the Russian Federation; meanwhile, the Russian language and culture are dominant in the media and public life.

The ‘national question’<sup>6</sup> is not new to Russia. In the pluri-ethnic Russian Empire and Soviet Union, the central authorities were acutely aware of the need to

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<sup>1</sup> Interview with a high-ranking public official working on nationality issues in Saint Petersburg [4.18]. See list of respondents in Appendix 1.

<sup>2</sup> In its First Report to the Advisory Committee of the Framework Convention for the Protection of National Minorities, Russia stated that ‘The Russian Federation is one of the largest multinational states in the world inhabited by more than 170 peoples’. ACFC, (First) Report submitted by Russia, 8 March 2000, ACFC/SR(1999) 015, p. 4.

<sup>3</sup> Those who declare themselves ‘Russians’ in the census.

<sup>4</sup> Followed by 3.8% Tatars, 2% Ukrainians, 1.2% Bashkirs, 1.1% Chuvashes, 0.9% Chechens and 0.8% Armenians; other, much smaller, minorities make up 10.2% of the population. The data are from the 2002 census. At the time of writing, the results of the 2010 census were still not available.

<sup>5</sup> According to the Pew Forum, ‘Russia has the largest Muslim population in absolute numbers in all of Europe.’ Muslims in Russia were projected to increase from approximately 16.4 million (2010) to 18.6 million (2030), and their share of the population from 11.7% (2010) to 14.4% (2030). <http://pewforum.org/future-of-the-global-muslim-population-russia.aspx> (accessed 2-5-2011).

<sup>6</sup> By ‘national question’ is meant the complexities of the interaction of the majority with a plethora of minority groups. In Russian the expressions *natsional’nyi vopros* (national question) and

develop policies to accommodate national minorities as a means to secure stability. Although some forms of Russification have periodically been imposed in Russia's history (Hosking 1998: 397), in most instances Russia has not adopted assimilationist policies. Nor has it failed to recognise its minorities.

In Russia the dynamics of majority-minority relations have altered as, with the development of international law, they have come to be seen as part of a broader context. These formerly *internal* concerns have become internationalised, and international standards for minority protection, together with the inter-governmental organisations (IGOs) behind them, have become new actors in the management of these relations. In particular, the Soviet Union in 1969 ratified the United Nations' (UN) International Convention on the Elimination of All Forms of Racial Discrimination<sup>7</sup> and in 1973 the UN's International Covenant on Civil and Political Rights<sup>8</sup> - generating international responsibility inherited by Russia as its successor state. In 1996, the Russian Federation became a member of the Council of Europe and acceded to its treaties: the Framework Convention for the Protection of National Minorities<sup>9</sup> and the European Convention on Human Rights,<sup>10</sup> both ratified in 1998. Upon accession to the Council of Europe, Russia also made a commitment to become a state party to the European Charter for Regional or Minority Languages<sup>11</sup> - although in 2011 it still had to ratify, after signing in 2001.

This thesis analyses *how* international standards on the protection of national minorities with regard to their *cultural* rights are applied in Russia,

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*natsional'naya politika* (nationalities policy) are used. The term *natsional'nost'*, or 'nationality', has the same meaning as 'ethnicity'.

<sup>7</sup> International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, adopted 21 December 1965, entered into force 4 January 1969.

<sup>8</sup> International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, adopted 16 December 1966, entered into force 23 March 1976.

<sup>9</sup> Framework Convention for the Protection of National Minorities, ETS No. 157, adopted 1 February 1995, entered in force 1 February 1998.

<sup>10</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 005, 4 November 1950, entered into force 3 November 1953.

<sup>11</sup> European Charter for Regional or Minority Languages, ETS No. 148, adopted 5 November 1992, entered into force 1 March 1998.

focusing on the period 2000-2011. The thesis examines the trajectory from the macro level (the Strasbourg institutions and its treaties) to the micro level (one of the member states) with regard to the transposition of cultural rights of national minorities to the domestic context. In order to capture the specificities of the Russian situation and highlight existing (micro)dynamics that can impact on the implementation of international standards, the analysis considers three case studies. The research question is: how, if at all, does accession to international standards make a difference to national minorities in Russia in the advancement of their cultural rights? This prompts a further question: what factors determine a particular role for international standards? I specifically use the expression ‘cultural rights’ to designate a set of rights that enables persons belonging to minorities to preserve their cultural distinctiveness and identity. This particular usage of the expression is discussed below.<sup>12</sup>

The study uses data from semi-structured interviews, as well as from legislation, legal judgements and documents submitted to or originating from the Council of Europe. It focuses on three minorities as case studies: the Karelians, Mordovians and Tatars. In the study I do not approach Russia as an unusual, wholly *sui generis* case differing from the norm. I also refrain from making judgements as to whether Russia is ‘normal’ (Shleifer 2004: 76), as the significance of ‘normalcy’ is inevitably subjective. I acknowledge that Russia faces many of the challenges common to other countries that have subscribed to international minority rights instruments and mechanisms. At the same time one has to take into account the interplay of factors that influence both political processes and their outcomes: Russia’s unique ethnic composition, the legacy of its imperial and Soviet past, and the characteristics of the Putin-Medvedev leadership and associated regime.

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<sup>12</sup> Section 1.2.

## 1.1 The Thesis: Structure and Purpose

### Structure of the Thesis

The research question, addressing whether international standards make a difference to Russia's national minorities in advancing their cultural rights, generates a series of sub-questions that are addressed in the thesis' various chapters. In the first part of the thesis - after outlining notions and definitions (Section 1.2) - I introduce the methodology (1.3). Chapter 2 provides the theoretical framework on legal transplantation, as well as Russia's historical background in the management of diversity. It identifies features of Russia's approach to diversity that are at odds with international standards for minority protection - without however implying their *a priori* exclusion from the Russian sphere. The remainder of the thesis is divided into three parts:

***Part 1: Practice and Law.*** Part 1 (Chapter 3 and 4) investigates how the specific characteristics of the Russian domestic legal environment and of the relevant international standards generate a particular type of dynamics between the two. Chapter 3 shows that there is a selective and flexible implementation of international law in Russia, rather than its being grounded on domestic legal guarantees. In the specific case of international *minority* rights law (as distinguished from other human rights), the elasticity of its application by Russia is facilitated by the international mechanisms' *own* flexibility. Chapter 4 elaborates on the theme of the selectivity of international standards' implementation, this time with a focus on the judiciary. As in Chapter 3, the data reveal a form of selective

implementation that reduces the potential role of international standards - due to the absence of guarantees that the said standards will be applied consistently and uniformly by judges. It points to a *practice* that can weigh more significantly than the law.

**Part 2: Homogenisation.** Part 2 (Chapters 5 and 6) examines whether international standards can suspend or reverse what I describe as Russia's culturally homogenising tendencies since the 2000s.<sup>13</sup> Chapter 5 outlines: Russia's promotion of a civic Russian identity (which I refer to as the 'new Russian Citizen'); and the re-structuring of the Russian Federation to reduce the salience of ethnicity, which ultimately also acts as a homogenising factor. Chapter 6 analyses the standardisation of minority education through legal reform since 2007, coupled with the absence of coherent educational policies supporting minority languages and cultures. It further shows that the media as 'educator' acts to propagate a patriotic, rather than inter-cultural, approach to Russian citizenship. The resulting scenario is one where cultural distinctiveness tends to be progressively diluted. This section concludes that even a rigorous application of international standards in 2011 would be ill-equipped to withstand these homogenising dynamics.

**Part 3: Exclusion.** Part 3 (Chapters 7, 8 and 9) investigates to what extent, if at all, international standards may modify the dynamics of majority-minority relations by facilitating the introduction of a form of participation that is *effective*, in the area of decision- and policy-making on minorities' cultural rights. Chapter 7 focuses on consultation and cooperation between

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<sup>13</sup> The scope of 'cultural rights' analysed in this thesis is discussed below (Section 1.2).

the authorities and civil society (primarily minority organisations); Chapter 8 on the consultative mechanism championed by the Russian authorities - National Cultural Autonomy (NCA); Chapter 9 on the remaining forms of participation: in elected bodies, and in other (non-NCA) mechanisms of consultation. Combined, the three chapters show that the concerns of minority groups do not tend to impact, or even inform, policy-making that affects minorities' cultural rights. In turn, international mechanisms have not empowered minority groups to *effectively* engage with the Russian authorities.

The conclusion that the role of international standards in the area of minorities' cultural rights is insubstantial and restricted in scope calls for a clarification: what are the principal reasons behind this finding? It is argued that these are:

- (a) *The domestic situation.* Features of Russian politics and society: (i) Russia's selective implementation of international law; (ii) the alternation of localism and centralism; (iii) Russia's homogenising centralisation and 'managed diversity', stemming from a (largely Soviet) essentialist, and culture-focused, approach to nationality issues; (iv) the absence of guarantees for the upholding of minorities' participatory rights, resulting in fictitious forms of participation.<sup>14</sup>
- (b) *International law itself.* The complexities and weaknesses of minority rights law.<sup>15</sup>

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<sup>14</sup> These concepts are clarified in later chapters.

<sup>15</sup> One can hypothesise on a third set of reasons, linked to globalisation processes, with prevailing socio-economic and cultural developments inimical to the preservation of minority cultures. This *problématique*, however, is outside the scope of the thesis.



Despite the rather pessimistic findings on the international standards' limited role in Russia, I argue against the view that these standards are incompatible with the Russian socio-political system, or that the Russian authorities are oblivious to international scrutiny and unconcerned with international legal standards. A full, rather than selective, implementation of international human rights law is very much dependent on (changing) political circumstances. For *minority* rights themselves, as distinguished from other human rights, the challenges are considerable - due to a combination of the Russian domestic situation and international law itself - but may also vary as circumstances alter.

### **Purpose of the Research and Originality**

On 31 May 2011 Valerii Tishkov, an influential actor in the area of nationalities policy who served as Minister of Nationalities under former President Yeltsin, wrote in *Russkii Zhurnal*:

If the 20th century was the century of minorities, the 21st century will be the century of the majority in the sense of recognising its interests, demands and rights [...]. Minorities today have international protection, they know how to self-organise, to promote themselves and make demands before Strasbourg judges.<sup>16</sup>

Effectively, Tishkov argues, minorities have been empowered: they are in a position akin to that of the majority, in terms of power and access to resources, 'either at the level of the state, or at the level of other regions within countries'. Far from being hapless victims, minorities can abuse their powers, and even 'organise a genocide or terror against the majority'.<sup>17</sup>

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<sup>16</sup> Tishkov, V. 31-5-2011. 'XXI Vek Priznaet Prava Bol'shinstva' ('The 21st Century Recognises the Rights of the Majority'), *Russkii Zhurnal* ('Russian Journal').

<sup>17</sup> *Ibid.*

Tishkov's statements followed much publicised statements on multiculturalism by the leaders of three Western European countries: Germany's Angela Merkel, the UK's David Cameron and France's Nicolas Sarkozy. These pronouncements fuelled debate within and beyond the three countries - each with substantial Muslim (and other) minorities. Merkel stated in October 2010:

The approach [to build] a multicultural [society] and to live side-by-side and to enjoy each other [...] has failed, utterly failed.<sup>18</sup>

Defeat was also said to be the end-result in in Britain:

Under the doctrine of state multiculturalism, we have encouraged different cultures to live separate lives, apart from each other and apart from the mainstream. We've failed to provide a vision of society to which they feel they want to belong.<sup>19</sup>

What, then, is the solution? Integration. In Germany, Merkel argued, immigrants should make a much greater effort in their new society, including by learning the language of their host country. In the UK, British Muslims should integrate into British society in a way which would guard against any gravitation toward Islamic extremism.

France's President Sarkozy did not limit himself to rhetoric. During 2011, a new law was introduced banning the wearing of the Islamic full-face veil (*niqab*) in public places.<sup>20</sup> Sarkozy said:

If you come to France, you accept to melt into a single community, which is the national community, and if you do not want to accept that, you cannot be welcome.<sup>21</sup>

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<sup>18</sup> Cited in *BBC*, 17-10-2010. 'Merkel Says German Multicultural Society has Failed'. <http://www.bbc.co.uk/news/world-europe-11559451> (accessed 3-10-2011).

<sup>19</sup> Cited in *BBC*, 5-2-2011. 'State Multiculturalism Has Failed, Says David Cameron'. <http://www.bbc.co.uk/news/uk-politics-12371994> (accessed 3-10-2011).

<sup>20</sup> The law came into force on 11 April 2011.

<sup>21</sup> Cited in *Agence France Press*, 10-2-2011. 'Multiculturalism has Failed, Says French President'. <http://www.google.com/hostednews/afp/article/ALeqM5jR1m5BpdMrDES3u4Cso1v3FwQRUG?docId=CNG.6b096ac0cdcfce7a0f599fbbb1c85c27.911> (accessed 13-10-2011).

Even the Council of Europe Secretary General Thorbjørn Jagland argued that forms of multiculturalism that lead to the formation of ‘parallel societies’ within states, and generating ‘radical ideas’, have to come to an end, in the interests of containing terrorism.<sup>22</sup>

These statements speak of a struggle to find working solutions that would allow for the coexistence of different cultures and ethnicities in the same country. With the threat of terrorism often invoked, the notion is that a mini-clash of civilisations in one’s own backyard needs to be avoided. In the UK, there was considerable shock at the discovery that the perpetrators of the 7 July 2005 bombings in London were British nationals who had been born and raised in Britain but had chosen to give their allegiance to overseas Islamic groups rather than ‘their own’ government. In Russia, the Chechen conflicts and Islamic fundamentalism have presented numerous challenges - and, as an integral part of the Russian Federation, the North Caucasus can easily be seen as incubating the ‘enemy within’. Two of the Russian public officials interviewed (in St Petersburg and Saransk) argued that multiculturalism might not be the best course of action to level internal differences; Russia, they suggested, was perhaps already displaying too much tolerance to difference [4.11; 4.18]. These respondents, whose interviews followed Merkel’s public critique of multiculturalism, referred to her statements as to the supposed failure of this approach. Similarly, Tishkov, in the aforementioned article, argues that the complexities of potential cultural and religious clashes have led to ‘panic’ in Russia, which results in the feeling that ‘multiculturalism is to blame, that it was a mistake’, echoing Merkel.

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<sup>22</sup> In an interview with Financial Times. Hollinger, P. 16-2-2011. ‘Council of Europe Warns on Multiculturalism’, *Financial Times*.

Ethnic issues have a particular salience in contemporary Russia. Whether at the centre of the Tsarist Empire, as a component part of the Soviet Union or as Russian Federation, Russia has had a long history of ethnic diversity. The dissolution of the Soviet Union revealed a society in which Russian national identity had been truncated, and where non-Russian nationalities had been affirmed but also controlled.<sup>23</sup> The legacies of Soviet and pre-Soviet policies are still present in the 21<sup>st</sup> century - visible in the continuation of such policies or in the repercussions that may ensue when breaking with them. At the same time, the forces of globalisation in today's world have been, in Hammarberg's view, generating a new quest for identity (2009) - a desire for self-definition resulting from the dislocation and homogenising tendencies created by modernity.<sup>24</sup>

Global ethnic and religious tensions are likely to grow given the fast pace of transnational migration.<sup>25</sup> The controversial speeches of Western European leaders do not, however, alter the fact that a considerable number of international instruments and documents for the protection of minorities exist - under the auspices of the UN, Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE). Through these instruments, the fate of minorities has become *internationalised* - a matter of international, rather than strictly internal, concern - and in some cases a matter of international jurisdiction (Pentassuglia 2009). Considerable financial and human resources have been invested in the establishment of a minority rights system, which is now an integral part of the international human rights framework. Has participation in this system enabled Russia to untangle some of the complexities linked to its diversity?

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<sup>23</sup> See Section 2.3.

<sup>24</sup> As Hammarberg puts it: 'More and more people appear to feel the need to define their own identity in a world which is changing so rapidly' (2009). See also Hylland Eriksen (1999).

<sup>25</sup> Russia has substantial numbers of guest workers from Central Asia and the South Caucasus. See, for example, 'Central Asia: Russia Grapples for Labour-Migrant Dilemma', *EurasiaNet.org*. <http://www.eurasianet.org/departments/civilsociety/articles/eav030510.shtml> (accessed 1-3-2011).

This thesis seeks to answer this question. Within the general area of cultural rights, I focus on minority education as a key factor in the preservation and development of minority cultures; and on national minorities' right to participation in decision-making and in the formulation of policies on minority cultures. Russia was chosen over other multi-ethnic countries as a highly complex case study, given its enormous size and the multitude of ethnicities present on its territory, and as a significant player in the international arena, whose potential inter-ethnic conflicts might create instability well outside its borders.<sup>26</sup> Russia can play a destabilising effect in the region; in turn, tensions in the 'near abroad' - former Union Republics of the USSR - are reflected internally in Russia. Indeed, the ethnic groups that have been affected by conflicts since the Soviet Union's collapse have fellow nationals in Russia (i.e. Georgians, Armenians, Azerbaijanis, Abkhaz, Ossetians and Moldovans). Internal and external tensions can be mutually reinforcing.

The originality of this thesis lies in its multidisciplinary approach, with the pulling together of different threads to answer the research questions. There is a wealth of literature on protection of minorities, and on the promotion of their cultural rights from a legal standpoint, analysing the ever-evolving nature of international minority rights law.<sup>27</sup> There is an abundance of analysis by renowned authors on multiculturalism, nationalism and identity.<sup>28</sup> There is also copious

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<sup>26</sup> Ethnically-motivated conflict has occurred in the post-Soviet period, namely the Chechen wars, and the spill-over of violence from Chechnya to other North Caucasus republics. The European Court of Human Rights has acknowledged Russia's involvement in the preservation of the *de facto* separation of Transdnistria from the rest of Moldova (in the judgement *Ilaşcu and Others v. Moldova and Russia*, Application No. 48787/99, 8 July 2004. See also Section 3.2 below). Only in 2009, Russia became involved in the inter-ethnic conflict in South Ossetia. In the former Soviet republics (the 'near abroad') other ethnic conflicts have unfolded (Abkhazia and Nagorno-Karabakh), and ethnic tensions abound in the multi-ethnic Ferghana Valley, in Central Asia). The 'nearness' of these territories, and Russia's former political supremacy therein, result in an interconnectedness of events.

<sup>27</sup> For example, Gilbert (2005a; 2005b); Pentassuglia (2003; 2009); Reidel (2010) Thornberry (2004; 1991).

<sup>28</sup> For example, Balibar (1991; 2004); Benhabib (2002); Breuilly (1994; 2005); Brubaker (2002); Connor (1994; 2004); Gellner (1997); Guibernau (2007); Hobsbawm (1990); Kymlicka (2003; 2007a); Parekh (2006); Smith (2008a; 2008b; 2010); Taylor (1992).

literature on Russia's inter-ethnic and centre-periphery relations, Soviet and Russian ethnic federalism, and nationality issues.<sup>29</sup> There is, however, little research linking Russian politics with international minority rights law; and focusing on *how* international law in this area is applied - together with the reasons for specific modalities and effects of its application. With few exceptions, authors that have examined nationality issues in Russia have excluded the international legal component from their analyses, focusing on other dimensions (politics, anthropology and/or sociology). International lawyers who have researched the implementation of international human rights law in Russia have primarily focused on Russia's own jurisprudence, and the European Court of Human Rights' case-law on Russia (Burkov 2007; Trochev 2009). I engage in a similar analysis but specifically with reference to the cultural rights of minorities. The study reduces the gulf between the disciplines of international human rights law and Russian politics by looking at minority issues and politics in light of unfolding developments in international law. It further integrates ethnographic elements into the legal discussion, with in-depth interviews carried out during the author's fieldwork. It thereby brings to the fore the opinions of interlocutors, including from the less researched regions of Mordovia and Karelia.

This thesis is informed by the research of the two principal authors who have studied minority rights in Russia with reference to international law - Professor Bill Bowring and Dr Alexander Osipov. This thesis adds to their analysis a different methodological and interpretative approach: the use of semi-structured interviews with a variety of respondents, particularly in the three focal regions of Karelia, Mordovia and Tatarstan; and the interpretation of the application of

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<sup>29</sup> For example, Alexander (2004); Bowring (2002; 2003a; 2005; 2007; 2010a; 2010b); Chebankova (2007; 2008); Gelmal (2003); Giuliano (2011); Gorenburg (2003); Hahn (2003; 2010); Hale (2005); Osipov (2004; 2011); Pain (2007); Suny (2001); Tishkov (1997; 2007).

international standards on minority protection in line with the concepts of: ‘selective implementation’, ‘localism’ (in the sense of ‘atomisation’), ‘managed diversity’, and ‘new Russian citizen’. These concepts are illustrated in the next chapters.

In examining international standards on the cultural rights of minorities, I focus on Council of Europe standards. This is for two reasons. First, in interviews, when asked general questions on international standards on minority protection, respondents automatically focused on Council of Europe standards, rather than on UN instruments. Indeed, membership of the Council of Europe gives everyone in Russia access to the European Court of Human Rights, and the European Convention on Human Rights has penetrated Russia’s judicial sphere to a significant degree.<sup>30</sup> Although the ECHR has a limited role in advancing minority rights, not being a minority rights instrument per se, it reconfirms the Council of Europe as a supranational institution with the authority to issue binding judgements on human rights in Russia. Second, the Framework Convention for the Protection of National Minorities (FCNM) is legally binding on Russia and has its own monitoring body, the Advisory Committee of the FCNM, whose monitoring has encompassed issues of relevance to the subject of the thesis: education in minority languages, political representation, consultative mechanisms and National Cultural Autonomies. Where needed, I make reference to other existing international standards on minority rights, developed by the UN and the OSCE. I acknowledge that no state entirely fulfils its responsibilities under international human rights and minority rights law. An international body such as the Council of Europe grants its member states a margin of appreciation: states are allowed relative flexibility in fulfilling their international human rights responsibilities, taking into account their

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<sup>30</sup> See Chapters 3 and 4.

political, historical and social circumstances.<sup>31</sup> Flexibility is even more pronounced in the case of minority rights law, so as to enable the devising of forms of implementation that match, as closely as possible, the specific needs of different minorities. In some cases a state's specific history can create optimal foundations for the upholding of minority rights (i.e. a tradition of autonomy for minority groups). In other cases, the opposite may be true (i.e. a history of assimilation). In assessing the impact of international standards in Russia, I incorporate in the research an analysis of underlying characteristics that are conducive to, or undermine, the upholding of the cultural rights of minorities, and with them the implementation of the relevant international standards. The findings show that the specific domestic characteristics of a state - aspects of historical legacies and the socio-political situation - can affect the implementation of international standards.

### **Focus of the Thesis**

There are numerous issues that, although undoubtedly worthy of analysis, were not included in the thesis for logistical considerations of time and space. Of these, three are particularly worthy of mention. First, Russian scholars and other respondents stressed in interviews that, in post-Soviet Russia, the most precarious conditions and human rights violations are experienced by immigrants rather than minorities with a traditional presence in Russia.<sup>32</sup> I chose not to include the issue of immigrants given my focus on Council of Europe standards, which primarily apply to 'old' minorities (with a traditional presence), rather than 'new' minorities.<sup>33</sup> This choice provoked a shift of focus from discrimination and racist societal attitudes,

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<sup>31</sup> This concept was developed by the ECtHR in its case-law, and takes into account the cultural and historical differences between the Council of Europe member states that can lead to differing interpretations of the ECHR.

<sup>32</sup> For example, this was the opinion of two academics and analysts in Moscow [2.16; 2.18].

<sup>33</sup> This does not mean that the new minorities are excluded from the scope of the FCNM. See Medda-Windischer (2009).



which affect mostly ‘new’ minorities - immigrants from Central Asia and darker-skinned Caucasians<sup>34</sup> - to *cultural* rights, which primarily affect ‘old’ minorities. While racism and discrimination are pressing problems in Russia, I chose to focus on the cultural rights of national minorities as issues that are destabilising but less researched.

Second, respondents noted that the challenges experienced by titular nationalities are greater for those persons *not* residing in their ‘own’ titular republics. A possible discrepancy in the enjoyment of cultural rights between the two groups (inside and outside their ‘own’ titular republics) is not a focus of the study. Some consideration is given to the matter in the case of the Karelians outside Karelia (in Tver), and Tatars outside Tatarstan (in Moscow and Saransk).<sup>35</sup> One may hypothesise that the problems affecting titular nationalities outside their titular republics are similar to, but more pronounced than, those of minority representatives benefiting from territoriality. Third, I exclude the thesis the analysis of Russia’s ‘small-in-number’ indigenous peoples of the North, Siberia and Far East.<sup>36</sup> Both in Russian and international law indigenous peoples are subject to a separate rights regime compared to national minorities.

As the research progressed, and particularly during the fieldwork, education and participation became primary concerns. These are the aspects of minority rights that feature most prominently in the thesis (Chapters 6 to 9). Linguistic and cultural heritage can hardly be preserved without education through the medium of minority languages, or the study of minority languages as subjects in schools. They require

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<sup>34</sup> When discrimination and prejudice is triggered by skin colour, it can also affect numerous Russian citizens from regions such as the North Caucasus, in addition to immigrants from the South Caucasus.

<sup>35</sup> Relevant interviews were conducted where possible. The author could not meet representatives of Karelian organisations outside Petrozavodsk and Tver, and of Mordovian organisations outside Mordovia: either such organisations did not exist in the cities visited or their representatives declined the request for an interview.

<sup>36</sup> On Russia’s indigenous people, see Section 1.2, and Xanthaki (2004).

expensive training of bilingual teachers and the production of appropriate textbooks, as well as academic research by scholars specialising in minority languages, history and cultures. Additionally, adequate and targeted measures for the preservation and development of minority cultures and languages cannot be effectively formulated without the involvement of the interested parties: person belonging to national minorities themselves.

## 1.2 Definitions: Minorities and Cultural Rights

Before moving on to the theoretical framework, I clarify the terminology used in the thesis - first and foremost, the definition of ‘minority’ itself, and subsequently ‘culture’ and ‘cultural rights’. Those institutions that have pioneered the development and promotion of minority rights standards - the UN, the Council of Europe and the OSCE - have refrained from providing a definition of ‘minority’. Equally, there is no definition of ‘people’ despite the fact that the ‘right of peoples to self-determination’ has been recognised as a right *erga omnes*.<sup>37</sup> As Thornberry puts it, in international law ‘there seems to be only general agreement that there is no generally agreed definition’ of ‘minority’ (1991: 164). Leading scholars of nationalism such as Anderson (1991) and Gellner (1997; [1983] 2006), in their seminal texts, have approached the issue from the point of view of ethnicity and the nation, focusing on the creation of nation-states - without analysing, or defining, minorities within such states. Yet almost every state includes minorities. Smith, for example, asserts that:

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<sup>37</sup>*East Timor (Portugal v. Australia)*, Judgment, International Court of Justice Reports 1995, p. 102, § 29. A right *erga omnes* relates to a state’s obligations to prevent its breach vis-à-vis the community of states as a whole, as in the cases of genocide and torture.

[M]ost nation-states are polyethnic [and] many have been formed in the first place around a dominant *ethnie*, which annexed or attracted other *ethnies* or ethnic fragments into the state (1991: 39).

Smith's assertion reveals that 'minorities', as the expression itself suggests, are commonly understood in relation to the 'majority'. It reinforces the view of a majority as a 'monolithic cultural bloc in opposition to the minority', which is seldom the case (Thornberry 1991: 7).

There are a number of reasons for the resistance to a definition in international law, including: the difficulty in formulating an all-encompassing definition given the great diversity of minorities, their historical legacies and social conditions;<sup>38</sup> and the sense of urgency in developing solutions to guarantee minority rights, with or without a conclusive definition.<sup>39</sup> In practice, even without an agreed definition, minority rights concerns have existed for centuries, and have been the subject of international agreements, treaties and declarations from the 1648 Treaty of Westphalia, the League of Nations and contemporary international bodies such as the UN. These instruments have delineated a minority's core features, although their exact meanings (and the responsibilities of states vis-à-vis minorities) have been the subject of debate and varied interpretations. Initial concepts, with the Treaty of Westphalia, focused on tolerance of minority faiths. Following the First World War, with the League of Nations, this was extended to encompass elements of language and ethnicity (Ramaga 1992a: 409; Hannum 1991: 1431).

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<sup>38</sup> This 'defeatist' approach was adopted by the Council of Europe in relation to the Framework Convention for the Protection of National Minorities:

It was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States.

Explanatory Report on the Framework Convention for the Protection of National Minorities (hereinafter FCNM Explanatory Report), § 12.

<sup>39</sup> According to Sigler, '[t]he real needs of minorities cannot wait' (1983: 3).

The most frequently cited draft definition is the one formulated by Francesco Capotorti, former UN Special Rapporteur on the Subcommission on Prevention of Discrimination and Protection of Minorities:

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language (Capotorti 1979).

It had been further clarified that ‘minority’ cannot be interpreted in its ‘literal sense’<sup>40</sup> - otherwise it would encompass ‘families, social classes, cultural groups, speakers of dialects, etc’.<sup>41</sup> Rather, a ‘minority’ is to be understood as a ‘national or similar community, which differs from the predominant group in the State’.<sup>42</sup>

Capotorti’s successor, UN Special Rapporteur Jules Deschênes, slightly elaborated on the definition in 1985.<sup>43</sup> However, neither definition was codified into a legal text. Instead, the qualifying attributes ‘ethnic’, ‘religious’ and ‘linguistic’ can be found in Article 27 of the International Covenant on Civil and Political Rights,<sup>44</sup> which stipulates:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

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<sup>40</sup> ‘Definition and Classification of Minorities’, 27 September 1949, UN Doc E/CN/Sub.2/85, § 24.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> The Deschênes definition is:

A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.

<sup>44</sup> Packer criticises the overuse of adjectives in the absence of a definition:

[The] emphasis on the adjective becomes largely irrelevant since they too lose their meaning in the absence of the noun: to say that something is “green” is not very helpful if one has no idea to what it applies. (1993: 57)

See also Gilbert (1996: 169).

These adjectives are also included in the title of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.<sup>45</sup> The first OSCE High Commissioner on National Minorities, Max van der Stoel (1993-2001) adopted a different approach: he refrained from providing even a working definition of ‘minority’ altogether. Rather, he argued that: ‘I know a minority when I see one’.<sup>46</sup>

The expression ‘national minority’ has also been used to designate a group’s national roots (Gilbert 1996: 169), effectively as a synonym of ‘ethnic’, for example in the Council of Europe’s Framework Convention for the Protection of National Minorities (FCNM) and the OSCE’s 1990 Document of the Copenhagen Meeting on the Human Dimension.<sup>47</sup> A similar understanding of ‘national minority’ is also found in a definition of the term proposed by the Soviet delegation to the UN, as:

[A]n historically formed community of people characterized by a common language, a common territory, a common economic life and a common psychological structure manifesting itself in a common culture.<sup>48</sup>

Kymlicka distinguishes between immigrants (ethnic minorities) and autochthonous nations (national minorities), deriving from the bifurcation of a *multinational* state (with a combination of nations or peoples) and a *polyethnic* state, formed by immigrants (ethnic minorities instead of national minorities) (1995: 11-26). Finally,

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<sup>45</sup> Adopted on 18 December 1992, GA Res 47/135.

<sup>46</sup> Van der Stoel, M. Keynote Address to the OSCE Human Dimension Seminar on ‘Case Studies on National Minority Issues: Positive Results’. He did however, in his work in Ukraine, specify that a national minority is to be distinguished from an indigenous people, since an indigenous people has no kin-state, whereas a national minority generally has. See Letter to Hennady Udovenko, Minister of Foreign Affairs of Ukraine, 14 February 1997. <http://www.minelres.lv/count/ukraine/970214r.htm> (accessed 15-10-2011).

<sup>47</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990.

<sup>48</sup> UN Doc. E/CN.4/SR.369, § 16. The Soviets’ addition to the other definitions was the inclusion of ‘territory’.

the expression ‘national minority’ has been employed to designate a minority with a kin-state (Gilbert 1996: 169).

Reaching universal consensus on the meaning of ‘ethnicity’ has also proven an insurmountable obstacle. Although some characteristics overlap, there are distinctions between ‘nation’ and ‘ethnicity’ - although, confusingly, the etymology of ‘ethnic’ is the Greek *ethnos*, meaning ‘nation’ (Thornberry 1991: 159). An *ethnie* (ethnic community), Smith argues, serves as foundation for the development of a nation (Smith 1991: 39), which Anderson describes as an ‘imagined political community - and imagined as both inherently limited and sovereign’ (1991: 6). Both *ethnie* and nation are communities ‘of common myths and memories’ (Smith 1991: 40).

In the absence of a widely endorsed definition, in practice states can forge their own definitions, and thereby may deny the existence of specific minorities in their territories - or, in the case of France, of *any* minority.<sup>49</sup> Thornberry stresses the pressing need for an agreed conclusive definition:

[T]he right to identity, diversity, development [...] needs acutely to be supplemented by some legal effort, perhaps in the form of a definition, to identify which groups are envisaged [...] (1991: 296).

Gilbert adds that the absence of a definition leads to the precariousness of the application of what are in fact only ephemeral concepts of ‘minority rights’ (1996: 162).<sup>50</sup>

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<sup>49</sup> The position of France is that it has no minorities, on the basis of Article 2 of its Constitution, stipulating: [France is] a [r]epublic, indivisible, secular, democratic and social. It shall ensure equality of its citizens before the law, without distinction of origin, race and religion.

Rodley notes that similar provisions are present in the constitutions of other countries that do not deny the existence of minorities within their borders (1995: 51).

<sup>50</sup> He argues:

[T]he specificity of protection for groups, particularly minorities, has remained largely uncertain. When there are [no definitions] in a legal instrument [...] that raises the question about to whom [it] applies - one cannot accord rights to wholly nebulous concepts and some definition is necessary (Gilbert 1996: 162).

The search for an ideal definition is a contentious issue in the international minority rights system. This issue is, however, only peripheral to this thesis. The Russian approach is very distant from that of, say, France. In its census, and in its reports under the FCNM, Russia lists over 170 ethnic groups distinct from the majority - which include the three case studies of this thesis. More complex is the meaning of ‘nationality’ (*natsional’nost’*) in Russia - a general concept that needs to be unpacked. The Russian (originally Soviet) anthropological tradition divides ‘nationalities’ - used here in the sense of ‘ethnic group’ - into three categories: titular, non-titular, and ‘small-in-number’ indigenous peoples of the North, Siberia and Far East.<sup>51</sup> I first clarify the distinction between indigenous peoples and other nationalities. This distinction is, of course, not unique to Russia: indigenous peoples worldwide have insisted on their distinctiveness from ‘simple’ minorities - not least because international mechanisms provide greater protection to indigenous peoples.<sup>52</sup> There is some overlapping between the two categories, although in some cases one group will indisputably fall into one or the other (Aukerman 2000). As for ‘minority’, there is no generally agreed definition of ‘indigenous people’. The UN International Labour Organisation, in Convention No.169,<sup>53</sup> refers to indigenous peoples as:

[P]eoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries

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<sup>51</sup> There is a further distinction between autochthonous people (*korennyye narody*) and non-autochthonous.

<sup>52</sup> On indigenous people and international law also see, among others, Barsh (1996); Kingsbury (1993); Pentassuglia (2003; 2009); Thornberry (1991; 2002); Xanthaki (2004).

<sup>53</sup> International Labour Organisation, ‘Indigenous and Tribal Peoples Convention’ No.169, adopted on 27 June 1989, entered into force 5 September 1991. The convention was adopted in the recognition of ‘the aspirations of [indigenous] peoples to exercise control over their own institutions, ways of life and economic development’, and in light of the fact that ‘in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live’ (Preamble).

and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.<sup>54</sup>

This definition exposes the vulnerability of indigenous groups, justifying the greater protection afforded to them. It further stresses the relationship to land: even through minorities can at times claim an ancestral relationship with their land, indigenous people have a deep cultural (also seen as spiritual) connection to land, as well as depending on it for their livelihood.<sup>55</sup> Russia federal legislation provides for specific rights in the area of land preservation and traditional way of life.<sup>56</sup>

For those groups not categorised in Russia as ‘small-in-number’ indigenous peoples, a supplementary distinction is made, between titular and non-titular nationalities. Titular nationalities are those that were provided territorial autonomy during the Soviet period, and ‘assigned’ a territory named after them, usually in the form of ‘ethnic republics’ (as for all three case studies: the Republics of Karelia, Mordovia and Tatarstan). Given that these nationalities could benefit from territoriality, and that the Soviet nationalities policy enforced affirmative measures for their representation in their territory’s administration, these nationalities tend not to be perceived in Russia as ‘minorities’ - an expression associated with vulnerability and inferiority. They have been regarded as ‘titular nationalities’.<sup>57</sup> Russia’s approach, at least on paper, reflects the notion of the coexistence of ‘co-nations’ rather than of a majority and minorities. The concept of ‘co-nations’

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<sup>54</sup> Article 1(1)(b).

<sup>55</sup> Cobo, J.R. ‘Study of the Problem of Discrimination against Indigenous Populations’, UN Doc. E/CN.4/Sub.2/1986/7/Add.4 (1986), pp. 196-7.

<sup>56</sup> The main law is the Law No. 104-FZ of 20 July 2000 ‘On the Basic Principles of Community Organisation of Small-in-number Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation’.

<sup>57</sup> The expression ‘minority’ has been linked to representatives of ethnic groups living outside ‘their’ territory (Malakhov & Osipov 2006: 509). In fact, the expression ‘national minority’ was mostly excluded from the Soviet discourse, and only seldom resurfaced. The repercussions of differing terminological approaches are examined in Chapter 3.



implies equality in status and dignity for all ethnic groups, rather than distinguishing between dominant and non-dominant ethnicities (Malloy 2005: 38).

For the purpose of the thesis, I use the term ‘minority’ (or ‘national minority’<sup>58</sup>) according to the meaning of the expression in international law. Although Capotorti’s is only a working definition, it is sufficient to classify the nationalities considered in the thesis as ‘minorities’. The Tatars, Mordovians and Karelians are ‘numerically inferior to the rest of the population of the state’; they are ‘in a non-dominant position’; they are distinct from the rest of the population by the ‘ethnic, religious or linguistic characteristics’ that they possess; and interview data indicates that they have a ‘sense of solidarity’ combined with a desire to preserve their cultures. Numerical factors are relative: although a minority should be numerically smaller than the majority, in some areas within a state its members might be more numerous than majority members (Thornberry 1991: 169). Of the three case studies, only Tatars have a population more numerous than that of the Russians within their republic. In these cases, international law approaches the condition of ‘minority’ in relation to a country in its entirety. In fact a bigger population does not by itself imply dominance: there are groups that, though numerically superior, are in a disadvantaged position, as black South Africans were in apartheid South Africa (a so-called ‘reversed’ minority) (Ermacora 1983: 284).<sup>59</sup>

A ‘need for protection’, then, has to be added to the equation (Ramaga 1992a: 119). Are the Tatars in need of such protection? I argue that they are: nearly two-thirds of Russia’s Tatars reside outside Tatarstan, and even within Tatarstan the Russian culture and language dominate in the public sphere. The same applies to

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<sup>58</sup> The expression ‘*national* minority’, however, is not used in the sense of a minority that has a kin-state, as this does not apply to many minorities in Russia (including Tatars, Mordovians and Karelians), which nevertheless fall within the scope of application of the FCNM. I use the expression ‘national minority’ as per Kymlicka’s classification of this type of minority as autochthonous (old minority) (1995), also reflected in the practice of the Council of Europe.

<sup>59</sup> Cited in Thornberry (1991: 7).

those other ethnic republics where the titular nationality is numerically superior (more than half the republic's total population): Chechnya, Chuvashia, Ingushetia, Kabardino-Balkaria, Kalmikia, North Ossetia and Tuva.

### **Cultural Rights of Minorities**

After discussing the meaning of 'minority', for the purposes of this study one also has to clarify the scope of a minority's 'cultural rights'. In the absence of a general agreement as to the exact scope of the expression, one first has to unpack the meaning of 'culture'. Geertz takes the following position:

Believing with Max Weber, that man is an animal suspended in webs of significance he himself has spun, I take culture to be those webs. (1973: 5)

Meanwhile, UNESCO provides an extremely broad definition of culture, as:

[T]he totality of ways by which men create a design for living. It is the process of communication between men; it is the essence of being human.<sup>60</sup>

Stavenhagen sees culture as a 'coherent self-contained system of values and symbols' (1995: 66). Reidel suggests the following definition:

A set of shared meanings, norms, and practices that form a comprehensive world view that serves to unite a group and contribute to the identity of its members. (Reidel 2010: 66)

Hence, culture can encompass 'meanings', a 'world view', a 'system of values and symbols', and the 'essence of being human'. 'Culture' is further contained in the expression 'multiculturalism' - which has itself been seen to imply the 'equal recognition of cultures' (Kelly 2002: 5). Young sees the 'culture' of multiculturalism as not confined to *ethnic* attributes, but also encompassing, for

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<sup>60</sup> 1970 Statement on Cultural Rights as Human Rights by the United Nations Education Scientific, and Cultural Organization.

example, ‘gay culture’ (1990). Yet, in its common usage, multiculturalism has acquired *ethnic*, more than strictly cultural, connotations. The statements by Merkel, Cameron and Sarkozy reported above, exemplify this interpretation of the notion of ‘culture’: their comments on ‘multiculturalism’ referred primarily to policies vis-à-vis Muslim minorities - communities religiously and *ethnically* distinct from the majority population in addition to possessing different cultural practices. It leads Hasan to denounce the term ‘culture’ when in fact what is intended is ‘ethnicity’ or ‘race’, which he sees as a sign of ‘pusillanimity’ (2010: 13).<sup>61</sup>

Cultural rights are not restricted to national minorities. They are incorporated in general human rights international conventions and declarations, such as the 1948 Universal Declaration of Human Rights,<sup>62</sup> the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>63</sup> They are also included in documents specifically concerning minority rights. For example, Article 5(1) FCNM states:

The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

Here, both language and culture are defined as ‘essential elements of ... identity’ of persons belonging to national minorities. Indeed, the attributes of culture are bound up with identity (Mannens 1999: 186).<sup>64</sup> Similarly, Reidel lists as the primary

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<sup>61</sup> The adjective ‘ethnic’ may, in turn, denote culture, as well as race. According to Thornberry, an ethnic group can refer to ‘a ‘cultural’ entity with or without distinct ‘physical’ characteristics’ (1991: 160). ‘Ethnic’ is an all-inclusive term (Ramaga 1992b: 418-9).

<sup>62</sup> GA Res. 217 (III), UN Doc. A/810 (1948) 71, adopted on 10 December 1948.

<sup>63</sup> 993 U.N.T.S. 3, adopted on 16 December 1966, entered into force 3 January 1976.

<sup>64</sup> See also Article 1(1) of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

attributes of culture: shared history, shared belief, shared identity, language, traditions, and practices (2010: 68). An alternative expression to ‘cultural rights’ is the ‘right to identity’: the right of minorities to protect their cultural destiny (Thornberry 1991: 141-2; Pentassuglia 2002: 133). It includes the enjoyment of those rights that enable a minority to express its identity, through the practice of its distinct cultural traditions, and the use of its language.

Hence, I employ an understanding of ‘culture’ of national minorities that is inextricably linked to ‘identity’. Additionally, I treat *language* as a highly prominent group identity marker - for three reasons. First, language is at the heart of the expression of a group’s identity (Crystal 2000). Thus, Martin Estebanez argues:

[L]inguistic communication [is] possibly the most intangible and at the same time fundamental of [...] spaces [for the development of a group’s identity], as language permeates almost every aspect of minority identity (Martin Estebanez 2005: 269).

Second, language encompasses all social spheres: the choice of language in the media, the public sector, employment, parliament and the courts has social repercussions, with a potential for linguistic discrimination. Third, language is a symbol of power. In the development of nations, the dominant group’s language crystallises, and consolidates as the dominant language.<sup>65</sup>

The cultural rights of minorities analysed here are considered in the context of human rights, in a recognition that an individual’s cultural identity is bound up

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States shall protect the existence and the national or ethnic, cultural, religious and linguistic *identity* of minorities within their respective territories and shall encourage conditions for the promotion of that identity [italics added].

<sup>65</sup> According to Anderson, this process occurred through the development of the printing press (1991).

with his/her dignity (Packer 1999: 247; Mannens 1992: 186).<sup>66</sup> Given the very broad scope of minorities' cultural I restrict my research to the following areas:

- (a) Linguistic rights of minorities: the right of minorities to preserve and develop their own language.
- (b) Cultural rights in their intersection with the right to education: the right of minorities to be instructed through the medium of their own language; or to be taught their language, history and culture as subjects.
- (c) Cultural rights in their intersection with the right to participation: the right of minorities to participate in decision-making and to be consulted on issues that directly affect them and their cultures.

Some final notes on terminology follow.

I use 'ethnicity' and 'nationality' interchangeably, although I use 'nationality' more frequently as a direct translation of the Russian *natsional'nost'*. Also interchangeably I employ other expressions that recur in international law: 'minority', 'national minority',<sup>67</sup> or 'person(s) belonging to national minorities'.

The term 'minority' is always used to mean *ethnic* minorities rather than sexual or other types of minorities: the latter are outside the scope of the thesis. Hence, 'minority cultures' is used in the sense of 'cultures of ethnic minorities'.

I refer to 'human rights' as the entire international human rights system, including the UN as well as regional bodies (the Council of Europe and OSCE for Russia). 'Minority rights' are treated as an integral part of the international human rights system.

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<sup>66</sup> On linguistic human rights see Skutnabb-Kangas (1994).

<sup>67</sup> See note 58.

When talking about ‘international law’, I also use the expression ‘international standards’. The two expressions may be used interchangeably, although ‘standards’ are broader: they encompass principles that are not legally binding (‘soft law’), such as those developed by the OSCE, as well as those arising from legally binding documents.<sup>68</sup>

### **1.3 Methodology**

Before analysing my findings, I outline the methodology used for the study. The research is based on qualitative data gathered through 100 semi-structured interviews: 95 in Russia and 5 in Strasbourg (Council of Europe respondents). The research is time-bound, from 2000 - shortly after Russia’s ratification of the ECHR and the FCNM in 1998 - up to 2011 (February 2011, when I conducted the last interviews). The timing offers insights into Putin’s leadership, which started in 2000, and the introduction of the ‘vertical of power’ and centralisation measures - continued during the joint leadership with President Dmitrii Medvedev.<sup>69</sup> This period also saw the introduction of amendments, in 2007, to the Federal Law ‘On Education’,<sup>70</sup> with potentially wide-ranging repercussions on minorities in Russia. The years 2010-2011, when the interviews took place, saw initial, tentative attempts to implement these new provisions and educational standards.

Although it has been argued that President Dmitrii Medvedev has not merely been a powerless entity in the duumvirate with Putin,<sup>71</sup> under Medvedev

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<sup>68</sup> The UN’s ICCPR (Article 27), and the Council of Europe’s FCNM, European Charter for Regional or Minority Languages, and the European Convention on Human Rights.

<sup>69</sup> Putin became acting president on 31 December 1999 upon former President Yeltsin’s resignation. Having won the presidential elections in 2000 and then in 2004, he was president until May 2008. He was succeeded by Dmitrii Medvedev, while Putin took the post of Prime Minister. In September 2011 Medvedev announced that he would not seek a second term but that Putin would run again for presidency in the Russian presidential elections of March 2012.

<sup>70</sup> No. 3266-1 of 10 July 1992. See Chapter 6.

<sup>71</sup> Hahn argues that Medvedev has displayed some independence in both internal and foreign affairs,

there has been no significant departure from the direction given by Putin to Russia's reforms (Hahn 2010). Among other things, Medvedev has replaced several regional governors, including in the ethnic republics, in line with new presidential powers secured under Putin's leadership.<sup>72</sup> Hence, in the thesis I refer primarily to Putin's (or Putin-Medvedev's) policies.

The research makes use of case studies, with a 'collective' approach - from Stake's categorisation of intrinsic and collective case studies (1994). Although the thesis has three case studies, I do not have an intrinsic interest in the case studies per se (intrinsic approach) (Stake 1994: 237). I apply, instead, the 'collective' approach to the case studies, aiming at identifying regularities that can apply to a broader context. I opt to move away from the individual idiosyncrasies of the case studies, with a view to developing more general conclusions where possible (Peters 1998: 29). I then offer my interpretation of the data from interviews with my respondents, analysing them in light of changing political and social circumstances, as well as relevant Russian laws and practices.

The thesis is multi-disciplinary. Although I decided to adopt a legal approach and focus on international minority rights law, the implementation of international law could not be fully comprehended without taking into account Russian history and contemporary political reality. The legislation cannot be divorced from political and other factors, particularly as the rule of law in Russia is far from guaranteed, as will be seen below.<sup>73</sup>

## **Case Studies**

As noted, a collective approach was chosen to interpret data from the case studies. I recognise that each case study is unique, complex, and comprises numerous

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encouraging reform, modernisation and anti-corruption programmes (2010: 169).

<sup>72</sup> *Vedomosti*, 30-9-2010. 'Medvedev i Voevody' ('Medvedev and the Governors'). See Section 5.2.

<sup>73</sup> Chapters 3 and 4.

dimensions, but I do not engage in a ‘thick description’ or apply the *verstehen* approach (Geertz 2000). Indeed, although a ‘deep cultural immersion’ is helpful to formulate appropriate hypotheses and correct interpretations of the phenomena under study (King et al 1994: 37), it is logistically demanding in cross-unit analysis. This inevitably results in less depth the higher the number of cases (Gerring 2004: 354). Thus, I opted for a ‘small-*n*’ comparison.

A major challenge in collective cases studies is the selection of cases. Three nationalities were selected because of their differences, following discussions with academics and activists specialising in minority issues in Russia: the Tatars, Mordovians and Karelians. By choosing minorities primarily in light of their differences, I wished to identify commonalities between them. I used the ‘most different system design’ (MDSD), after J.S.’s Mill’s method of difference (1843), comparing ethnic groups that share few common features, to shed light on the outcomes of the application of international standards by common explanatory factors (Landman 2003: 29-30). In order to identify such explanatory factors, I searched for discernible patterns through inference - or ‘using facts we know to learn something we do not know’ (King et al 1994: 119). The choice of case studies was also partially shaped by logistic reasons: I needed to visit regions that were not particularly far, and therefore expensive to reach, given the restrictions of funding; and where my existing contacts could assist me in developing further contacts through a snow-balling effect.

Of the three, the nationality that is in the strongest position politically, economically, demographically and culturally is the Tatar minority. Tatars speak a Turkic language and predominantly embrace Islam as a religion. Mordovians and Karelians have cultural and religious similarities (Finno-Ugric languages and Russian Orthodox religion), but Karelians are in a particularly weak position in



terms of numbers and the use of Karelian language, which is virtually disappearing as urbanisation advances in Karelia. The Mordovian nationality can be placed at an intermediate stage between the Tatars and the Karelians. According to the 2002 census,<sup>74</sup> out of 145 million Russian citizens, there were 5.5 million who identified themselves as Tatars, 843,350 Mordovians and 93,344 Karelians; 52.9% of the population of the Republic of Tatarstan were ethnic Tatars, 31.9% of the population of the Republic of Mordovia were Mordovians, and only 9.2% of the population of the Republic of Karelia were Karelians (see Tables 1 and 2). Karelia is more culturally and religiously homogeneous than the two other republics: in Tatarstan there is an almost even Christian/Muslim split,<sup>75</sup> and in Mordovia the third nationality by size (after Russians and Mordovians) is the Tatar minority (5.2% of the republic's population). Karelia's autochthonous nationalities (Russians, Karelians, Finns and Veps) are traditionally Christian Orthodox, and the republic's ethnic and religious composition was only very slightly altered through minor post-Soviet migration from the North and South Caucasus. Both Finno-Ugric nationalities and Tatars have organised themselves in over-arching Finno-Ugric and Tatar institutions in Russia (Congresses of Peoples) and also international movements (such as the World Congress of Tatars<sup>76</sup>). An additional reason for selecting Mordovians as a case study was the inclusion of the Republic of Mordovia, with the republics of Dagestan and Altai, in a joint European Union and Council of Europe programme entitled 'Minorities in Russia: Developing Culture, Language, Media and Civil Society' (hereinafter 'Minorities in Russia'). The

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<sup>74</sup> In 2011 only the preliminary results of the 2010 census had been made public. <http://www.perepis-2010.ru/perepisnye-listy/> (accessed 8-9-2011). I rely on the 2002 census data in the thesis.

<sup>75</sup> On the basis that ethnic Russians (39.5%) and the Chuvash minority (3.3%) residing in Tatarstan tend to associate themselves with the Christian Orthodox faith, and Tatars (52.9%) with the Muslim faith. The remainder of the population of Tatarstan is religiously mixed.

<sup>76</sup> It operates in Russia and is also part of an international network uniting Tatars from different countries.

programme was launched in mid-2009, to be implemented together with the Russian Ministry of Regional Development (the ministry responsible for minority issues) over the period 2009-2011. It aimed at enhancing the preparatory process towards the ratification of the European Charter for Regional or Minority Languages.

***Table 1 - Case Studies: Main Characteristics<sup>77</sup>***

| ETHNIC GROUP | Type        | Population in Russia    | Population in own republic | Percentage of population living in own republic | Main Religion    |
|--------------|-------------|-------------------------|----------------------------|---|------------------|
| TATARS       | Turkic      | 5,566,215 <sup>78</sup> | 2,000,116 (Tatarstan)      | 52.9%   | Muslim           |
| MORDOVIANS   | Finno-Ugric | 977,381 <sup>79</sup>   | 283,861 (Mordovia)         | 31.9%   | Russian Orthodox |
| KARELIANS    | Finno-Ugric | 93,344                  | 65,651 (Karelia)           | 9.16%   | Russian Orthodox |

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<sup>77</sup> Data from the 2002 census are used.

<sup>78</sup> Including Astrakhan Tatars and Siberian Tatars.

<sup>79</sup> Including Moskha and Erzya speakers.

**Table 2 - Case Studies: Similarities and Differences**

| FEATURE  | SIMILARITIES  | DIFFERENCES   |
|--|---|---|
| Territoriality                                 | Karelia-Mordovia-Tatarstan: all ethnic republics                              | N/A   |
| State language in the republic                 | Both Mordovian and Tatar are recognised as state languages in their republics | Karelian not recognised as a state language in the Republic of Karelia                            |
| Ethnicity                                      | Karelians and Mordovians: Finno-Ugric   | Tatars: Turkic  |
| Language                                       | Karelian and Mordovian: Finno-Ugric   | Tatar: Turkic   |
| Religion                                       | Karelians and Mordovians: traditionally Christian                             | Tatars: traditionally Muslim  |
| Size of population – Russia                    |   | Karelians: small population (93,000)<br>Mordovians: medium (977,000)<br>Tatars: large (5,566,000) |
| Percentage of the population - ethnic republic |   | Karelians; low (9%)<br>Mordovians: medium (32%)<br>Tatars: high (53%)                             |

### **Summary of the Case Studies' Main Features**

#### ***Tatars***

Numerically the second biggest ethnic group after the Russians in the Russian Federation, approximately a third of Russia's 5.5 millions Tatars live in the Republic of Tatarstan. Within the boundaries of the republic, Tatars are a numerical majority, surpassing ethnic Russians (52.9% Tatars and 39.5% Russians). The area of current Tatarstan was invaded by the Mongols in the 13<sup>th</sup> century, and Islam was introduced in the 14<sup>th</sup> century. Following the defeat of the Golden Horde at the end of the same century, the Tatar khanates were established - first among them, the

Khanate of Kazan, conquered by the Russians in 1552. Hence, Tatars and Russians have a long history of interaction. As Bowring puts it:

If Muscovy conquered the Tatars, the Tatars thoroughly penetrated their conquerors. The Tatar-Turkic heritage is found throughout the Russian language and Russia's cultural heritage (2007: 424).

The predecessor to the Republic of Tatarstan was the Tatar Autonomous Soviet Socialist Republic, established in 1920. Tatarstan is not only the epicentre of Tatar culture in Russia but also a rich, oil-producing and a highly industrialised republic. Tatarstan has 'diaspora' policies for Tatars residing in Russian regions outside Tatarstan, and centres for the promotion of Tatar culture can be found in Moscow and several other cities in Russia.

### *Mordovians*

Mordovians are a numerical minority in the Republic of Mordovia (31.9% against 60.8% Russians). Tatars are also represented in Mordovia (5.2%). The Mordovians, like Mari and Udmurt nationalities, were subject to acculturation through Christianisation in the 18<sup>th</sup> century. There are two versions of the Mordovian language: Moksha and Erzya. Like other Finno-Ugric languages, they have absorbed elements of Russian syntax and grammar (Haarmann 1998: 236).

Mordovia as a republic was established in 1934 as the Mordovian Autonomous Soviet Socialist Republic. Mordovia is far from enjoying Tatarstan's economic power: its economy is primarily based on machine building and chemical industries. The republic has 'diaspora' policies, with institutions promoting Mordovian culture, for Mordovians living outside the republic. In its Second Opinion, adopted in 2007, the ACFC noted that Mordovians, together with other titular Finno-Ugric nationalities, were 'vulnerable groups' within their republics

despite their titularity, given the reduction of state support for their languages and cultures.<sup>80</sup>

### *Karelians*

The Karelians are a very small minority in the Republic of Karelia: 9.2% versus 76.6% Russians. Karelians also live in relatively significant numbers in Tver, Novgorod and Leningrad oblasts. The Republic of Karelia was established in 1920 as the Karelian Autonomous Soviet Socialist Republic (later to be incorporated into the Karelo-Finnish Soviet Socialist Republic). The Karelian language, of which three versions (dialects) exist, has many borrowings from Russian, having been influenced by the Russian language. The economy of the Republic of Karelia is primarily based on wood processing and paper production. Agriculture has suffered after the end of the Soviet Union with the discontinuation of communal farming. The resulting depopulation of villages has had an impact on Karelian language use, through the sharp decrease of areas with a high concentration of Karelians, and the progressive reduction of Karelian-speaking oases.

Separate interviews were carried out with Karelians outside the Republic of Karelia, in the Tver oblast, near Moscow. The version of Karelian spoken in Tver differs from that of Karelia, and it has been more heavily influenced by the Russian language (Haarmann 1998: 234). Tver Karelians consider themselves distinct from the Karelians in the Republic of Karelia, and have programmes to promote their own language and culture, including a National Cultural Autonomy of Tver Karelians. The Tver Karelians' opportunities to promote their own culture are limited, as is commonly the case for Russia's numerically small minorities. They have received some support from Finland - a country that promotes Finno-Ugric

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<sup>80</sup> ACFC, (Second) Opinion on Russia (note 133), § 84.

cultures and languages - and the Tver local government has pursued a policy supportive of minorities, particularly Karelians.

### *Other Respondents*

Specific areas of study call for the targeted consideration of additional cases. First, in examining the issue of participation, the thesis takes into account, through data from targeted interviews, the nationality that, above all, is precluded from accessing decision-making channels: the Roma. Additionally, in examining Putin's centralising policies (Chapter 5) one could not exclude from consideration the issue of mergers of some of the Federation's ethnicity-based territorial units with predominantly Slavic ones, that took place between 2005 and 2008. The mergers have not affected the case studies themselves, so I refer in Chapter 5 to one of the nationalities that have been affected: the Buryats.<sup>81</sup> I gathered data from secondary sources, private communication with Buryat representatives, and conducted an interview with the representative of a Buryat organisation in St Petersburg.

Second, in cities not located in Karelia, Mordovia or Tatarstan, I interviewed not only representatives of the focus ethnic groups, but more broadly minorities active in promoting their languages and cultures. This was for two reasons. First, there were logistical considerations, such as the absence of representatives of one or more of the three focus ethnic groups and their institutions in some such cities, or the fact that those approached for interviews declined to take part in the study. Second, I wished to develop a broader view of the processes and institutions studied, and how a region may accommodate its minority groups as a collectivity. Indeed, mechanisms such as National Chambers or Assemblies of

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<sup>81</sup> The former Urd-Osta Buryat Autonomous Okrug was merged with Irkutsk oblast in January 2008; and those of the Agin-Buryat Autonomous Okrug were merged with Chita oblast in March 2008. See Section 5.2.

Peoples were established to address minority issues jointly by the various minority communities residing in a particular region. The members of these institutions did not always include representatives of the three case studies. The supplementary interviews resulted in triangulation with additional interviews with representatives of other groups, including non-titular ones, which revealed commonalities in the concerns of different minority groups.

### **Fieldwork**

The fieldwork was divided into three parts. After conducting preliminary research, I compiled a list of questions for different categories of respondents, for the first part of the fieldwork (May and June 2010). The questions are reproduced in Appendix 2. As the interviews progressed, recurring themes started to emerge. These led to more questions and cross-checking during the fieldwork, and to supplementary research immediately following it. These data informed the second part of the fieldwork, in October 2010. Notes from the interviews were then coded and analysed. One last research trip to Moscow in February 2011 provided the opportunity to clarify some pending issues, including by discussing the interview data with Russian academics and analysts. Some issues were followed up through private communications (primarily email communication) during the writing-up phase. The fieldwork was made possible by funds granted by the Economic and Social Research Council.

The regions visited were:

**Ethnic republics:** Petrozavodsk (Republic of Karelia), Kazan (Republic of Tatarstan), Saransk (Republic of Mordovia).

**Cities outside ethnic republics:** Moscow, St Petersburg, Voronezh, Tver.

*Table 3 - Case Studies and Fieldwork*

| <b>ETHNIC GROUP</b> | <b>FIELDWORK LOCATION</b> |
|---------------------|---------------------------|
| Tatars              | Kazan, Moscow, Saransk    |
| Mordovians          | Mordovia                  |
| Karelians           | Petrozavodsk, Tver        |

Of the cities outside the ethnic republics, Moscow and St Petersburg were visited primarily to ensure access to scholars at relevant academic institutions and non-governmental organisations (NGOs), which provided valuable insights into the dynamics of majority-minority relations. Voronezh was chosen as an (overall) ethnically homogeneous city, although not devoid of ethnic tensions.<sup>82</sup> Public officials, or former officials, were interviewed where possible. The data from interviews in Russia were complemented by interviews with five Council of Europe representatives. They had been involved in activities on the implementation of the FCNM and ECHR in Russia, or activities towards Russia's ratification of the ECRML.

### **Interviews**

The thesis includes data from interviews carried out in Russia in May, June and October 2010, and February 2011. Different questions were asked of different groups of respondents, depending on their specialisation. The respondents were divided into the following categories. The codes correspond to the coding system

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<sup>82</sup> A Peruvian student was murdered by skinheads in Voronezh in 2005. See also, on Voronezh, SOVA, 2-10-2007. 'A High Profile Neo-Nazi Leader Currently under Investigation' <http://www.sova-center.ru/en/xenophobia/news-releases/2007/10/d11682/> (accessed 1-10-2011). The OSCE had a mission to Voronezh in March 2009. See 'OSCE Minorities Commissioner to Investigate Education Situation of Ukrainian Minority in Russia'. <http://www.osce.org/hcnm/62767> (accessed 15-10-2011).



used to identify respondents in the thesis. A full list of respondents and basic data on them is provided in Appendix 1.

- 1.1 civil society - (National Cultural Autonomy) (6 respondents)
- 1.2 civil society - minority NGO (11)
- 1.3 civil society - cultural association (7)
- 1.4 civil society - congress of peoples (3)
- 1.5 civil society - human rights NGO (11)
- 2 academia (23)
- 3 media (11)
- 4 public official (18)
- 5 school employee (2)
- 6 judiciary (3)
- 7 Council of Europe (5)

Civil society was divided into five different groups. Besides National Cultural Autonomies, analysed in Chapter 8, I distinguish between minority NGOs and human rights NGOs: although partially overlapping, minority NGOs focus on minority concerns and the preservation of minority cultures, while human rights NGOs have a wider spectrum of activity which encompasses minority rights. I refer to ‘cultural associations’ to indicate those semi-official organisations, sponsored by the state, that promote minority cultures, such as Houses of Nationalities, and can act as a focal point for minority groups in their regions. Finally, Congresses of Peoples are structures established by minorities themselves for internal decision-making (for example, the Congress of Karelians).

In total 95 people were interviewed in Russia - 47 women and 48 men. For the Council of Europe, I interviewed three employees and two expert consultants, in March and September 2010 respectively. Some respondents in Russia belonged to more than one of category (e.g. academics who were also activists working with minority associations). I classified the respondents according to their main profession at the time of the interview, but also indicated a possible overlap in categories in the list of respondents. In just one case a former public official who worked for an academic institution at the time of the interview was classified as a 'public official' rather than an 'academic', given that for most of his professional life he had been a public official [4.13]. The majority of the information the respondents shared with me was not of a particularly confidential or sensitive nature, but I preferred to keep all respondents anonymous, so as to guarantee their protection. Given my focus on political processes and institutions, I chose not to interview 'ordinary' persons belonging to national minorities - meaning persons not active in promoting their cultures and languages. I focused instead on 'active' respondents who fit one or more of the above categories. Among the respondents were also several ethnic Russians whose professional activities related to minority issues.

I tried to meet respondents from the main institutions working on minority issues in all the regions visited, to maximise the representativeness of respondents. I started approaching potential respondents through my main contacts, who then recommended other contacts through a snowballing effect. I interviewed public officials working on nationalities policy at federal level as well as public officials at the regional level. There is no complete symmetry between the three case studies, as some of the institutions working on nationality issues differed slightly between regions (for example, there was no specific Ministry of Nationality Policy in Kazan,

while there was one in Petrozavodsk). In addition, logistic concerns prevented me from having access to a group of respondents that was fully representative. Some public officials or representatives of minority groups declined to take part of the study, in light of other commitments, lack of interest or, at times, what appeared to be suspicious attitudes towards a foreign researcher. Requests for interviews, particularly formal ones with public officials, sometimes required a go-between who could introduce me to the potential respondent, which could not always be arranged.

Public officials interviewed were not representative of Russian public officials generally but of those working on minority issues. The same is true for the other categories of respondents. The same groups of respondents working in other spheres might have had differing views on international standards. The academics were primarily working for state institutions (the Institute of Ethnography of the Russian Academy of Science; the Russian Academy of Science of Tatarstan; and state universities in the cities visited). Civil society respondents were fairly representative inasmuch as I approached both persons affiliated to more 'traditional' organisations and others working for more outward-looking institutions, seeking novel ways of pursuing their goals, including through the use of international standards.

Data from interviews, like the information on respondents, was coded, using the following categories:

- 1 Participation and civil society
- 2 Education
- 3 Nationalities Policy (minority language programmes etc)
- 4 International standards
- 5 Legislation, courts and the judiciary

6 Media

7 Federalism

Within these core areas, I identified the respondents' main messages and classified them. I based my analysis on the 'framework analysis' developed by Ritchie and Spencer (1994). It involves the identification of the thematic framework, indexing, charting, and mapping and interpretation. The list of codes was developed in tandem with the analysis of the data;<sup>83</sup> the data were then compartmentalised through a theme-based approach. I did not use a software for qualitative data but simply cut and pasted the data from my interview transcripts and notes into word documents. As an example of coding, I list the themes for the category of data 'participation and civil society'.

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<sup>83</sup> Some statements by respondents were simply excluded from the analysis, when respondents raised issues that were unrelated to the focus of the thesis.

***Participation and Civil society – Main Themes:***

Spurious consultation  
Consultation (neutral)  
Cooperation with the authorities (neutral)  
Good cooperation with the authorities  
Lobbying (general)  
Lobbying not working  
Lobbying successful  
Partial success/compromise  
Funding matters  
Informal participation  
Activities of civil society (general)  
Participation and international standards  
Informal practices  
Importance of access of information for participation  
Strength of civil society  
Importance of civil society  
Weaknesses/problems of civil society  
Minority issues outside politics (culture but no politics)  
Authorities attending civil society meetings  
Registration issues  
Folklore and civil society  
The 'vertical' affecting civil society  
Bureaucracy affecting civil society  
Leaders of minority organisations (different aspects)  
Minorities exploiting their ethnicity (for personal interests)  
Civil society and extremism  
Election of minority representatives (congresses of people)

The commonalities that were distilled from the data analysis related to overarching themes on: informal practices; varied attitudes to the application of international standards on Russia; the alternation of centralism and localism; issues of education and cultural homogenisation; and issues of (fictitious) participation. These are the main themes that are explored in the thesis and in the conclusions.

After cross-checking information from interviews it became clear that some respondents tended to exaggerate their statements. For this reasons, I used data from the interviews with caution. I cross-referenced information from interviews with data from publications, including by Russian analytical institutions. I compared the answers from different categories of respondents, and remained

aware of possible over-statements that might be linked to a respondent's profession or political orientation. In many cases the interviews pointed me to court cases or particular facts, which were added to my primary sources. Not all information from the interviews was used as data for the research: some of the issues brought up by respondents did not fit the framework of the thesis. Nevertheless, all general discussions with respondents contributed tremendously to my general understanding of the issues studied and the context in which they unfolded.

Some of the areas analysed, such as the workings of Russian bureaucracy and informal networks, are very difficult to penetrate as an outsider. Additionally, when different insiders relate their individual experiences, it becomes fragmented and does not amount to the full picture. This is before one takes into account that insiders might themselves have a skewed perception of events. The complexity and the size of the subject studied was simply too great to allow sweeping deduction based on individual accounts. As a result, I have followed the documentary flow and have traced the information that was publicly available, whilst acknowledging the difficulties in gaining a full understanding of the forces behind events. For example, a delay in the implementation of a law could be interpreted as resistance to it, or be linked to bureaucratic hurdles. I therefore combined factual data and information from interviews, which was disaggregated by categories of respondents, and offered qualified interpretations of events. I was careful not to present interview data on their own as facts, to avoid instances of 'data mining' or anecdotalism - a frequent problem with the use of qualitative data (Silverman 2000, 2005).

When respondents classified particular data as 'facts' but these could not be corroborated, it was clarified in the thesis that their categorisation as 'facts' was made by the respondents, rather than constituting empirical evidence. When

multiple interpretations of the data were possible, this was also indicated. If different sources presented different interpretations, this was explained in the text. I used the interviews to gain insight into the facts and to gather information on the perceptions of the respondents. When reliable information on particular facts was unavailable, I have refrained from making conclusions, or have indicated that what I have offered was my own interpretation.

Semi-structured, in-depth interviews were the most suitable method for this type of study. Although in some cases I participated in events as an observer (in seminars and minority festivals), I wished to gather direct testimonies from stakeholders. The interviews needed to be in-depth as frequently the underlying reasons for particular statements were not immediately apparent, and required a deeper investigation for such reasons to emerge. The interviews were semi-structured as I often needed to ask several follow-up questions to unearth the meanings of particular statements; this would have been impossible with a fixed set of questions. Hence, although quantitative data obtained through surveys would have ensured a broader range of respondents, qualitative methods allowed me to uncover the reasons why respondents provided particular answers. I also wished to give representatives of minorities and civil society in Russia a voice, acting as a conduit for their interpretation and perception of events, which are seldom given attention.

The thesis took into consideration the Joint EU/Council of Europe Programme ‘Minorities in Russia’ referred to above. This programme was examined: though a five-week study visit at the Council of Europe, in March and April 2010;<sup>84</sup> through discussions with, or by interviewing, some of the experts

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<sup>84</sup> In the Secretariat of the European Charter for Regional or Minority Languages, Directorate of Education and Languages.

involved in the programme; and through my participation in some of the programme's research and activities from July 2010 to April 2011 as a Council of Europe expert consultant. The views expressed in this thesis in no way represent the views of the Council of Europe, but are wholly based on personal observations and analysis.

In addition to data on interviews and academic literature, I used the following materials: Opinions of the Advisory Committee on the FCNM, particularly on Russia; other Council of Europe documents (such as recommendations of the Parliamentary Assembly of the Council of Europe, and Committee of Ministers); shadow reports from Russian civil society to the Advisory Committee FCNM and other international bodies; jurisprudence (Russian and international jurisprudence on cultural rights of minorities, and cases on Russia in the European Court of Human Rights); articles from the Russian print media on relevant political developments, and selected outputs from the international media; Russian legislation relating to minorities and their cultural rights (including previous versions of current legislation and relevant amendments), and on the application of international law in Russia; proceedings from selected conferences in Russia relating to cultural rights of minorities.

The working languages of the fieldwork were English and Russian. The majority of the interviews were conducted in Russian, unless the Russian respondents were fluent in English and indicated that they were fully comfortable in speaking English. The excerpts reported in the thesis were translated from Russian by the author. Interviews with Council of Europe experts were conducted in English. The persons belonging to minorities were, in nearly all cases, more fluent in Russian than in their minority languages, while few were bilingual. Media



outputs were accessed in English and Russian. Laws, including the republics' regional legislation, were accessed in Russian. The logistical difficulties of learning additional languages prevented me from accessing the regional or local media outputs in minority languages.

Finally, ethical issues could have emerged from interviews with representatives of civil society involved in activities considered controversial by the Russian authorities. The possible risks to interviewees were taken into account, and the research plan was reviewed by the UCL Research Ethics Committee. Those who took part in the interviews were informed of the research project's aims, methods and use. Anonymity was guaranteed.

## **1.4 Conclusion**

The thesis aims at analysing the application in post-Soviet Russia of international standards on the protection of national minorities with regard to their cultural rights. An additional research question is what factors determine a particular role for international standards. The thesis wishes to contribute to the discussion on multiculturalism and international standards on minority protection: on one side, since the 1990s in particular, issues surrounding minority rights have become internationalised; on the other, the 'excessive' attention to cultural diversity has come under criticism. Russia is not only a powerful actor in the international arena, but also a country of remarkable ethnic and cultural diversity, where the application of international standards presents specific challenges.

The research questions are addressed in the thesis using a methodology based on a broad range of semi-structured interviews, conducted mostly in Russia but also in Strasbourg. The research is based on the analysis of themes from interviews with seven categories of respondents (civil society, academia, media,

public official, school employee, judiciary and Council of Europe). The research uses inference and the comparison of three ethnic groups as case studies, discerning commonalities between them despite their differences. The main messages raised by the respondents crystallised around general trends, identified as: informal practices; varied attitudes to the application of international standards in Russia; the alternation of centralism and localism; issues of education and cultural homogenisation; and issues of (fictitious) participation. These factors are found to provide explanations for the challenges in the application in Russia of international standards on cultural rights of national minorities.

## **2. 'TRANSPLANTING' INTERNATIONAL STANDARDS ON CULTURAL RIGHTS TO RUSSIA**

Chapter 1 has outlined the structure of the thesis, definitions and the methodology used for the analysis. This chapter is divided into three main sections. First, it illustrates the notion and significance of legal transplantation, and theories on the role of cultural and socio-political factors in these processes. Second, it provides an overview of international minority rights law, which is linked to multiculturalist theories and then placed in the context of the broader international human rights system. The dynamic interaction of Russian and Western European legal traditions is further described. Third, it outlines aspects of Russia's history that are relevant to the understanding of its present minority policies, and their interplay with international standards on minority rights.

### **2.1 The Phenomenon of 'Legal Transplantation'**

The expression 'legal transplant' designates the transfer of a legal rule, or entire legal system of law, from one entity to another.<sup>85</sup> Other expressions are used interchangeably, including 'borrowing' or 'transposition'. Watson says:

[R]eceptions and transplants come in all shapes and sizes. One might think also of an imposed reception, solicited imposition, penetration, infiltration, crypto-reception, inoculation and so on [...] (1974: 30).

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<sup>85</sup> The expression 'legal transplant', or 'legal transplantation', is used in this thesis.

Transfers are normally understood as taking place between the legal system of a state to another - although it has also been used to designate the incorporation of the ECHR by the Council of Europe member states (Bowring 2003b; 2008). Legal transplantation is common: Watson stresses the influence of foreign legal norms on most legislative systems; thus, for example, Roman law has influenced the legal system in Scotland, Greek law in Germany, Swiss law in Turkey, and French law in Ethiopia (1974: 102).

A particular form of transfer of norms that has been the subject of a rich scholarly literature is ‘Europeanisation’.<sup>86</sup> The term refers primarily to the integration of EU law and practices by EU member states.<sup>87</sup> Since the start of EU enlargement, the scholarship on Europeanisation has shifted its focus from member states to *candidate* states, several of which are post-Communist, and required to harmonise domestic law, practices and institutions with the EU (Bauer et al 2007).<sup>88</sup> Europeanisation, although geographically specific, is wider in scope than legal transplantation, as practices and institutions, in addition to legal norms, have to be internalised by the member states.

The conditions for EU accession are established in the Copenhagen criteria, and involve the development by the candidates of the capacity to apply EU law and practice, by undergoing an institutional reconfiguration in line with the regulations contained in the *acquis communautaire*. The candidate countries’ accession is regulated by EU conditionality, which acts as a ‘gatekeeper’, only allowing states

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<sup>86</sup> Among others see: Bache (2012); Bauer et al (2007); Börzel (2003; 2012); Delanty (2005); ; Exadactylos & Radaelli (2012); Featherstone (2003); Goetz (2000); Goetz (2011); Grabbe (2001); Green Cowles & Risse (2001); Héritier (2001); Hughes et al (2004); Knill (1998); Knill & Lehmkuhl (2002); Ladi (2012); Ladrech (2012); Lynnggard (2012); Martinsen (2012); O’Dwyer (2006); Olsen (1996); Olsen (2002); Radaelli (2000); Risse et al (2001); Saurugger (2012).

<sup>87</sup> Risse et al define Europeanisation as:

[T]he emergence and development at the European level of distinct structures of governance, that is, of political, legal, and social institutions associated with political problem solving that formalize interactions among the actors, and of policy networks specializing in the creation of authoritative European rules. (2001: 3)

<sup>88</sup> In the wider sense, Europeanisation also involves states with limited prospects of accession (Ladi 2012). The ‘neighbourhood’ countries also stand to benefit from grants and some trade relations.

complying with the *acquis communautaire* to advance along the path towards accession. Part of the influence exercised onto the EU member and candidate states as part of Europeanisation processes is what Olsen calls the ‘central penetration of national systems of governance’; this entails ‘adapting national and sub-national systems of governance to a European political centre and European-wide norms’ (2002: 924).

The literature on Europeanisation analyses the level of effectiveness of the juxtaposition of one system over another, with the interplay of international and domestic models, exogenous and endogenous elements. Similarly, the literature on legal transplantation has generated theories on the transplantability of legal norms: they aim at identifying what particular conditions are necessary to bring about a successful transplant - one that is effectively integrated into an existing system. When integration takes place, the transplant becomes a functioning addition to the receiving system, rather than being subsequently ‘rejected’ or remaining a mere appendage.

One should note at the outset that the evaluation of the impact of transfers is fraught with difficulty. In the case of Europeanisation, authors have noticed that its processes are not amenable to measurement through dependent and independent variables, as transformation takes place amidst mixed, coevolving processes (Featherstone 2003: 4; Olsen 1996: 271). These processes, which can be more ‘evolutionary than revolutionary’ (Green Cowles & Risse 2001: 236), follow tortuous trajectories in shifting circumstances. Meanwhile, the EU has no clear benchmarks at its disposal to measure the changes taking place within a state during EU-isation processes (Grabbe 2001: 1018). Thus, the patterns of convergence and divergence of member and candidate states around the EU core can be difficult to explain (Green Cowles & Risse 2001: 231).

Further complexities are linked to the issue of causality, or the identification of possible causal links between domestic change and specific mechanisms and institutions such as the EU or the Council of Europe (Exadaktylos & Radaelli 2012). In relation to Europeanisation, scholars have argued that there exist multiple understandings of causality, meaning that the emphasis should be on understanding rather than measuring (Bache et al 2012; Lynngard 2012). Causality in the context of Europeanisation is particularly complex as it comes as a package of varied (domestic and international) processes occurring simultaneously (Ladrech 2012), as well as in a non-linear fashion (Ladi 2012). Goetz points to a ‘missing link’ between pressure for change and adaptation, which, in his opinion, few analyses aim at identifying (2000: 222). One of the methods that may be employed for this purpose is the ‘tracing’ of causality through the examination of categories such as actors and policy instruments. One needs to isolate the ‘EU effect’, and examine the direction of causation with regard to selected policy episodes in the causal chain from EU to member states (Exadaktylos & Radaelli 2012). The difficulty lies in the need to disassociate the change induced by the EU from endogenous elements (Exadaktylos & Radaelli 2012), or general globalising movements (Moravcik 1998: 4). A complicating factor is the question of how to establish causality, if any, in the case of absence of change (Saurugger 2012). In some cases Europeanisation can be delayed or occur in stages that are not immediately detectable (Martinsen 2012). The transposition onto states of other international models, such as those of the Council of Europe, will be affected by the same dynamics.

### **Cultural and Socio-Political Factors in Legal Transplantation**

Scholars have attributed varied degrees of importance to domestic legal and institutional cultures and practices in processes of transfer. Powell and DiMaggio

argue that the continuous interaction of institutions leads to convergence, even when structures have developed differently throughout their histories (1991). Others believe that the law develops in particular socio-political, as well as cultural, contexts (Pulchalska-Tych' & Salter 1996). According to Orücü, cultural differences lead to a mismatch when legal systems have different traditions, such as socialist and religious ones versus legal systems that are not grounded on ideological or religious beliefs (2002: 219). In the context of Europeanisation, Knill sees the 'degree of embeddedness' of national institutional arrangements as a factor influencing domestic adaptation (1998: 24).<sup>89</sup> Yet Green Cowles & Risse provide data claiming to disprove this position, which they refer to as the 'isomorphism hypothesis' (or the inability of Europeanisation mechanisms to take root given the deep historical and cultural entrenchment of domestic institutions) (2001). They see (EU) integration as a pragmatic choice: 'actors evaluate existing models and determine which one is successful. They then adopt the model irrespective of its national origin.' (Green Cowles & Risse 2001: 233) These two positions reflect those of Watson and of Kahn-Freund on legal transplants, who had already developed diametrically opposed views by 1974.<sup>90</sup> Watson stressed the facility with which norms may be transferred, travelling across borders, downplaying a possible resistance to 'foreign' legal norms, or the importance of local legal culture: his view was that there is not necessarily a link between the law and the socio-political and economic situation of a country (1974: 2). Conversely, Kahn-Freund's point of departure was the position that a law is shaped around the people for whom it is made (1974). The same concept is behind Ewald's 'mirror theory of law', by which '[L]aw is a mirror of society, and every aspect of the law is moulded by economy

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<sup>89</sup> Other scholarship has argued on the importance of several other factors, such as the domestic capacity for reform (Knill 1998; Goetz 2000) .

<sup>90</sup> For a comparison of the two theories, see Heim (1996).

and society' (1995: 492). According to this model, the prerequisite for the transferability of legal principles is a close resemblance in the socio-political environment of the donor and recipient states (Kahn-Freund 1974; Heim 1996: 196). Orücü sees as key to overcoming differences in what she calls the process of 'tuning' – a form of adaptation of norms by adjusting them to local conditions (2002: 219).

In relation to Europeanisation, an additional factor in domestic transformation is the EU conditionality, and the pressure that can be applied by the EU. Divergence between the EU and the candidate state results in a 'misfit'; in turn, a misfit leads to adaptational pressure (Green Cowles & Risse 2001: 222). Héritier argues:

Where the established policy of a member state diverges from a clearly specified European policy mandate, there will be an expectation to adjust, which in turn constitutes a precondition for change (2001: 1).

At the same time, the detection of specific patterns of fits or misfits is problematic (Green Cowles & Risse 2001: 223). Even favourable conditions may not lead to convergence (Olsen 2002: 261-2). Factors determining the 'goodness of fit' are not fixed, as both the EU and member or candidate states continue to evolve (Börzel & Risse 2003). Additionally, a misfit might produce pressure, yet pressure might not necessarily induce change.

Then, one needs to analyse the specific context of the transfer, as 'goodness of fit' approaches provide limited understanding of the presence or lack of change. In the case of Europeanisation, studies have shown that local factors tend to be more important than external factors (Hughes et al 2004), adaptation pressures interacting in different ways with local circumstances (Green Cowles & Risse 2001). O'Dwyer sees a 'combination of political opportunism and policy



unpredictability' (2006: 153). If this is the case with the adaptation pressure of EU conditionality, it is likely to be even more so in the case of the Council of Europe, where there is no similar 'gatekeeping' mechanism to regulate compliance with international obligations.

Thus, transformation is unpredictable. At the same time, what seems like a 'transfer' from a 'foreign' system might in fact be rather less than this. The donating and the receiving systems do not tend to be completely separate entities, and there might be a blurring of the distinction of what is exogenous and endogenous. Where does one system start and another end? Different systems are not sealed off and isolated until the transplant takes place. Even when a new treaty is ratified, the provisions it contains can often be already present in some shape and form in the ratifying state's legal system.<sup>91</sup> Then, comparative law does not amount to the 'comparison of two separate and unconnected entities, frozen in the present' (Bowring 2003b: 180). Most systems are mixed, often the originating from multiple legal sources. It means that the analysis of a transplant necessitates the careful study of the relations between one polity and another, as well as the history and political situation of the receiving state.

## **2.2 International Minority Rights Law in the Context of International Human Rights Law**

Before moving on to sketching the historical perspective of Russia's nationality policies,<sup>92</sup> in this section I outline some of the attributes of international minority rights law, placing it within the broader context of international human rights law. I

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<sup>91</sup> For example, Watson argues: 'Often the host system had a similar rule and little of importance was received apart from the terminology.' (1974: 97)

<sup>92</sup> See Section 2.3.

then add considerations on international human rights law, in light of realist, ideational<sup>93</sup> and republican liberal theories.

Xanthaki argues that, although international human rights law does not refer directly to multiculturalism, its basic notions are reflected through it (2010). Although multiculturalism is not a monolithic body of thought, multiculturalists argue for the ‘equal recognition of cultures’ (Kelly 2002: 5) as a vital underpinning of ethnic groups’ coexistence. Multiculturalism is defined by Parekh as:

[A] body of beliefs and practices in terms of which a group of people understand themselves and the world and organise their individual and collective lives. (Parekh 2006: 2-3)

Multiculturalists have argued that multiculturalism can further stability in societies that are ethnically diverse, displaying forms of identification and, therefore, different and possibly conflicting loyalties. Multicultural policies, in their view, can further safeguard the cultural wealth of multicultural societies (Kymlicka 1995; Kymlicka 2007b; Parekh 2006; Phillips 2007; Taylor 1992; Young 1990). This position is based on the belief that diversity cannot simply be eliminated: it is a fact that the majority of states are and have been multi-ethnic. The attempt to transcend difference, with the (unrealistic) objective of creating a colour- and difference-blind society is not a viable option (Phillips 2002). The denial of difference does not solve its complexities, but merely removes them from public discourse. Instead, Smith values a policy that ‘engages rather than suppresses *difference*’ (1998: 204). Similarly, Phillips talks of ‘democracy *through* difference’ (2002: 5) [italics in original].

As noted, France is one of the countries that do not recognise the existence of minorities on its territory.<sup>94</sup> It is an exception in Europe:<sup>95</sup> although Merkel,

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<sup>93</sup> Embracing human rights law for altruistic reasons. This and other theories are discussed below.

Cameron and Sarkozy's pronouncements might suggest the opposite, overall there has been a departure from traditional Western theories of nationalism, which had been developed around 'an idealized model of the polis in which fellow citizens share a common descent, language, and culture' (Kymlicka 1995: 2). To attain this ideal, minorities have been eliminated, assimilated, expelled or segregated. Ideals of 'cultural purity' are unnatural, Kymlicka argues, since they keep ethnicities and nations frozen in their (supposedly) traditional forms. Instead, identities are in a state of flux, and the rule is 'cultural hybridity' (2007a: 100). The notion of cultural hybridity is a rejection of the 'homogenous nation-state', and of assimilationist or exclusionist policies (Kymlicka 1995; 2007b). Packer places this in the context of human rights and freedoms:

In contradistinction from the exclusivist, coercive and assimilating nature of the putative 'nation-State' which values 'purity', we must think in terms of securing and expanding opportunities for multiple, open and evolving cultures and identities: we must value *freedom* [italics in original]. (Packer 1999: 270)<sup>96</sup>

On the other hand, there has been much criticism of multiculturalism. For example, Anderson sees multiculturalism in a negative light, noting that 'many 'old nations' [...] find themselves challenged by 'sub'-nationalisms within their borders - nationalisms which, naturally, dream of shredding this subness one happy day' (1991: 3). Žižek argues that multiculturalism as an ideology is in fact 'hegemonic', and conjures up an 'illusion of anti-racist multiculturalism' (2011: 44). He believes that there is a form of racism masked as liberalism:

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<sup>94</sup> A number of Latin American countries also reject the notion of 'minorities', considering it irrelevant to their populations (Thornberry 1991: 3).

<sup>95</sup> Of the Council of Europe member states, in May 2011 only four countries had not ratified nor signed the FCNM (France, Turkey, Monaco and Andorra); 39 had ratified and 4 signed it.

<sup>96</sup> See also Article 1 FCNM, stating that minority rights are 'an integral part of the international protection of human rights.'

[T]his kind of “respect” for the Other is the very form of the appearance of its opposite, of patronizing disrespect. The very term “tolerance” is here indicative: one “tolerates” something one does not approve of, but cannot abolish, either because one is not strong enough to do so or because one is benevolent enough to allow the Other to retain its illusions - in this way, a secular liberal “tolerates” religion, a permissive parent “tolerates” his children’s excesses, and so on. (2011: 46)

Barry sees as the pernicious consequence of an excessive attention to cultures. He believes that multiculturalism’s differentiated treatment is a menace to equality, as well as detracting attention from ‘universal human values’ and disadvantages shared by different ethnic groups, such as poverty (2001). Hasan likens multiculturalism to segregation and ghettoisation. Others have noted a potential for illiberal practices harming vulnerable persons within a minority (Okin 1999; Okin 2002). It is linked to a fear that excessive tolerance might lead to illiberal practices in illiberal backwaters located within liberal democracies.

Inversely, both multiculturalist theories and international human rights law converge in the the belief of a strong correlation between the acceptance of diversity, with the recognition of its intrinsic value, and stability. The link between the acceptance of diversity and stability is also behind the international minority rights system, which originated from a desire to prevent gross human rights abuses against vulnerable minorities. The impetus for the promulgation of the FCNM came from the 1990s armed conflict in the Balkans (Martin Estebanez 2005: 271).<sup>97</sup> The post of the OSCE High Commissioner on National Minorities was established in 1992 specifically to seek an early resolution of ethnic tensions. These tensions can emerge with the dominance of a culture over another, and the non-recognition of the value and dignity of minorities. It can be expressed by imposing a particular

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<sup>97</sup> The Preamble to the FCNM states that ‘the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent’. Recommendation 1134 (1990) of the Parliamentary Assembly of the Council of Europe qualifies minority rights as ‘an essential factor for peace, justice, stability and democracy’. PACE Recommendation 1134 (1990) ‘On the Rights of Minorities’, 1 October 1990.

language on minority groups: in these cases, language becomes the ‘emblem of that dominance’ (Crystal 2000: 77). The loss of control over one’s cultural expression (for example when witnessing the impending death of one’s language) can lead to a sense of alienation (Crystal 2000: 78).

International human rights law has not developed its own definition of multiculturalism. However, the importance of culture, for all individuals, is recognised by international bodies such as the UN (particularly UNESCO) and the Council of Europe.<sup>98</sup> States have endorsed (through signatures and ratifications) declarations and conventions that encompass multicultural approaches. For example, the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions<sup>99</sup> had 116 states as parties in May 2011. There is an emerging consensus that a plurality of minority cultures and identities ‘enrich[es] the fabric of society as a whole’.<sup>100</sup>

One tenet of multiculturalism that is effectively at the foundation of international human rights law is the need for social integration. Multiculturalism does not necessarily imply fragmentation. Ideals of ‘unity’ *and* the accommodation of minorities are not mutually exclusive. Rather, it is the societal marginalisation of particular groups that can lead to radicalisation. Different ethnicities may feel a common loyalty towards their state, as in the commonly-cited example of Switzerland, with its multi-layered identity: the canton, the cultural/linguistic group, and the overarching Swiss identity (Spillman 1997: 203; 211). Indeed, Guibernau argues that the adoption of a ‘cosmopolitan attitude’, as an overarching identity, does not necessitate renouncing one’s national identity. It simply requires

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<sup>98</sup> See also Section 1.2 on cultural rights and international documents such as the ICCPR and ICESCR.

<sup>99</sup> 20 October 2005, entered into force in 18 March 2007.

<sup>100</sup> General Comment No. 23: The Rights of Minorities (Art. 27). 08/04/1994. CCPR/C/21/Rev.1/Add.5, § 9.

adding another layer - a ‘cosmopolitan layer’ - to it (2007: 195). Multiple loyalties lead to ‘a balance between cohesion, equality, and difference’ (Xanthaki 2010: 24).

In international minority rights law there is a strong emphasis on integration and social cohesion. For example, the FCNM’s Explanatory Report clarifies:

[Article 5 FCNM] acknowledges the importance of social cohesion and reflects the desire expressed in the preamble that cultural diversity be a source and a factor, not of division, but of enrichment to each society.<sup>101</sup>

This approach also addresses the issues of inequality and marginalisation. What may be perceived as inequality (the differentiated treatment of particular minorities) can in fact amount to a programme of ‘special measures’, to build concrete opportunities for real, rather than apparent, equality. Affirmative action in support of minorities is widely recognised as non-discriminatory, and acting to elevate a minority to genuine equality with the majority.<sup>102</sup>

### **International Standards or Double Standards?**

While the international minority rights system aims at simultaneously promoting cultural distinctiveness and integration, one should also note certain features and perceptions of it that impact upon its applicability in Russia.

The international human rights system holds member states to account for what happens *within* their borders - unlike the regulation of interstate exchanges such as trade (Moravcsik 2000: 217-8). In the case of the European Convention on Human Rights (ECHR), the rights of ‘everyone’ in a state’s jurisdiction are

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<sup>101</sup> FCNM Explanatory Report (note 38), § 46.

<sup>102</sup> Article 1(4) of the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (note 7), ratified by Russia in 1969, states that:

Special measures taken for the sole purpose of *securing adequate advancement* of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms *shall not be deemed racial discrimination*, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved. [italics added]

Similar provisions are found in Article 4(3) FCNM and its Explanatory Report; and Article 7(2) of the European Charter for Regional or Minority Languages.

protected,<sup>103</sup> and everyone is empowered to submit cases to the European Court of Human Rights. As a challenge to state sovereignty and self-determination, the international human rights system is an exceptionally radical development (Humphrey 1974). Why would governments be willing to renounce their full sovereignty for an internationally-managed system, on which they have no direct control? Moravacsik refers to two reasons: the coercion by great powers (realist approach) and altruistic reasons (ideational approach). Among the supporters of the realist theory there is a cynical strand that sees liberal values and human rights as a tool in the hands of powerful governments to add a veneer of legitimacy to essentially selfish geopolitical pursuits. In line with this interpretation, Donnelly talks about the United States' 'hegemonic power' in relation to the Inter-American human rights regime<sup>104</sup> (1986). Similarly, Waltz denounces the imposition of great powers' ideas over other countries (reminiscent of the old adage *cuius regio, eius religio*):

Like some earlier great powers, we [the United States] can identify the presumed duty of the rich and powerful to help others with our own beliefs [...]. England claimed to bear the white man's burden; France had its *mission civilisatrice* (1979: 200).

Additional pressure to embrace human rights norms has been seen to originate from international institutions that are not human rights-based but carry substantial weight, including in the area of human rights, such as the World Bank (Brysk: 1994) and the European Union (Moravacsik 2000).<sup>105</sup> These bodies have significant influence and may use their political and economic weight to force governments to join the human rights system. The ideational approach, instead, sees the human

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<sup>103</sup> Article 1 ECHR.

<sup>104</sup> The Inter-American Court of Human Rights of the Organization of American States.

<sup>105</sup> Texts on minority rights include the European Parliament's 'Resolution on Linguistic and Cultural Minorities in the European Community', A3-0042/94, 29 February 1994, Official Journal of the European Communities, No. C 61, pp. 110-113.

rights system as based on ideals which not all governments necessarily share, but which are promoted by civil society organisations through campaigning and lobbying. According to this theory, civil society and those governments that embrace the human rights system are driven by altruistic sentiments.

Moravacsik proposes a *third* approach: the ‘republican liberal’ theory, through which new democracies use international human rights mechanisms to ‘lock in’, and thereby solidify, democratic institutions - protecting themselves (through outside support and ready-made institutions) against internal non-democratic threats (2000: 219-20). In the realist and republican liberal approach, human rights are a pragmatic choice - to affect foreign and internal policies respectively.

An in-depth analysis of the three theories in the Russian case is outside the scope of this thesis. Suffice to say that, whichever the motivation, Russia has formally acceded to the international human rights regime (first the UN, subsequently the Council of Europe and the OSCE). However, Russia has accused these international bodies of an anti-Russia political agenda, and of pursuing particularistic interests rather than human rights - somewhat in line with the ‘cynical strand’ of the realistic theory. For example, with regard to the OSCE, former President Vladimir Putin stated:

They are trying to transform the OSCE into a vulgar instrument designed to promote the foreign policy interests of one or a group of countries. And this task is also being accomplished by the OSCE’s bureaucratic apparatus.<sup>106</sup>

What prompts such vehement criticism? Chandler points to a presence of double standards in the internationalisation of minority rights through the OSCE. He argues that this process has consisted in the development of standards for the ‘new

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<sup>106</sup> Cited in Kolesnikov, A. 12-2-2007. ‘The Munich Speech. Vladimir Putin Tells Off the United States’, *Kommersant*. For more on Putin’s attitudes to international law see Chapter 3.



[Eastern European] democracies' to guarantee peace in the new Europe - a need acutely felt following conflict in the Former Yugoslavia (1999: 67). To avoid the post-World War I scenario, when treaties on minorities were forced solely upon Eastern Europe, generating hostility, the OSCE standards were to be applied *universally*. At the same time, Western countries acted to reduce the scope of the OSCE's impact on *their* internal affairs. Western countries insisted on strategic exclusions from the scope of international monitoring: Germany for 'new' minorities (to exclude its substantial immigrant population); the US for 'indigenous peoples' (to exclude American Indians); the UK and Turkey, with Spain's support, for groups said to be involved in terrorism (to exclude matters involving Northern Ireland and the Kurds); and France for any 'national minorities' on its territory, by claiming that none existed (to exclude its population of Arab origins). Through these exclusions, particularly those negotiated by the UK and Turkey, possible conflicts in the West were left outside the scope of the OSCE monitoring. In this way, 'universal' standards can rather be likened to 'double' standards. This led to what Chandler defined as 'the selective interpretation of what constituted a national minority question by Western states and the pragmatic acceptance of this framework by Eastern states.' (1999: 66-7; 71)

A very different scenario can be observed in the case of the UN. Here Russia (the Soviet Union) participated in defining the scope of the human rights system, including in early discussions in the 1940s on the Universal Declaration of Human Rights (UDHR).<sup>107</sup> Russia remains an influential player in the UN by remaining a permanent member, with the veto, of the 15-strong UN Security Council.<sup>108</sup> Instead, the Council of Europe is an institution in whose development

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<sup>107</sup> Although the Soviet Union abstained from voting on the UDHR on 10 December 1948.

<sup>108</sup> The realist theory can of course be applied here - Russia may use its influence in the UN Security Council to pursue its political interests.

Russia has, for the most part, not been involved, including in the formulation of its fundamental treaty: the ECHR.<sup>109</sup> The ECHR dates from 1950, while Russia joined the Council of Europe in 1996. Neither was Russia involved in the adoption of the two main Council of Europe instruments on national minorities and minority languages: the FCNM and the European Charter for Regional or Minority Languages (ECRML). For the late joiners, the Council of Europe required an accelerated route to the Council of Europe human rights system: in the case of Russia, it included a commitment that the ECRML would be ratified.<sup>110</sup> Russia signed the ECRML but had still not ratified it in 2011 - resulting in non-compliance with this international obligation. Yet, France, which has also refrained from acceding to the ECRML is under no obligation to do so, being one of the ten countries that ratified the Statute of the Council of Europe in 1949, thereby establishing the institution.<sup>111</sup> Neither is France required to accede to the FCNM. As for some aspects of the OSCE minority rights regime, this can well create perceptions of double standards.

In light of these considerations, I do not approach this study with an unshakeable belief that the international human rights system is necessarily and always an undiluted force for good, behind which lie purely altruistic motives. Pragmatic (realist) considerations might well lie behind many member states' (including Russia's) decision to develop and/or join these instruments. The republican liberal theory can also apply to Russia inasmuch as some aspects of human rights - such as the rule of law as opposed to 'legal nihilism'<sup>112</sup> - provide

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<sup>109</sup> One might argue, however, that the ECHR does not substantially differ in its aims and content from the UDHR, the ICCPR and the ICESCR.

<sup>110</sup> On the other conditions for accession, see Section 3.2.

<sup>111</sup> Together with Belgium, Denmark, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom.

<sup>112</sup> Medvedev's expression. Cited in *Vedomosti*, 22-1-2008. 'D. Medvedev: Rossiya - Strana Pravovogo Nihilizma' ('D. Medvedev: Russia - A Country of Legal Nihilism'). See also Section 4.1.

favourable foundations for the development of the existing political, legal and economic regimes.

### **Russia, the West and ‘Legal Transplantation’**

The comments voiced by Putin concerning the OSCE, reported above, speak of a suspicious attitude to international (‘Western’) institutions such as the OSCE, which become locked in an ‘us-and-them’ discourse. Yet, throughout its history, Russia has borrowed from Western models.<sup>113</sup> Russian law had a pre-Soviet grounding on the Roman-Germanic legal family (Ajari 1995). Ajari writes:

Political factors, rather than cultural difficulties, have prevented the draft of a Civil Code for the Russian Empire, heavily based on a pandectist [Roman-Germanic] framework, from becoming positive law right before the First World War. The Draft [...] imposed to reluctant revolutionary judges a difficult coordination between “socialist” and “bourgeois” rules. (1995: 94, note 3)

Although Soviet legislation was based on uniformity and laicisation (after eliminating religious legacies such as Orthodox canon law or Islamic law), there were also other forces influencing it, some of which legacies of pre-Soviet times (Ajari 1995: 99; 101). Russia continued to borrow from the West even during the Soviet Union with regard to its civil law (Ajari 1995: 94; Rudden 1994: 61). With the decline of the Soviet models, the Soviet Union explored alternative socialist models from Central and Eastern Europe, including Hungary and Poland, particularly during the *perestroika*. It paved the way for reaching out further West for additional alternative models. No longer required to be grounded on ideology,

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<sup>113</sup> In the same fashion, there is also a long history of opposition to the West (Heim 1996: 210). While it reached its climax during the Cold War era, already under the reign of Peter the Great (1682-1725) several groups opposed reforms based on Western European models (Riasanovsky 1995).

Russian legal scholarship could examine normative solutions, including those from foreign sources (Ajari 1995: 101; 109-10).

Despite this, differences between Western Europe and Russia have been seized upon to justify claims that a treaty such as the ECHR, as a ‘Western’ instrument, cannot be applied in Russia. For example, Kharlamova (2009) cites historical and psychological reasons supposedly separating Russians from Western Europeans, such as Russian ‘spirituality’ and ‘irrationality’, as well as a presumed aversion to democratic reforms such as those initiated by USSR President Mikhail Gorbachev in the late Soviet period. Evidence that Gorbachev acted against the inclinations of his people, Kharlamova believes, is shown by his popularity in the West and concomitant unpopularity in Russia. Western authors similarly refer to differences that may not be reconciled. Some describe Russia’s judicial system as mirroring a ‘hybrid’ political system - a ‘pluralistic form of authoritarianism’ (Solomon 2005). Others suggest that specific features of the Russian judicial system, such as *nadzor* - the re-opening of legal proceedings that should be final - are opposed to the ‘Western principles of [...] the right to a fair trial.’ (Pomeranz 2009: 35)

It can of course be disputed that the right to a fair trial is a uniquely ‘Western’ concept - for example, jury trials presided over by independent judges operated in Russia from 1864 to 1917 (Bowring 2009b: 259). Human rights principles have not been transplanted from the ‘West’ onto a Russian *tabula rasa*. Concepts associated with human rights law were already present in pre-Soviet Russia (Bowring 2008).<sup>114</sup> Bowring argues that with the ratification of the ECHR,

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<sup>114</sup> While some authors argue that Marxism and human rights are incompatible (e.g. Kolakowski 1983), others believe that human rights are a component of socialism, and that Marxism not only has an authoritarian tradition but also a human rights one (Lane 1984: 350). Thus, in the Soviet Union, while political rights were often repressed, there was an emphasis on *social* (and collective) rights (Lane 1984: 352). Social, economic and cultural rights are now part of the international human rights system.

its principles are not transferred into a completely different ‘body’ of law, or legal system and tradition, but are in fact a rediscovery of principles that had been part of the Russian legal tradition. Contacts with, and travel to, the West has resulted in what Bowring calls ‘dynamic interplay of Russian and Western European [...] history and traditions.’ (Bowring 2003b: 176). The importing of Marx’s theories also effectively consists in the transfer of a (Western) theory and its application in Russia. Another import has been the idea of National Cultural Autonomy, which first appeared in 19th century Vienna, and was applied, following a process of adaptation, in post-Soviet Russia. Equally, principles underlying Soviet and post-Soviet programmes for the promotion of minority languages and cultures, such as education in minority languages, closely resemble those contained in the Council of Europe’s FCNM and the ECRML. International human rights law has been increasingly employed by Russian human rights lawyers and judges in post-Soviet Russia. Then, it becomes difficult to draw a dividing line between Russia and the rest of Europe. It means that the ECHR present not only exogenous, but also endogenous elements, or at least principles that have, in previous historical phases, been internalised by Russia, and harmonised with its legal culture. Legal ‘transplantation’ is not as clear-cut as the transplantation of a foreign organ into a body - despite the frequently used analogy. It can occur imperceptibly, over time, through the interaction of different actors and legal cross-fertilisation (Bowring 2003b: 2008). Moreover, transplantation is not forcefully only one way - from West to East. Despite this, international law in Russia has not fully shaken off the label of *chuzhoy*, or alien, as will be shown below.<sup>115</sup> To better analyse Russia’s current interaction with international minority rights law, we now need to turn our attention to the specificities, and historical foundations, of Russia’s nationalities policy.

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<sup>115</sup> See Chapter 3.

### 2.3 Historical Perspectives: Russia and the National Question and Minority Rights

In Sergei Eisenstein's 1944 film *Ivan the Terrible*, the 1552 defeat of the Kazan Khanate at the hands of the Russians is portrayed as a glorification of Russian power and a humiliation for the Tatars. After victoriously chanting 'to Kazan!', the city is swiftly and effortlessly taken by the Russians (in reality, the Russo-Kazan wars had unfolded since 1438). The military venture is presented as a reaction to the boldness of the envoy from the Kazan Khanate, who had presented Ivan with a knife with the suggestion he uses it to commit suicide - adding that 'Kazan is big' and 'Moscow is small'.

This is an example of a culturally insensitive approach to Russia's multinational character. Gibatdinov argues that, throughout the history of Russia, Islam was portrayed in publications as a 'fake' religion (2010); and Shnirelman presents evidence of textbooks being employed to support particular versions of history (1999; 2006; 2009).<sup>116</sup> At the same time, the Soviet Union has been famously described as an 'affirmative action empire', with 'the most ambitious affirmative action programme in history' (Martin 2001: 2).<sup>117</sup> Hence, nationality issues, although devoted considerable attention, have rested on contradictory foundations, shifting between the two poles of promotion of cultural distinctiveness, and its hindrance. Soviet nationalities policy provides a key example of this oscillation.

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<sup>116</sup> This was not only the case of ethnic Russians. Shnirelman equally shows that, in the ethnic republics, there have been similar cases of ethnocentric representations of history by other nationalities.

<sup>117</sup> Prior to this, in Imperial Russia, Catherine the Great's policy was to refrain from commanding religious uniformity while instead introducing a 'policy of toleration' for its many faiths (Crews 2006: 2).

The Soviet approach to the ‘national question’ sought to forge a strong link between ethnicity and territory, encapsulated in Stalin’s definition of a nation as a:

[H]istorically evolved, stable community based on a common language, *territory*, economic life and psychological make-up manifested in a community of culture [*italics added*]. (Stalin 1950: 239)

On the basis of this principle, Soviet *ethnic* federalism was established. The Soviet Union (and Russia’s precursor, the RSFSR<sup>118</sup>) was divided into territories, several of which were ‘assigned’ to particular ethnicities.<sup>119</sup> This created a form of asymmetric federalism: a hierarchy of independence ranging from the union republics, to autonomous republics down to smaller units.<sup>120</sup> With some adjustments,<sup>121</sup> the structure of Russia’s federalism was preserved in post-Soviet Russia. In 2011 Russia had 83 *subiėkti* (subjects, or territorial units), comprising: 21 ethnic republics (formerly autonomous republics), 46 oblasts, nine krai, four autonomous okrugs, two federal cities (Moscow and St Petersburg) and one autonomous oblast (Jewish).<sup>122</sup> The concept of ‘nationalities’ was based on essentialist notions, nationalities being seen as entities with intrinsic characteristics. The view propagated by Soviet ethnologist Lev Gumilev, in particular, saw these ethnic groups as regulated by natural rather than social processes - as self-contained entities with a permanent, immutable identity, transferred from generation to generation (Bassin 2007).

Soviet nationalities policy supported ethnic and cultural diversity. Since language was considered the predominant ethnic marker in the Soviet Union, the

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<sup>118</sup> The acronym stands for the Russian Soviet Federative Socialist Republic.

<sup>119</sup> On these processes, see, for example, Hirsch (2005).

<sup>120</sup> See Bowring (2010a) for a history of Russian federalism.

<sup>121</sup> See Section 5.2.

<sup>122</sup> ‘Oblast’, ‘krai’ and ‘okrug’ are Russian expressions to designate particular administrative units. They can be translated as ‘district’ or ‘region’.

state established schools in minority languages (Slezkine 1994).<sup>123</sup> The local administration was transferred to local leaders through the process of *korenizatsiya* (indigenisation). Local leaders filled positions in the local administration, the local Communist party, the judiciary and industry, through complex quota systems. Admission to the best universities was also dependent on membership of the titular group. Overall, in local government titular groups were overrepresented, and affirmative action policies continued up to *perestroika* (Gorenburg 2003; Slezkine 1994).

Indeed, the advent of Communism was portrayed by its leaders as the end of the oppression of the Russian Empire's peoples. Lenin's 1917 'Declaration of the Rights of the Peoples of Russia' contained guarantees of self-determination and equality. Lenin further argued that Marxism required centralism in order 'to sweep away the old, medieval, caste, parochial, petty-national, religious and other barriers', but this had to be a form of 'democratic centralism' (1913). This type of centralism would not preclude local self-government or autonomy:

Obviously, one cannot conceive of a modern, truly democratic state that did not grant such autonomy to every region having any appreciably distinct economic and social features, populations of a specific national composition (Lenin 1913).

The Soviet Union was, then, based on anti-imperialist values and self-determination of its peoples, at least in principle.<sup>124</sup> Although what ensued deviated significantly from the originally-conceived 'democratic centralism', the Soviet Union had some degree of localism: local self-government constituted a mechanism for control but also provided some level of representation, involving people in the life of the

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<sup>123</sup> Local languages were considered necessary to reach workers. As Stalin wrote, only the mother tongue enables 'a full development of the intellectual faculties of the Tatar or of the Jewish worker.' (Stalin 1050: 21)

<sup>124</sup> Ideologically the Communists were opposed to colonisation, although Hirsch points out that the Soviet Union could not have survived without the material resources of its constituent parts (2005: 78).



community (Bowring 2010b: 665-6; Tiskhov & Filippova 2002). Bowring traces the legacy of regional autonomy back to the imperial past, for example in the case of Finland (Bowring - forthcoming). While imperial and Soviet Russia tend to be known for their absolutist, centralised policies, both also saw instances of local autonomy: the *zemstva* (local government) and the *mir* (peasants' communities) in Imperial Russia; and later the 'soviets' (workers' councils). Hosking argues that the success of the 'soviets' in 1905 and 1917 was primarily due to 'the long experience of both peasants and workers in creating and running their own grass roots institutions' (1990: 26).<sup>125</sup>

Local and regional autonomy has benefited nationalities. From the 16<sup>th</sup> century, according to a mutual agreement between Moscow and the Kazan and Astrakhan Khanates, Tatars were able to retain their language and religion, as well as their lands, in exchange for loyalty to the tsar (Kutafin 2006). There were also opportunities to self-manage in the area of education: for example, Kokko and Kon'kova relate how the 19<sup>th</sup>-century reforms of Alexander II, with the establishment of *zemstva*, enabled the Ingrian Finns to organise their education in the Finnish language, including (as of 1863) a three-year course for Finnish teachers, taught in both Finnish and Russian. In 1888 there were already 38 Finnish schools in Ingria (a part of the present Leningrad oblast), and, in 1913, 229 schools (Kokko and Kon'kova 2009: 18).

At the same time, the Soviet nationalities policy lacked coherence, with an alternation of liberal and illiberal practices. Although titular nationalities were usually able to preserve their ethnic diversity, certain minorities were subjected to repressive and deeply traumatic measures such as mass deportation during the

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<sup>125</sup> On local government in Russia, see also Bowring (2010b).

Stalin period - notably the Chechens, Crimean Tatars and Germans.<sup>126</sup> The Karelians and Mordovians interviewed who had lived in the Soviet period, described social attitudes that eroded their dignity as representatives of their ethnic groups, leading to widespread feelings of shame in their origins. Another aspect of identity - religious expression - was repressed, in the case of minorities and ethnic Russians alike, with the killing of priests and the closure of churches and mosques, in the belief that religious institutions might hamper the process of collectivisation (Duncan 1999).<sup>127</sup> At a minimum there was a lack of real autonomy from Moscow (Melvin: 207; Sakwa, 2008: 228) - as regional leaders recruited by the Bolsheviks had to be unremittingly loyal (Duncan 1999; Roeder 1991). Unwavering 'loyalty' meant that in practice these leaders were not in a position to fully represent the interests of their ethnic group.<sup>128</sup> Ultimately, whether the regions and localities could exercise some autonomy in decision-making depended on the centre. And, during the Soviet Union, following an auspicious start, Stalin criticised the 'local nationalism, including the exaggerated respect for national languages'<sup>129</sup> that had characterised the Union's initial phases. Thus, the numbers of schools in minority languages decreased from the end of the 1930s onwards (Gorenburg 2003). To return to the example of Finnish-language schools, in the late 1930s teaching exclusively in the Russian language was imposed, together with the closure of

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<sup>126</sup> Some ethnicities were accused of collaboration with the Nazis, and deported to Siberia and Central Asia. Duncan refers to the deportations as 'a demonstration of Russian firmness and a warning to other nationalities.' (1999: 70). In addition to deportations, different ethnicities were subjected to repression - particularly during the Great Terror in the 1930s. This affected, among others, Germans and Poles. Among the ethnic groups whose members (entirely or partially) were subjected to forced relocation within the USSR, were Koreans, Chinese, Finns, Greeks, Bulgarians, Armenians, Crimean Tatars, Poles, Belarusians and Meskhetian Turks. Deportations were not only based on ethnic grounds but also on social grounds (for example, targeting *kulaki*, or wealthy farmers, seen as class enemies of the poorer farmers).

<sup>127</sup> Repression was reduced in 1941, primarily for the pragmatic decision to involve religious institutions in the collective effort required by World War II. It intensified again in 1959, under Krushchev's leadership (Duncan 1999: 69-70).

<sup>128</sup> The relaxation of regional control during the perestroika and in the 1990s led to ethnic mobilisation (Gorenburg 2003).

<sup>129</sup> Cited in Lewis (1972: 71).

Finnish newspapers and Lutheran churches (Kokko and Kon'kova 2009: 18). The Soviet Union moved from Lenin's original notion of 'democratic centralism' to top-down, exclusivist decision-making.

Overall, the regulation of ethnicity fundamentally occurred in a top-down fashion. The wishes of minorities were rarely taken into account in formulating nationalities policy. Language policies required minorities to learn a mother tongue determined by their ethnicity, itself biologically inherited from their parents,<sup>130</sup> regardless of personal linguistic preferences and habits (Slezkine 1994: 416; 432). Due to the fact that Soviet leaders considered several non-Russian nationalities as 'backwards', the state adopted a deeply paternalistic and patronising attitude towards them. The Soviet leaders effectively repressed the cultural traditions of certain ethnic groups by forcing them to work in collectives (Hirsch 2005: 251). This approach points to a legacy of *management* of diversity rather than its *respect*, or engagement with it - a form of 'managed diversity'. It further indicates a policy based on assumptions as to the meanings of diversity - based on essentialist notions of minority groups, seen as internally homogeneous collectives.

The Soviet legacy can be seen in the context of an alternation of localism and centralism. A clarification of the meaning of these two concepts - localism and centralism - may be helpful here. There are two sides of 'localism': as a form of local *autonomy* that can accommodate the specific needs of minority communities; and as *fragmentation* of federal policies into uncoordinated activities at the local level. In the first case, local autonomy serves to promote minority rights, as

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<sup>130</sup> Although in the 1930s ethnicity was established on the basis of self-identification, this was soon modified, and made to coincide with the parents' ethnicity (in the case of mixed marriages, one could choose the nationality of either parent). This changed again in post-Soviet Russia: the 2003 Russian Constitution states that ethnicity is based on self-identification: 'Everyone shall have the right to determine and indicate his nationality' (Article 26(1), Constitution of the Russian Federation, 12 December 2003).

cultural diversity can be better enabled through decentralisation and flexibility.

Grin suggests that decentralisation is conducive to enhanced participation:

[I]t appears likely [...] to be easier to implement [participatory democracy] in institutionally *decentralised settings* [...]. This multiplies the levels at which practical arrangements can be designed for individuals citizens and grassroots movements to make their concerns heard [italics added]. (2003: 152-3).<sup>131</sup>

In the second case, localism can lead to a *laissez-faire* approach that atomises efforts at the local level without their integration into coherent federal policy on national minorities, and with insufficient financial and technical support from the centre. Centralism can provide an antidote to fragmentation, through a coherent framework for local efforts - but it can also lead to the imposition of centrally-conceived policies, without the participation of civil society, including representatives of national minorities. Centralism is linked to the concentration of power by the central authorities: as Wolman puts it, ‘to centralise is to concentrate by placing power and authority in a center, while to decentralize is to disperse or distribute power from the center’ (1990). Elander argues that ‘neither centralism nor localism are inherently good or bad’, as their functions and approaches to them vary, nor are local autonomy and democracy always inextricably linked (1997). An alternation of localism and centralism is also a feature of post-Soviet Russia, and a recurring theme in this thesis.

In post-Soviet Russia attention is paid to ethnic diversity and there has been a proliferation of government programmes on nationalities. As part of its implementation of the FCNM, the Russian government has submitted to the

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<sup>131</sup> See also the OSCE Lund Recommendations on the Effective Participation of National Minorities in Public Life, 1999, Point 19.

Council of Europe three substantial reports,<sup>132</sup> outlining its programmes for the preservation and development of minority cultures and languages. In its 2006 Second Opinion on the implementation of the FCNM by Russia, the Advisory Committee of the FCNM (ACFC) acknowledged that ‘the Russian Federation has adopted a positive approach to the Framework Convention’s monitoring process’.<sup>133</sup> This statement was echoed by the Committee of Ministers of the Council of Europe, which, in 2007, stated that the Russian authorities had ‘continued to pay attention to the protection of national minorities’.<sup>134</sup> The tradition of teaching minority languages and cultures, as well as teaching through the medium of minority languages, has continued in post-Soviet Russia. In 2007 the Council of Europe’s ACFC noted that in all of Russia’s territorial units there were at least some schools providing teaching of minority languages and cultures, while also acknowledging attempts between the first and second reporting cycles (2000 to 2005) to increase the teaching in large cities and for dispersed minorities.<sup>135</sup> Yet there continue to be impediments to minorities’ participation in decision-making regarding matters that affect them, leading to the formulation of policies that, as in the Soviet period, tend to be centrally-defined and essentially top-down. This situation due to an absence of guarantees that bottom-up initiatives will be effectively forwarded up to decision-making levels.

What is the reason for such a lack of guarantees? We come to another Soviet legacy and feature of post-Soviet Russia: around the core, centrally-

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<sup>132</sup> Pursuant to Article 25(1) FCNM. The last (third) report was submitted in April 2010. ACFC, (Third) Report submitted by Russia, 9 April 2010, ACFC/SR/III(2010)005.

<sup>133</sup> In the period between the ACFC’s First and Second Opinions (2002-2007). ACFC, (First) Opinion on Russia, 13 September 2002, ACFC/INF/OP/I(2003)005; and ACFC, (Second) Opinion on Russia, 2 May 2007, ACFC/OP/II(2006)004, § 6.

<sup>134</sup> It added that ‘... subjects of the federation have taken steps to consolidate existing federal norms pertaining to minority protection in their respective laws and regulations’. Resolution CM/ResCMN(2007)7 ‘On The Implementation of the Framework Convention for the Protection of National Minorities by the Russian Federation’, 2 May 2007, Point 1(a).

<sup>135</sup> ACFC, (Second) Opinion on Russia (note 133), § 245.

developed policies radiate a myriad of *ad hoc*, ‘informal’ practices. The predominance of such practices in lieu of universal rules has been documented by Ledeneva: these are (often illegal) means based on ‘opportunistic logic’, that involve, among other things, the use of unofficial channels, including the alternative enforcement of the legislation, to achieve particular ends (2006). These circumstances do not signify an utter absence of formal practices and of the rule of law in Russia. However, a web of informal, opaque practices can be traced, existing alongside formal structures. As Ledeneva puts it:

[I]nformal practices were an integral part of the postsocialist transformation [...] they were beneficial for certain individuals but also made them hostage to the system. These practices were not simply illegal but integrated the law into political, media, and business technologies, often manipulatively. Similarly, they did not simply follow or contradict informal norms but relied on some of them and played one set of norms against the other (2006a: 190).

Although persons belonging to minorities might themselves benefit from personal networks, their arbitrariness denies the guarantees of a fully functioning legal system.

This outline has identified three features of Russia’s approach to nationalities: a tendency to formulate top-down policies; the coexistence of devolution (localism) and centralising tendencies; and the ubiquity of informal practices. These characteristics, as will be seen later, have a profound impact upon the application of international standards on minority protection in Russia. At the same time, attempts have been made to incorporate these standards into Russian law and practice in post-Soviet Russia - a period characterised by internal uncertainty, including as to what it means to be ‘Russian’.

Two roots for this uncertainty are to be found in Russian history. Hosking points to a choice not to build a *Russian* nation-state during the Soviet Union

(2005), which meant that the Union's collapse left not only an ideological, but also an identity, vacuum. The concept of *ruskii* (belonging to the Russian nation) had by then become ephemeral, supplanted by vague notions of a 'Soviet people'. Meanwhile, Russians have historically perceived themselves at the core of a multinational empire, or the '*Staatsvolk* - the dominating people of a multinational state' (Opalski 2002: 299). This has implied a need to re-position themselves, and re-shape their identity, following the loss of much of this 'empire' as the Union fragmented (Hosking 1998). It generated the *ruskii vopros*, the 'Russian question' - or doubts as to Russians' self-definition vis-à-vis other nationalities sharing the same territory (Simonsen 1996: 91). By the same token, post-Soviet Russia has seen a renewed effort - from critics, politicians and others - to 'forge the nation' (Tolz 1998; Tolz 2001). One of the approaches to self-definition is neo-imperial and grounded on Eurasianism, with the aim of creating an 'Eurasian home' for the Russians and non-Russian nationalities residing in Russia (Opalski 2002: 301). It is while 'forging a nation' that Russia has taken upon itself the international obligations resulting from ratification of international treaties on human rights and minority protection.

## **2.4 Conclusion: Russia Between East and West?**

Two main considerations emerge from this chapter. First, in each case study on legal transplantation, the legal tradition and culture of the receiving state, and its theoretical or ideological foundations, are complex, and derived from ever-changing political circumstances. In the case of Russia, one has to take into account the nuanced nature of its history, its complex relationship with the West - at times rejected as the 'other', at times used as a model - and its dual identification with a

Western and Eurasianist tradition. One ought to avoid forcing the Russian system into the reductionist model that sees it as a quintessentially centralised and autocratic state.

Second, ‘fits’ and ‘misfits’ between the international and domestic systems are also complex, and cannot be easily placed into two fully distinct categories. The richness and complexity of Russia’s history means that the same tradition can have *both* fits and some misfits. For example, although the Russian judiciary has seen a tradition of servility, there have also been instances of judicial independence. Related to this concept is the fact that the drawing of a dividing line between Russia and the ‘West’ would be an artificial exercise, as the two systems have not developed by following two separately and mutually exclusive trajectories.

The question arising from this chapter, and addressed in the thesis, is whether the multiculturalist views that are at the core of minority rights law - particularly the marriage of integration and cultural distinctiveness - are transferrable to Russia. These views have also emerged in Russia. They may be conceived as a way of preserving Russia’s linguistic and cultural wealth without jeopardising social cohesion through an overarching, all-inclusive identity for its groups *alongside* the preservation of cultural pluralism. Tishkov has acknowledged the impossibility of a ‘monoculture’ in Russia:

[A] democracy should be built on the recognition of diversity, rights, demands and interests that are linked to people’s culture, their ethnic and religious origins; at the same time a civic solidarity [for all citizens] should be affirmed. In Russia there is talk of Russian [*rossiiskii*] identity, of all-Russian [*obshcherossiiskii*] patriotism. The formula here should not be ‘either-or’ (*either* an ethnic Russian *or* a Russian citizen; *either* a Chechen *or* a Russian citizen) but ‘both’. Democracy should be built in a way to reflect this complexity [italics added]. (2011)<sup>136</sup>

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<sup>136</sup> See Section 1.1 (note 16).



This implies the need for Russia's *engagement* with difference, rather than an attempt ultimately to eliminate it - an approach is analogous to that of the international minority rights system. Opalski examines the question from the point of view of Kymlicka's theory of liberal pluralism (1995), and argues that the essentialism and collectivism of the nationality discourse in Russia are not conducive to the application of Kymlicka's theories: Russia has a culture that 'continues to rely heavily on the language of institutionalized ethnicity, ethnic federalism, and ethnic group rights.' (Opalski 2002: 316) This raises the question of whether the natural process of building a new, post-Soviet identity is creating multi-layered identities of equal dignity, or a 'core' Russian, effectively supremacist, culture. International standards could play a role in furthering the former approach - that of a multiculturalist society - *or* remain a mere appendage at the periphery of a more or less covert Russian nationalist discourse that marginalises, or assimilates, other cultures.

In the assessment of transferability of international (Council of Europe) standards on minorities' cultural rights to Russia, one has to acknowledge the complexity in establishing causal links between such standards and developments in Russia. As noted in the previous chapter, the qualitative data contained in the thesis is based on the interpretations of domestic change by the respondents. It does not aim at identifying all processes of causality, but at highlighting gaps in implementation between international obligations and corresponding actions by the Russian government. They will be analysed in light of some of Russia's main characteristics in relation to its nationalities policy identified in this chapter: a tendency to formulate top-down policies; the coexistence of devolution (localism) and centralising tendencies; and the ubiquity of informal practices.

# **PART 1: PRACTICE AND LAW**

### 3. SELECTIVE IMPLEMENTATION: INTERNATIONAL LAW IN RUSSIA

Chapter 2 has elucidated the notion of legal transplantation and stressed the dynamic interaction of Russia's and European legal traditions. It has further described the historical approach to nationality issues in Russia, and the features that can constitute obstacles to multiculturalism and the implementation of international standards on minority protection: the tendency to formulate top-down policies, the coexistence of localism and centralism, and the prevalence of informal practices.

This chapter assesses the ambivalent reception of international law in Russia. It investigates how the specific characteristics of the Russian legal environment and of the relevant international standards generate a particular type of dynamics between the two. It is argued that, despite legally endorsing the supremacy of international law over domestic law, Russia reserves the right, in practice and in selected cases, not to honour its commitments. It has developed what I call a 'selective implementation' - a form of application of international law that is short of 'implementation' per se, as discussed below. Despite these reservations, the application of the European Convention on Human Rights (ECHR), has, overall, progressively increased in Russia since ratification; yet, in the specific case of international *minority* rights and the Framework Convention for the Protection of National Minorities (FCNM), the impact of international standards is reduced by the flexible nature of their application in Russia, itself facilitated by the standards' *own* fluidity. It creates a legal environment for minority rights in which the *practice* can weigh more significantly than the law.

It has already been noted that, in examining the application of international law in Russia, I focus on Council of Europe mechanisms.<sup>137</sup> This and the next chapter incorporate the analysis of the application not only of its minority-specific convention, the FCNM, but also the ECHR. Although the ECHR has limited impact on the promotion of minority rights, not being designed specifically to protect minority rights, its implementation is a barometer for the implementation of international human rights standards in the wider sense. To date the ECHR has no provisions, nor is there yet a protocol, specifically relating to minority rights. Cases concerning minority rights must be based on provisions such as Article 3 (inhuman and degrading treatment), Article 8 (respect for family and private life) and Article 14 (discrimination in the enjoyment of other specific rights). In this way it provides basic guarantees for vulnerable groups including minorities, which grows with its ever-expanding case-law.<sup>138</sup> Unlike the ACFC's Opinions,<sup>139</sup> ECtHR's judgements against Russia in most cases require the payment of sums of money as 'just satisfaction', and are subject to enforcement through the Council of Europe's Committee of Ministers.

In the first part of the chapter, I introduce the notion of Russia's 'selective implementation' of international law in Russia. In the second and third sections, I present the results of interviews with public officials and with civil society, outlining their perceptions on the role and impact of international law. I supplement these data with those from interviews with Council of Europe experts: three Council of Europe employees and two external experts who have sat on Council of Europe monitoring bodies – for the FCNM and the European Charter for Regional

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<sup>137</sup> Section 1.1.

<sup>138</sup> On the ECHR and minority rights see also Section 4.2.

<sup>139</sup> The monitoring process is based on country reports submitted, at intervals of five years, by the state party to the FCNM, data from civil society (shadow reports), and ACFC's visits to the States. On the basis of this data, the ACFC compiles Opinions, which are followed by Resolutions of the Council of Europe's Committee of Ministers.

or Minority Languages (ECRLM).<sup>140</sup> I conclude by offering my interpretation as to the selectivity of implementation of international standards in Russia.

### 3.1 ‘Applying’ without ‘Implementing’: Russia’s Selective Implementation

As noted, the incorporation of the ECHR into Russian law and practice amounts to a form of ‘legal transplantation’ (Bowring 2003: 164). However, the adoption of legislation and its implementation are two distinct processes. For example, Hughes et al argue that states might incorporate the *acquis communautaire* into domestic law but not be equipped with the capacity to implement the new provisions. They conclude that the process of ‘formal legislative engineering [...] has to be accompanied by a more informal process of normative adaptation and policy learning if the former is to be effective.’ (Hughes et al 2004: 165) The specific form of implementation largely depends on the type of ‘reception’ of international law in each state.

Russia has engaged in substantial legal reform since its accession to the Council of Europe. It needed to remedy the fact that, following the collapse of the Soviet Union, it was ill-fitted to join the Council of Europe. This was highlighted in 1996 by the Parliamentary Assembly of the Council of Europe (PACE):<sup>141</sup>

[T]he legal order of the Russian Federation does not, at the present moment, meet the Council of Europe standards as enshrined in the statute of the Council and developed by the organs of the European Convention on Human Rights.<sup>142</sup>

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<sup>140</sup> In interviews the respondents affiliated to the Council of Europe were asked to express their personal opinions and observations, and as such are not to be taken as reflecting the official position of the Council of Europe.

<sup>141</sup> PACE, ‘Russia’s Application for Membership of the Council of Europe’, 18 January 1996, Doc. 7463.

<sup>142</sup> PACE, ‘Report on the Conformity of the Legal Order of the Russian Federation with Council of Europe Standards’, 28 September 1994, Doc. AS/Bur/Russia (1994)7.

There were even fears that Russia, by acceding to the Council of Europe, would lower the institution's human rights standards, with a consequent loss of status of the Strasbourg law (Janis 1997: 94). Russia's admittance to the Council of Europe was conditional upon its institutional and legal reform, to harmonise its laws and practices to Council of Europe principles.<sup>143</sup> Russia, then, embarked on a legal reform programme which was as rapid as it was deemed promising (Nussberger 2008: 667) - leading to the adoption of new criminal and civil provisions. The foundations of Russia's legal reform programmes were laid on the 1993 Constitution's Article 15(4), which declares the supremacy of international law over Russian law:

The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the *rules of the international agreement shall be applied* [italics added].

However, there is a tension between this and paragraph 1 of the same article, which, instead, proclaims the Constitution, rather than international law, supreme:

The *Constitution of the Russian Federation shall have the supreme juridical force, direct action and shall be used on the whole territory of the Russian Federation* [italics added].

Article 17(1) of the Constitution seems to place the two at the same level:

In the Russian Federation recognition and guarantees shall be provided for the rights and freedoms of man and citizen according to the universally recognized principles and norms of international law *and* according to the present Constitution [italics added].

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<sup>143</sup> In the Final Declaration of the Council of Europe's Vienna Summit of 9 October 1993, member states of the Council of Europe stated that they would 'welcome the democracies of Europe freed from the Communist oppression'. However:

Such accession presupposes that the applicant country has brought its institutions and legal system into line with the basic principles of democracy, the rule of law and respect for human rights.

This tension is symptomatic of the complex relationship between Russian law and international law. Russia is simultaneously proclaiming international law to be above Russian law and the opposite, in the same constitutional provision. In Russian judicial practice international law has prevailed over domestic law in the event of conflict between the two,<sup>144</sup> but not specifically in cases of conflict with the *Constitution*. The assumption that international law is superior even to Russia's highest legal norms, the Constitution, has been called 'a very bold proposition' (Danilenko 1999: 64). Burkov solves this conundrum by pointing to the fact that in cases of conflict the Constitution would need to be amended, allowing international *de facto* supremacy but not its direct invalidation of Russian constitutional norms (2007).<sup>145</sup> The amendment would be introduced voluntarily by Russian institutions rather than being imposed from international bodies. Hence, if this were to happen, the requirement of supremacy of international law could be met in a way that still leaves the Russian government a measure of control - and a possible buffer between law and practice.<sup>146</sup>

A gap between international legal responsibility and practice can be observed in other areas of the Russian legal system. The 1996 Constitutional Law 'On the Judicial System of the Russian Federation'<sup>147</sup> makes it compulsory for Russian courts to apply 'generally recognised principles and norms of international law and international treaties of the Russian Federation'. Similarly, the 1998 Law 'On the Ratification of the Convention on the Protection of Human Rights and

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<sup>144</sup> However, the interviews for this study indicate that this does not happen consistently, and there is no full consensus on the issue even among high-ranking judges. See statement by the Chairman of the Russian Constitutional Court, Section 3.2 (notes 196 and 198).

<sup>145</sup> Burkov points to Article 22 of Law No. 101-FZ of July 1995 'On International Treaties of the Russian Federation'. It envisages amendments of the Constitution if 'an international treaty contains rules requiring the change of individual provisions of the Constitution'.

<sup>146</sup> See also Bowring (1997; 2000).

<sup>147</sup> No. 1-FKZ of 31 December 1996.

Fundamental Freedoms'<sup>148</sup> compels courts to apply the ECHR. Russia has a *monist* approach to international law - meaning that the treaties it enters into are immediately and directly applicable in the country, without the need of supplementary Russian legislation to be adopted.<sup>149</sup> A 2003 Supreme Court Resolution<sup>150</sup> states at Point 1 that:

[T]he rights and liberties of man in conformity with commonly recognised principles and the norms of the international law, as well as the international treaties of the Russian Federation shall have direct effect within the jurisdiction of the Russian Federation.

The legal bases for the direct application of international law create wide-ranging new opportunities for Russian lawyers and judges, and as such have been perceived as a highly positive development by commentators such as Danilenko (1999: 53). It marks a significant departure from previous constitutions: the Soviet Union had a dualist, rather than monist, approach, envisaging the implementation of international law but not its direct application in Russian courts.<sup>151</sup> Despite this, the application of international law in Russian courts presents logistical difficulties, as will be seen in the next chapter - as well as requiring a political will for implementation. There are two main reasons. First, the ECHR is an extremely complex instrument, due to the volume of the jurisprudence of the ECtHR, which transforms the ECHR through its interpretation. Second, monism does not have an undisputed advantage over dualism. It could mask the attempt to find a 'shortcut', by absolving a member state from the responsibility to compile, adopt and implement tailored legislation - the equivalent, for example, of the UK's 1998

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<sup>148</sup> No. 54-FZ of 30 March 1998.

<sup>149</sup> With the technicality that they must be published in the official gazette (*Rossiiskaya Gazeta*).

<sup>150</sup> Resolution of the Plenum of the Supreme Court of the Russian Federation No. 5 of 10 October 2003 'On the Application by Courts of General Jurisdiction of the Commonly Recognized Principles and Norms of International Law and International Treaties of the Russian Federation', adopted by the Plenum of the Supreme Court of the Russian Federation.

<sup>151</sup> Both in the 1978 RSFSR Constitution and the 1977 USSR Constitution.



Human Rights Act. The monist approach, with its apparent openness to international law can be a double-edged sword: Russia commits all - but may deliver little.

What is the situation in practice? Burkov and Trochev have shown that the modes of interpretation of ECHR case-law in Russia's courts (including Russia's three highest courts - the Russian Constitutional Court, the Russian Supreme Court, and the Supreme Commercial Court) - are often superficial, lacking detailed references to, and analysis of, the ECHR jurisprudence (Burkov 2007; Trochev 2008a: 176).<sup>152</sup> Although on one side the level of incorporation of the ECHR into Russian legal practice has increased since 2005,<sup>153</sup> on the other citations routinely relate to principles of law that complement or confirm the Russian Constitution, rather than their being used more creatively (perhaps controversially) to overcome contradictions or fill gaps in the Russian legal system (Burkov 2007: 40; Danilenko 1999: 62). Such gaps are numerous, as the Russian Constitution provides only vague provisions on human rights, meaning that the ECHR could serve the vitally important function of defining and crystallising Russian human rights law (Danilenko 1999: 62). The fact that the ECHR serves *primarily* a complementary function to domestic legislation raises doubts as to the real 'supremacy' of international law. Meanwhile, the vague references to the ECHR perpetuate the opacity as to the exact meaning of 'generally recognised principles and norms of international law'. Danilenko argued in 1999 that the RCC had 'invented its own version of sources of international law for domestic consumption' (1999: 62).

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<sup>152</sup> Burkov engaged in an analysis of 3,911 cases from courts of first and second instance in Sverdlovsk oblast. Of these, only 12 cited the ECHR since between 1998 and 2004. The proportion of citations is much higher for the Russian Constitutional Court (RCC); by 2004, there were 54 RCC judgements with ECHR citations, of 116 judgements pronounced since the ECHR came into force in May 1998 - yet Burkov contends that application would have been feasible in nearly every case (Burkov 2007: 36; 47). For a critique of Burkov's analysis, see Golubok (2010).

<sup>153</sup> For example, Nussberger shows an increase in the citations by the Russian Constitutional Court from 2005 to 2006 (2008: 619).

Hence, although the ECHR is certainly used by Russian lawyers and judges, and concrete efforts have been made for its application, one may say, as Burkov does, that the ECHR is ‘applied’ but is not ‘implemented’ (2007). Following this approach, I interpret ‘implementation’ as a coherent and comprehensive set of measures to progressively incorporate international obligations into a country’s domestic law and practice; and ‘application’ as a set of individual instances of judges or officials employing principles of international law. ‘*Selective implementation*’ reflects a form of ‘application’ that falls short of full-fledged ‘implementation’. In the next two sections (3.2 and 3.3) the forms of implementation are analysed in light of perceptions of international law among public officials and civil society representatives respectively. These data are then supplemented by those from interviews with Council of Europe experts.

### **3.2 The Views of Public Officials: ‘International Law as Foreign’**

The official media in Russia has tended to portray the ECtHR as biased against Russia, and chipping away at its sovereignty (Nussberger 2008: 664).<sup>154</sup> In all likelihood this activates feelings of self-preservation, coupled with a common distrust of the ‘other’, seen as Western Europe<sup>155</sup> - sentiments that are powerfully present in Kharlamova’s arguments reported above.<sup>156</sup> Nussberger reflects on Russia’s ambivalent reception as to what is considered ‘external’ (*chuzhoy*):

As Russian [...] history shows: What has come from outside, has either been welcomed enthusiastically or deeply condemned (2008: 667).

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<sup>154</sup> Some of these views reported in the media were articulated by Putin himself and RCC Chairman Velerii Zorkin (see statements reported below in this same section).

<sup>155</sup> On the perception of Western Europe as the ‘other’ see Tolz (2001).

<sup>156</sup> See Section 3.1.

This polarisation is reflected in the interview data from two categories of respondents (public officials and civil society), on the issue of the applicability of international law in Russia. Public officials' responses substantially differed from those of civil society, in that the former centred around the theme of Russia as 'different' from the rest of Europe - and, thus, from other Council of Europe member states. This difference was linked by public officials to distinct historical and political traditions, and Russia's unique pluri-ethnic makeup, which made Council of Europe mechanisms ill-suited to accommodate Russia's needs. Inversely, civil society tended to see international standards as an opportunity to advance their objectives - a perception often accompanied by regret that the impact of international mechanisms did not have more far-reaching repercussions. Both civil society and public officials referred to the ECRML as well as the FCNM in the interviews, given the resonance of the Council of Europe programme 'Minorities in Russia',<sup>157</sup> and the resulting debate on the ECRML's possible ratification. In the interviews, the respondents used the expression 'the Charter' (*Khartiya*) as abbreviation for the ECRML. 'The Charter' is used in their statements reproduced in this chapter.

I first describe public officials' responses. A former high-ranking public official saw the FCNM and ECRML as 'supplementary instruments' to the mechanisms already employed in Russia to cater for minority interests - an essentially superfluous additional layer [4.13]. He believed that 'the objectives of international standards are already realised [in Russia]', using as an example the fourteen officially recognised languages of Dagestan. The analogous view is expressed in Russia's Second Report to the ACFC, stating that 'basically all

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<sup>157</sup> See Section 1.3.

provisions of the Framework Convention have been respected'.<sup>158</sup> The same respondent thought that Russia should still ratify the ECRML; as to the reason for ratification he argued:

The position of Russia is useful for Europe. In Europe Islam is a new phenomenon and Russia instead has 1,000 years of coexistence with Islam... [4.13]

One public official from Tatarstan, and three more persons in quasi-official institutions - one from Tatarstan and two in Mordovia - saw international standards as fundamentally irrelevant to their ethnic republics. The perception stemmed from the view that minority rights are for disadvantaged minorities only. Those nationalities that enjoy titular status were, in their opinion, not disadvantaged:

There is no problem in Tatarstan. [In Russia] there are issues of small-in-number peoples of the North and their way of life, but there are no small-in-number indigenous peoples in Tatarstan. [4.8]

A public official in Mordovia also doubted the usefulness of international standards but added that 'perhaps there are some prospects' [4.11].

The ECRML was also not considered a panacea. A public official from Tatarstan said:

I am in favour of the ratification of the Charter and its application in Tatarstan [...]. [But] the focus of the Charter is the protection of the languages of the small-in-number indigenous peoples, and languages that are disappearing. In Tatarstan there isn't a problem with this, although it could happen [in the future]. [4.10]

And in Mordovia:

Mordovia is not very interested in the Charter because it doesn't protect Mordovians in Mordovia, only the diaspora [Mordovians outside

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<sup>158</sup> ACFC, (Second) Report submitted by Russia, 26 April 2005, ACFC/SR/II(2005)003, p. 70.

Mordovia]. The Mordovian languages are already the state [official] language in Mordovia. [4.12]<sup>159</sup>

These statements reveal a misunderstanding of international standards and particularly the ECRML. Both FCNM and ECRML may be applied in the titular republics. The public officials' view is primarily due to a discrepancy between the understanding of a 'minority' in Russia and in international law: as noted, international law considers a 'minority' to be a group in a disadvantaged position in a country as a whole,<sup>160</sup> while titular nationalities in Russia are commonly not perceived as 'minorities' in Russia.<sup>161</sup> Traditional expressions to designate non-Russians employed during the Soviet period did not include 'minority'<sup>162</sup> but rather 'nation' and 'nationality' (*natsiya, natsional'nost'*) and 'ethnos' (*etnos, etnonarod*) (Sokolovskii 2004).

The statements of a former public official interviewed [4.13], and of public officials at Council of Europe events attended by the author, reveal an underlying belief that Russia's titular nationalities would be 'offended' if they were referred to as 'minorities'. This can solidify perceptions that international human rights mechanisms are based on Western countries' conceptualisation of nationality issues, and therefore unsuitable for Russia. Only two of the cited respondents saw a potential benefit in the application of the ECRML in Mordovia or Tatarstan, but only in a possible future, should the use of titular languages be eroded. Despite these views, the cultures and languages of titular nationalities in Russia are

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<sup>159</sup> Russian is the only state language in the whole territory of the Russian Federation, as per Article 68(1) of the Russian Constitution, and Law No. 53-FZ of 1 June 2005 'On the State Language of the Russian Federation'. The 21 ethnic republics, with the exception of Karelia, have also officially recognised 'state languages of the republics' - for example, the Tatar language in Tatarstan.

<sup>160</sup> Regardless of whether a national minority is a numerical majority within a particular region (see Section 1.2). An alternative interpretation of the public officials' responses in the ethnic republics is that they were aware of the meaning of 'minority' under international law, but they did not wish to be regarded as such - due to a perceived link between minority status and inferior status - and preferred the expression 'titular nationality'. The rejection of the self-identification as a 'minority' was, however, not conveyed by the civil society respondents belonging to national minorities.

<sup>161</sup> See Section 1.2 and note 57.

<sup>162</sup> With few exceptions (Malakhov & Osipov 2006: 509).

generally not in a strong position. In the case of the Republic of Mordovia, on the one hand the two Mordovian languages, Moksha and Erzya, are recognised as state (official) languages alongside Russian;<sup>163</sup> on the other, equality in legal status is not translated into equality in practice, with Russian enjoying a much more dominant position than Moksha or Erzya in the public sphere.

The framing of Russia as ‘different’ from Western Europe was further elaborated by public officials. The following extracts are from the interviews with a public official in Tatarstan, three in Moscow and one in Mordovia:

In Western Europe there is a very different situation from Russia. The people from Catalonia, America, Western Europe are different. Russia needs a strong hand (*sil'naya ruka*). Somebody like Putin was needed. When there is no *sil'naya ruka* a Russian doesn't know what to do. It doesn't mean that the system in Russia is bad, just that it's different. But you can never tell, every generation changes. [4.10]

The situation in Russia is very different from that of the other member states; it's much bigger. Even the biggest member state [of the Council of Europe, after Russia] will have much fewer minorities and languages than Russia. [4.13]

There is a very different juridical understanding [in Russia], and harmonisation [with international law] is not easy. [4.15]

There are many nationalities in Russia. Ratifying the Charter in the UK, for example, is not the same as Russia ratifying it. [4.16]

For Part III [of the ECRML]<sup>164</sup> a lot of funds are needed, and it's difficult in Russia. It's not a country like Germany. There are much more languages. [4.12]

The respondents presented several layers of ‘difference’, ranging from an idiosyncratic Russian ‘psyche’ (close to Karlamova’s view),<sup>165</sup> to differing juridical

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<sup>163</sup> Article 3 of Law No. 4-Z of 24 April 1998 ‘On the State Languages of the Republic of Mordovia’ stipulates that ‘the state languages of the Republic of Mordovia are Russian and Mordovian (Moksha and Erzya)’.

<sup>164</sup> Part III of the ECRML includes specific undertakings for the promotion of minority or regional languages. Upon ratification, the member states are required, pursuant to Article 2(2) ECRML, to select and commit to a minimum of 35 undertakings from 68 options, in the spheres of: education and culture, judicial authorities, administrative authorities, media, and economic and social life.

<sup>165</sup> See Section 3.1.

interpretations, to more objective criteria such as the country's geographical size, number of ethnic groups and languages spoken in its territory.

Civil society representatives commented on what they considered public officials' dismissal of international standards. The director of a minority NGO in Moscow described a 'state policy' based on the authorities' belief that 'Europe is not needed to fix problems in Russia' [1.2.3]. The director of a human rights organisation in St Petersburg said he had observed a strong resistance to the perceived need to shed Russia's distinctiveness from Europe in order to embrace international standards:

We had a project on juvenile justice [which involved using Council of Europe standards] and there was a big resistance among some people. There is a big resistance from nationalists - they think that [using international standards] means assisting the West in influencing Russia, in making Russia a part of Europe. [1.5.11]

No views on the superfluous nature of international standards were expressed in Karelia by either public officials or civil society. This might derive from the weak position occupied by the Karelian language and culture in the republic, despite its titularity.<sup>166</sup> Finally, the view of two public officials - one in Kazan and one in Moscow [4.7; 4.14] - differed from those of the other public officials, in that they were supportive of international standards. These respondents were themselves representatives of minorities, and were committed to advancing minority interests. Their attitudes were therefore more aligned to those of civil society respondents, rather than those of other public officials interviewed.

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<sup>166</sup> It might also be explained by the fact that two of the four public officials interviewed in Karelia were themselves ethnic Karelians (one respondent displaying a particularly strong commitment to preserve Karelian identity); and by the limited knowledge of international standards of the other two public officials interviewed.

## **Russia: Just Another Member State or Superpower?**

Before examining the views of civil society, I wish to further elaborate on the reception of international standards by the Russian authorities. Here I include data from interviews with a former member of the ACFC (ACFC respondent) [7.5], and a member of the Committee of Experts of the ECRML (CEEC respondent) - the body that monitors state parties' compliance with the ECRLM [7.4]. The first respondent had been involved in the FCNM monitoring on Russia, and the second in the Council of Europe programme 'Minorities in Russia', aimed at aiding the preparatory process towards ECRML ratification.<sup>167</sup>

In 2010, Russia submitted its Third Report to the ACFC. It was also in the second year of its implementation of the programme 'Minorities in Russia'. The two experts shared the opinion that Russia was not openly violating its obligations under international minority rights law, and that attempts were being made at its implementation. In the case of ECHR implementation, the CEEC respondent believed that Russia's 'problems are comparable to other countries'. Asked to point to any possible forms of implementation specific to Russia, comparing it to other Council of Europe member states, the ACFC respondent noted that Russia very rarely, in its reports, directly responded to shortcomings identified by the ACFC in an Opinion on Russia, or outlined specific measures to rectify them.<sup>168</sup> The respondent further described what he called a predominantly 'defensive approach' on the part of Russia.

The willingness and ability to listen to each other and get into a really constructive dialogue would be lower than in other countries. [The FCNM] is more seen [by the Russian authorities] as an unnecessary burden, like they really don't need it, while in other countries there is more of an open mind to listen to critique. [7.5]

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<sup>167</sup> See Section 1.3 on the programme.

<sup>168</sup> In some cases, a country will go as far as enacting legislation to directly address concerns raised in an ACFC opinion, although this occurs rarely [7.5].



The second (CEEC) respondent noted that ‘Russia perceives itself as a powerful country, which doesn’t want to be subdued’ [7.4].

Russia’s ‘defensive approach’ might be linked to its self-perception, as the second expert suggests, as a great power that commands respect in the international arena. The idea of Russia as a ‘great power’ (*derzhavost’*) forms part of Putin’s view of Russia (Duncan 2007).<sup>169</sup> This status can be achieved by following an intrinsically Russian path. Already in 1999, Putin had argued for the ‘Russian idea’ to be shaped by the ‘organic merger of universal, human values with primordial Russian values’.<sup>170</sup> He added:

Russia will not soon become, if it at all becomes, a second edition of, say, the USA or England, where liberal values have deep historical traditions [...]. A strong state for a Russian is not an anomaly, not something to fight against, but, instead, a source and guarantor of order.<sup>171</sup>

Russia under Putin’s leadership has been described as a ‘managed democracy’, or ‘a combination of democratic institutions and authoritarian institutions’.<sup>172</sup> It constitutes an amalgam of strong statehood and Eurasianism.<sup>173</sup> Through the media, and the manipulation of Soviet myths, Russians are encouraged to forge a ‘Russian way’ to modernisation that does not reject, but integrates elements of the Soviet past (Novikova 2010).

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<sup>169</sup> Together with patriotism, the need for a strong state (*gosudarstvennichestvo*) and social solidarity (Duncan 2007).

<sup>170</sup> In this statement Putin used the adjective *rossiiskii* (civic Russian) rather than *russkii* (ethnic Russian), so as not to exclude non-Russian nationalities.

<sup>171</sup> Putin, V. 31-12-1999. ‘Vladimir Putin: Rossiya na Rubezhe Tysyacheletiya’ (‘Russia on the Eve of the Millennium’), *Rossiiskaya Gazeta*.

<sup>172</sup> As defined by Putin’s advisor Sergei Markov. Markov, S. 5-12-2003. ‘Managing Democracy’, *News Hour with Jim Lehrer*. [http://www.pbs.org/newshour/bb/europe/july-dec03/russia\\_12-05.html](http://www.pbs.org/newshour/bb/europe/july-dec03/russia_12-05.html) (accessed 1-7-2011).

<sup>173</sup> Duncan describes ‘Eurasianism’ as a body of ‘policies which give priority towards promoting the cooperation and unity of the post-Soviet states’ (2002). Eurasianism has pan-Slavic roots inasmuch as it defines itself in its opposition to Westernisation (Bonnett 2002: 444). See also Bowring (2003a).

Russia's commitment to following its 'own' path might explain why similar concerns are expressed by the ACFC in both the First and Second Opinions, with no substantive changes between the two. In the case of the ECRML, the CEEC respondent noted that the substantive delay in ratification might be explained by Russia's laborious preparation for its implementation [7.4]. It might, however, also signify an ultimate disregard for the commitment to ratification which the country entered into in 1996. The perception of Russia as a 'different' (non-Western) type of democracy is in line with the interviewed public officials' framing of Russia as 'different' - a country where mechanisms such as the FCNM and the ECRML are effectively superfluous. Meanwhile, the Russian government's position, as stated in its Second Report to the ACFC, that it fully meets all FCNM requirements<sup>174</sup> is facilitated by the fact that the FCNM is a flexible instrument. This flexibility allows the development of tailored policies that truly accommodate the specific needs of different groups - yet it is also a double-edged sword, as vague provisions may well generate vague policies.

While the exact scope of a FCNM 'violation' might be subject to differing interpretations - and it is hardly possible to determine whether the Russian government is in good faith or disingenuous in its self-praise - there have also been instances of clear avoidance of international responsibilities. Already in the early days of Russia's membership of the Council of Europe, the government refrained from fulfilling the commitments made at the time of ratification. These included, in addition to the prompt ratification of the ECRML, the ratification of the ECHR's Protocol 6,<sup>175</sup> on the abolition of the death penalty.<sup>176</sup> Despite early differences

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<sup>174</sup> ACFC, (Second) Report submitted by Russia (note 158), p. 70.

<sup>175</sup> Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty, ETS No. 114, adopted 28 April 1983, entered into force 1 March 1985.

<sup>176</sup> Russia executed 53 people in 1996. Since then, there has been a moratorium on the death penalty - although by 2011 it had not been formally abolished. See Pinchuk, D. 19-11-2009. 'Russian Court

between Russia and the Council of Europe, Ovcharenko writes that ‘it was clear for both sides that the marriage, even if unhappy, should continue’.<sup>177</sup> By continuing, it generated further tensions. First, perhaps the source of the most acute tensions was Russia’s blocking of the adoption of the ECHR’s Protocol 14<sup>178</sup> for four years, thereby delaying a reform of the ECtHR aimed at accelerating its adjudication of cases and reducing its caseload. All Council of Europe member states ratified Protocol 14 between 2004 and 2006, with the exception of Russia, which ratified it only in February 2010. Second, Russia has created obstacles to the investigation of cases against it, by refusing to cooperate with the ECtHR in some instances, and by preventing fact-finding missions. It has refused to provide documents to the ECtHR, particularly on Chechen cases (Koroteev 2008). There was no cooperation in the preparation of the cases *Klyakhin v Russia*<sup>179</sup> and *Poleshchuk v Russia*.<sup>180</sup> Requested documents were not supplied as ‘not relevant to the case’ or for being a ‘state secret’<sup>181</sup> (Koroteev 2008; Solvang 2008; Trochev 2009). A fact-finding mission was refused in the cases of *Shameyev and 12 others v Georgia and Russia*,<sup>182</sup> *Trubnikov v Russia*,<sup>183</sup> and *Mikheyev v Russia*.<sup>184</sup> This refusal came despite provisions in the ECHR requiring cooperation from member states in the conduct of the ECtHR’s investigations, including the provision of documents,<sup>185</sup>

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Extends Moratorium on Death Penalty’, *Reuters*.

<sup>177</sup> Ovcharenko, E. 16-2-2006. ‘Razvod s Sovetom Evropy - i Devichya Familiya’ (‘The Divorce with the Council of Europe - and the Maiden’s Name), *Izvestiya*.

<sup>178</sup> Protocol 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, ETS No. 194, adopted 13 May 2004, entered into force 1 June 2010.

<sup>179</sup> Application No. 46082/99, 30 November 2004.

<sup>180</sup> Application No. 60776/00, 7 October 2004.

<sup>181</sup> The Russian authorities referred to Article 161 of the Criminal Procedural Code, protecting the interests of the parties to the proceedings, the state and military secrets.

<sup>182</sup> Application No. 36378/02, 12 April 2005.

<sup>183</sup> Application No. 49790/99, 5 July 2005.

<sup>184</sup> Application No. 77617/01, 26 January 2006.

<sup>185</sup> Article 38 ECHR states:

[The ECtHR will] pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the State concerned shall furnish all necessary facilities.

and despite the confidentiality that the ECtHR can guarantee if so requested.<sup>186</sup>

Against this background, doubts have been raised about Russia's genuine commitment to the ECHR's founding principles. As PACE noted:

[T]he lack of cooperation of the Russian authorities [...] will inevitably cast serious doubts as to Russia's will to abide in good faith with the commitments entered into upon ratification of the European Convention on Human Rights.<sup>187</sup>

Third, there have been instances of harassment of persons who had submitted cases to the ECtHR. In the case *Fedotova v Russia*,<sup>188</sup> a tax inspection against the applicant's representative was used as a means of harassment, and was considered by the ECtHR as interference with the right to individual petition.<sup>189</sup> A fourth, highly complex point of contention has been the retention of *nadzor*, a supervisory review of judgements that are (and should be treated as) final - a legacy of the Tsarist and Soviet periods (Pomeranz 2009: 16). This aspect of the Russian legal system defies the principle of legal finality and *res judicata*<sup>190</sup> (Koroteev & Golubok 2007; Pomeranz 2009). The ECtHR has criticised Russia on this point: in *Ryabykh v Russia*<sup>191</sup> the Court found *nadzor* in violation of the ECHR's Article 6<sup>192</sup> and clearly spelled out that 'where the courts have finally determined an issue, their ruling should not be called into question'.<sup>193</sup> Rather than simply abolishing *nadzor*,

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<sup>186</sup> Under its Rule 33, 'Public Character of Documents', *Rules of Court*, 1999.

<sup>187</sup> PACE, 'Honouring of Obligations and Commitments by the Russian Federation', 3 June 2005, Doc. 10568, § 258.

<sup>188</sup> Application No. 73225/01, 13 April 2006.

<sup>189</sup> The right of any person, non-governmental organisation or group of individuals to submit an application to the ECtHR, when claiming to have been a victim of an ECHR violation by one of the states party to it. The ratifying states are prohibited from hindering the exercise of this right (Article 34 ECHR). The ECtHR judged the tax inspection in the *Fedotova* case to have been linked to the applicant's legal claim. *Fedotova v Russia*, *ibid*, § 49-50.

<sup>190</sup> A case that has been settled in court.

<sup>191</sup> Application No. 52854/99, 24 July 2003.

<sup>192</sup> On the right to a fair trial.

<sup>193</sup> § 51. However, it should be noted that, in line with the ECtHR's respect for the member states' legal and cultural traditions (the 'margin of appreciation'), the ECtHR accepted the application of *nadzor* in some instances: 'only when made necessary by circumstances of a substantial and compelling character'. *Ryabykh v Russia* (note 191) § 51.

Russia has sought to harmonise it with international standards. Although its impact has been reduced through legal reform, it remains a problem (Pomeranz 2009: 16; 35).

Political hostilities complete the picture. Putin said about the judgement in *Ilaşcu and Others v. Moldova and Russia*<sup>194</sup> - in which the ECtHR ruled that both Russia and Moldova were responsible for human rights violations in Moldova's breakaway region of Transdnistria:

This is a purely political judgement, that undermines our trust in the international judicial system.<sup>195</sup>

The Chairman of the Russian Constitutional Court, Valerii Zorkin, similarly rejected some aspects of the ECtHR's jurisdiction. In November 2010 he stated that 'Russia, if it wishes, may withdraw from the jurisdiction of the European Court of Human Rights'.<sup>196</sup> The ECtHR, he argued, 'encourag[ed] those in Russia who want any excuse' not to use their domestic courts. It followed a case in which the ECtHR had found Russia guilty of discrimination for denying a divorced male soldier a three-year parental leave to care for his children, which was routinely granted to women.<sup>197</sup> Zorkin added:

Russia has the right to develop a defence mechanism against such decisions [by the ECtHR]. [The ECtHR] ignored [Russia's] historical, cultural and social situation.<sup>198</sup>

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<sup>194</sup> See note 26. The Russian government refrained from cooperating with the Council of Europe in the execution of the judgement.

<sup>195</sup> Putin, V. 2007 'Stenographic Report on the Meeting of Members of the Council for Enhancing Institutions of Civil Society and Human Rights and President Putin'.

<sup>196</sup> Cited in Pushkarskaya, A. 22-11-2010. 'Valerii Zor'kin Gotov k Oborone Natsional'nogo Pravovogo Suverniteta' ('Valerii Zorkin is Ready to Defend National Legal Supremacy'), *Kommersant*.

<sup>197</sup> In the case *Konstantin Markin v Russia*, Application No. 30078/06, 7 October 2010 (referral to the Grand Chamber 21 February 2011).

<sup>198</sup> Cited in *Reuters*, 22-11-2010. 'Russia could Shun European Rights Court - Top Judge'. <http://www.reuters.com/article/2010/11/22/us-russia-court-rights-idUSTRE6AL5IW20101122> (accessed 20-5-2011).

Finally, the Russian authorities have displayed forms of the ‘defensive approach’ referred to by the ACFC respondent [7.5], as a reaction to criticism from international bodies. In the case of the ACFC, the Russian authorities have argued that the ACFC’s ‘views [...] quite often are unreasonably negative’, referring to a ‘somewhat biased interpretation of the Russian legislation and law-enforcement practice’.<sup>199</sup> In another case, it strongly rejected the findings of a 2007 report on Russia by the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance.<sup>200</sup> Referring to the report, the Permanent Representative of the Russian Federation at the UN, Valerii Loshchinin, complained that:

[A] range of problems [...] was extrapolated which for our country either don’t exist or aren’t really that serious or systematic [...] the report is inappropriate [...] unfortunately, there have been incidents of racist and ethnic intolerance. However, to make far-reaching conclusions [...] based on unproven data and falsifications [...] is absurd.<sup>201</sup>

The refusal to abandon *nadzor* proceedings and to cooperate with the Council of Europe in some instances, together with public displays of defiance vis-à-vis the Council of Europe and the UN, reconfirm Russia’s resistance to some aspects of international standards - and its selective approach to them. One should note at this point that some degree of protectionism of a country’s sovereignty is not a purely Russian phenomenon. To use an example from the UK, an ECtHR judgement in favour of prisoners’ right to vote sparked a debate in the country as to whether the

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<sup>199</sup> ‘Comments of the Government of the Russian Federation on the Second Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities by the Russian Federation’, 11 October 2006.

<sup>200</sup> Report by the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène, on his Mission to the Russian Federation, 20 May 2007, UN Doc. A/HRC/4/19/Add.3.

<sup>201</sup> Statement by Ambassador Valerii Loshchinin, reported in: ‘Open Letter to the UN High Commissioner for Human Rights Louise Arbour’, 10 September 2007, <http://www.sova-center.ru/en/xenophobia/news-releases/2007/09/d11531/> (accessed 5-10-2011). The letter was signed by several Russian NGOs.

ECtHR was going too far, imposing principles - electoral rights of persons found guilty of crimes - not shared by the British populace.<sup>202</sup> Similarly, in Italy, the ECtHR was seen as trampling over Italian cultural traditions by ruling against the display of Catholic crucifixes in non-religious schools.<sup>203</sup> There is a delicate balance between the retention of sovereignty and international cooperation.

The approach chosen by Russia in maintaining this balance, and the reasons behind them, are complex. Trochev argues that one should not assume, as is often done, that Russia's reception of international law is 'somewhere between defiance and quiet ignorance' (2009: 146). Russia is responding to the new challenges created by accession to international human rights mechanisms - whether through cooperation or resistance, or a mixture of both. Specific motivating factors lie behind Russia's accession to the Council of Europe. These factors may or may not include a genuine desire to incorporate its principles. There are likely to be a combination of reasons, which may include trade, the development of ties with Western Europe, and the maintenance of a connection with the Soviet bloc - whose newly-independent states located in Europe have also joined the Council of Europe (Jordan 2003). According to Sakwa, Putin considers Russia 'part of the West', rather than distinct from it, and encompassing elements of both East and West, in the Eurasianist tradition (2004: 168-9). This approach was reflected by a statement of a former public official interviewed, who said that Russia 'is part of Europe', and

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<sup>202</sup> *Greens and M.T. v The United Kingdom*, Application No. 60041/08 and 60054/08, 23 November 2010 (final 11 April 2011). See Council of Europe Press Release, 12-4-2011, 'L'arrêt de la Cour concernant le Retrait Systématique du Droit de Vote aux Détenus au Royaume-Uni Devient Définitif'. On the reaction in the UK see for example *BBC*, 10-2-2011, 'MPs Reject Prisoner Votes Plan'. <http://www.bbc.co.uk/news/uk-politics-12409426> (accessed 2-9-2011). A similar judgement had already been issued in *Hirst v The United Kingdom (No. 2)*, Application No. 74025/01, 5 October 2005.

<sup>203</sup> On the grounds that crucifixes in classrooms violated the secular principles of the state education system. See for example Hooper, J. 3-12-2009, 'Human Rights Ruling against Classroom Crucifixes Angers Italy', *The Guardian*. <http://www.guardian.co.uk/world/2009/nov/03/italy-classroom-crucifixes-human-rights?INTCMP=ILCNETTXT3487> (accessed 12-10-2011). The judgement was later reversed by the Grand Chamber, in *Lautsi and Others v. Italy*, Application No. 30814/06, 18 March 2011.

thus cannot ignore its standards [4.13]. As noted in Chapter 1, the Russian leadership might also believe that ‘locking in’ selected aspects of the international human rights system could be to its advantage.<sup>204</sup> This was also the opinion of a Council of Europe representative:

They [the Russian authorities] realise that it is to their advantage to have a more independent judiciary, [so as] to have better economic development. [7.3]

A Russian lawyer working for the Council of Europe also linked the application of international law to state interests:

Whether or not implementation takes place [...] depends on whether the state sees a state interest in it. Transparency of the judiciary is in everybody’s interest, and it is important for Russia’s international image. There is a Russian saying that ‘you cannot say for sure that you will not find yourself in prison’. So it’s in people’s interest to have a fair judiciary.

Russia was active in bodies of the Council of Europe fighting against corruption and terrorism, because these issues have been very important to Russia. There is a state interest.

The Council of Europe hasn’t provided a clear explanation as to why international standards on minorities and languages are useful to the state. Russia probably thinks that it’s already complying with international standards on minorities and languages. There are policies for languages [in Russia]. Russia might say that other countries, like Turkey, are the real problem. The Council of Europe needs to explain it [...] [and] it’s up to the Council of Europe to convince Russia to ratify the Charter. [7.1]

According to this respondent, Russia has a utilitarian approach to international law, where a state interest in the promotion of minority rights has to be identified prior to implementation. The respondent placed the burden to prove this state interest on the Council of Europe. Similarly, a respondent in Moscow, the representative of a human rights NGO and academic, believed that Russia linked engagement with international standards to specific advantages, for example in the form of trade

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<sup>204</sup> See Section 2.2, on realist theory and international human rights law.



benefits. International cooperation was seen as promoting state interests and potentially the personal interests of individuals involved in international exchanges.

These individuals wish to have:

[...] opportunities to travel to get in touch with international experts, to bring these people to [Russia], to be included in official delegations. They are interested in projects. Because international contacts and opportunities to travel can be helpful for trade, for funds ...and also for the international image of the country. [1.5.1]

More prosaically, this respondent added that ‘also travel is for pleasure’. Whatever their underlying motivation, these exchanges expose Russian public officials to international standards, and involve them in mechanisms for human rights and international cooperation. The ECHR, albeit slowly and somewhat inconsistently, is increasingly penetrating Russian legal practice. But is it enough? Presenting Russia as ‘different’ can justify a selective implementation that oversteps the commonly-accepted boundaries of the margin of appreciation envisaged by the ECtHR. Representatives of civil society pointed to the limited impact of international standards caused by this selectivity, particularly in relation to nebulous international obligations on minority rights.

### **3.3 The Views of Civil Society: ‘International Law as Weak’**

The respondents from the ‘civil society’ category tended to focus on what they perceived as flaws of the international minority rights system, seen as ineffective given its substantial flexibility. These respondents made no reference to international standards being ‘alien’ or ‘foreign’ - or irrelevant to Russia. Rather, with few exceptions, discussed below, they shared the perception that international mechanisms were insufficiently far-reaching to directly influence Russia’s law and practice. I refer here to the representatives of organisations that were aware of

international standards - many organisations with limited resources and international exposure were not aware of them.

The statements of two representatives of civil society, one in Moscow and one in St Petersburg, illustrate the attitudes of the civil society representatives interviewed. The respondent in Moscow, director of an NGO working on inter-ethnic relations, saw the flexibility of the FCNM as a reason for its lack of real impact: ‘the FCNM does not state clearly that governments *have to* do specific things’ [1.2.3], referring to the fact that ACFC Opinions only contain recommendations. Similarly, the representative of a human rights NGO in St Petersburg, working on the protection of minorities, said:

I would really like to see the FCNM implemented. It’s a very good convention [...]. But the FCNM is only about principles. And if the Language Charter was ratified it would not really change things much. There is no mechanism for implementation, the [Council of Europe] monitoring is not very good. The Charter and FCNM only help at the moral level: they provide moral standards on which to orient oneself. Like the Russian Constitution, they are declarative, they do not provide details. But ideally what is in the FCNM should be realised, and all my work is towards this. [1.5.7]

In fact, this interpretation is legally incorrect. The FCNM, like the ECRLM,<sup>205</sup> does create legal obligations, but they have to be translated into practice by the states party to the instrument - including through dialogue and negotiations between the government and minorities. ACFC *Opinions*, whose very name suggests the absence of specific legal obligations, are often simply approached as loose recommendations which do not command remedial action. The Opinions are the basis of Committee of Ministers Resolutions, which generate international obligations - yet inasmuch as there are no binding judgements, they can be regarded as a case of ‘soft jurisprudence based upon hard law’, as Hofmann puts it (2008:

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<sup>205</sup> The ECRLM requires its states party to select, and commit to, a set of undertakings (see note 164).

173).<sup>206</sup> The lack of direct and specific obligations in the text of the FCNM minimises the impact of the ‘hard law’ part of the equation, with a resulting emphasis on ‘soft law’.

Some respondents judged not only the FCNM, but international law generally, as inadequately equipped to withstand obstacles to its implementation in Russia. Among the reasons cited were: a possible conflict between domestic and international law; the fact that ‘the interests of the authorities come before people’s rights’ [1.5.3]; and the lack of a real commitment by the authorities to comprehensively implement international law. The last point was illustrated by the director of an NGO in Moscow:

There were some important seminars of the Council of Europe [on the FCNM] in different towns of Russia [...]. There was some interest by public officials but then the years went by and there was no follow-up. [1.2.3]

Respondents from the ‘civil society’ category, as well as analysts (‘academia’), referred to forms of opportunism by the state: the appropriation of international standards to add a democratic veneer to what, in reality, had scarce democratic substance, with a view to promoting internationally a positive image of Russia. The exceptions were Mordovia and Karelia, where the respondents did not voice opinions relating to perceived flaws of the international minority rights system. In most cases, neither did these respondents list perceived benefits offered by the system. The absence of references to perceived flaws compared to their counterparts in other regions might be due to these respondents’ lower awareness of the minority rights system’s potential impact in Russia, rather than to the belief of its flawlessness.

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<sup>206</sup> Hofmann differentiates this system from that of the ECtHR, which instead amounts to ‘hard jurisprudence based upon hard law’ (2008: 173).

Despite the said flaws, civil society respondents that commented on international standards did not consider them insignificant in Russia. The exponential increase in applications to the ECtHR reflects the appeal of Strasbourg in defending human rights (and the concurrent distrust of Russian courts) (Trochev 2009). Civil society and minority representatives interviewed approached international standards in a pragmatic manner, as a tool that often accorded well with their own objectives. They seized upon the opportunity to appeal to the Council of Europe as a supranational body that might rectify some shortcomings at home. Far from fearing Western interference and the resulting loss of Russian sovereignty, they would have welcomed stronger international mechanisms to support their activities in Russia.

How can one explain the differences of views between the majority of public officials and civil society respondents? Keck and Sikkink show trajectories of cooperation not within a state, but through ‘transnational advocacy networks’ (1998a; 1998b; 1999). Such networks are referred to as ‘forms of organization characterized by voluntary, reciprocal and horizontal patterns of communication’; the actors in these networks are bound by common objectives and various forms of cooperation, but also by *shared values* (Keck & Sikkink 1999: 89). These networks can act to promote the acceptance of international norms into the domestic sphere, including by shifting perceptions of domestic actors vis-à-vis such norms as well as behaviours (Keck & Sikkink 1999: 90). Similarly, Mertus argues that with globalisation and transnational civil society, non-state actors, particularly NGOs, have contributed to building a (global) human rights culture (1999: 1387). In Russia there have been instances of shifting perceptions of international law, from alien (*chuzhoy*) to integral to Russian law - simultaneously an identity that does not see Russia as in opposition to the Council of Europe (perceived as Western Europe),

but as part of it. While the East-West dichotomy is still present in some of the rhetoric referred to in this thesis,<sup>207</sup> networks reach out to external, powerful actors to gain leverage on their own state (the ‘boomerang’ effect - Keck & Sikkink 1999: 93). Keck & Sikkink’s position is based on the complexity of interaction among various domestic and international actors, and the ever-changing nature of identity (1999: 90). Similarly, Lipschutz and Peterson argue that states no longer can be considered as unitary in the context of international civil society. There are various forms of interaction between different individuals and groups that transcend state borders, and are dictated by personal and group interests rather than state interest (Lipschutz 1992; Peterson 1992).

### **3.4 Mixed Outcomes**

Given the differing views on international standards, what is, in practice, the level of compliance with them? I look at this issue from two points of view: the specificities of FCNM implementation; and civil society’s use of international standards. As noted, many of the respondents in all categories had little or no awareness of international standards for minority protection. The director of a minority organisation in Moscow summarised the situation thus:

Since 2000 I’ve been working in this area [of minority rights] and I don’t think that there are more than 100 professionals [in Russia] who know about or understand [international standards on minority rights]. [1.2.5]

The representatives of an organisation in Moscow [1.2.3] and one in St Petersburg [1.5.7] similarly held the view that minority organisations themselves had little or no knowledge of these standards. This was confirmed by the interviews: it was the

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<sup>207</sup> See, for example, Putin’s statement on the OSCE in Section 2.2. See also instances on the discrediting of NGOs for receiving funding from Western institutions, described in Section 7.3.

larger organisations, primarily in Moscow and St Petersburg, with international contacts, which had the specialised knowledge of Council of Europe mechanisms. They reported having used the standards in one or more of the following three ways: by referring to international standards in their exchanges with the authorities, using them to support their claims; by participating in the compilation of shadow reports on the FCNM for the ACFC; or by attending meetings and events of the programme ‘Minorities in Russia’.<sup>208</sup>

In the interviews the authorities in the three republics had very little to say on the subject of their encounters with international standards. A representative of the Tatar Cabinet of Ministers said that they had not used the FCNM, as ‘we did not get to this’ [4.10]. He added, with regard to Tatarstan, ‘Russia does not use confrontation’ - perhaps linked to the perception that international standards and international mediation are used only in case of severe ethnic tensions, which the republic had been fortunately spared. A high-ranking public official working on nationality issues in Moscow only noted that international standards are applicable mostly in the case of indigenous people [4.15]. Respondents from quasi-official institutions or well-connected minority associations displayed similar attitudes. A representative of the House of Nationalities in Moscow<sup>209</sup> said that: ‘we don’t deal with international standards, we work on cultural issues’ [1.3.4]. In this case, international standards on minority rights were divorced from the preservation and promotion of cultural pluralism, despite the latter coinciding with the aims of these standards. One of the leaders of the Inter-regional Social Movement of Mordovian (Moksha and Erzya) Peoples Movement in Saransk rapidly dismissed the question

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<sup>208</sup> See 0 on the programme. At the time of the interviews, in the summer of 2010, events had recently taken place in the programme’s focus region of Mordovia, and in Moscow. The interviews revealed an awareness of the ECRML that, presumably as a result of the programme, was much more pronounced than that of the FCNM.

<sup>209</sup> On Houses of Nationality, see Chapter 7.

of a possible FCNM application in Russia by saying that it is ‘not really used’ by the authorities - hinting at the complexities of its application [1.4.3].

In this environment, then, a compelling question becomes how, if at all, the federal authorities guarantee that the international obligations arising from Russia’s accession to the FCNM cascade down to, and are shared with, the regional and local authorities. The regional authorities were asked about possible mechanisms to coordinate FCNM implementation, through a three-level (local, regional and federal) framework. Public officials in the regions said they did not operate within the scope of such a framework: they had received no specific guidelines besides the general principles of the Concept of State Nationalities Policy of the Russian Federation.<sup>210</sup> A public official from Karelia stated:

We didn’t receive any instructions about how to implement international standards. We don’t really have much information on the standards - although we do try to get and provide as much information as possible [4.2].

A former Minister of Education of an ethnic republic - an academic at the time of the interview - stated that he had never been required to incorporate any aspect of international standards, including the FCNM provisions on education, in his work as a minister [2.12]. His personal opinion was that international obligations were not taken into account in shaping Russian domestic policies. He added that ‘Russia is very good at writing reports [to the Council of Europe]’ - pointing to a greater attention to form than to practice.

The question on the modality of implementation was then put to a representative of the Ministry of Regional Development. He confirmed the absence of guidelines:

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<sup>210</sup> Presidential Decree No. 909 of 15 June 1996. The Concept lists general principles, such as the right to equality for all citizens regardless of ethnic origin, the right to ethnic self-identification, the rights of indigenous peoples and the prohibition of ethnic hatred. It places National Cultural Autonomies and ‘dialogue’ between the Russian authorities and minorities at the heart of Russia’s nationalities policy.

We don't give any instructions. There is already the federal legislation that is in compliance with international standards. [4.16]

The data strongly indicate that there is no implementation plan for the FCNM. Russian legislation provides a general framework for human and minority rights, but there are other complexities: the vagueness of the legislation; the *de jure-de facto* dichotomy;<sup>211</sup> and the overlooking of a *positive* responsibility of the state to engage in affirmative action to support minority cultures. The issue of vague legislation is captured in a statement by the director of a minority NGO in Karelia:

International standards [on minority rights] should become the concrete basis of Russian law. If international law says that there should be minority education, it should actually happen. Now people see this just as a principle, as an ideal. We need to write everything in the laws very clearly, that classes [for the study of minority languages] should be formed etc. We need to have mechanisms for the realisation [of international standards]. [1.2.1]

This statement reflects a perceived need for the crystallisation of norms that can be easily pinned down rather than remaining vague notions only vaguely met. It echoes the view, reported above, that the FCNM only amounts to a set of principles [1.5.7]. Another respondent had similarly emphasised the absence of *mechanisms* to realise the rights formally enshrined in Russian legislation, in the context of minority education [4.14]. The Ministry of Regional Development's reliance on vague domestic legal norms denotes the absence of coordination between institutions at different levels and a generally passive approach in the implementation of international standards on minority protection. A public official complained of what he saw as Russia's disregard of its *positive* responsibilities, with reference to the ECRML:

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<sup>211</sup> Itself resulting from the vagueness of the legislation. See also Chapter 4 on the interference in activities of the judiciary.



The Charter has provisions on education in minority languages, for which the state has to create the conditions. Instead Russia's approach is that it should not go against the right to study [a minority language], instead of creating favourable conditions for it. [4.7]<sup>212</sup>

It reflects the attitude displayed by public officials interviewed. They tended to hold the view that nationalities policy primarily centre on benign neglect: the negative obligation of the state *not to* interfere with the freedom of minorities to preserve their cultures and languages, without the concurrent positive obligation to create the conditions for their preservation. Without the obligation to adopt special, concrete measures, the same Tatar respondent argued, the authorities simply prolong their ongoing policies and activities, without actively guaranteeing protection for minority cultures and languages [4.7].

The absence of a coordinated country-wide effort to enhance implementation, complete with targets that are periodically and centrally evaluated, point to an application of international standards characterised by a predominance of localism in the sense of atomisation.<sup>213</sup> While developing a comprehensive implementation strategy is certainly no simple task in Russia, given its territorial vastness and ethnic pluralism, the reliance on traditional (Soviet-style) models of state programmes for minority cultures results in a form of implementation that is haphazard.

An external perspective on the application of international law in Russia was provided by Council of Europe representatives interviewed: three Council of

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<sup>212</sup> Chapter 8 ECRML include provisions 'to make available' different types of education. Article 7(1) states that:

[T]he Parties shall base their policies, legislation and practice on the following objectives and principles: [...]

(c) the need for resolute action to promote regional or minority languages in order to safeguard them; [...]

(f) the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages [...].

<sup>213</sup> 'Localism' can be linked to both fragmentation and uncoordinated action, or to local autonomy. This is discussed below (Section 5.2).

Europe employees and two external experts.<sup>214</sup> These respondents saw any attempt to quantify Russia's level of compliance with international standards as a real challenge. With reference to the ECHR, a respondent, a Russian lawyer working for the Council of Europe, noted that assessing the impact of the ECHR presents complexities as the ECtHR considers *individual cases* rather than *systems* of legislation and practice. He referred to a Russian saying that 'it is impossible to measure the average temperature in a hospital' [7.1]. All people have different temperatures; similarly, the ECtHR operates at the level of individual rulings, and there are no clear indicators to pin down their cumulative impact.

With reference to the FCNM one of the Council of Europe experts identified a different set of problems:

The problem is that, unlike the Language Charter, the Framework Convention is not clear-cut. [For example] it doesn't say how many hours governments have to teach [minority languages]; it's much more general. [7.5]

On the other hand, the Council of Europe representatives shared the opinion that there had been attempts at implementation of international standards in Russia, and cooperation with the Council of Europe. For example, the Russian lawyer said:

There are areas where you can see that the attitude with regard to international standards is changing. It's a mixture of people starting to understand European practice, and also attitudes shifting. One area in which things have changed is detention. Before the conditions of prisons were very bad, with cases of torture. Now this is changing, and it has been accepted that prisoners who have had to endure these conditions have a right to compensation. There are domestic decisions in favour of compensation. [7.1]

The shift in judicial attitudes with regard to prison conditions had been induced, the respondent believed, by ECtHR judgements. A form of incorporation of

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<sup>214</sup> On the external experts [7.4; 7.5] see also Section 3.2.

international law into the Russian judicial sphere takes place when Russian courts reproduce domestically legal principles upheld in Strasbourg judgements. The same respondent disagreed with the view that Russia's 'defensive approach', noted above, might signify a prevailing rejection of international standards. For example, although Russia had attacked the report by the UN Special Rapporteur on Contemporary Forms of Racism,<sup>215</sup> the report had not been without impact:

The number of convictions for racial attacks has increased since the [UN] report, and this might be as a result of it. If the person you speak to doesn't agree with you, it doesn't mean that he has not taken what you say into account. Sometimes it's simply a ritual - that when you are criticised, you have to reply and defend yourself. Overall the visit of the Rapporteur was beneficial. Russia also used the UN report in the case *Georgia v Russia*. It referred to what was written in the report to show that there is no policy of discrimination [in Russia], and that Georgians who were expelled from the country were expelled for administrative reasons. [7.1]

The Russian analytical centre SOVA corroborates one of the points made by the respondent: between 2008 and 2009 Russian law-enforcement agencies managed to restrain the activities of the main ultra-right groups in Moscow, resulting in a reduction of instances of racially-motivated violence in 2009, for the first time in six years.<sup>216</sup> With regard to *Georgia v Russia*, the respondent referred to an interstate application filed by Georgia against Russia, for its large-scale deportations of Georgians.<sup>217</sup> The Georgian authorities argued that the Russian government had won public support for the anti-Georgian policies through the media, with reference to data in the UN Special Rapporteur's report on the frequency of xenophobic messages in the Russian media.<sup>218</sup> Russia justified the

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<sup>215</sup> Report by the UN Special Rapporteur on Contemporary Forms of Racism [...] (note 200).

<sup>216</sup> SOVA Report: Kozhevnikova, G. 2009. 'Under the Sign of Political Terror. Radical Nationalism and Efforts to Counteract it in 2009'. <http://www.sova-center.ru/en/xenophobia/reports-analyses/2010/03/d18151/> (accessed 3-10-2011).

<sup>217</sup> *Georgia v Russia*, Decision on Admissibility, Application No. 13255/07, 30 June 2001, § 22. Hundreds of Georgian citizens were deported from Russia in 2006 as relations between the two countries deteriorated.

<sup>218</sup> Report by the UN Special Rapporteur on Contemporary Forms of Racism [...] (note 200).

deportations on the grounds of illegal immigration from Georgia, and noted that the Special Rapporteur had stated in his report that there was ‘no State policy of racism or xenophobia in the Russian Federation’.<sup>219</sup> In fact, the Special Rapporteur had also concluded that:

[W]hile there is no State policy of racism in the Russian Federation, the Russian society is facing a profound trend of racism and xenophobia’.<sup>220</sup>

This trend included:

[A] climate of relative impunity that the perpetrators of such acts [of violence against minorities] enjoy from law enforcement [...].<sup>221</sup>

One could interpret Russia’s use of the UN report as a cynical one, serving the country’s particularistic needs - alternatively dismissing<sup>222</sup> and using a report depending on the government’s needs. According to this interpretation, Russia appropriated the report for its own purposes, isolating one finding from the overall context of the report, and not responding to the specific reference by Georgia to the section on the portrayal of minorities in the Russian media.

The Council of Europe respondents noted other aspects of Russia’s approach to international law they considered problematic. The issues cited were: egregious human rights violations in the North Caucasus, where there has been ‘not much progress, only promises’ [7.3];<sup>223</sup> the *propiska* system, which ‘nobody [in Russia] realises [...] is a human rights issue’ [7.1];<sup>224</sup> and the rights of homosexuals

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<sup>219</sup> *Georgia v Russia* (note 217), § 23.

<sup>220</sup> Report by the UN Special Rapporteur on Contemporary Forms of Racism [...] (note 200), § 69.

<sup>221</sup> *Ibid.*, § 70.

<sup>222</sup> The report’s findings were, overall, contested by the Russian authorities. See Section 3.2.

<sup>223</sup> See for example PACE, ‘Legal Remedies for Human Rights Violations in the North Caucasus’, 4 June 2010, Doc. 12276.

<sup>224</sup> The *propiska* is a residence permit. Its absence, which is not infrequent in the case of migrant workers, can lead to their being deprived of political, social and economic rights. See PACE, ‘The *Propiska* System Applied to Migrants, Asylum Seekers and Refugees in Council of Europe Member States: Effects and Remedies’, 12 October 2001, Doc. 9262.

- citing the refusal of the (then) mayor of Moscow Yuriy Luzhkov to allow gay pride demonstrations in the city<sup>225</sup> [7.1].

The circumstances surrounding ECRML ratification are a further example of Russia's selective approach to international commitments. Russia has a clear obligation to ratify the treaty, given the commitment made at its accession to the Council of Europe.<sup>226</sup> The interviews evidenced the perception among public officials and civil society alike that Russia still has a choice to opt out and refrain from ratification - although this might admittedly originate from a lack of in-depth knowledge of Russia's international obligations. As a respondent from a human rights NGO noted, the Russian government has an interest in international projects, and willingly cooperated on the programme 'Minorities in Russia' [1.5.1];<sup>227</sup> yet, by 2011, the programme had not led to concrete steps towards ratification. This might not only be due to a reluctance to take up new obligations, but also to the perceived instability that would result from shifts in the *status quo* in majority-minority relations - a fear of 'strengthening minorities too much', as a Council of Europe expert put it [7.4]. The same respondent noted:

There is the issue of ethnic conflict, the feeling that there is a danger attached to ratifying [the ECRML] [...]. The public officials also are afraid that the minorities will be strengthened and might then want more rights [...]. [7.4]

The federal authorities in Moscow, she felt, were perhaps fearful that ratification could unleash a torrent of demands. In this case, Russia might be indefinitely postponing ratification as it sees a stronger state interest in *not* ratifying than in

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<sup>225</sup> See for example *Agence France Press*, 25-1-2011. 'Moscow Mayor Calls Gay Pride March 'Satanic''. [http://www.google.com/hostednews/afp/article/ALeqM5gJsxHe-4tN\\_bvVOH5ayeGaJ1x\\_A](http://www.google.com/hostednews/afp/article/ALeqM5gJsxHe-4tN_bvVOH5ayeGaJ1x_A) (accessed 1-1-11).

<sup>226</sup> See Chapter 1.

<sup>227</sup> See Section 1.3.

ratifying. This might also explain the high level of control that Russia exerted over the ‘Minorities in Russia’ programme, noted by the same respondent:

The Russian government made it clear that it wanted to participate in meetings [between Council of Europe experts and minorities], so its active participation was a compromise [...]. The participation of public officials in meetings is contrary to the normal procedures of the Committee of Experts: usually the Council of Europe experts [during missions] at first meet minorities only [without representatives of the authorities], to make sure that they are not influenced by public officials. [7.4]

Hence, interviews with Council of Europe experts suggest, on the one hand, that among Russian officials the reception of the ECHR is progressively enabling its direct application; on the other, they indicate a residual degree of control by the Russian authorities over some aspects of compliance with the ECHR and, in particular, with international minority rights standards. These attitudes consolidate a selective form of implementation.

### **Every Little Helps: International Standards as a Tool for Activists**

Selective implementation implies some implementation nonetheless. The general conclusion of civil society representatives was not that international standards should be disregarded as irrelevant, but that what opportunities exist ought to be exploited. Civil society respondents were able to identify some benefits in the mass of flaws that they had enumerated. The main benefits of international standards cited by the respondents were: the support from an international body (of a moral if not always practical kind); and the legal articulation of their convictions, framed as human *rights* and enshrined in legally-binding international documents. A respondent, an academic and Mordovian activist in Saransk, saw a symbolic significance that could ultimately have a practical impact on policy. Speaking about the ECRML, he said:

Any international document impacts on Russia's internal policy. [By acceding to international instruments] Russia enters a system of civilised nations. [2.14]

A public official from Karelia believed that the FCNM 'force[d] the [federal] authorities to think about [minority] issues and to think of solutions' [4.2]. Other respondents from both civil society and academia believed in a positive role for international standards in Russia, although they did not provide specific examples of what this role may be.

The data indicate that some practical use is made of international standards. The foundations of international human rights law are already incorporated into domestic law via the ECHR, and increasingly used in Russian courts. Regional public officials reported invoking international standards on minority protection in campaigning and lobbying, and employing them in centre-periphery exchanges. For example, a civil servant in Karelia reported citing Russia's international minority rights obligations to solicit the allocation of adequate (federal) funding to the republic for programmes on minority cultures, such as media outlets operating in Karelian language. The Tatarstani Parliament in May 2009 called on the Russian authorities to ratify the ECRML, in order to uphold the right to access education in one's minority language - a right the regions saw menaced by the 2007 Law 309 amending the Law 'On Education'.<sup>228</sup> Minorities in Russia have started framing their claims by relating them to linguistic *rights*, rather than, more generally, to cultural programmes (Suleymanova 2010). The Council of Europe has acted as mediator, by facilitating exchanges between the Russian authorities and civil society at Council of Europe-sponsored events;<sup>229</sup> and by considering the claims

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<sup>228</sup> Gordeev, I. 19-5-2009. 'Tatarstan Gotov Prikrytsya Khartiei' ('Tatarstan is Ready to Adopt the Charter'), *Nezavisimaya Gazeta*. On Law 309, see Chapter 6.

<sup>229</sup> For example, in the programme 'Minorities in Russia' (Section 1.3).

and observations included by civil society in ACFC shadow reports, which have contributed to the formulation of the ACFC's recommendations. An academic and activist from Tatarstan believed that the support of the Council of Europe or the OSCE might increase the chances of success when civil society lobbied the Russian state in the area of minority rights. When, in 2009, a decree removed the option to take the final secondary school exam in the Tatar language,<sup>230</sup> in addition to addressing protest letters to the Russian authorities, his pressure group had written to the Council of Europe and the OSCE [2.6].<sup>231</sup>

The director of a minority NGO from Karelia had clearly identified international standards as an opportunity - something that could add substance to her claims as a minority representative, and as such had 'always used them' [1.2.1]. She had noted an interest in international standards among local government and courts in Karelia, although the actual 'application' of the standards was 'a different matter'. Her NGO's use of the new opportunities afforded by international law can be contrasted with the position of the head of an NCA in Moscow [1.1.5]: in common with other NCA representatives, he had very little (if any) knowledge of the FCNM. Although based on a small sample, my interpretation of the data is that NCAs or minority associations with close links to the authorities do not look for supplementary lobbying opportunities other than those already offered by their own networks. The aforementioned NGO from Karelia had opted *not* to become a NCA. It was by no means openly critical of the establishment and sought to cooperate with the Karelian authorities wherever possible, yet it also pursued its independent objectives. The Moscow NCA, instead, operated very closely with the authorities and MPs. Other respondents, leaders of NCAs or other minority organisations, had

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<sup>230</sup> See Section 6.1.

<sup>231</sup> The appeals, however, had had no outcome.



close contacts with the local authorities or the Duma,<sup>232</sup> or had themselves acceded to these institutions. The data suggest that the use of international standards is inversely proportional to the overlapping of networks and interests between minority organisations and institutions such as the Duma.

There are instances in which international organisations have directly intervened to facilitate the defusing of tensions in instances of problematic majority-minority relations. A civil society representative from Karelia referred to the case of a Mari representative in the republic of Mari El, Vladimir Kuzlov, who, in 2005, had been the victim of an attack by unidentified individuals and suffered life-threatening injuries.<sup>233</sup> In the preceding years the relations between Mari organisations and the Mari El's authorities had deteriorated, as 2000 saw the election as the republic's president of Moscow-born Leonid Markelov of the extreme right-wing Liberal Democratic Party. Markelov refused to collaborate with the existing Congress of Mari People and instead formed another organisation, the Mari Council, with handpicked loyalists as its members.<sup>234</sup> The Mari groups had subsequently positioned themselves politically in opposition to Markelov. Following the deterioration of relations between the Mari ethnic group and Mari El's authorities, and the incident involving Kuzlov, the Council of Europe issued recommendations condemning the conditions of Russia's Finno-Ugric people, to which Mari belong.<sup>235</sup> The respondent believed that:

The authorities [of Mari El] tried to change afterwards [...]. It's not true that Russia doesn't care about international standards. They [the authorities]

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<sup>232</sup> The lower house of the Russian parliament. Dumas also exist in the republics' own parliaments.

<sup>233</sup> Kuzlov was the head of Mari organisation Mer Kanash and editor-in-chief of the Finno-Ugric newspaper *Kudo+Kodu*. He was attacked on 7 February 2005. Criminal proceedings were also instigated against him, for unpaid rent of the newspaper's premises. See International Helsinki Federation for Human Rights & Moscow Helsinki Group, 2006. 'Russian Federation: The Human Rights Situation of the Mari Minority of the Republic of Mari El', 51-3.

<sup>234</sup> Ibid, p. 49.

<sup>235</sup> PACE, 'Situation of Finno-Ugric and Samoyed Peoples', 26 October 2006, Doc. 11087. PACE acknowledged 'anti-minority sentiment and actions' in Mari El under the Markelov presidency.

don't want a big scandal. [After the Council of Europe recommendations] they tried very hard to show that the situation is now fine. This was also reflected in Mordovia, [where] there have been a lot of events for Finno-Ugric people [1.2.1].

A civil society representative and academic believed that the increased attention to the needs of Finno-Ugric people was motivated by trading incentives with Finno-Ugric countries outside Russia, such as Finland - after the Council of Europe brought the issue to international attention [1.5.1]. He further noted that international monitoring had contributed to improving the conditions of Russia's indigenous peoples. Another ethnic group to which the Council of Europe has devoted attention is the Meskhetian Turks. Deported from Georgia to Central Asia in the Soviet period, and having resettled in Russia's Krasnodar krai in 1989, Meskhetian Turks were mostly not granted Russian citizenship in the post-Soviet period.<sup>236</sup> The situation was resolved primarily through a resettlement to the United States.<sup>237</sup>

### **3.5 Conclusion: Selective but Valuable**

This chapter has shown that the approach to international law in Russia is characterised by its selective implementation. The perception prevails among public officials that international law is 'Western' and that Russia is 'different': in addition to objective criteria of 'difference' such as size and number of minorities, there is a self-perception that Russia is a 'managed' democracy and a 'great power'

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<sup>236</sup> In 1944, at Stalin's orders, Meskhetian Turks were forcibly displaced from the area they inhabited in Southwest Georgia to Central Asia. In 1989, a series of riots and violence against them in the Ferghana Valley (Central Asia) prompted them to leave *en masse*. Of the 50-70,000 Meskhetian Turks who moved to Russia, 16-18,000 settled in Krasnodar krai, whose authorities denied them residence registration on the grounds that their stay was 'temporary'. As a result many Meskhetian Turks in Krasnodar krai remained stateless. See PACE's position on the matter, see PACE Draft Resolution, 'The Situation of the Deported Meskhtian Population', 4 February 2005, Doc. 10451. On Meskhetian Turks, see also Trier et al. (2011).

<sup>237</sup> In its Second Opinion, the ACFC criticised Russia for obstructing programmes for the resettlement of Meskhetian Turks. ACFC, (Second) Opinion on Russia (note 133), § 278-9.

(*derzhavost*). Instead, civil society institutions, including minority organisations, appear to have embraced the opportunities that exist to further their objectives with the assistance of international law. The prevailing view among the civil society respondents was far removed from the Russian government's own, which favours a measure of control over international standards' application.

While there have been centralised, federal-level decisions - which, depending on the circumstances, have promoted or thwarted the application of international standards -, these have often alternated with a default localised approach where localities and regions are omitted from central plans to implement the relevant standards. It suggests a selectivity of implementation by which the Russian authorities seemingly seek to reap the benefits from adherence to an international system, for example through trade and international cooperation, while filtering what may otherwise result in a perceived 'excessive' penetration of international principles into the Russian sphere. Hence, there are no guarantees that international standards will be applied comprehensively in Russia - thereby lessening the overall impact they may exert on domestic law and practice. Among the international standards, the flexible, open-ended provisions of the FCNM are certainly more volatile than the ECHR. The cases of Mari and Meskhetian Turks seem to indicate that the more concrete the recommendations by the Council of Europe, the greater the chances that they will be solidified into concrete action. The ECHR, meanwhile, regularly imparts detailed sets of legal obligations, and boasts a rich and constantly growing jurisprudence. Is it to Russian jurisprudence in practice that I now turn, with the analysis of the views of those who directly apply international law in their work: the judges.

## 4. THE JUDICIARY AND INTERNATIONAL STANDARDS: FROM APPLICATION TO IMPLEMENTATION?

Judges have a crucial role in the implementation of international standards. They are the ones who translate abstract international conventions into domestic judicial practice. The performance of judges, their receptiveness to or rejection of international law is a factor determining its impact, or lack thereof. This chapter examines the Russian judiciary's approach to international law and minority rights. It is shown that the judiciary is a multi-faceted, non-monolithic body: the selectivity in the Russian authorities' reception of international law is mirrored by the varied attitudes of judges. Judicial practice varies across the country and courts at different levels. Although both the data from this study's interviews and from legal studies point to an overall increasing application of the ECHR in Russian courts,<sup>238</sup> application is contingent upon a combination of external circumstances, including instances of political pressure, and upon judges' own attitudes and commitment. There is an additional complicating factor in the safeguard of *minority* rights through courts: the difficulty in legally formulating minority claims, due to the vagueness and flexibility of both domestic and international legislation. It reconfirms prevailing tendencies of selective implementation of international law.

In this chapter, I analyse data from in-depth interviews with judges and persons who have worked closely with judges. First, I consider the complexities in the application of international law, with a focus on the ECHR, and I discuss the possible repercussions of informal practices upon the rule of law in Russia. Second,

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<sup>238</sup> See Chapter 3.

I examine legal cases relating to minority issues and the Russian courts' performance. Third, I outline options for the possible enhancement of the role of Russian courts in protecting minority rights. I conclude by noting difficulties in the crystallisation of minority rights through Russia's courts, both with regard to domestic and international law.

#### **4.1 The Russian Judiciary and the ECHR's Application**

The direct application of international standards by Russian courts relates primarily to the ECHR. The open-ended provisions of the FCNM, which have to be translated into concrete measures by the member states, are not conducive to their direct application by domestic courts. Such measures can involve legal reform, but also programmes and (non-legally binding) regulations for the promotion of minority cultures. Thus, the ECHR features prominently in this chapter.

The application of the ECHR is no simple task. It is not only the ECHR itself but also its body of jurisprudence that requires incorporation into the Russian legal system. This is in line with the 'expansive meaning' of the Russian Constitution's Article 15(4),<sup>239</sup> which encompasses not only treaties themselves, but also their interpretation by international bodies (Danilenko 1999: 68). Article 15(4) also applies to the 'evolutionary aspect' of international law: the ECHR is not static, but a living instrument with an evolving interpretation by the ECtHR. The member states' reception to it needs to be adjusted accordingly (Danilenko 1999: 465; Nussberger 2008: 617). As Keller & Stone put it:

[A] state in compliance at one moment in time will be put out of compliance at a later point, every time the court decides to raise the level of protection (2008: 703).

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<sup>239</sup> Stipulating that international law takes precedence over Russian law. See Section 3.1.

It is no surprise that the application of the ECHR generates complexities. To unpack these difficulties I interviewed a judge from Voronezh (in service for 17 years at the time of the interview - ‘Judge A’ [6.1]), one from St Petersburg (13 years - ‘Judge B’ [6.3]), a procurator from St Petersburg (‘Procurator’ [6.2]), a lawyer and director of an NGO working on human rights cases in Voronezh (‘Lawyer’ [1.5.5]) and another director of an NGO in St Petersburg (‘NGO Director’ [1.5.11]). The last two respondents had been involved in projects providing ECHR training to Russian judges.

All five respondents agreed that the harmonisation of Russian legal practice with the ECHR had been progressing since ratification, echoing the opinions of the authors cited in Chapter 3. ‘Judge A’ affirmed that, in 2010, when the interviews took place, judges were *required*, not only expected, to apply international law. Both ‘Judge A’ and Judge B’ had discerned a clear shift towards a more frequent application of the ECHR in the second half of the 2000s. A closer look at the conditions of application reveals, however, a more complex picture. Judges can find themselves pulled in two separate directions, with an obligation to apply international standards, and (direct or indirect) disincentives to do so.

The respondents spoke of the following measures that tended to intensify application: binding resolutions and ‘letters’ by Russia’s three highest courts,<sup>240</sup> serving as instructions to judges, and requiring ECHR application<sup>241</sup> (all respondents); disciplinary measures that may be instigated by the Qualification Collegium of Judges (*Kvalifikatsionnaya Kollegiya Sudei*) in case of failure to apply the ECHR (‘Judge A’); the possible overruling of a judgement by a higher

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<sup>240</sup> The Russian Constitutional Court, the Russian Supreme Court and the Supreme Commercial Court.

<sup>241</sup> See below on resolutions and ‘letters’ (Section 4.2).

court for failure to apply, or to apply correctly, the ECHR (Procurator); and possible repercussions for a judge's career if a case on which s/he ruled is taken to Strasbourg and results in Russia's defeat ('Judge B'). The 'Procurator' argued that there were 'no real problems in implementing international standards'. She added that upon ratification of a treaty Russia takes upon itself the responsibility to implement it: 'It takes time, but it is done'. The 'Lawyer' noted that judges have started to approach training in international law as a means of furthering their legal qualifications: 'Now the judges want to apply [international law]. If they apply it they look very progressive.'

The disincentives consist in judges at times experiencing a gravitational pull towards non-application. 'Judge B' said that she had witnessed judges carefully circumventing the ECHR. The 'Lawyer' had primarily interpreted this avoidance, which she had also periodically noticed, as insufficient training, generating a fear of 'mistakes':

They don't know how to do it. They try to read the ECHR like they would read [Russia's] criminal code. For example, they try to understand it without looking at the case-law. They don't apply [the ECHR] because they don't want to feel stupid. They are afraid of making mistakes.

'Judge B' was asked whether she had observed a similar insecurity among her colleagues about their performance in court. She went much further than the 'Lawyer':

They are afraid of making mistakes but also they are afraid of looking too progressive. Nobody will punish them if they *do* apply the ECHR, but they can be considered too liberal for a judge [...]. I had a case [in which] there was a conflict between domestic and international law. I applied international law and the other judges found it difficult to accept it. I had to convince them [that it was the right thing to do]. I looked like a revolutionary, although I wasn't doing anything revolutionary.

She believed this attitude to be due to the fact that some judges are ‘conservative, especially the judges trained during the Soviet Union’, which affects judicial practice. The ‘Lawyer’ also pointed to a ‘mentality’ disfavoured application:

It is an issue of mentality. The Russian judges still have to go through the transition [to the application of international law], and get accustomed to applying it.

Similarly, the ‘NGO Director’ saw a complex transition for some judges:

The old school of judges are still far away from the international standards [...]. The new [young] judges are career-oriented and are different. The young judges dream of occupying places in international courts, and they are unhappy under an omnipotent government. The situation [...] depends on the psychology of judges.

The respondent believed, then, that younger judges tend to be more progressive and wish to embrace a new (post-Soviet) judicial era. The ‘Procurator’ identified a similar pattern, although she believed that resistance to change by the more conservative judges had characterised only the initial phases of the transition, and that most difficulties had been ironed out by 2010:

At the beginning there were difficulties, including psychological, with the older generation; they were used to looking at the old law, the national law, and thought of international law as an interference with domestic law.

Variance in judicial performance (Burkov 2007; Trochev 2009) reveals that these complexities have still not been fully resolved. An illustration of the tension between Russian and international law is provided by judges’ attitudes to cases of collision between the two. In these cases, pursuant to Article 15(4) of the Russian Constitution, international law takes precedence over domestic law. When asked whether judges indeed treat international law as superior to Russian law, ‘Judge A’ simply cited the legislation in this area, stipulating that international law must



prevail. ‘Judge B’, when asked the same question, focused on what she saw as the situation *de facto*, rather than *de jure*:

Judges will do what is easier for them [...]. Normally they are obliged to apply international law; but if they don’t they will not make it evident, they might keep quiet, and make it look like they forgot in that particular case.

The ‘NGO Director’, similarly, believed that some judges ‘don’t act as if international law has priority over Russian law’. He identified, again, a generational gap, by which the most conservative judges tended to be those trained during the Soviet Union.

Do judges, then, have a margin of discretion in deciding over application or non-application? The ‘Procurator’ denied this: judges are ‘obliged’ to apply international law. She noted: ‘Why take a risk with your job? It is a utilitarian position: if you know that your decision will be overturned, why do it?’ The ‘Lawyer’, however, echoing ‘Judge B’, argued that remedial action, including the overturning of a ruling, does not necessarily follow a failure to apply, or to apply correctly, the ECHR. Indeed, Burkov and Trochev show that mistakes in ECHR application, including in higher courts, do take place (Burkov 2007; Trochev 2009). ‘Judge A’ had similarly noted that, despite her superiors having become ‘very strict’ about applying international standards, she had observed cases in which judges refrained from applying the ECHR, with no direct consequences. Again, this is corroborated by legal studies, showing that judgements are not consistently quashed as a result of failure to apply the ECHR (Burkov 2007: 76). It follows that the requirement to apply international standards is not widely enforced.<sup>242</sup>

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<sup>242</sup> The statements by the ‘Procurator’, reported above, may originate from a concern with presenting the Russian judiciary in a positive light to a foreign researcher.

## Judges, Informal Practices and the Rule of Law

The independence and professionalism of the judiciary are essential to make the application of international law a reality. Progressive constitutional provisions, in line with international standards, are ineffective unless there is a corresponding inclination by judges to apply them (Danilenko 1999: 53). The interviewees shared the opinion that knowledge, through training and materials, can progressively reshape the attitudes of the judiciary: what seems ‘revolutionary’ may thus become ‘the new normal’. Yet, other factors besides knowledge and legal practice affect application. ‘Judge B’ referred to ‘political’ decisions:

The first [ECtHR] case on Russia, *Kalashnikov v Russia*,<sup>243</sup> was distributed very widely; it was everywhere. Others less so. The Chechen case on discrimination, *Timishev*, was not published widely.<sup>244</sup> I think that it was a political decision.<sup>245</sup>

This takes us to the infiltration of the judiciary by political interests. It involves the use of informal practices, including in the form of pressure on judges, to influence the rule of law. ‘Judge B’ elaborated on her views:

Q: Is there pressure on judges?

A: There are different types of pressure. In Russia nobody is protected. There are strong political and business interests and to go against them you need a lot of courage. Nobody is protected; you will have to make a choice. If I had had to work on a case like Khodorkovskii’s I would have left the court.<sup>246</sup>

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<sup>243</sup> Application No. 47095/99, 15 July 2002.

<sup>244</sup> Application Nos. 55762/00 and 55974/00, 13 December 2005.

<sup>245</sup> The *Kalashnikov* case related to prison conditions and length of detention. The respondent believed the *Timishev* case, in which Russia was judged to have discriminated against an ethnic Chechen, to be more politically sensitive.

<sup>246</sup> The respondent referred to the very prominent case of former Russian oligarch Mikhail Khodorkovskii, arrested for fraud in 2003 and subsequently found guilty. He was still in detention in 2011. It has been widely considered to be a political case characterised by a series of unfair trials. See, for example, Amnesty International Press release, 24-5-2001. ‘Russian Businessmen Declared Prisoners of Conscience after Convictions are Upheld’. <http://www.amnesty.org/en/for-media/press-releases/russian-businessmen-declared-prisoners-conscience-after-convictions-are-uph> (accessed 15-10-2011).

Studies have shown that the Russian judiciary is not fully independent (Hendley 2007; Ledeneva 2006a, 2006b, 2008; Shevtsova 2003: 149; Trochev 2008a).<sup>247</sup> Popova presents the theory of ‘strategic pressure’ in analysing levels of judicial independence in Russia and Ukraine. In countries that are not consolidated democracies nor consolidated autocracies, political competition hinders independent courts, as dependent courts are ‘more useful and more attractive to vulnerable incumbents’, particularly weak incumbents. It results in the ‘politicization of justice’. (Popova, 2012) In the Russian legal environment there is no full separation between the executive and judiciary, as the interests of the executive can trickle down to the courts. Even President Medvedev has admitted to the absence of an independent judiciary in Russia. Shortly after his appointment, Medvedev called Russia a country of ‘legal nihilism’, adding that ‘[n]o European country can boast of such disregard of the law’.<sup>248</sup>

Post-Soviet ‘legal nihilism’ finds its roots in Russian history (Pomeranz 2009: 15): in particular, in Soviet Russia, courts operated according to unwritten, pliant rules and superiors’ orders. The RSFSR and USSR Constitutions were rarely applied directly, due to the vagueness of their wording. Instead, judges prioritised secondary law, statutes as well as ‘instructions’ from above; these included ‘resolutions’ and ‘letters’ from higher courts, but also from non-judicial influential bodies such as ministries. It created a Soviet ‘culture of dependency’ of the judiciary on the executive (Hendley 2007). Such instructions tended to be ‘for internal use only’: regulations were thus listed in unpublished documents, in the absence of judicial transparency (Nussberger 2008: 635; Burkov 2007: 26). Thus, the impact of international law in the USSR remained insignificant, despite the

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<sup>247</sup> See also PACE, ‘Allegations of Politically Motivated Abuses of the Criminal Justice System in Council of Europe Member States’, 23 June 2009, Doc. 11993.

<sup>248</sup> Cited in *Vedomosti*, 22-1-2008. ‘D. Medvedev: Rossiya - Strana Pravovogo Nihilizma’ (‘D. Medvedev: Russia - A Country of Legal Nihilism’).

country being ‘perhaps the most assiduous ratifier of UN instruments’ (Bowring 2009a: 285).

As for other sectors, informal practices have infiltrated the judiciary (Ledeneva 2006a; Solomon 2005). Informal practices can take the form of personalised responses to a judge’s performance. ‘Judge B’ observed that issuing a judgement on a case later taken to Strasbourg, and resulting in Russia’s defeat, ‘can be an obstacle to [a judge’s] career’. But it depends: ‘they [the authorities] could close their eyes on it, or they could use it against you’ - depending on the circumstances, and relations between a particular judge and the authorities or his/her superiors. The ‘NGO Director’ had further identified diverging judicial practices in different courts:

In [Town A] judges are more independent than in [Town B]. The [Rayon C] court has a reputation for rubber stamping.<sup>249</sup>

The ‘Lawyer’ confirmed:

There are cases in which the decision has already been made before the trial takes place. They are politicised cases.

Soviet and post-Soviet judicial culture favours opaque means and informal practices to literal application and the principle of equality before the law. In politically controversial cases, the notorious phenomenon of ‘telephone justice’ may compel judges to issue rulings in line with the political imperatives of powerful individuals - following ‘instructions’ received over the telephone (Gelman 2004; Krasnov 2004; Ledeneva 2006b; Ledeneva 2008).<sup>250</sup> Russian judges experience pressures from a multitude of actors: numerous organs can, or have tried to, exert their influence upon the judiciary. Solomon cites, among these, the

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<sup>249</sup> The names of towns were removed in the interests of confidentiality.

<sup>250</sup> See also PACE, Doc. 11993 (note 247).

Ministry of Economic Development, the State Duma, the Federal Council, the *siloviki* (former military and security officials), and the government itself (2005: 340).

Judges' financial circumstances are not favourable to independence. Payments to judges' salaries and housing originate from regional budgets rather than directly from the federal budget, causing judges to be financially dependent on the local authorities.<sup>251</sup> The rules for the appointment of judges create the conditions for possible control by the leadership, as federal judges are appointed by the president,<sup>252</sup> upon recommendations by a Qualification Collegium of Judges.<sup>253</sup> In some cases, judges who strive to maintain their full independence when pressure is placed upon them may be discredited, isolated, and, ultimately, pushed out of the system. For example, in October 2010 former Moscow city court judge Sergey Pashin was dismissed after he criticised the conviction of a pacifist, and his ill-treatment in prison, for refusing to serve in the army during the Chechen conflict.<sup>254</sup>

In line with this, the 'NGO Director' argued:

The practice of the courts, including the Supreme Court, is sometimes contradictory. The Supreme Court is not independent and also the Constitutional Court is losing some independence under Putin. This year judge Yaroslavtsev was squeezed out [of the Constitutional Court] and he was one of the last two independent judges.

The respondent referred to the case of a former judge of the Russian Constitutional Court, Vladimir Yaroslavtsev, who resigned from his position four months after complaining of intense political pressure on the Russian judiciary, in an 2008

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<sup>251</sup> On dependency on housing, also see Hendley (2007: 267).

<sup>252</sup> Article 128(2) of the Russian Constitution. There is a different appointment procedure for the judges of the three higher courts, who are appointed by the Federation Council (the Russian Parliament's upper chamber) upon proposals by the president (Article 128(1)). This does not guarantee independence given the vertical structure of power. See Section 5.2.

<sup>253</sup> Article 19(2) of Law No. 30-FZ of 14 March 2002 'On the Organs of the Judicial Community in the Russian Federation'.

<sup>254</sup> Amnesty International, 'Annual Report 2001'.

interview to the Spanish newspaper *el País*.<sup>255</sup> According to the respondent, the Constitutional Court's Chairman Valerii Zorkin had sought to discredit Yaroslavnev by turning other judges against him, as a form of retaliation for his criticism of Zorkin himself for being 'too eager to listen to command', as the respondent put it. It led to the judge's resignation.

This is not to say that there are no or extremely few fair verdicts. Short of politicised cases, the interviews point to judges' freedom of action. Fair trials result from a combination of freedom from pressure and individual judges' own commitment to independence and fairness of proceedings. The 'NGO Director' summarised it as: 'The way a judge behaves depends both on his/her personality *and* pressure from above.' These results are in line with Hendley's argument that opportunities for judges to operate independently emerge primarily in cases that do not touch upon the key interests of Russia's most powerful individuals - whether at the federal or regional level (2007: 267). The interpretation of a Council of Europe expert was that 'Russia is still reserving the right to intervene': it keeps open the option to influence judges' performances. For as long as this option exists, he believed, there cannot be an independent judiciary. As he put it: 'there can't be a *partially independent* judiciary, like there can't be a partially pregnant woman' [7.3]. Hence, although there exist opportunities for the application of international law, in practice it occurs selectively.

## **4.2 Use of Courts to Defend Human and Minority Rights**

When judges are not subjected to, or resist, pressure, the courts can become locomotives for change - tools to advance human and minority rights. Judicial

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<sup>255</sup> The interview was used for the article: Bonet P. 31-8-2008. 'En Rusia Mandan los Órganos de Seguridad, Como en la Época Soviética' ('In Russia Security Forces are Used as in Soviet Times'), *El País*.

patterns are not fully predictable: for example, one should not assume the politicisation of judicial decisions in all cases involving human rights organisations. In a case from 2008, the human rights NGO Citizens' Watch in St Petersburg successfully sued the local administration for requiring it to provide copies of all its outgoing correspondence for the period July 2004-July 2007, without the court order foreseen by law in such cases. The St Petersburg City Court declared that the local authorities were in violation of the law.<sup>256</sup>

The 'NGO Director', likewise, argued:

Courts can give protection to NGOs if the defence lawyers know what they are doing, but it depends on the judges.

Consequently, there is scope for the judiciary to play a role in defending human rights - including minority rights. Yet the jurisprudence on the cultural rights of national minorities in Russia is miniscule. During her 17 years of service, 'Judge A' was aware of only two cases in her Voronezh court relating to minority interests - on migration and citizenship.<sup>257</sup> Two main reasons are identified for the paucity of legal cases involving minority rights. First, there is a weak - albeit growing (Trochev 2005; 2008a) - tradition of litigation in Russia. In addition to practical considerations such as the need for resources for litigation, lawsuits antagonise public officials when these become defendants in a case. As will be seen in Chapter 7, good relations with the authorities are considered to be of paramount importance by many minority representatives in their efforts to promote programmes for the preservation of their cultures and languages. It is when dialogue with the authorities

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<sup>256</sup> St Petersburg City Court, Judgement of 29 October 2008, No. 33/12016/2008.

<sup>257</sup> Other judgements on minority issues - the ones that tend to receive media coverage - involve instances of racially-motivated violence. See, for example, SOVA, 2011. 'Winter 2010-2011. December and its Consequences'. <http://www.sova-center.ru/en/xenophobia/reports-analyses/2011/05/d21571/> (accessed 30-10-2011).

proves fruitless, the director of a minority NGO in Petrozavodsk suggested, that one should resort to the courts:

At the moment things happen only if the authorities think that something is advantageous for them; if they don't think so nothing will happen. In these cases it's necessary and important to sue [...]. If the situation between the authorities and civil society doesn't change, it will be the only way. [1.2.1]

There is a second issue: the scarcity of instances that can be categorised as clear-cut minority rights violations. The same respondent cited, as possible opportunities for minorities' judicial redress, instances of clear and tangible violations, such as the failure to pay social benefits to which indigenous peoples are entitled (i.e. Veps in Karelia); or the failure to pay a bonus of 25% on the salary of civil servants who can work in minority languages in addition to Russian - a provision in Karelian (regional) legislation that is rarely complied with. In many instances, legislation on minority and linguistic rights tends to be declarative and overly general, referring to the 'development' of minority languages and cultures. Thus, for example, Article 2(2) of the Law 'On the Languages of the Peoples of the Russian Federation' states:

The Russian Federation guarantees all its peoples regardless of their numbers equal rights on the conservation and development of the native language, freedom of choice and of use of the language for communication.<sup>258</sup>

This type of provision does not generate specific responsibilities for state institutions. The respondent also identified general shortcomings running through the Russian legislature and judiciary, concluding:

There is no structure to control the implementation of the legislation [...]. Since *perestroika* they [the authorities] have tried to build a new [legal] system; a lot of laws were adopted. But as they build this system they also undermine it, because when a law is adopted there can already be another

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<sup>258</sup> Law No. 1807-I of 25 October 1991. On general provisions that do not lead to specific responsibilities, see also those on the financing of National Cultural Autonomies (Section 7.3).



law that [the law-makers] don't know about, and one law contradicts another. Instead, during the Soviet Union, when laws were passed everybody applied them. There was a strong mechanism of control. [1.2.1]

The respondent suggested that the post-Soviet judicial environment is still in a transitional phase, with a judicial vacuum left by the Soviet system that is still partly unfilled. In the post-Soviet legal climate some elements of the 'old' system linger on, exerting residual control over the judiciary, without however guaranteeing the coherence that can stem from a heavily centralised system.

Despite these complexities, Russia's higher courts have started to rule on issues relating to minority rights. Eight years before France banned the full-face veil, Russian courts ruled in favour of women being allowed to wear headscarves in the photographs for their (Russian internal) passports. A group of Muslim women had argued against a requirement to remove their headscarves while these photographs were taken, given the Islamic prescription that they should not appear bareheaded in front of strangers.<sup>259</sup> The case had been turned down by the Russian Supreme Court (RSC) but upheld by the RSC's Cassation Collegium. As a consequence, a regulation of a Ministry of Internal Affairs directive, requiring that a person be photographed bareheaded for passport images,<sup>260</sup> was declared invalid on the grounds that it restricted the right to freedom of religion.

Meanwhile, the Russian Constitutional Court (RCC) has ruled on matters relating to minority languages in the republics. In one case from 1998 the RCC ruled on the legal requirement that the president of the Republic of Bashkortostan speak both Russian and Bashkir. Analogous provisions on titular languages are found in the constitutions of the republics of Buryatia, Ingushetia, Yakutia, North

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<sup>259</sup> Russian Supreme Court (RSC), Cassation Collegium, Judgement of 15 May 2003, No. KAS03-166, 'Concerning the Case of F. K. Gabinullina [and Others] [...]'.  
<sup>260</sup> Point 14(3) of Internal Directive of the Ministry of Internal Affairs of 15 September 1997 No. 605 'On the Procedures for Issuing, Replacing and Registering Passports of the Citizens of the Russian Federation'.

Ossetia, Tatarstan, Tuva and Adygeya. The court dismissed the case by referring to the absence of ‘objective criteria’ on which to base the court decision:

Until the question of the legal status of the state language of the Republic of Bashkortostan is resolved, legal agencies are to ensure that citizens may exercise their rights during the electoral process *regardless of language requirements*. [italics added]<sup>261</sup>

This ambiguous judgement has been explained as an attempt by the RCC to avoid a clear ruling on a very sensitive issue. As Zhukov puts it, ‘the court has told the regions to solve the problem themselves’.<sup>262</sup> At the same time, the RCC left open the possibility of a non-Bashkir speaker to become president of the republic, thereby lessening the status of the titular languages in Russia as a whole - as the ruling is applicable not only in Bashkortostan but in all republics.

In another case from 2004, the RCC ruled on Article 10(2) of the Law of the Republic of Tatarstan ‘On the Languages of the Peoples of the Republic of Tatarstan’,<sup>263</sup> stipulating that the Tatar and Russian languages are to be studied in equal measure in the republic’s nurseries and schools.<sup>264</sup> The plaintiff had complained that Tatarstan’s language legislation forced the republic’s students to study Tatar intensively, detracting from their ability to master other subjects:

[The intensive study of Tatar] reduces the opportunity to deepen the study of other subjects of the curriculum, and also of optional disciplines [...]. Those who reside in the Republic of Tatarstan therefore are in an unequal position in the realisation of the right to education compared to those living in other subjects of the Russian Federation, which violates the guarantees of this right [of equality] under the Constitution [...].

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<sup>261</sup> RCC, Judgement of 27 April 1998, No.12-P ‘On the Assessment of the Constitutionality of the Provision of Article 92(1) of the Constitution of the Republic of Bashkortostan [...]’.

<sup>262</sup> Zhukov, M. & Poryvayeva, A. 28-4-1998. ‘Constitutional Court says Presidents don’t have to Learn Languages’, *Kommersant*.

<sup>263</sup> Law No. 1560-XII of 8 July 1992 (with amendments of 28 March 1996).

<sup>264</sup> RCC, Judgement of 16 November 2004, No. 16-P ‘On the Constitutionality of Article 10(2) of the Law of the Republic of Tatarstan ‘On the Languages of the Peoples of the Republic of Tatarstan [...] in relation to the Complaint by S.I. Khapugin [...]’.

The issue of the Tatar alphabet was also raised in the same case. The plaintiff argued that the choice of alphabet flows from the constitutional right of Russia's republics to establish their own state languages.<sup>265</sup> The RCC ruled that Tatarstan's legislation, stipulating that Tatar and Russian must be studied 'in equal measure', did not represent a violation of the Russian Constitution; rather, it served to enable the use of Tatar in all spheres in public life. The intensive study of Tatar was, then, per se not interpreted as an obstacle to equality. The RCC, however, stressed the authority of the federal centre in formulating language policies, including those affecting the republics' state languages. Additionally, the study of Tatar must not undermine Russian as a state language of the Russian Federation:

The teaching of Tatar as a state language of the Russian Federation cannot occur to the detriment of the federal component of the basic federal curriculum<sup>266</sup>[...] or be an obstacle to the realisation of the right of students to deepen their learning of other subjects of the curriculum, including Russian [...]. [F]ederal law regulates the principal issues on the status of the republics' state languages affecting the interests of the Russian Federation [...] and also establishes general principles of the legal regulation of these languages [...].<sup>267</sup>

The federal centre, it was ruled, further decides on the alphabet of languages in Russia - in line with another judgement that confirmed the constitutionality of legal provisions requiring that the federal authorities make decisions on language scripts.<sup>268</sup>

In another case, the parent of a school pupil in Tatarstan submitted a claim to the RSC challenging the introduction of Russian-only exams in Tatar schools in 2009.<sup>269</sup> The parent argued that the abolition of the option to take the exam in Tatar violated her daughter's right to an education in her mother tongue. The RSC turned

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<sup>265</sup> Article 68(2), Russian Constitution.

<sup>266</sup> The federal part of the curriculum, common to all regions of Russia. See Chapter 6.

<sup>267</sup> Point 4.

<sup>268</sup> The judgement prevented the Republic of Tatarstan from officially switching from the Cyrillic to Latin alphabet for the Tatar language. See also Section 5.2.

<sup>269</sup> See Section 6.2.

down the claim, pointing to the distinction between the right to *receive an education* in a particular language and the language of the subsequent exam; and noting that instruction in Tatar should take place with no detriment to the Russian language as a state language.<sup>270</sup> Other judgements have confirmed the constitutionality of the banning of political parties on the grounds of ethnic or religious identity; and ruled that no more than one local or regional National Cultural Autonomy per minority could be established in a municipality or a region. These cases are discussed in Part 3 of the thesis.<sup>271</sup>

To conclude, the higher courts have crystallised some of the rights of minorities, protecting minority languages - by upholding the right to study Tatar and Russian in equal measure - and religious minorities - by making special allowances for Muslim practices. At the same time, the RCC has reasserted the authority of the federal state, with regard to centralised decision-making on school curricula, script, the language of exams, platforms for political parties, and the registration of National Cultural Autonomies. The cases examined in this section were filed by private citizens and, in the case concerning the Latin script for Tatar, by the Republic of Tatarstan. This last case serves as an illustration of the regions' use of the RCC in their battles against the federal centre (Trochev & Solomon 2005). The incremental use of courts to defend the rights of people and regions may, in turn, lead to a greater 'demand for law' (Hahn 2003: 133). This can expand the domestic jurisprudence on minority issues, and concomitantly the role of Russian courts in adjudicating on these cases.

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<sup>270</sup> RSC, Cassation Collegium, Judgement of 2 July 2009 No. KAS09-295 'On the Claim by A.A. Kamalova [and Others] on the Forms and Order of the Undertaking of the State Examination [...], per Decree of the Ministry of Education and Science of the Russian Federation of 28 November 2008 No. 362 [...]'. See also Section 6.1 on this case.

<sup>271</sup> Section 9.2 (note 612), and Section 8.2 (note 553).

## A Burgeoning Role for the Courts?

The enhancement of the role for Russian courts in defending minority rights can be facilitated by two simultaneous processes: the ECHR's 'expansion' (in Strasbourg), and the guidance from Russian higher courts to lower courts in the form of resolutions (in Russia). The ECHR's expansion reduces the impact of one of its features that acts to restrict its effect in Russia: the fact that it is built around rulings on *individual* cases. As Keller and Stone Sweet put it:

[There is a] tension [...] between two functions of the Court. The Court constructs Convention rights as *general* norms, which it treats as having prospective legal consequences for States. At the same time, its powers are largely limited to the rendering of *individual* (retrospective and particular) justice to victims of specific abuse [*italics added*]. (2008: 691-2)

With a focus on individual justice, the ECtHR can do little to solve patterns of gross and systematic violations (Kamminga 1994), systemic violations - leading to the submission of 'clone' cases (Leach 2005) - or administrative malpractice. The ECtHR cannot initiate cases *proprio motu* but is activated only by individual complaints (Reidy et al. 1997). It has refrained from recognising 'administrative practice' in human rights violations in both Chechnya and Turkey (Bowring 2008: 95).<sup>272</sup> The focus on individual applicants is also one of the reasons why the ECHR is ill-equipped to protect minorities as groups.

The ECtHR is compelled to modernise to meet new and evolving challenges (Keller & Stone Sweet 2008). I argue, then, that there is an expansion of the ECHR's scope that runs both vertically and horizontally. Vertically, the ECtHR has added new layers of meaning to individual rights. It is becoming more 'innovative' and 'creative' when confronted by new challenges (Bowring 2008; Keller & Stone

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<sup>272</sup> The expression 'administrative practice' indicates violations that take place routinely, for which effective remedies are not guaranteed and that are frequently followed by the perpetrators' impunity (Bowring 2008).

Sweet 2008: 691). Horizontally, the ECtHR has increasingly demanded the adoption of ‘general measures’ across member states - rather than discrete, case-specific responses to individual violations (Keller & Stone Sweet 2008). This development has been accompanied by the member states’ relaxation of their sovereignty with the transfer of some judicial control over to the ECtHR since 1950. The ECtHR is indeed slowly, but resolutely, moving towards a greater role as law-maker - as a ‘Constitution of Europe’.<sup>273</sup>

[The] Court behaves more as a general and prospective lawmaker than a judge [...] it seeks general solutions to general problems (Keller & Stone Sweet 2008: 703).

The ECtHR’s expanded role would assist national governments in improving their human rights records by providing redress domestically<sup>274</sup> - a priority of the ECtHR in light of its enormous caseload. In this context, the Council of Europe’s Committee of Ministers has asked the ECtHR to find the origins of systemic problems and delineate solutions, in the form of recommendations.<sup>275</sup> The ECtHR has itself become vocal in emphasising the importance of effective remedies at the domestic level.<sup>276</sup>

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<sup>273</sup> Greer argues that:

[The Court] is already ‘the Constitutional Court for Europe’, in the sense that it is the final authoritative judicial tribunal in the only pan-European constitutional system there is. (2006: 173)

The Court itself has called the ECHR ‘a constitutional document’, in *Loizidou v Turkey*. Application 15318/89, 23 March 1995, § 71. In 2000 the court’s president, Luzius Wildhaber, contended that the constitutional role of the court should be increased (2007).

<sup>274</sup> This has presented challenges in Russia. In 2011 the Parliamentary Assembly of the Council of Europe, with regard to a number of member states including Russia, noted ‘with grave concern’:

[...] the continuing existence of major systemic deficiencies which cause large numbers of repetitive findings of violations of the Convention and which seriously undermine the rule of law in the states concerned.

PACE Resolution 1787 (2011), ‘Implementation of Judgements of the European Court of Human Rights’, 26 January 2011.

<sup>275</sup> Committee of Ministers Resolution Res(2004)3 ‘On Judgements Revealing an Underlying Systemic Problem’, 12 May 2004 and Committee of Ministers Resolution Res(2004)6 ‘On the Improvement of Domestic Remedies’, 12 May 2004.

<sup>276</sup> In *Kudla v Poland*, Application No. 30210/96, 26 October 2000, § 146-60 and *Surmeli v Germany*, Application No. 75529/01, 8 June 2006. The exhaustion of domestic remedies is a requirement for the submission of an application to the ECtHR. The high number of cases found admissible in Strasbourg reveals that domestic remedies in the member states are often inadequate.

Indeed, guaranteeing the ECHR's rights does not only amount to providing the right to submit individual petitions in Strasbourg, but the effective realisation of such rights within a state's boundaries.<sup>277</sup> New opportunities to enhance general measures include the development of 'pilot judgements',<sup>278</sup> by which the ECtHR's judgements come complete with guidelines for domestic courts, with a view to increasing domestic adjudications modelled upon pilot judgements. Identifying 'general solutions to general problems' stimulates a growing emphasis on the general over the individual. It is beneficial to minorities, who stand to gain from a general recognition of 'group rights' over individualism (Bowring 2008). The outstanding hindrance to a more substantial use of the ECHR in minority cases is its scarce application (Gilbert 2002) - given that it is not specifically an instrument for minority protection. Yet the jurisprudence continues to grow, and, as an evolving instrument, the ECHR is slowly widening its scope to embrace some minority issues.<sup>279</sup> In the case *Timishev v Russia*,<sup>280</sup> the ECtHR found that Russia had discriminated against the victim on *ethnic* grounds. In some instances, the ECHR and FCNM overlap and are mutually reinforcing. Thus, the right of association, protected at Article 11 ECHR, bestows rights upon all organisations, including those promoting minority rights. Equally, restrictions on the right to association in Article 7 FCNM cannot go beyond those permitted under Article 11 ECHR.<sup>281</sup>

### **Guidance from the Higher Courts**

The second phenomenon serving to enhance the role of Russian courts in the application of international law is the guidance provided by the higher Russian

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<sup>277</sup> In the meaning of Article 1 ECHR: 'to secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention'.

<sup>278</sup> See, for example, *Broniowski v. Poland*, Application No. 31443/96, 22 June 2004.

<sup>279</sup> On the ECHR jurisprudence and minority concerns, in addition to Gilbert (2002), see Pentassuglia (2003; 2009), Turkens & Piedimonte (2009) and Hofmann (2008).

<sup>280</sup> See note 244.

<sup>281</sup> See Chapter 7.

courts to lower courts. Guidance comes in the form of ‘resolutions’ (*rukovodiashchie raziasneniya*) and ‘letters’ (*metodicheskie pis'ma*) on the application of international law and particularly the ECHR.<sup>282</sup> Resolutions are explanatory notes on court proceedings issued by the RSC and the Supreme Commercial Court, creating legally binding obligations on all courts. The first such resolutions dates from 1995:<sup>283</sup> it signalled the formal acknowledgement of the role of international law in Russian jurisprudence, although in practice it did not add to the Constitution’s existing Article 15(4)<sup>284</sup> (Burkov 2007: 28). RSC Resolution No. 5 (2003) goes into more detail.<sup>285</sup> It establishes: an obligation on Russia to recognise and guarantee human rights and freedoms, in line with the commonly recognised principles of international law (Point 1); and an obligation on courts to apply directly international treaties to which Russia is a party (Points 3 and 4). Such treaties have ‘direct and immediate effect’ (Point 5) and should be applied ‘in particular [...] [when the treaty has] set out other rules than the legislation of the Russian Federation’ (Point 5). It is stressed that international law has ‘priority’ over Russian law (Point 8). Failure by judges to comply with the above points, or incorrect application of international law, ought to be followed by remedial action - by overturning a judgement (Point 9).<sup>286</sup> The Supreme Commercial Court opted for a ‘letter’,<sup>287</sup> a non-binding document containing instructions to the lower courts. A

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<sup>282</sup> By 2011 there had been no resolutions on minority-related issues.

<sup>283</sup> Resolution of the Plenum of the Supreme Court of the Russian Federation No. 8 of 31 October 1995 ‘On Some Questions Concerning the Application of the Constitution of the Russian Federation by Courts’.

<sup>284</sup> See Section 3.1.

<sup>285</sup> Resolution No. 5 of 10 October 2003 (note 150).

<sup>286</sup> See also Chapter 3.

<sup>287</sup> Informational Letter by the Chief Justice of the Supreme Commercial Court of the Russian Federation, No. C1-7/CMP-1341 of 20 December 1999 ‘On the Main Provisions Applied by the European Court of Human Rights for the Protection of Property Rights and Right to Justice’.



‘letter’ carries such symbolic weight that its instructions are normally followed by courts, despite the absence of a legal obligation to do so.<sup>288</sup>

Resolutions and ‘letters’ fit with the Soviet tradition of applying instructions and secondary law rather than the Constitution itself or international law. The importance of resolutions was confirmed by one of the respondents, the ‘Lawyer’, who said:

When there is a resolution on a particular issue the judges can no longer ignore it. [Through the resolutions] there has been a change of attitude. Now they understand that they have to apply international law.

In addition to resolutions, the performance of the higher courts itself acts as guidance to lower courts. The RCC, Burkov argues, is the most responsive to international law. The judgements of this court carry most weight in the Russian judicial system, as adjudications have a normative character (Burkov 2007: 28; 33). In practice, the RCC’s case-law also provides ‘instructions’ to lower courts, by serving as a template for the application of international legal principles. In this way, the higher courts’ judicial practice cascades down to lower courts. A complicating factor is that the higher courts do not always serve as good models as their performance has been far from flawless. Although the number of citations has increased in the 2000s,<sup>289</sup> starting with the breakthrough *Maslov* case,<sup>290</sup> Burkov’s data show that many opportunities for ECHR application are overlooked.<sup>291</sup> Additionally, the modes of citations tend to be superficial, lacking analysis of the ECHR jurisprudence, or even mistaken (Burkov 2007; Trochev 2008a: 176).

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<sup>288</sup> However, the ‘letter’ is brief and devoid of practical information on the technicalities of implementation (Burkov 2007: 31). In practice its non-binding character tends to reduce its impact (Danilenko 1999: 57).

<sup>289</sup> In 2005 and 2006 the RCC cited the ECHR in 16 out of 22 judgements. In 12 of them the relevant case-law was also cited (Nussberger 2008: 619).

<sup>290</sup> RCC, Judgement of 27 June 2000, No. 11-P, ‘On the constitutionality of Articles 47 and 51 of the Criminal Procedure Code’. The judgement refers to Article 14 ICCPR, Articles 5 and 6 ECHR and, for the first time, to the ECtHR’s jurisprudence, with six cases cited. See also Bowring (2008).

<sup>291</sup> See note 152.

‘Superficial’ citations mean a general references to the ECHR, without supplementing them with its case-law - despite the fact that the exact scope of the ECHR’s rights only emerge through the accumulation of judgements. Applying the ECHR superficially or mistakenly may be harmful: in extreme cases, the Russian judiciary has misused the ECtHR’s jurisprudence to justify what in reality were ECHR violations (Nussberger 2008: 667).

The dubious performance of higher courts has important consequences as ordinary courts rely heavily on them for guidance. ‘Judge B’ said:

The Supreme Court is conservative, or rather not sufficiently active. For certain issues it remains silent. And if the Supreme Court does not speak out on certain issues [provide guidelines], in the lower courts judges are afraid [to apply the ECHR in these cases].<sup>292</sup>

The RSC has sometimes failed to follow its own recommendations from the above-mentioned 2003 Resolution in its judgements (Burkov 2007: 83). The defiance of the RCC’s chairman vis-à-vis the ECtHR<sup>293</sup> can further influence the lower courts’ outlook on international law.

Burkov has suggested that the route to enhanced ECHR application is conditional upon profound changes in the performance of higher courts. Higher courts should: issue detailed instructions to lower court on ECtHR case-law on Russia, including analyses of cases - rather than vague references; and dare to use international law to supersede Russian law where applicable. In this manner, the higher courts would motivate and enable other courts to apply the ECHR consistently and correctly. As Burkov puts it:

If a law professor does not ask students to read a particular text-book or a case, the professor is thereby implying that he will not address the principles

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<sup>292</sup> She added that training had slowly but progressively provided judges with new skills, resulting in greater confidence to directly apply the ECHR.

<sup>293</sup> See Section 3.2, notes 196 and 198.

contained in this book at the examination, and, as a result, only a few individuals will refer to the book. Why would one do so if one could manage to graduate without addressing this particular book? Will one know about the existence of the book in the library? The Supreme Court of Russia should become this “professor” [...] (2007: 76).

This is closely reflected by the observation of a Russian lawyer working at the Council of Europe:

In some cases it's hard for judges to know what the international standards are... You need to make the standards easy, understandable, and as substantial as possible. [Russian] district judges will not do research on what it means to apply international standards on, for example, fair trials. [7.1]

Thus, a greater role for the Russian courts in defending human rights might result from the ECHR's expansion, as discussed above, *and* from the Russian higher courts' taking the lead in moving towards an enhanced application of international law by providing guidelines for lower courts - in short, progressing from application to *implementation*.

### **4.3 Conclusion: Opportunities without Guarantees**

This chapter has argued that the selective implementation of international law stems from: the judges' varied approaches to international law; the fact that its application is not consistently enforced; and potential pressure on judges. Some judges do not make the leap from domestic to international law and remain safely within the realms of Russian law. If unchallenged by the authorities, judges are allowed to remain in their comfort zone. Consequently, application is not uniform across the country, across courts and even at the level of individual judges. At the same time, judges in Russia may be constrained in some of their actions: the fate of progressive judgements tend to depend more on political considerations than the rule of law.

Indeed, the Russian judiciary cannot insulate itself from politicised institutions themselves somewhat at the mercy of informal practices. Then, in some cases judges may be pressurised, following centralised (political) decisions; yet in others the judges' independence is not impinged upon, and they are left a margin of discretion in applying (or not) international law. These dynamics reflect an alternation of centralised control and *laissez-faire* in Russian political-judicial life.

The implementation of international law has not been fully integrated into the Russian judicial system, reducing guarantees concerning the upholding of rights contained in international documents and mechanisms, including minority rights. The Russian judiciary has still not reached a level in which the distinction between domestic law and international law blur, when the latter is incorporated into the former (Green Cowles & Risse 2001: 235). Despite this, there are indications that the ECHR's application in Russia is incremental: unlike the FCNM, it has generated a set of precise legal principles through the ECtHR, in some cases reproduced in resolutions and guidelines from Russian higher courts.

In the case of minority rights, there are complicating factors. First, the ECtHR still devotes little attention to minority rights: its jurisprudence does not encompass several issues of concern to minorities, such as minority education. It was observed in this chapter that this might alter through the widening of the ECHR's scope, although in 2011 the legal principles on minority rights arising from its jurisprudence were still scarce. In Russia, ECHR application mostly contributes to an advancement of the rule of law generally, which can benefit minorities as well as other groups. However, Burkov's observation that enhanced ECHR implementation is likely to arise through detailed, concrete instructions cascading down from higher to lower courts can hardly be expected in the area of minority rights. Indeed, the meagre jurisprudence on minority issues the Strasbourg

court means that there are no resolutions on minority rights cases, and that lower courts have no guidance on the adjudication of these cases.

Second, the legal articulation of minority claims is complex. The scarcity of legal guarantees for minorities in Russian law stems from the absence of explicit 'rules' for the protection of the cultural rights of minorities - itself coupled with a weak (albeit growing) tradition of using litigation to solve disputes. Although the regions have used the courts to claim their rights vis-à-vis the centre - indicating a growing thirst for justice through litigation - these efforts are still relatively modest ones. Meanwhile, with regard to the FCNM, the interviews indicate a widespread view among public officials and civil society alike that it comprises merely a set of ephemeral notions, with weak supranational monitoring, as shown in Chapter 3. With the application of international standards resting on shaky foundations, and given the selectivity of implementation, the question arises: can these standards assist the Russian Federation (and its minorities) in resolving the challenges of post-Soviet Russia, and can they reverse an existing trend toward the homogenisation and exclusion of minorities? These issues are analysed in Parts 2 and 3 of the thesis.

## **PART 2: HOMOGENISATION**

## 5. STRENGTHENING THE STATE THROUGH HOMOGENISING CENTRALISM

The previous two chapters have assessed the reception of international law in Russia: the complex relationship between the Council of Europe and Russia, and the inconsistent manner in which international law is brought into the Russian context. They have focused on the selective implementation of international law, and limited guarantees that the rights enshrined therein will be upheld in Russia. At the same time, selective *implementation* implies that at least some implementation takes place, and that international instruments *can* in principle enhance the promotion of human rights, including minority rights. I now move on to international standards in light of unfolding socio-political circumstances in Russia. This chapter argues that centralisation and (ethnically) homogenising processes in Russia have reduced the potential for the application of the international standards on minority rights; and, in turn, that international standards have been unable to prevent such homogenising processes. The homogenising policies of post-Yeltsin Russia are a series of measures that have effectively downgraded ethnicity and increased uniformity. The chapter delineates two forms of de-ethnification: the promotion of a civic Russian identity - which I call the 'new Russian citizen' - to the detriment of minority identities; and the re-structuring of the Federation to reduce the salience of ethnicity.

I first outline the reasons for the de-ethnification strategy included in Putin's reforms.<sup>294</sup> Then I examine Russia's homogenising efforts in the cultural arena and the creation of an overarching civic Russianness. Last, I outline a number of

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<sup>294</sup> As noted (Section 1, note 71), Medvedev's policies have not introduced major shifts in the reforms.

administrative reforms that contribute to a de-ethnification of the Russian Federation through centralising, de-federalising measures.

### **The Complexities of Diversity**

The drive for de-ethnification originates from the complexities posited by diversity. As noted, nationality policies in the Soviet Union hinged on the forging of a link between ethnicity and territory.<sup>295</sup> This approach did not help a large section of minorities: smaller nationalities were not classified as ‘titular’, and clearly not all persons belonging to a titular nationality resided in ‘their own’ ethnic republics. During the Soviet Union, according to 1989 census data, approximately three-quarters of Tatars lived outside the Tatar Autonomous Soviet Socialist Republic, and only 49% of its population were Tatars. In Khakassia, only 11% of the population was Khakass in 1989. Indeed, as Brubaker noted, ‘[n]ations are fundamentally groups of persons, not stretches of territory’ (1996: 40). At the same time, ethnicity-based federalism led to a heightened consciousness of diversity and ethnic mobilisation in the *perestroika* period (Gorenburg 2003).

Yeltsin inherited these unresolved difficulties and, without the Soviet ‘glue’ that had held the Union together, these problems could only increase in complexity. Following the Soviet Union’s collapse, the regions started to gravitate away from the centre as they increasingly acquired autonomy through devolution (Stoner-Weiss 1999). In 1990, Yeltsin famously invited the regions to ‘take as much sovereignty as [they] can swallow’. This derived less from Yeltsin’s liberal attitudes than from an inability of the federal authorities to fill the power vacuum left by the Communist party’s dethronement (Reddaway and Orttung 2004: 6). The Yeltsin years led to statutory and political fragmentation, as evidenced in a plethora

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<sup>295</sup> See Section 2.3.



of *ad hoc* bilateral treaties with the subjects not regulated through a coherent federal legislative and administrative framework. Asymmetry became the norm: from the ‘unofficial asymmetry’ of *ad hoc* measures and selective legal implementation (Hahn 2003: 115), to ‘socioeconomic asymmetry’ (Stepan 2000).<sup>296</sup> Special arrangements to satisfy the particularistic needs of regions (and their leaders) enabled the formation of virtual fiefdoms, ruled by assertive leaders engaging in ‘regional warlordism’ (Kirkow 1995; 1998: 139).<sup>297</sup> Substantial powers were enjoyed by prominent regional (ethnic) leaders in post-Soviet Russia, such as former (ethnic Tatar) President of Tatarstan, Mintimer Shaimiev (1991-2010), and former (ethnic Bashkir) President of Bashkortostan, Murtaza Rakhimov (1993-2010). A republic like rich, oil-producing Tatarstan, with a high concentration of Tatars living on its territory, could defy the Russian authorities and refuse to sign Yeltsin’s Union Treaty in 1990, insisting instead on a power-sharing treaty.<sup>298</sup>

At the end of Yeltsin’s rule ethnic pluralism had become synonymous with instability ‘from below’ and ineffective management ‘from above’. Yeltsin’s rule was also associated with the social ills generated by the difficult transition to a market economy, such as large scale privatisation and the rise of the oligarchs, increased poverty, lawlessness and crime. In turn, newly-found freedoms of the post-Communist period allowed forms of ethnic nationalisms to emerge, with calls for autonomy which threatened further instability. It is these complexities that former President Putin attempted to resolve through the strengthening of the state, which involved, *inter alia*, processes of ‘homogenisation’, with new forms of uniformity and centralism.

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<sup>296</sup> With some regions having greater economic power and control over resources than others.

<sup>297</sup> Calls for devolution during this period were not only driven by ethnic motives, but also by political ones. Whatever the reasons, in several regions ethnicity became a factor of mobilisation (Giuliano 2011; Gorenburg 2003).

<sup>298</sup> The power-sharing treaty was signed two years later, in 1992. On this, see, for example, Bowring (2007). The only other republic to refuse to sign the Union Treaty was Chechnya.

## 5.1 Russia's Homogenising Efforts

The post-Yeltsin Russian leadership has sought to promote basic, non-ethnic values which supposedly unify nationalities residing in Russia, to replace potentially destabilising multiple forms of nationalism at the regional level. In its 2006 Comments to the ACFC's Second Opinion, the Russian government stated that it was pursuing a 'policy of de-ethnization of [the] domestic political scene', and that the choice of policy derived from the fact that 'national and ethno-cultural issues blend perfectly in the concept of basic civil rights'.<sup>299</sup> The essence of this new approach is captured in Russia's Third Report to the ACFC, in the expression 'unity in variety'.<sup>300</sup> This is a civic unity combined with ethnic diversity, in the recognition that the two are intertwined. It is supposedly an attempt to create what has been defined as 'multicultural constitutional patriotism' (Codagnone and Filippov 2000). *Russian* citizenship should replace forms of 'quasi citizenship' in regions with strong national identities such as Tatarstan and Bashkortostan - ending their ability to forge an 'inner abroad' within Russia (Sakwa 2008: 234).

The civic identity that should replace ethnic consciousness is an identity coloured by elements of Russian *patriotism*, yet only after it has been carefully disassociated from *nationalism*. Putin has espoused the view that *nationalism* is a destructive force, generating conflict and secessionist tendencies. *Patriotism*, instead, represents the overarching values through which any Russian citizen might find pride in his/her country and its achievements (Daucé et al. 2010). It brings together elements of imperial, Soviet and Russian history, whose threads have been laboriously pulled together: the former president has been at pains to trace a

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<sup>299</sup> Russia's Comments to ACFC, (Second) Opinion (note 199).

<sup>300</sup> ACFC, (Third) Report submitted by Russia (note 132), pp. 6-7.

continuum throughout Russian history, and to find positive outcomes in all eras (Sakwa 2004: 241). For example, while Putin denounced the excessively 'bureaucratised' style of the old Communist Youth League (*Komsomol*), he upheld some of the principles behind it, such as 'the spirit of love of the homeland, of the fatherland.'<sup>301</sup> Soviet myths are further incorporated into what are essentially nation-building efforts on federal television (Novikova 2010).

Russia has certainly seen instances of rampant Russian nationalism (Kozhenikova et al. 2005).<sup>302</sup> Some neo-fascist views have reached the mainstream media, government institutions and academia through ideologues such as Aleksandr Dugin, founder, in 2002, of the Eurasia Party - a party of patriots of Russia (Umland 2009).<sup>303</sup> Daucé et al. argue that, despite this, the general, Putin-supported patriotic discourse is non-militant and non-nationalistic (2010). Putin maintained that the national idea should be based on 'patriotism in the most positive sense of the word'.<sup>304</sup> Can this amount to accommodation of minorities - through the creation of an overarching identity that also respects diversity, in line with multiculturalist theories?

### **Overarching Civic Identity or Pervasive Russianness?**

Establishing an overarching civic Russian identity, rather than an *ethnic* Russian one, would seem to fit Smith's model of coexistence of diversity and integration.

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<sup>301</sup> Putin, V. 2002. 'Razgovor s Rossiei: Stenogramma 'Priamoi Linii s Prezidentom Rossiiskoi Federatsii V.V.Putinym'' ('A Conversation with Russia: Stenographic Report of 'Direct Line with the President of the Russia Federation V.V. Putin'), First Channel (19 December 2002).

<sup>302</sup> See also the numerous reports of the SOVA Centre, on racism and xenophobia in Russia. <http://www.sova-center.ru/en/xenophobia/reports-analyses/> (accessed 15-12-2010).

<sup>303</sup> Among the stated aims of the Eurasia party are 'reinforcing the strategic unity of Russia, her geopolitical homogeneity, the vertical line of authority [...] fighting separatism, extremism, localism'. See 'Theses of Dugin's Address to the Political Conference of the Pan-Russian Social-Political Movement Eurasia', 1 March 2002. [http://eurasia.com.ru/dugin0103\\_eng.html](http://eurasia.com.ru/dugin0103_eng.html) (accessed 3-11-2011).

<sup>304</sup> While campaigning for his presidency in November 1999. Reported in Interfax, 3-11-1999, cited in Sakwa (2004: 163).

This process creates:

[A]n overarching community housing, but also binding together, through a common symbolism and institutional network, different cultures and ethnic communities (2008: 106).

The traditional distinction between civic (liberal and inclusive) and ethnic (illiberal and exclusive) forms of nationalism is drawn from Kohn's seminal work (1944). It has been argued that a form of inclusive civic nationalism (based on *ius soli*), rather than exclusive ethnic nationalism (based on *ius sanguinis*), is conducive to a common loyalty: thus, '*ius sanguinis* leads logically to ethnic cleansing, *ius soli* to ethnic integration.' (Hastings 1997: 34) Brubaker, however, argues that the distinction between the two forms of nationalism is overstated (1999). Smith adds that 'even the most 'civic' and 'political' nationalisms often turn out on closer inspection to be also 'ethnic' and 'linguistic'' (2010: 212-3). Indeed, Russia's 'civic identity' has acquired an ethnic dimension by borrowing elements from Russia's national iconography. A new overarching identity is supposedly being shaped around a concept that I call the 'new Russian citizen', which reasserts Russianness but also downgrades non-Russian ethnicities. Already in 1996 the Concept of State Nationality Policy of the Russian Federation, while upholding the right of ethnic minorities to their national and cultural identities, also stressed the 'unifying role of the Russian (*russkii*) people on the territory of Russia'.<sup>305</sup> Meanwhile, under Putin there has been a rediscovery of Russian symbolism. In 2000 he declared that the old Soviet anthem was to become the state anthem, the two-headed Tsarist eagle the state emblem, and the Tsarist tricolour (white, blue and red) the Russian flag (Sakwa 2004: 164-5). The ambiguity of the patriotic discourse of a strong Russia also lies in the nexus between Russian identity and the Russian Orthodox Church.

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<sup>305</sup> See note 210.

Although Putin has repeatedly emphasised Russia's religious pluralism, the former president is also ostentatiously practising member of the Russian Orthodox Church with a close relationship with the Orthodox Patriarch. Modern Russian life, then, is characterised by contradictory messages: on the one hand the current leadership insists that patriotism and diversity can, and should, coexist - and, on the other, television programmes have featured Dugin himself on Russia's First Channel (Umland 2009). What is being presented is a model of *rossiiskii* (the concept of Russian *citizen*) that is being closely identified with *russkii* (*ethnic* Russian), in a move towards a homogenised vision of Russia that is at odds with official pronouncements concerning Russia's multi-ethnic multiculturalism.

What is the impact of such conflicting messages? The Russian leadership can be perceived as representing the interests of the 'main group' - the Russians (Pain 2005a). A Muslim Tatar interviewed, an academic in Kazan, noted that the special relationship between Putin and the Orthodox Patriarch implicitly marginalised other religions in Russia. He further referred to a generalised (and, in his view, institutionalised) 'Islamophobia'. He complained of non-Muslims' failure to differentiate between the general Muslim population and the very few Islamic fundamentalists responsible for terrorist attacks from the Chechen wars onwards [2.10].

Of symbolic and practical significance is the primacy of the Russian language itself. There have been three developments since 2000. First, there have been calls to drop the requirement in the republics' constitutions for presidents to speak the titular language (Hahn 2003: 130),<sup>306</sup> and subsequently a RCC decision

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<sup>306</sup> For example, in 2000, by the Head of the Central Election Commission Aleksandr Veshnyakov. It is also indicative that in 2000 the prosecutor of Khakassia argued that the Khakas Constitution should refer to 'Russian and Khakass languages' as the republic's official languages, rather than 'Khakas and Russian' (Hahn 2001a: 513).

relaxing language requirements in the republics' presidential elections.<sup>307</sup> Second, as will be seen in Chapter 6, in the three focus republics of Karelia, Mordovia and Tatarstan, the study of and through the medium of minority languages has tended to decrease. Meanwhile, in 2007 the Russian government promoted the programme '2007 Year of Russian Language in the Russian Federation'. Third, there has been a prohibition against any introduction of the Latin script in Russia. The Republic of Tatarstan has been particularly affected: while Tatar organisations were calling for the Latinisation of their alphabet, in 2002 the Duma adopted an amendment to the 1991 Law 'On the Languages of the Peoples of the Russian Federation (2002 amendments).<sup>308</sup> Article 3(6) of the amended law states that the alphabets of the Russian language, and those of the republics' state languages, 'shall be based on the Cyrillic graphic symbol'. Following the 2002 amendments, the use of (non-Cyrillic) alphabets for the state languages of republics have to be established exclusively by federal law: as Russia's Third Report to the ACFC puts it, it 'requires a justified managerial decision'.<sup>309</sup> In line with this, in November 2004 the RCC turned down a claim submitted by Tatarstan's Parliament, denouncing the 2002 amendments as unconstitutional, inasmuch as they prevent the republics' choice of their own scripts.<sup>310</sup> This had followed a decision of the Tatar Constitutional Court from the previous year, upholding Tatarstan's right to choose the script for the republic's state language, Tatar. The 2002 amendments also mean that Karelian cannot be declared a state language within the Republic of Karelia as long as the traditional Latin script is used. Consequently, Karelian is the only language of a titular nationality within Russia not to be recognised as a state language within its ethnic republic. As a Karelian language expert noted during an interview, Karelian 'needs

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<sup>307</sup> See Section 4.2, note 261.

<sup>308</sup> Law No. 1807-I, dated 25 October 1991, with the amendments introduced by Laws No.126-FZ of 24 July 1998 and No. 165-FZ of 11 December 2002.

<sup>309</sup> ACFC, (Third) Report submitted by Russia (note 132), p. 55.

<sup>310</sup> See Section 4.2 (note 264).

to be a state language [within Karelia] but *also* it needs to keep the Latin alphabet' [2.2]. The respondent could not see the language being divorced from its traditional script. In 2011 Karelian continued to have a lower legal status than other languages of titular nationalities in Russia.<sup>311</sup>

Respondents belonging to national minorities, from both civil society and academia, voiced grievances vis-à-vis state policies on nationalities for the preservation of minority cultures and languages.<sup>312</sup> A second group of civil society respondents believed that, given the finite resources, the present efforts in the area of minority cultures were still laudable. The analysis of the data shows that the second group of respondents judged *local* public officials and their efforts positively, having established a working relationship with them, but had limited awareness of the measures adopted at the federal level to promote minority cultures. Additionally, the second group of respondents predominantly resided in Mordovia and Karelia, where ethnic issues feature less in the public discourse than in Tatarstan. It is noteworthy that, even when not nurturing grievances towards the authorities, several respondents expressed sadness that their languages were progressively losing prominence, and felt powerless to stop advancing Russification. These attitudes were particularly evident in the case of Karelian respondents in Petrozavodsk and Tver.

Three conclusions can be drawn from the data. First, homogenising policies can lead to resentment and dissatisfaction in those persons belonging to minorities who have an interest in the preservation of their cultures and languages. This suggests that homogenisation is not a precursor of stability, as the anti-multiculturalists argue, but rather its negation. Second, the homogenising processes,

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<sup>311</sup> Issues relating to script have not been raised in Mordovia.

<sup>312</sup> Many of the grievances were linked to new policies on minority education, examined in the next chapter.

based on quintessentially Russian symbols and values (and even religion) generate not an interplay of different cultures, but rather a dominant Russian culture around which other minority cultures are ‘tolerated’. This ‘tolerance’ is close to the meaning that Žižek gives to the term, as a form of condescension (2011: 46).<sup>313</sup> Third, homogenising processes, inasmuch as they are antithetical to genuine multiculturalist policies, bring into question Russia’s compliance with international standards such as Article 5 FCNM. In addition to prohibiting assimilatory measures, Article 5(1) establishes a positive obligation on the member states to:

[P]romote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

In its Third Report to the ACFC, the Russian government provided a long list of programmes under Article 5, centring around festivals and cultural institutions.<sup>314</sup> Some respondents from the category ‘civil society - minority NGO’ argued that, although welcoming these programmes, they did not believe them to be contributing in practice to preserving elements of their identity [1.2.1; 1.2.2; 1.2.5; 1.2.8; 1.2.9].<sup>315</sup> The ACFC did not comment specifically on these programmes in its Second Opinion.<sup>316</sup> However, it noted the criticism by representatives of minorities and some of Russia’s regions, including Tatarstan, on ‘the heightened role [...] given to the Russian language and culture as the instrument for “consolidating” society’.<sup>317</sup> The ACFC stated on this point:

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<sup>313</sup> See Section 2.2.

<sup>314</sup> ACFC, (Third) Report submitted by Russia (note 132), pp. 30-43.

<sup>315</sup> Additionally, some academics and representatives of human rights NGOs referred to the superficiality of these programmes [1.5.1; 1.5.7; 1.5.9; 2.14; 2.16; 2.19]. See also the issue of ‘folklorisation’ of minorities (Section 7.1).

<sup>316</sup> The ACFC comments on Article 5 FCNM focused on, among other things, funding and National Cultural Autonomies.

<sup>317</sup> ACFC, (Second) Opinion on Russia (note 133), § 108.



While recognising the legitimacy of the aim to protect the state language, the Advisory Committee considers that this aim should not be given undue importance in this context and should be coupled with guarantees regarding the values of diversity and respect for the rights of persons belonging to national minorities.<sup>318</sup>

In its Third Report to the ACFC, the Russian government acknowledged a previous ACFC recommendation that the initiatives to promote the Russian language should not create obstacles to the use of minority languages. It limited its response, however, to pointing to the existence of provisions in Russian law on the ‘equality of languages’. It further noted that the programme ‘2007 Year of Russian Language in the Russian Federation’ promoted not only Russian but also bilingualism as ‘both Russians and representatives of other peoples of the Russian Federation’ participated in the initiative.<sup>319</sup> The ACFC’s monitoring and assessment, due to its finite resources and time constraints, is based primarily on short state visits, state reports and shadow reports.<sup>320</sup> It is therefore unable to pin down, analyse in detail, and provide recommendations on the specificities of socio-political processes that may lead to homogenisation and the dilution of diversity. Shifts towards homogenisation are subtle, and can easily slip through the net of Council of Europe monitoring. The use of state symbols for example, has been defined by Billig as a form of ‘banal nationalism’, that is as real as it is imperceptible ([1995] 2004).

Some authors have also described insidious, covert means that might be used by the Russian authorities to reduce diversity - means that are even more impenetrable by Council of Europe monitoring. Abramov describes what in Mordovia are, in his opinion, attempts to divide the Mordovian population into Moskha and Erzya peoples, through ‘propaganda’ that started in the early 1990s, to

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<sup>318</sup> Ibid, § 108-10.

<sup>319</sup> ACFC, (Third) Report submitted by Russia (note 132), p. 100. There was a further reference to education in minority languages, analysed in the next chapter.

<sup>320</sup> The time constraints were also noted by a Council of Europe expert during an interview [7.5].

facilitate an ultimate shift toward a ‘united and indivisible’ Russia. Moskha and Erzya speakers are two subgroups whose languages differ, but both tend to self-identify as ‘Mordovian’.<sup>321</sup> Abramov sees a vested interest for the Russian authorities’ in forging a schism, as part of a general attempt to weaken the overarching Mordovian nationality (2010: 149-156).

## 5.2 De-Federalisation as De-Ethnification

Having described homogenising tendencies around a civic patriotic discourse, I move on to aspects of de-ethnification linked to centralising measures affecting Russia as a federation. As noted, since the end of the Soviet Union there has been first a progressive relaxation of the central powers (under Yeltsin), and a subsequent reverse movement strengthening the centre (under Putin and Medvedev). Similarly, for much of its history, Russia has oscillated between the two diametrically opposed positions of federalism (with localism through devolution) and centralism. It has already been mentioned that, during the Soviet Union, powers were delegated to titular nationalities in their ‘own’ ethnic republics through the policy of *korenizatsiya*, yet regional developments were micro-managed by Communist Party institutions. In post-Soviet Russia, the 1993 Constitution simultaneously enshrines guarantees for the Russian Federation’s sovereignty in all its territories (Article 4), *and* for the self-determination of Russia’s peoples (preamble and Article 5(3)). The latter recognises the ethnic republics and their rights to their constitutions and state languages (Article 5(2) and

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<sup>321</sup> According to the 2002 census, of the 884,000 Mordovians recorded, only 80,000 identified themselves specifically as ‘Mordovian-Erzya’ and 50,000 as ‘Mordovian-Moksha’. At the forefront of the campaign for Erzyan nationalism, separate from Moksha, is the newspaper *Erzyan’ Mastor*. A possible split in the Mordovian nationality threatens the Republic of Mordovia as an entity: the charter of *Erzyan’ Mastor* indicates as its main objective the creation of a Erzya national okrug on the territory of Mordovia.

68(2)).<sup>322</sup> The same ambiguous approach is found in the constitutions of the republics themselves, simultaneously recognising the rights of titular nations (e.g. Tatars) *and* all the republics' nationalities (e.g. Tatarstan's 'multi-national people') (Ossipov 2008).

In 1993, Rafael Khakimov, one of the chief advisers to Tatarstan's President Mintimer Shaimiev, predicted that federalisation would prevail over centralism, ultimately leading to the disintegration of Russia as a country, as the regions became increasingly culturally assertive and financially autonomous (1993: 16). Sakwa considered this unlikely, noting Russia's 'great power mentality', and the fact that its pluriculturalism had become one of Russia's intrinsic characteristics (2008: 244). Sakwa was correct in his prediction inasmuch as ethnic federalism has been preserved to this day. It has, however, been weakened and, with it, de-ethnified. .

### **From Ethnic Federalism to Civic Centralism**

Putinite homogenising policies have involved a progressive de-ethnification of the Russian federal structure. Centralisation measures have reined in powerful regional leaders, reducing their autonomy from Moscow. The much-mentioned 'vertical of power' (*vertikal' vlasti*) has seen the development of a steep hierarchy with the Russian president and his administration at its apex. Indeed, federal reforms were elaborated by the Presidential Commission for the Demarcation of Powers between the Federal, Regional and Municipal Levels of Government, formed by Putin in 2001, under the management of (then) deputy head of the Presidential Administration, Dmitrii Kozak. Some of the reforms were discussed with regional

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<sup>322</sup> On this issue, see Varlamova (2001: 13).

leaders, who secured a partial review of them,<sup>323</sup> still, the ultimate responsibility for the reforms rested on the highest echelons of the executive. I focus here on the ethnic (de-ethnifying) aspects of the reforms in relation to: a movement from election to appointment of officials, the creation of a dependency of the regions on the central authorities, and the merging of ethnic regions with Slavic ones.

Before Putin's rise to power, Yeltsin's *ad hoc* bilateral treaties had created a complex web of agreements, together with contradictory pieces of legislation and overlapping jurisdictions - for example in the form of regional laws that diverged from the federal constitution. The elimination of these contradictions was needed for the viability of the legal and federal systems. Putin referred to it as part of the process towards a 'dictatorship of the law'.<sup>324</sup> The centralisation measures aimed at the creation of uniform rules, transcending bilateral political negotiations and reconnecting to the centre the regional 'islets of power'.<sup>325</sup> Yet the package of measures also had a profound effect on ethnicity. Putin moved towards a general ethnicity-neutral bureaucratisation of the country, using opportunities offered by the 1993 Constitution, which created a super-presidential system. It made the president the 'guarantor of the Constitution' (Article 80(2)), with the authority to suspend regional laws contradicting federal legislation (Article 85(2)), and heading a unified executive that encompassed centre and regions (Article 77(2)).

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<sup>323</sup> Tsvetkova, M. & Shishkunova, E. 21-11-2002. 'Gubernatorov Budut Snimat' Izyashchno' ('Governors Will Be Overthrown Delicately'), *Gazeta.ru*.

<sup>324</sup> The expression 'dictatorship of the law' was first used in Putin's first (2000) State of the Nation Address to the Federal Assembly. The process of harmonisation of the legislation aimed at addressing the fragmentation of the Russian legal space (Hyde 2001). By 2002 efforts towards legal harmonisation had brought nearly all the 6,000 laws identified as contradicting federal legislation into line with it. By April 2002, 22 of the 42 bilateral agreements between the centre and the subjects had been abolished, an additional 11 were abrogated in 2003, and the rest were declared null by 2005 (Mitin 2008: 58).

<sup>325</sup> This expression was used in the 2000 State of the Nation Address. In the 2002 State of the Nation Address Putin added that separate agreements with individual subjects had created 'effective inequality in relations between [the] Federation components and, ultimately, between citizens living in various parts of Russia.'

A first de-ethnifying factor has been the shift from elections to appointment, with a view to creating a country primarily administered by appointed managers, rather than elected representatives. This has been described by Filippov as:

[R]emov[ing] excessive politicisation elements from the Russian state system, to replace politicians, which hinder its effective operation, with managers and bureaucrats.<sup>326</sup>

As of 2005 the Russian president controls gubernatorial appointments. These new presidential powers follow an (unconstitutional) measure of September 2004, when Putin announced that the heads of the subjects (territorial units) of the Federation would be nominated by the president and confirmed in their position (nominally) by the legislature. The move was justified in light of the 2004 Beslan school siege (Lemaître 2006).<sup>327</sup> Following the event Putin asserted that only the unity of the country could combat terrorism.<sup>328</sup>

Although powerful leaders of ethnic regions, such as Tatarstan's Mintimer Shaimiev and Bashkortostan's Murtaza Rakhimov, were initially confirmed in their third term as presidents of their republics, in the absence of direct voting their powers became contingent upon the will and imperatives of the federal authorities. Between May 2008 and October 2010, Medvedev replaced 34 regional leaders.<sup>329</sup> Shaimiev and Rakhimov eventually left their positions, in January and July 2010 respectively. One of the respondents, a scholar specialising in Tatar history, said in an interview:

Shaimiev had political weight. He was independent, even with Putin. He had authority at the federal level, not only in Tatarstan. The current

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<sup>326</sup> Filippov, Y. 29-10-2004. 'State Duma Ponders Russia's Future', *RIA Novosti*.

<sup>327</sup> On 1 September 2004 Islamic militants took hostage over 1,100 people in a school in Beslan, North Ossetia. They demanded the withdrawal of Russian troops from Chechnya, and led to the intervention of Russian security forces. The fighting that ensued resulted in the death of 334 people.

<sup>328</sup> Putin, V. 13-9-2004. Speech at an enlarged cabinet meeting attended by regional leaders.

<sup>329</sup> *Vedomosti*, 30-9-2010. 'Medvedev i Voevody' ('Medvedev and the Governors').

president is in a very different position. They can remove him very easily. He always has this Damocles sword hanging over him. [2.7]

A much more pallid figure than Shaimiev, his successor Rustam Minnikhanov has much-reduced freedom in representing Tatarstan's (and Tatar) interests.

The most visible manifestation of the regional leaders' lower status has been their exclusion from the Federation Council (the Russian Parliament's upper chamber). This follows a law of July 2000, replacing the governors and the republics' presidents with their representatives ('senators') in the Federation Council.<sup>330</sup> Half the senators are appointed by the regional leaders - who are, as noted, in turn appointed by the president. The other half, appointed by the regional assemblies, tend to be 'recommended' by the Presidential Administration (Remington 2003: 674). This creates a 'circular flow of power', continuously reinforcing presidential power, in the Federation Council - a body that should act as check on, and balance out, the power of the executive (Sakwa 2008: 283).

The new Federation Council has been effectively de-ethnified as senators, in many cases, have no direct connection with the regions they represent, and tend indeed to come from Moscow or St Petersburg (Alexander 2004). Their background, connections and geographical location mean that they are, in principle, well-placed to lobby central structures in favour of the regions they represent. However, Alexander argues that appointing non-titular representatives undermines the republics' distinct ethnic bases:

Not only will these representatives be personally removed from the issues of concerns to titular nationalities and thus less likely to fight for these issues, but their choice further indicates to the center that ethnic issues have become less potent in Russian politics. [This] threaten[s] to weaken the long-term viability of the ethnic republics as separate entities (2004: 255-6).

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<sup>330</sup> Law No. 113-FZ of 5 August 2000 'On the Order of the Formation of the Federal Federation Council'.

Following their exclusion from the Federation Council, in 2000 a new body was created for governors: the State Council.<sup>331</sup> This is essentially a consultative body, stripped of the veto power formerly enjoyed by the governors on the Federation Council. It thus reduces governors' impact on decision-making, including on national issues and cultural choices.

The vertical reaches down to regions and localities. Regional leaders have continued to insist on the direct appointment of mayors so as to select politically-neutral 'professionals', effectively (pliant) managers, rather than politicians (Lankina 2005: 167).<sup>332</sup> The Kozak Commission, established in 2001 to formulate amendments to the Law 'On Local Self-Government',<sup>333</sup> similarly stressed the need to eliminate the governor-mayor cleavage, effectively by appointing bureaucrats. Their activities were expected to be in line with those of the republic's governor or president, the presidential envoy and, ultimately, the president of Russia. Along with political battles, this process has excluded systems of checks and balances, as well as minority representation (Lankina 2005: 169-70). Those likely to be particularly affected are the small minorities, such as non-titular minorities within ethnic republics (double minorities). Meanwhile, regional leaders have themselves tended to contribute to political homogenisation by joining the ranks of United Russia, the 'party of power'.<sup>334</sup>

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<sup>331</sup> Decree of the President of the Russian Federation No. 1602 of 1 September 2000 'On the State Council of the Russian Federation'.

<sup>332</sup> For example, former governor of Sverdlovsk oblast (1995-2009) Eduard Rossel stated that elected mayors are 'engrossed in politics, rather than pursuing purely managerial activities.' Cited in Lankina (2005: 162).

<sup>333</sup> Law No.131-FZ 'On the General Principles of the Organisation of Local Self-Government in the Russian Federation. See Lankina (2005) and Bowring (2010b).

<sup>334</sup> See Section 9.2.

## **Dependency on the Centre and Regional Mergers**

A second factor of de-ethnification has been the creation of a dependency of the regions on the centre. In May 2000 the many subjects of the Russian Federation were grouped into seven presidential okrugs,<sup>335</sup> and placed under the supervision of presidential envoys. The branches of the main federal agencies (the Prosecutors' Office, the Federal Security Service, the Ministry of Interior and the Tax Inspectorate) were affiliated to the okrugs themselves rather than regional leaders, thereby redirecting their loyalty to the centre (Melvin 2007: 209). Cashaback argues that the envoys create a new intermediary layer in the communication flow between regions and the centre; and, despite the claims of greater accountability, the new structure is excluded from public scrutiny, with the concentration of powers on regional matters within the Presidential Administration via the envoys (2003: 8;19).

New legislation has further standardised taxation systems across the Federation. A new form of 'fiscal federalism' was introduced during Putin's presidency under which the vast majority of the regions' revenues have been claimed by the centre, to be later redistributed (Sakwa 2008: 274). Moscow is the final decision-maker in the redistribution of funds (Melvin 2007: 210). Not only are the poorer, heavily subsidised regions relying on the centre for wealth, but so do the wealth-producing regions, as they await the re-allocation of some of the same wealth they have generated. Respondents in Tatarstan argued that the taxation system had reduced autonomy in respect of available choices to preserve their cultures [2.7; 4.7]. One respondent, a political analyst in Moscow, argued that, instead, poorer regions perceive the federal centre as a 'kind uncle' that assists

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<sup>335</sup> Seven districts were established by Presidential Decree No. 849 of 13 May 2000 'On the Presidential Envoy of the President of the Russian Federation in a Federal Okrug'. The number of districts was increased to eight in January 2010, when the North Caucasus Federal Okrug was separated from the Southern Federal Okrug.



them, but are also left in a state of dependency and lack control.<sup>336</sup> The absence of economic self-sufficiency can adversely affect their assertiveness and autonomy [2.17].

Meanwhile, the Law ‘On Local Self-Government’,<sup>337</sup> rather than empowering and enhancing the autonomy of the localities, has primarily *transferred* their dependence from regional authorities to federal centre. Lankina described it as ‘facilitating the extension of Putin’s centralizing “power vertical” further down into grass roots.’ (2005: 16) Local government can be penalised by the federal centre for a multitude of reasons, including the accumulation of debts, and where it is a ‘threat to Russia’s territorial integrity, national security, [or] defence potential.’<sup>338</sup> Lankina adds:

Ideas normally associated with decentralization, such as developing civil society, respecting the diversity of local contexts, and increasing popular participation and initiative in local decision making, receive little attention in the law (2005: 165).

Bowring agrees that the law neglects the issue of representation of national minorities (2010b). Hahn believes that the non-inclusive process of adoption of the law means it could be appropriated by those networks with an interest in strengthening the power vertical (2008). These measures are antithetical to the establishment of the decentralised settings, able to further national minorities’ participation in decision-making on cultural matters. The ‘vertical’, then, has led to a widening gulf between the Lund Recommendations in the area of territorial devolution and autonomy, and Russian reality.<sup>339</sup> Self-government can also provide

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<sup>336</sup> He added that this is ‘very bad for democracy’ [2.17].

<sup>337</sup> See note 333.

<sup>338</sup> Articles 75(3) and 74(2) of the Law ‘On Local Self-Government’. Provisions on local self-government are also found in Articles 12 and 130 of the Russian Constitution. Furthermore, in 1998 Russia ratified the Council of Europe’s European Charter for Local Self-Government, ETS No. 122, adopted 15 October 1995, entered into force on 1 September 1998.

<sup>339</sup> Lund Recommendations (note 131), Points 19 and 20.

unique opportunities for minority mobilisation, which legislative reform has acted to truncate (Lankina 2002).

Mergers of predominantly Russian regions with ethnicity-based autonomous okrugs are another example of regional homogenisation processes that involve the reduction of regional autonomy through top-down, non-consultative measures. Between 2005 and 2008 there were five mergers (see Table 4). The mergers, enabled by Law No.6-FKZ,<sup>340</sup> aimed at ‘equalizing the levels of socio-economic development’ and at the ‘optimization of regional management, infrastructure and resources’.<sup>341</sup> The authorities argued that the mergers ‘did not affect the position of national minorities in the new administrative and territorial entities’, as guarantees as to the rights of minorities, including on the preservation of their cultural and linguistic distinctiveness, were clearly stated in regional laws on the mergers.<sup>342</sup> The former ‘autonomous okrugs’, now just called ‘okrugs’, in principle maintain a ‘special status’; yet the status is devoid of legal meaning in Russian law (Oracheva & Osipov 2010).

Some analysts have welcomed mergers. For example, Taimyr and Evenkia have very small populations (respectively, 30,000 and 18,000 people), and separate administrations imply a proliferation of bureaucratic structures (Bransten 2005). Financial imperatives have also been strong: the creation of a common Russian market, breaking through the barriers of local economies across Russia, may indeed facilitate economic development.<sup>343</sup> Others have feared that the real motivation for the mergers might be the elimination of the ethnic republics altogether.<sup>344</sup>

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<sup>340</sup> Federal Constitutional Law No.6-FKZ of 17 December 2001 ‘On the Procedure of Introducing a New Subject in the Russian Federation’.

<sup>341</sup> ACFC, (Third) Report submitted by Russia (note 132), p. 98.

<sup>342</sup> Ibid, p. 99.

<sup>343</sup> In the opinion of Finance Minister Alexei Kudrin, cited in Filippov, Y. 29-10-2004. ‘State Duma Ponders Russia’s Future’, *RIA Novosti*.

<sup>344</sup> Yasmann, V. 2006. ‘Analysis: Is the Kremlin Looking to Dissolve Ethnic Republics?’ *Radio Free Europe/Radio Liberty*.

*Table 4 – Mergers*

| <b>Name of new subject</b> | <b>Merged subjects</b>                           | <b>Date of referendum</b> | <b>Federal constitutional law on the new subject</b> | <b>Date of the establishment of the new subject</b> |
|----------------------------|--|---------------------------|--|---|
| <b>Perm krai</b>           | Perm oblast & Komi-Permyak Autonomous Okrug (AO) | 7/12/2003                 | Law No. 1-FKZ 25/3/2004                              | 1/12/2005   |
| <b>Krasnoyarsk krai</b>    | Krasnoyarsk Krai & Evenk AO and Taimyr AO        | 17/4/2005                 | Law No. 6-FKZ 14/10/2005                             | 1/1/2007  |
| <b>Kamchatka krai</b>      | Kamchatka oblast & the Koryak AO                 | 23/10/2005                | Law No. 2-FKZ 12/7/2006                              | 1/7/2007  |
| <b>Irkutsk oblast</b>      | Irkutsk oblast & Ust-Orda Buryat AO              | 16/4/2006                 | Law No. 6-FKZ 30/12/2006                             | 1/1/2008  |
| <b>Zabaikalskii krai</b>   | Chita oblast & Agin-Buryat AO                    | 11/3/2007                 | Law No. 5-FKZ 21/7/2007                              | 1/3/2008  |

*Table based on Artobolevskii et al. (2010 : 7)*

The idea of resuscitating the (non-ethnic) administrative units of pre-revolutionary Russia<sup>345</sup> is not new. Often dismissed as unrealistic, these ideas have intermittently resurfaced. Preoccupied with the power of the governors elected in 1996-1997, many of whom were in opposition, Yeltsin also entertained the idea of reducing the number of subjects from a total of 89 (in 1996) to 24 (Reddaway and Orttung 2004: 10). Similarly, a number of governors, presidential envoys and Duma members have publicly stated that they were in favour of the reduction of administrative units.<sup>346</sup> The Russian Academy of Sciences compiled a plan to reduce the number of regions to 28.<sup>347</sup> Even more radical proposals advocated the slashing of regions down to between eight and ten territories (Mitin 2008: 52). After the process stalled

<sup>345</sup> Eight provinces under Peter the Great, 40 under Catherine the Great (Empress of Russia 1762 - 1796) and 56 at the time of the 1917 Revolution.

<sup>346</sup> Chirkin, D. 25-3-2002. 'Vladimir Putin – Russia's New Ivan Kalita. The Federation Subjects to Be Consolidated', *Pravda*. <http://english.pravda.ru/news/russia/25-03-2002/36185-0/> (accessed 5-10-2011).

<sup>347</sup> Netreba, T. & Tseplyaev, V. 12-4-2006. 'Natsional'nye Regiony - "Pod Nozh?" ('Are the National Regions "Under the Knife?")', *Argumenty i Fakty*.

between 2008 and 2010, in late 2010 *Vedomosti* reported on a possible plan to replace Russia's 83 regions with 20 large 'agglomerations' around Russia's main cities.<sup>348</sup>

Giving their continuing strength, the full abolition of ethnic republics is still a remote possibility. In 1992-1993 the (then) Minister of Nationalities Valerii Tishkov warned of the likelihood of violence if ethnic territorial units were eliminated (1993: 18). The regions' claims for autonomy are unlikely to be abandoned as they are not only in the interest of the titular nationalities, but also of ethnic Russians residing in the ethnic republics, who wish to retain some control over local natural resources (Hagendoom et al. 2008). Yet the mergers are uncomfortable precedents for many nationalities. Although referenda appear to have provided the democratic and legal bases for the mergers,<sup>349</sup> opposition to amalgamation has surfaced (Artobolevskii et al. 2010; Bowring 2010a; Dmitriyev 2007).

Take, for example, the merger of Irkutsk oblast' with (former) Ust-Orda Buryat Autonomous Okrug. The central government strove to convince the residents of the okrug of the financial gains to be reaped from the merger, while strongly hinting that the region could not survive without federal support. The Irkutsk administration committed to maintaining a special status for the okrug post-merger, along with special cultural and social programmes for Buryats. The analysis of the impact of the mergers by the Institute of Contemporary Development revealed that these promises have, overall, not been kept (Artobolevskii et al. 2010).<sup>350</sup> Meanwhile, the Moscow Helsinki Group reported

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<sup>348</sup> Pis'mennaya, Y. & Kostenko, N. 16-12-2010. 'Rossiyane Budut Zhit' ne v 83 Regionakh, kak Seichas, a v 20 Agglomeratsiyakh, gde Kotsentriruyutstya Resursy' ('Russians will Live Not in 83 Regions, but in 20 Agglomerations, where Resources are Concentrated'), *Vedomosti*.

<sup>349</sup> Article 11 of Law No. 6 states that the creation of a new subject has to follow a referendum and consultations with the president of the Russian Federation.

<sup>350</sup> President Dmitrii Medvedev is one of the patrons of the Institute.

voting irregularities during the referendum on the merger of 16 April 2006, including strong incentives, and even threats, to induce voting among the local population.<sup>351</sup> The effect of the ‘vertical’ is evident in the process towards the restructuring of the Federation. The governor of Irkutst oblast, Boris Govorin, who had promoted the merger, was himself a product of vertical policies: he had not been elected but appointed by the president, and ‘as a state public official he could not place himself in opposition to the federal authorities and advance any claims [...]’ (Artobolevskii et al. 2010). This appointment finally enabled the merger following a deadlock of three years.<sup>352</sup> An ethnic Buryat defined the merger of the two regions ‘an unnecessary step towards Russian integration’.<sup>353</sup>

The mergers have not involved an ‘inclusive, transparent, and accountable process of consultation’, which is essential ‘to maintain a climate of confidence’.<sup>354</sup> Additionally, they are contrary to Article 16 FCNM, stipulating that the parties ‘shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities’. This includes ‘redrawing administrative borders’. Both the FCNM and its Explanatory Report stress that, for it to constitute a violation of the FCNM, the changes have to aim at restricting the rights and freedoms enshrined in the FCNM.<sup>355</sup> If the mergers’ primary objective was indeed to reduce ethnicity-based administrative units, thereby enhancing homogenisation, it can be interpreted as a move deviating from the principles of the FCNM. The ACFC had recommended that territorial changes be accompanied by the right to effective participation of persons belonging to national minorities;<sup>356</sup> to

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<sup>351</sup> Moscow Helsinki Group 2006, ‘On Violations Committed in the Course of Organising and Carrying out Referendum on Merging Irkutsk Region and Ust-Ordynski Buryatskyi Autonomous District’.

<sup>352</sup> Yasmann, V. 2006 (note 344).

<sup>353</sup> Private communication with the author, 24 February 2011.

<sup>354</sup> Lund Recommendations (note 131), Point 5.

<sup>355</sup> Article 16 FCNM and FCNM Explanatory Report (note 38), § 81-2.

<sup>356</sup> ACFC, (Second) Opinion on Russia (note 133), § 24.

this the Russian authorities' 'response' consisted to two references: one to the fact that referenda and 'open discussions' had been held; and the other to the existence of legal provisions in the new administrative regions on the 'freedoms' of national minorities.<sup>357</sup>

### **5.3 Conclusion: Reducing Diversity - Russia for the Russians?**

The application of international standards in Russia has been unable to withstand the effect of homogenising and de-federalising policies initiated by Putin. A patriotic discourse has reasserted Russianness, while the reformed federal structure has reduced opportunities for participation in decision-making at the regional and local level, marginalising local concerns, including those of minorities and ethnic republics. Similarly, the increase of the central regulation of funds has lessened local autonomy.

One could argue that aspects of the federal reforms have become a force for good in Russia. The rule of law is hardly possible in a country with a mass of contradictory laws, and where regional leaders may abuse their powers for personal gain. Reforms might have: advanced democracy in Russia (Hahn 2003), placed the Russian Constitution at the core of centre-periphery relations (in lieu of arbitrarily-applied legal norms) (Sakwa 2004: 240), enhanced the equality of citizens (Cashback 2003: 2), and possibly even have strengthened federalism (Smirnyagin 2001). Yet reforms processes have also created 'collateral damage': the dilution of ethnic pluralism, and the reduction of the democratic content of the Federation. In the first case, Russia's pursuit of a civic (Russian) identity - the 'new Russian Citizen' - can lead to its *replacing*, rather than *adding to*, minority identities. It

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<sup>357</sup> ACFC, (Third) Report submitted by Russia (note 132), pp. 98-9.

results in a general devaluation of ethnic identities, with the exception of Russian culture. The distinction between *rossiiskii* and *russkii* hence becomes blurred, as the federal authorities have sought to impose elements of *russkii* upon the entire population. The motivating factor is not necessarily a suppression of diversity with Russian neo-imperialist undertones, but rather the strengthening of the state.<sup>358</sup> Still, this project brings a real risk that it might be interpreted ‘a disguised and embellished version of the old Soviet rhetoric of the fusion of all nations into a non-national Soviet nation’ (Codagnone & Filippov 2000: 283).

Second, the effect of the ‘vertical of power’ has been a reduction of checks and balances: the regions have become part of a more rigid, technocratic state. Putin’s *vertikal*’ has eroded regional autonomy through the convergence of powers at the centre and a weakening of democratic processes and regional autonomy.<sup>359</sup> Undemocratic elements of the measures are particularly evident in the abolition of elections and voting irregularities in referenda. The reforms have excluded key actors from decision-making, such as civil society (Hahn 2001b; Taylor 2005); they have further excluded systems for ‘horizontal accountability’ (Hashim 2005).

Although the Russian government has justified the restructuring of the federation in terms of promoting greater equality in socio-economic development,<sup>360</sup> standardisation through de-federalisation has not necessarily resolved the country’s fragmentation and the utilitarian approach to its management (Sakwa, 2004: 239). ‘Selected co-operation’ with regions of ‘strategic importance’ continue (Chebankova 2007: 289). Meanwhile, the ‘dictatorship of the law’ did not prevent Putin from unconstitutionally imposing a new form of presidential appointment of governors, disregarding principles of federalism and separation of

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<sup>358</sup> In line with the principle of *gosudarstvennichestvo* (a strong Russian state). See note 169.

<sup>359</sup> Similar patterns of reduced regional autonomy can be observed in the area of education, discussed in Chapter 6.

<sup>360</sup> ACFC, (Third) Report submitted by Russia (note 132), p. 98.

powers enshrined in the Russian Constitution (Lemaître 2006). The predominance of the federal centre in many spheres of public life in the regions, regulated by non-transparent processes, signifies, Chebankova argues, an absence of ‘federal values’ (2007: 295-299). Russia does not have the flexibility of the type of federalism described by Friedrich - one that does not amount to a ‘fixed division of power’, but in the coordination of different political communities that develop ‘arrangements for working out solutions’ (1968: 176). The ‘spirit of federalism’ is still missing, so that Russia resembles more a centralised state rather than a federation: ‘de jure a federation (with independent local self-government), de facto a centralised state (with a vertical of power)’ (Artobolevskii et al. 2010: 174).

Russia has, then, distanced itself from the conditions necessary for the upholding of international standards of minority protection: democratic processes,<sup>361</sup> local autonomy, and opportunities for participation and public consultations - including in cultural matters. Democracy, rule of law and civil society are preconditions for successful autonomy arrangements within federations (Ghai 2000: Pain 2005a). To this, the Russian leadership contrasts the need for ‘unity’ as a prerequisite to strengthen the state - for example, as a measure to combat terrorism following the Beslan incident. Hence, international standards on minority rights have been unable to prevent the homogenising and centralising processes in Russia; in turn, with these processes Russia has distanced itself from international standards. Homogenisation can reduce the appreciation and respect of pluralism. The next chapter focuses on education, whose functions, in a multicultural society, includes that of instilling respect for diversity.

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<sup>361</sup> On the obstacles to democratic development in Russia, see Gelman (2003) and Wilson (2005).



## 6. INTERCULTURALISM OR ACCULTURATION? EDUCATION AND THE MEDIA

Education has a pivotal role in safeguarding Russia's cultural diversity. This chapter analyses Russian educational policies for the teaching of minority languages and cultures, as well as intercultural education. The chapter has a focus on the 2007 amendments of the Russian Law 'On Education'.<sup>362</sup> I argue that while the new provisions might signal a greater attention to the local needs of minorities within the federal educational framework, they may also have other consequences, namely lead to enhanced localising and/or centralising tendencies. On one side, the amendments can lead to a fractionalisation of the Russian educational space in the absence of a coherent, nation-wide educational policy. On the other, they enable an increased control of the federal centre over the regions in the area of education.<sup>363</sup> These two shifts are seemingly moving in opposite directions (localism and centralism) but may in fact simultaneously impact on minority education. From the special reference to these amendments I widen the discussion to incorporate other reforms that affect minorities, particularly with regard to the language of exams; and to scrutinise the role of the media as educator.

The limited involvement of minorities and regions in decision-making with regard to the new regulations in the education sphere caused considerable alarm among some minority representatives, as described below. In addition to the potential destabilisation of inter-ethnic relations in the country, these reforms have hindered Russia's fulfilment of its responsibilities under international minority rights law. The contours of these responsibilities, in the area of education, are charted through the FCNM and the ECRML: Article 12 FCNM (state parties' responsibility to foster the knowledge of cultures and languages of minorities and

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<sup>362</sup> No. 3266-1 of 10 July 1992.

<sup>363</sup> See Section 2.3 on the meanings of 'localism' and 'centralism'.

the majority); Article 14 FCNM (right to learn one's minority language); and Article 8 ECRML (education in regional or minority languages).<sup>364</sup>

In this chapter I outline the shifts in the region-centre balance introduced by the new education policies with regard to minority education. I then analyse the impact of the new education policies at three levels: the regional, the local and the federal. At all levels I note issues that may affect minorities' linguistic and cultural rights, with reference to compliance with the FCNM. I then move on to inter-cultural education.<sup>365</sup> I show that, where minority rights intersect with education rights, there are two concomitant functions for the education system: providing minorities with the opportunity to receive a particular type of education (i.e. in a minority language) but also ensuring that the *majority* receive an education reflecting society's pluralism. This form of inter-cultural education is provided not only by the education system itself, but also by the media. I conclude by stating that international standards in 2011 were unequipped to withstand existing homogenising dynamics in Russia. For international standards to make a difference in the area of inter-cultural education, states have to embrace their positive responsibilities, rather than remaining within the confines of their negative responsibilities - through the simple *non-interference* in the ability of minorities to, for example, speak their languages. The *active* promotion of diversity, through both education and the media, is paramount for the preservation and development of minority languages and cultures, and for a functioning multicultural society. Paying insufficient attention to the relevant legislation and policy frameworks leads to homogenising tendencies. In the case of Russia, it can contribute to the progressive loss of a wealth of languages and cultures that form an integral part of the Russian

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<sup>364</sup> See also the OSCE Hague Recommendations Regarding the Education Rights of National Minorities, 1996.

<sup>365</sup> 'Inter-culturalism' is defined below (Section 6.2).

Federation's historical and cultural heritage. The active promotion of pluralism can only occur through shifts from Russia's existing approaches to localism and centralism.

### **School Data and Interviews**

The last data provided by the Russian government to the ACFC indicates that for the period 2001-2004 in Russia there were 2,166 schools in which Tatar was used as a language of instructions, and 1,466 in which Tatar was studied as a subject. There were 200 schools where either of the two Mordovian languages (Moksha and Erzya) were used as a language of instruction<sup>366</sup> and 275 where either was studied as a subject. There were no Karelian schools where Karelian was used as a language of instruction, and 40 where the language could be studied as a subject.

Of the 100 interviews conducted, 22 were particularly relevant to this chapter because of the respondents' direct involvement in minority and/or intercultural education. The respondents belonged to the following categories: minority NGO (4 respondents), human rights NGO (3), academia (10), public official (3) and school employee (2). The interviews included a relatively large number of academics as the new educational policies are still only partially implemented and have generated few analysable data; academics and analysts offered insight into the reasons for the tension between law and practice, and potential repercussions on national minorities. The category 'academia' includes analysts from research institutions and academics directly involved in programmes for the preservation of minority languages and cultures.

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<sup>366</sup> Only until the 4th grade in most cases. Only a small number of students used Erzya as a language of instruction in grades 5 to 9. In the case of Tatar, 35.8% of students studied in Tatar in grades 1 to 4; 48.3% in grades 5 to 9; and 15.9% in grades 10 and 11.

## 6.1 Changing the Rules of the Game: The Three Players in the Education System

In December 2007 Law No. 309<sup>367</sup> (Law 309) amended the Federal Law ‘On Education’. The main thrust of the new provisions was the creation of a common *federal* educational space, but it also dispensed a plethora of new rights and responsibilities to *local* institutions, particularly individual schools. The amendments have placed a stronger emphasis on Federal State Educational Standards - with a myriad of small modifications interspersed throughout the law placing the adjective ‘federal’ before ‘state educational standards’. The amendments aim at creating a ‘unified educational space’ (Law 309, Article 7(3)(1)). They have been justified in light of the need to raise educational standards, by setting minimum standards which all of Russia’s schools must attain. It was further argued that the amendments bring the Law ‘On Education’ into line with the Russian Constitution (Kuz’min et al. 2010),<sup>368</sup> which indeed stipulates that educational standards are to be established by the Russian federal government.<sup>369</sup> The Russian authorities argued that the amendments were not meant to impose a new educational or cultural straitjacket upon the regions, but to create an overarching general framework that could be flexibly applied by individual schools, following consideration of the needs of students and their parents.<sup>370</sup>

The most contentious section of Law 309 has been the effective elimination of the ‘national component’ - a particular model for the teaching of language, history and culture of non-Russian nationalities. The pre-309 Law ‘On Education’ included three ‘components’: the federal level, the regional level and the individual

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<sup>367</sup> Law No. 309-FZ of 1 December 2007, ‘On the Amendment of Legal Acts of the Russian Federation Modifying the Concept and Structure of State Educational Standards’. The law should have entered into force on 5 December 2007, but the date was postponed to 1 September 2009, and then for a further year.

<sup>368</sup> See also ACFC, (Third) Report submitted by Russia (note 132), p. 45.

<sup>369</sup> Russian Constitution, Article 43(5).

<sup>370</sup> ACFC, (Third) Report submitted by Russia (note 132), p. 46.

school - each contributing to the curriculum. At the regional level, regions devised the 'national-regional component', approximately 15% of teaching time of the standard school curricula for all pupils, devoted to the study of minority languages and cultures. The school component (an additional 10%) could be used at the school's discretion to further develop the teaching of minority languages and cultures, thereby creating a school 'with an ethno-cultural component'.<sup>371</sup> As a mechanism for the teaching of minority languages and cultures, the ACFC saw the 'national-regional component' in a positive light.<sup>372</sup> Post-309, the Law 'On Education' makes no reference to such components. Yet the education programme is still divided into parts: the 'obligatory' and 'variable' parts.<sup>373</sup> The former (70% of total teaching time) is devised at the federal level, while the latter part (30%) is established by the 'participants in the educational process', or, as summarised by the Russian government in the Third Report to the ACFC, 'primarily by educational institutions with consideration of the needs of students and their parents, as well as by education regulatory bodies.'<sup>374</sup> The two main actors in the Russian education system are now the federal centre and local institutions; the individual schools, with input from local civil society (students and parents), devise the 'variable' part - up to 30% of the curriculum.<sup>375</sup> The 'middle level' - i.e. the republics and other subjects of the Russian Federation - is seemingly excluded. This section explores the three levels of education policy management: the regional, the local, and the federal centre.

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<sup>371</sup> ACFC, (Second) Opinion on Russia (note 133), § 232.

<sup>372</sup> Ibid.

<sup>373</sup> Federal State Educational Standards, adopted through the Decree of the Ministry of Education and Science of the Russian Federation, 17 December 2010, <http://mon.gov.ru/files/materials/7195/1897.pdf> (accessed 20-4-2011).

<sup>374</sup> ACFC, (Third) Report submitted by Russia (note 132), p. 45. More details are in the Federal State Educational Standards, *ibid*, § 25-27.

<sup>375</sup> Ibid (ACFC).

## The Regions: Decreased Legal Guarantees

The Russian authorities have provided assurances that the regions will not be marginalised in the formulation of educational policies. They will continue to adopt normative acts, as well as developing educational programmes on the bases of regional and local needs.<sup>376</sup> The Russian authorities have stated that:

[The] subjects of the Russian Federation are actively involved in the process of elaboration of the obligatory part of the main educational program, also for the purposes of ensuring that due consideration is given to regional, national and ethno-cultural components.<sup>377</sup>

What has been effectively removed is the legal and formal control by the regions. The downgrading of their legal status was articulated by a Russian education expert:

Regions [...] no longer have permission to maintain fully independent regional legislation in education. No longer can any regional system of education with self-sufficient legislation exist. Prior to 2007 there was some kind of balance between regional and federal legal systems on particular topics. The new situation is directed at the prohibition of this 'balance'.<sup>378</sup>

Unsurprisingly, the adoption of Law 309 has sparked centre-periphery tensions (Stepanov 2010a: 5). The amendments were met with resistance and demonstrations (Gordeev 2009a); demonstrators denounced centralised decision-making on minority education as a violation of their constitutional right to freely choose their language of education.<sup>379</sup> Some regions reliant on Moscow for subsidies, normally timid in their claims to the centre, on this occasion acted in unison with Tatarstan, joining the republic in its protests, which were articulated

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<sup>376</sup> Ibid, p. 46.

<sup>377</sup> Ibid, p. 45.

<sup>378</sup> Private communication with an expert on minority education, Russian Academy of Sciences, 5 March 2011.

<sup>379</sup> Article 26 of the Russian Constitution.

with ‘one voice’.<sup>380</sup> The reactions to the amendments were recorded through interviews for the thesis in the focus republics, as well as in Moscow and St Petersburg, where several schools ‘with an ethno-cultural component’ exist. In the republics of Mordovia and Karelia, respondents from civil society as well as school employees displayed little or no alarm at the amendments, and in most cases had little awareness or knowledge of them. The situation was dramatically different in Tatarstan. Here, the respondents tended to be aware of the amendments, whose swift adoption had generated feelings of uncertainty and powerlessness. An education specialist at Kazan’s Institute of History<sup>381</sup> - who had previously been consulted in the formulation of federal education standards, and in the preparation of federal textbooks depicting Tatar history - perceived the new regulations as an imposition, adopted ‘quickly and without discussion’ [2.7]. His position was that the policies of the federal centre prevented Tatarstan from preserving its diversity.<sup>382</sup> Another Tatar respondent echoed the opinion that Moscow’s actions were ‘destructive’ [4.7]. There was further uncertainty due to hearsay over potential further centralisation: possible supplementary amendments to the Law ‘On Education’ (which between 1996 and 2009 was amended over 60 times); and possible modification in the procedures for the federal endorsement of new textbooks, until then produced autonomously in the republics for use at the regional level. The same respondent from the Institute of History described the feared removal of this autonomy as a ‘threat’ to minority cultures [2.7]. This view was shared by another education specialist in Moscow, who spoke about an ‘education vertical’ [4.14].

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<sup>380</sup> The expression was used in an interview by an advisor to the Minister of Culture the Republic of Tatarstan [4.9].

<sup>381</sup> Part of the Academy of Science of Republic of Tatarstan.

<sup>382</sup> Referring in particular to Law 309, the respondent argued that the federal centre prevented the Republic of Tatarstan from fulfilling the principles of diversity contained in the FCNM.

The discrepancy between the three republics in their perceptions can be explained by a number of factors: the much greater size of the Tatar nationality compared to the other two<sup>383</sup> (leading to a more pronounced ethnic consciousness); the public discourse around the amendments, taken up, in particular, by former Tatar President Mintimer Shaimiev, who vigorously opposed them; the higher stakes - given the much higher number of schools operating in Tatar language than in Mosha, Erzya or Karelian. Tatarstan was also particularly affected by two other centralising measures: the federal rejection of Tatarstan's claim to use the Latin alphabet for the Tatar language;<sup>384</sup> and the introduction of the Russian-only 'uniform state exam' (*Edinyi Gosudarstvennyi Ekzamen* - EGE). The Russian-only exam was introduced through a 2009 decree removing the option for students to take the EGE, the final secondary school exam, in a minority language rather than Russian.<sup>385</sup> The highly-controversial decree affected Tatarstan, which had until then enabled students to access universities within the republic through a state exam that could be taken in either Tatar or Russian.<sup>386</sup> The requirement to take the state exam in Russian has had a profound effect on the status of minority languages in Russia. Tatar respondents (civil society and academia) argued that the obligation to take the exam in Russian would inevitably lead to an increasing number of parents sending their children to Russian schools, hoping for better academic achievements in (Russian-language) exams, and, with them, enhanced job prospects. According to the same Tatar respondents, sitting the state exam in Tatar does lead to a lack of fluency in Russian, or to Tatar enclaves isolated from the rest of Russia. Part of the education

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<sup>383</sup> Both within Tatarstan and in Russia as a whole.

<sup>384</sup> See Sections 4.2 and 5.1 on the script for the Tatar language.

<sup>385</sup> Decree of the Ministry of Education and Science of the Russian Federation No. 362 of 28 November 2008 'On the Approval of Regulations on the Methods and Procedures for the State (Final) Certification of Students Having Completed the Main General Educational Programmes of Full Secondary Education'. In pilot regions the requirement to take the secondary school examination in Russian had already been introduced in 2002.

<sup>386</sup> Additionally, Russian language and mathematics are the EGE's two compulsory subjects.



in Tatar national schools is in Russian - and most of the media and forms of public communication in Tatarstan are also conducted in Russian. This issue was raised in the Russian courts: the parents of a student in Kazan's Gymnasium No. 2, a Tatar school where teaching takes place in Tatar, Russian and English, submitted a case to the Russian Supreme Court following the decree's adoption. The parents saw the right of taking the exam in one's language as an extension of the right to receive an education in it - which, in their opinion, the presidential decree had violated. As the claim was turned down,<sup>387</sup> the complaint was submitted to the ECtHR.<sup>388</sup>

Loss of fluency in Russian is a particularly remote possibility in the Republic of Karelia, where Karelians amount to less than 10% of the republic's population, and where the language has virtually disappeared from public places with the exception of small demographic pockets with relatively high concentrations of Karelians. These are primarily villages that are gradually becoming uninhabited as most young people leave them in search of employment. Despite this, a Karelian activist complained in an interview that two nurseries that operated exclusively in Karelian - with methodological support from Finland - had been closed by the Russian authorities [1.2.2]. The measure was justified by the authorities in this way:

The refusal of federal executive bodies to use in Russia [the] so called "language nest" technique applied in Finland can [...] serve[s] as an example of efforts taken to ensure equal access to education for persons belonging to national minorities. The above technique is aimed at learning by the Finno-Ugric minorities of their native languages. However, its mechanism creates [a] closed language environment within the frames of pre-school institutions where children plunge into native language from the early childhood. In [the] multinational environment of Russia this would significantly reduce their socialization opportunities and, accordingly, would entail [a] violation of the principle of equal opportunities of education, further employment etc. and is considered as segregation of children on ethnic grounds.<sup>389</sup>

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<sup>387</sup> SRC, Cassation Collegium, Kamalova case (note 270).

<sup>388</sup> In 2011 there had still been no admissibility decision by the ECtHR.

<sup>389</sup> ACFC, (Third) Report submitted by Russia (note 132), pp. 103-4.

Hence, the Russian authorities saw these nurseries as a form of segregation and a threat to equality, much like the position of the critics of multiculturalism described in Chapter 1. Yet international standards for minority protection are very clear that equality does not mean enforcing uniformity to pre-empt potential instances of discrimination, but creating the conditions for the preservation of diversity, while also adopting ‘special measures’ to ensure that minorities enjoy equal opportunities despite their difference.

The decrease, through Law 309, of the regions’ options for independent law-making in the area of education could in theory be rebalanced by the direct participation of the regions in federal decision-making. However, the precedents of the adoption of Law 309 and the introduction of exclusively Russian-language exams indicate the absence of guarantees of effective participation in decision-making. In the case of Law 309, respondents agreed that discussions took place *ex post facto*, on modalities of implementation rather than on its adoption and content.<sup>390</sup> The role of the regions in shaping educational policies has consequently decreased. They are afforded fewer legal guarantees, which has caused alarm in some regions,<sup>391</sup> as they are faced with a sense of unpredictability given the lack of clarity on the practical consequences of the reforms. With the regions’ role diminished, the local and federal levels have acquired greater prominence, with increased ‘localism’ and ‘centralism’.

### **Schools and Localities: Localism or Atomisation?**

The regional layer of decision-making having been removed through Law 309, the schools have the autonomy to self-organise with regard to the ‘variable’ part of

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<sup>390</sup> The Law’s adoption generated tensions in the regions, which however tended to decrease with time given the slow and uncertain steps towards its application.

<sup>391</sup> In addition to Tatarstan, the Republic of Bashkortostan also vigorously protested against the amendments.

education, according to the new model outlined above. In light of this, a respondent called Law 309 a ‘great achievement’, inasmuch as it gave increased autonomy to individual schools [2.23]. Another nationality expert saw it as a step towards the implementation of the 1985 European Charter for Local Self-Government, ratified by Russia in 1998<sup>392</sup> [2.15]. Indeed, cultural diversity tends to be better catered for through decentralisation, which enhances participation at the local level and a greater attention to local needs (Grin 2003: 152-3). At the same time, Law 309 creates both new responsibilities and new opportunities for schools. Present conditions, both internal and external to schools, might impair the fulfilment of responsibilities and the enjoyment of opportunities available to schools.

First, schools require a new set of skills as well as information concerning their new responsibilities. Following the adoption of Law 309 schools had only minimal knowledge of the law and what it entailed (Stepanov 2010b). The interviews for this thesis exposed much confusion and, in several cases, a lack of information. Although specialists on education and nationality issues in Tatarstan were generally aware of the amendments, the majority of respondents in Karelia and Mordovia, and non-specialists in Tatarstan, tended to believe that Law 309 would not substantively affect teaching in the republics. This perception tended to coincide with vague notions of the amendments. Some had the erroneous belief that the amendments had been repealed. Even specialists in Kazan and Moscow had limited information, and were cautious in their predictions as to how the amendments would affect the teaching of minority languages and cultures. A respondent, an academic working on inter-cultural education in Moscow, said:

Moscow has given more power to individual schools, so they should decide [what to teach] on the basis of [the preferences of] the local population, but

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<sup>392</sup> See note 338.

it's not clear how. How it will be done is still not known. So the regions are suspicious, and they have full right to be suspicious [2.22].

One specialist explained that the confusion as to how to comply with the federal standards had led to schools simply prolong previous practices, and to continue to seek guidance from regional regulatory bodies [2.23]. In fact, no substantive changes had been made in minority education in the three republics by 2011.

Law 309, then, has placed schools in Russia in a procedural and legal limbo while practical guidelines are developed. Yet the resulting precariousness around minority education is not necessarily only a transitory, time-bound phase. While schools might ultimately be equipped with information, training and materials, other factors in the schools' external environment might intervene to restrict their scope of action to the detriment of minority education. Such factors relate to federal funding and Russia's socio-economic environment.

In the case of federal funds, schools in Russia have an interest in accommodating the needs of students and their parents as schools receive financing in a measure that is proportional to the number of students (Stepanov 2010a: 6). Denial of the opportunity to learn a minority language by a school might lead a pupil belonging to a minority to leave for another educational institution, thereby decreasing the first school's funds. Similarly, students who are uninterested in minority languages, even if themselves members of a minority, will prompt schools to reduce minority language teaching [2.15; 2.22]. This system can induce the monetisation of culture, with schools being driven by financial concerns rather than the accommodation of local preferences. Respondents working in education invariably referred to tight budgets, although schools are supplied with materials - such as textbooks on minority languages and cultures - free-of-charge.

Closely related to the issue of school budgets is the socio-economic environment that minorities inhabit together with the majority. Socio-economic conditions can, in practice, restrict the options available to minorities. The introduction of the requirement to hold the EGE in Russian language illustrates this: parents and students might decide, as a consequence, not to avail themselves of their legal right to education in a native language provided by Russian law.<sup>393</sup> Respondents from a variety of backgrounds made frequent references to an increasing number of parents opting for Russian-language education for their children, particularly following the requirement to hold the EGE in Russian.<sup>394</sup> Meanwhile, demographic shifts due to low birth rates,<sup>395</sup> financial constraints and migration from rural to urban areas in search of employment, have led to the closure of minority schools. This has particularly affected small village schools, where minorities are concentrated and where the language of instruction is more likely to be the language of the minority.<sup>396</sup> In 2011 it was reported that 700 village schools are closed a year.<sup>397</sup> These schools are no longer considered financially viable and tend to be closed as part of plans of modernisation of the education system. When there is no other minority-language school in the vicinity, pupils are left with no alternatives but joining Russian-language schools. Despite this, in its

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<sup>393</sup> Article 26(2) of the Russian Constitution (right to choose the language of communication and education), Article 9 of the Law ‘On the Languages of the Peoples of the Russian Federation’ (note 258) and Article 6 of the Law ‘On Education’ (note 70).

<sup>394</sup> For example, in early 2011, 600 parents of Tatarstan’s pupils, including ethnic Tatars, submitted an appeal to the Russian Education Minister to reduce or end the obligatory study of Tatar. Goble, P. 14-4-2011. ‘Kazan Parents’ Call for Studying Russian Not Tatar Sparks Conflicts about More than Language’, *The Kazan Herald*.

<sup>395</sup> The Russian population declined from 148.7 million in 1991 to 145.1 million (2002 census), and then to 142.9 million (2010 census, preliminary results). Only in 2009 was the decline reversed. See Russian Federal Service of State Statistics. <http://www.perepis-2010.ru/message-rosstat.php> (accessed 20-4-2011).

<sup>396</sup> With regard to Tatarstan and Tatar schools, see Simonova, I. 3-2-2007. ‘Kuda Idti Sel’skoy Shkole’ (‘What to Do with the Village School’), *Respublika Tatarstan*. In Karelia and Tver, the respondents noted that the depopulation of predominantly Karelian villages had meant a quick decline of the use of the Karelian language.

<sup>397</sup> Sokolova, V. 1-4-2011. ‘Serye Kardinaly Obrazovaniya’ (‘The Eminences Grises of Education’), *Sovershenno Sekretno* (‘Completely Secret’). <http://www.sovsekretno.ru/magazines/article/2758> (accessed 9-3-2011).

Third Report to the ACFC (2010) the Russian government stated that 33 languages were used as languages of tuition and 47 additional languages were studied as subjects. The figures had increased from, respectively, 30 and 45 languages reported in the Second Report submitted in 2005. The Third Report added that:

In recent years, a number of the subjects of the Russian Federation have significantly increased their networks of general education institutions that hold tuition in native languages.<sup>398</sup>

Hence, the Russian authorities describe a scenario where minority language education has increased where other sources indicate it has decreased. Suleymanova explains this discrepancy, with relation to Tatarstan, by noting that some schools that are recorded as schools ‘with an ethno-national component’ have in reality switched to Russian language for the teaching of several courses, confining the Tatar language to the teaching of Tatar literature and history (2011). This is due not only to a new concern for complete fluency in Russian (since the introduction of the Russian-language EGE) but also to a general devaluation of the status of the Tatar language following a brief Tatar renaissance in the aftermath of the Soviet Union’s collapse. The number of languages taught might not have decreased but the actual teaching might have been reduced or be generally scarce. In Karelia the teaching of the Karelian language was considered by the respondents from minority organisations and a school teacher as insufficient to provide fluency, with only two hours of teaching a week [1.2.1; 1.2.2; 5.1]. Thus, even if schools weigh the needs of parents and students, the teaching of minority languages and cultures might ultimately decrease as a mirror of ongoing socio-economic patterns which see the Russian language and culture as the pathway to financial viability. In this case, Russia’s centralising move (the Russian-language EGE) can directly

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<sup>398</sup> ACFC, (Third) Report submitted by Russia (note 132), p. 101.

shape decision-making at the local level, as schools and the local population adjust to the new provisions.

Finally, the new educational policies do not deal with further complexities. In the Kamalova case cited above, challenging the 2009 obligation to take the state exam in the Russian language,<sup>399</sup> the school shared the opinion of the parent who initiated the case, and wished to continue to hold exams in Tatar. Despite this agreement, the Supreme Court's ruling prevented the accommodation of the parents' wishes by the school. Another example was provided by a representative of a minority (Jewish) organisation in Moscow, whose son attended one of the city's schools. He said:

In schools there are textbooks on the bases of Orthodox culture... The music lessons have traditional Russian songs - Russian Orthodox songs. It is not for any particular policy [of Russian nationalism] but it's because that's what they [the teachers] know. There are no professionals in schools who have received training to deal with inter-religious issues [...]. I don't like a member of the clergy to go to my son's school, and my son to tell me that a priest has been there [to talk to the students about Russian Orthodoxy] [1.2.5].

The respondent was referring to religious classes that started in 2010.<sup>400</sup> The schools decided, together with the pupils' parents, on the type of religious education to be provided - including Russian Orthodox or Islamic variants, or a history of religions approached from a secular perspective. This example illustrates that, even in consultation with parents, some parental concerns can slip through the net of such discussions. In this case, the wishes of parents were considered collectively, and the school opted for classes on Orthodox religion as the majority of children in the school were Russian Orthodox. It is certainly difficult to involve wide sections of the local groups in permanent dialogue; at the same time, the

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<sup>399</sup> See note 387.

<sup>400</sup> Initially in pilot regions, to be extended to the whole of Russia. It followed lobbying by the Russian Orthodox Church to introduce the teaching of Russian Orthodoxy in Russian schools.

excessive flexibility of arrangements might lower the level of representativeness, as there is no obligation to ensure an inclusive process. Meanwhile, the rights of parents, and responsibilities of schools, remain undefined - for example it remains unclear when additional courses ought to be set up in a school to accommodate the linguistic or cultural needs of specific minorities. The lack of clarity on the exact scope of the schools' responsibilities, and of parents and students' rights, causes a lack of formal redress in cases of dissatisfaction.

To conclude, schools operate in an environment fraught with adverse socio-economic conditions vis-à-vis minority languages and cultures. Moreover, areas of legal uncertainty remain, as well as cases in which parental concerns remain unaccounted for. This is when the federal centre ought to step in, providing legal and procedural clarity for the actors involved in education processes, as well as coherent and sustainable policies that assist pupils, parents and schools withstand socio-economic pressures threatening the preservation of minorities' cultural heritage.

### **The Federal Centre: Laissez-faire**

As shown in Chapter 5, Putin's centralising, de-federalising policies have been a fundamental aspect of Russian politics since the early 2000s. At the same time, certain areas, such as education in minority languages and cultures, face a lack of a central coherent planning, supervision and support.

Legal clarity is one of the primary requirements for compliance with state obligations in the area of minority education, referred to in numerous ACFC Opinions.<sup>401</sup> The 2006 ACFC Commentary on Education states that:<sup>402</sup>

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<sup>401</sup> See, for example, ACFC, (First) Opinion on Estonia, 14 September 2001, ACFC/INF/OP/I(2002)005, § 51-2.



Legal certainty and clarity are preconditions for coherent implementation of the provisions of the Framework Convention, especially since the Framework Convention requires the concretization and contextualization at national, regional and local levels.<sup>403</sup>

Legal clarity is of particular relevance during decentralisation processes - when, as in the Russian case, local authorities and individual schools are delegated new responsibilities. Teachers, parents and pupils need to be aware of what decisions are taken and on what legal basis, if they are to participate in decision-making on educational matters, including minority education.<sup>404</sup>

The state parties to the FCNM are afforded a wide margin of discretion in establishing the rules for its implementation. The FCNM provisions themselves, such as Article 14(2) (education in a minority's language), are worded very flexibly, in light of the 'financial, administrative and technical difficulties' that may arise in the teaching of, or through the medium of, minority languages.<sup>405</sup> Depending on the resources available, the member states have to act 'as far as possible' and when there is 'sufficient demand'.<sup>406</sup> In its Second Opinion on Russia, the ACFC commented favourably on aspects of the flexibility of Russia's education system. It noted that the 'national-regional component', in conjunction with the schools' and federal components, provided a variety of options to pupils and students. According to this model, different educational institutions placed a greater or lesser emphasis on the learning of minority languages and cultures, yet they all operated within the same broad educational framework.<sup>407</sup> Clearly some flexibility allows for the accommodation of local needs. Cultural rights of minorities cannot

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<sup>402</sup> ACFC, 'Commentary on Education under the Framework Convention for the Protection of National Minorities', 2 March 2006, ACFC/25DOC(2006)002, p. 20.

<sup>403</sup> Ibid.

<sup>404</sup> Ibid.

<sup>405</sup> FCNM Explanatory Report (note 38), § 75.

<sup>406</sup> Article 14(2), FCNM; FCNM Explanatory Report (note 38), § 75.

<sup>407</sup> ACFC, (Second) Opinion on Russia (note 133), § 232.

be approached in a uniform, mechanical manner, but have to take into account the nuances of each group's special characteristics and needs in different territories - for example, whether or not a group is concentrated in a particular area or geographically dispersed.<sup>408</sup>

This flexibility, however, has to exist within a framework that offers sufficient guarantees to minority groups - particularly of a legal and financial nature.<sup>409</sup> Minimum standards have to be developed at the domestic level, following the analysis of the local conditions, resources and needs through a process that defines and then crystallises the rights of minorities. As noted, the right to receive an education in one's language is enshrined in the Constitution and other laws, but, despite this general framework, the contours of Russian legislation in minority education remain dim. Among the regulations that legislation should provide are clear thresholds on the number of pupils belonging to minorities that will activate the provision of new minority language classes. In Russia these decisions are left to individual schools, in the absence of specific thresholds and, according to the ACFC, a 'poorly defined' division of responsibilities between the local, regional and federal bodies.<sup>410</sup> The consequence is wide discretionary powers being vested in individual schools. This *laissez-faire* approach, the ACFC noted, does not provide sufficient guarantees for minorities to enjoy the right to education in their mother tongue, particularly in the case of small and dispersed national minorities.<sup>411</sup> Without specific guidelines, the Law 'On Education' (both pre- and post-309) is interpreted and applied differently in various regions and in different schools (Stepanov 2010b) - not only to tailor solutions to local needs, but as the standards

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<sup>408</sup> ACFC, Commentary on Education (note 402), p. 6.

<sup>409</sup> On the need of strong legal guarantees, see for example ACFC, (Second) Opinion on Switzerland, 2 September 2008, ACFC/OP/II(2008)002, § 67; 80. The Opinion further recommends regular dialogue between regional and federal authorities in implementing new legal guarantees (§ 17).

<sup>410</sup> ACFC, (Second) Opinion on Russia (note 133), § 251.

<sup>411</sup> *Ibid.*, § 248.

of application are left undetermined and do not form part of a coherent whole. In practice schools have provided minority language education even without specific federal regulations. This signals a local commitment and attention to minority needs, but these efforts are not buttressed by clear rights that parents can invoke.

Hence, the transfer of legal responsibilities from the regions to the centre and localities has inevitably caused an interlude of legal uncertainty. The situation has progressed only minimally between 2007 and 2011: for the most part, in 2011 Law 309 had still not been translated into practice. The ACFC recognised this type of impasse as problematic when it called not only for legal guarantees but also for them to be supplemented by implementing regulations and teaching practice.<sup>412</sup> For laws to be effective, the supervision of their enforcement also has to be effective. The ACFC has argued that reports by the state parties to the FCNM tend to skirt the issue of judicial enforcement, failing to provide details on the relevant jurisprudence.<sup>413</sup> Although these are generalised problems, Russia's specific characteristics - the large number of its minorities, ethnic federalism, and the existence of numerous 'minorities within minorities' - converge to create a particularly complex scenario, with different layers of demands. A lack of specific guarantees and thresholds means that there is only a minuscule body of jurisprudence in minority-related cases - the Kamalova case being one of the rare exceptions.<sup>414</sup>

Legal guarantees should fit within an 'active and coherent educational policy'.<sup>415</sup> This is an integral part of a government's responsibility in FCNM implementation: the state has to formulate and apply mechanisms ensuring that relevant measures cascade down to the different institutions that play a role,

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<sup>412</sup> ACFC, (First) Opinion on Italy, 14 September 2001, ACFC/INF/OP/I(2002)007, p. 58.

<sup>413</sup> ACFC, Commentary on Education (note 402), p. 20.

<sup>414</sup> Kamalova case. See Section 4.2 (note 270) and this section (note 387).

<sup>415</sup> ACFC, Commentary on Education (note 402), p. 10.

whether directly or indirectly, in its implementation, including schools. A coherent educational strategy should ideally be coordinated with a wider language policy (Council of Europe 2007). In the absence of such a strategy the efforts for the promotion of minority languages and cultures typically become fragmented, remaining a succession of isolated initiatives.<sup>416</sup> The ECRML includes provisions for the safeguard of minority languages encompassing several areas of language usage - education, judiciary, administrative authorities, media, cultural activities, economic and social life - reflecting a need to approach language preservation holistically for language policies to succeed. A coherent long-term strategy in education may involve bilingual education and also the provision of secondary and tertiary education - to enable students to consolidate and further develop their language skills.<sup>417</sup> Indeed, a frequent ACFC recommendation is the provision of education in minority languages in universities.<sup>418</sup> In this sense, the focus on individual schools (the small, rather than the big, picture) is myopic. While there are material impediments in guaranteeing substantial attention to all minority languages, particularly when they are as numerous as in Russia, there is a need for strategic choices. A Karelian activist in Petrozavodsk noted its absence in the following way:

Some work is done for languages - a bit here, a bit there - but there is no comprehensive policy. [1.2.2]

The federal state educational standards, adopted to serve as a guiding framework for individual schools, are themselves worded in vague terms. In relation to

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<sup>416</sup> ACFC, (First) Opinion on Italy (note 412), § 58.

<sup>417</sup> ACFC, (First) Opinion on Russia (note 133), § 97; ACFC (First) Opinion on Cyprus, 6 April 2001, ACFC/INF/OP/I(2002)004, § 39; ACFC, (First) Opinion on the United Kingdom, 30 November 2001, ACFC/INF/OP/I(2002)006, § 92.

<sup>418</sup> ACFC, (First) Opinion on Albania, 12 September 2002, ACFC/INF/OP/I(2003)004, § 105.

languages, they state goals rather than procedures and guidelines. The goals are described as, among others:

[I]mprovement of language knowledge (listening, reading speaking and writing) [...] [of the] understanding of the role of language in intellectual development [...].<sup>419</sup>

Finally, a state's positive responsibilities in the area of minority education include awareness-raising over the options for instruction in minority languages and cultures. The ACFC has noted that, although in some cases demand for education in minority languages is low in Russia, the fact that the right to minority language instruction is enshrined in federal legislation requires that the government makes students and parents aware of existing opportunities.<sup>420</sup> Awareness-raising is linked to creating an expectation that such rights will be realised if claimed (De Varennes & Thornberry 2005: 419). Low demand has already been discussed above and was raised repeatedly during interviews, with references to parents' preference for full fluency in Russian rather than in a minority language. Other respondents (of the categories 'civil society', 'academia' and 'school employee') referred to: poor facilities for the teaching of minority languages [1.2.1; 1.2.2; 1.2.8; 2.5; 2.13; 5.1]; a lack of professional prospects for bilingual teachers and scholars [1.2.9; 1.2.2; 2.2; 2.3; 2.5], or those who are fluent in minority languages [1.1.3 1.2.1; 2.2; 2.7]; and the barriers to taking the state exam in minority languages [2.6; 2.7; 5.2].<sup>421</sup> A Tatar respondent noted that these conditions mean that minorities have *no real choice* as to whether to preserve their cultural differences [2.7]. At the same time, fluency in a minority language should not jeopardise fluency in the state's official

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<sup>419</sup> Under the same category are 'Russian' and 'native languages' (of persons belonging to other nationalities). See the Standards (note 373).

<sup>420</sup> ACFC, (Second) Opinion on Russia (note 133), § 250. See also ACFC, (First) Opinion on the United Kingdom (note 417), § 91. The ACFC encouraged the British government to be more proactive in facilitating minority language education in areas where minorities are concentrated.

<sup>421</sup> This last issue was only raised by respondents in Tatarstan, as other regions had not been affected by it.

language. The ACFC has clarified that even in minority-language schools the majority language should be an integral part of the curriculum.<sup>422</sup> This approach was followed during the *travaux préparatoires* of Article 14 FCNM: the parties insisted on a compatibility of the protection of the minority languages through education while also, as De Varennes and Thornberry put it, ‘equipping the members of minorities with sufficient language skills to succeed in the broader society [...]’ (2005: 419). A proactive and positive approach to language pluralism convey the view that bilingual education can expand, rather than limit, one’s horizons in a plurilingual society.

## 6.2 *Inter-culturalism*

Special educational arrangements for minority groups can potentially lead to ghettoisation. This risk can be offset by efforts towards social cohesion through inter-cultural education and the media. These can serve as instruments to promote a sense of a plurilingual, multicultural society through the promotion of inter-culturalism in the public discourse. The idea of interaction between different cultures and groups, and their cross-fertilisation, is stressed by the suffix ‘inter’ of ‘inter-culturalism’.<sup>423</sup> This interplay is in the interest of both states and minorities: as noted in the ACFC’s Commentary on Education, governments have an interest in social cohesion (as a path to stability),<sup>424</sup> while minorities tend to desire social and economic integration.<sup>425</sup> Both elements are present in Article 29(1) of the UN

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<sup>422</sup> ACFC, (First) Opinion on Serbia and Montenegro, 27 November 2003, ACFC/INF/OP/I(2004)002, § 98.

<sup>423</sup> This leads to a supplementary distinction between multilingualism (the simple presence of different languages in a particular space) and plurilingualism (a coexistence of languages grounded on the appreciation of linguistic diversity - and a fundamental aspect of intercultural education) (Council of Europe 2007).

<sup>424</sup> ACFC, Commentary on Education (note 402), p. 9.

<sup>425</sup> Parents wish for good standards of living for their children. *Ibid.*

Convention on the Rights of the Child,<sup>426</sup> stating that education should be directed at promoting the respect for *both* the child's 'own cultural identity, language and values' and that of the country in which the child lives (paragraph 1(c)). Education should further nurture respect for 'tolerance [...] friendship among all peoples, ethnic national and religious groups [...]' (paragraph 1(d)). The FCNM refers to the inter-cultural perspective of minority rights, with relevance to 'intercultural dialogue [...] particularly in the field of education, culture and the media' (Article 6(1)) and to 'foster[ing] knowledge of the culture, history, language and religion of [...] national minorities and of the majority' (Article 12(1)). Plurilingualism does not only imply the majority learning the rudiments of minority languages, but also their appreciation and respect (Council of Europe 2007). In Article 14 FCNM, an emphasis is placed on the interaction and mutual understanding in the education system. Then, adaptability and efforts for interaction and integration have to come not only from minorities, but also from the majority. At the same time, there should be no prejudice as to the learning of the official language of the state<sup>427</sup> - again, to stimulate social cohesion and to keep the threat of ghettoisation at bay. Key to these processes is 'integration in diversity'.<sup>428</sup>

One of the respondents, the representative of a minority NGO in St Petersburg, had noticed initial steps in this direction, which she judged positively. She believed that activities to promote minority cultures in her city had become more outward-looking by involving inter-group dynamics. Earlier, she said, activities had been 'internal':

Now it is two directions: it's for the nationality [itself], but there is also the dissemination of information [outside the group]. [Activities] are not done

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<sup>426</sup> GA Res 47/135, adopted on 20 November 1989, entered into force 2 September 1990.

<sup>427</sup> Article 14(3) FCNM; Preamble and Article 8(1) ECRML.

<sup>428</sup> ACFC, Commentary on Education (note 402), p. 16. Also see Article 6 FCNM, and FCNM Explanatory Report (note 38), § 71.

with the *balalaika* but with education, with seminars. Before there was a certain closure, the [ethnic] groups were separated from the rest of society. Now there are people who come to our [Finno-Ugric] organisation who are Tatars or from other groups, but they are interested in other nationalities [...]. Some of the activities are shown on television. We want to stop national separatism, because nobody is 100% of a particular nationality, we are all mixed. [1.2.9]

The respondent implicitly criticised the folkloristic slant of some cultural programmes, welcoming a new effort towards education, while also stressing the importance of inter-group exchange. She referred to the media as contributing to the coming together of different societal groups, by educating the population on diversity. Other respondents were more critical of the media - which serves the crucial function of helping to shape societal self-perceptions.

### **The Media: The New Teacher**

As minority cultures and languages, and inter-cultural approaches, are sidelined in schools, the role of the media is correspondently enhanced. It serves the role of educator, including by shaping social attitudes towards minorities. This is particularly the case with the broadcast media: television is the main source of information in Russia, available in virtually every household (Ognianova 2009). The Russian media operates on two levels: it promulgates patriotism and it builds societal attitudes towards particular groups. In the first case, the media serves the function of nation-building, as described by Anderson (1991). In Russia, the media has contributed to creating a new identity for the country in its post-Soviet incarnation (Hutchings et al. 2010: 177). Hutchings writes:

Since 2000, Channel 1 has, without reverting entirely to totalitarian type, been enlisted in a nation-building campaign launched by Putin to restore Russian pride from the humiliations it had endured under Yeltsin. It is accompanied in this mission by the Rossiia channel, owned entirely by the government [...]. Channel 1 deploys “everyday patriotism” which, rather than grounding itself in the “ordinary,” aims instead to use the recurring



cycles of the daily news bulletin to promote heroically positive images of both Putin and Medvedev (2010: 178-9).

Two respondents, both journalists and representatives of media freedom organisations in Moscow, were asked to elaborate on the role of the Russian media in the minority discourse [3.9 and 3.10]. The first respondent said that Russian patriotic themes are evident on television and state-funded cinematography.<sup>429</sup> The multiplication of patriotic messages in the state media has coincided with the increasingly frequent coverage of the Russian Orthodox Church on television [3.9]. The broadcast media can easily be employed to accommodate the interests of the leadership, as the main television channels are controlled by or closely associated to the state. The second respondent similarly said:

The state media promotes a patriotic agenda, traditional values. The Orthodox Church has a big role. The media contains themes of the Russian and Soviet empires [...]. The Prime Minister [Putin] in particular reminds us of our 'glorious past', which is useful during electoral campaigns. [3.10]

In line with this, Hutchings writes that Putin's leadership has intensified nation-building in the broadcast media through 'patriotic' programmes. These included:

[A] series of made-for-television dramas celebrating the Great Patriotic War and depicting triumphs from pre-revolutionary Russia's history, and a number of programmes idealising the daily work of Russia's security forces and Secret Service [...]. [O]nly months after the end of the South Ossetian conflict in late summer 2008 [...] a glossy television film portraying the "truth" about Georgian atrocities (*Olympius Inferno*, Igor Voloshin, 2009) [was broadcast] [...] (2010: 179).<sup>430</sup>

Patriotic programming can be construed as a form of Billig's 'banal nationalism': the presence of nationalistic themes of which the members of society might not be aware, but that affect them through their pervasiveness in daily life (2004). While

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<sup>429</sup> He further noted that in some regions the regional media had been used to shape regional national identities, in antagonism to the Russian identity.

<sup>430</sup> See also Hutchings & Rulyova (2009).

the broadcast media is imbued with patriotic themes of Russia's greatness, Hutchings argues that there has been 'little evidence' of an inversed 'banal nationalism' in the form of a positive portrayal of minority cultures that could advance their respect and appreciation (2010: 179).

The Russian media's second form of potential impact on society is the sparking of tensions between ethnic groups. The UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance has written about the 'dissemination of racist and xenophobic ideas and stereotypes by an increasing sector of the media, which has contributed to 'a negative image of certain communities and [to] fostering feelings of intolerance and xenophobia'. This has been the case, in particular, with Roma and Tajiks - associated with drug trafficking and crime in the media - and Caucasians, particularly Chechens - associated with terrorism.<sup>431</sup>

International standards envisage the opposite role for the media - that of fostering tolerance and pluralism. The Council of Europe's Committee of Ministers describes the role of the public service broadcaster as 'as an essential factor of pluralistic communication'.<sup>432</sup> It adds that public service broadcasters have a responsibility to promote a culture of tolerance and understanding, and that the broadcast media generally is 'a potent force for creating an atmosphere in which intolerance can be challenged'.<sup>433</sup> The use of minority languages is also foreseen in public broadcasters.<sup>434</sup>

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<sup>431</sup> Report by the UN Special Rapporteur on Contemporary Forms of Racism (note 200), § 46.

<sup>432</sup> Recommendation No. R (96) 10 of the Committee of Ministers of the Council of Europe to Member States 'On the Guarantee of the Independence of Public Service Broadcasting', 11 September 1996.

<sup>433</sup> Appendix to Recommendation No. R (97) 21 to Member States on the Media and the Promotion of a Culture of Tolerance, 30 October 1997, Point 5.

<sup>434</sup> The OSCE Guidelines on the Use of Minority Languages in the Broadcast Media (2003) state: States should prescribe appropriate requirements for State or public service broadcasters with regard to the provision of programming in minority languages.

The media is a double-edged sword: it can further both tolerance and intolerance. Russia has no public service broadcasting whose stated role is that of serving the needs of the public - encompassing its numerous social strata and groups, including by devoting special attention to national minorities.<sup>435</sup> There is no provision for minorities to feed into decision-making on programming. The first journalist interviewed argued that in Russia decisions on broadcasting were taken on the basis of two factors: politics and ratings [3.9]. The portrayal of politics does not tend to embrace minority concerns, while ratings privilege entertainment programmes. Coverage of themes related to minorities only occurs in the case of major incidents, as in the ultra-right, racist rallies that resulted in riots in Moscow on 11 December 2011, to subsequently spill over to other Russian cities.<sup>436</sup> Even in this case, he believed that the coverage was ‘wide-spread but not in-depth’ [3.9]. The second journalist similarly stated:

In general each channel deals with the promotion of mainstream politicians and entertainment [...]. Officially there is no censorship but channels try not to upset people in power and get as much money as possible from the channels. [3.10]

As little information on minority issues reaches the mainstream media, with the exception of serious incidents involving minorities or festivals with a folkloristic flavour, the activities of organisations devoted to minority cultures remain largely confined to a narrow circle of supporters. Similarly, media in minority languages, although highly valued by representatives of minorities, has limited reach. It leads to the localisation of minority media; this should be counterbalanced by the federal

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Additionally, Article 11(1) ECRML stipulates that the public broadcasters must address the needs of the users of minority languages. The ACFC has further noted that minority concerns should be regularly mainstreamed in the in the media. ACFC, (Third) Opinion on Croatia, 6 December 2010. ACFC/OP/III(2010)005, § 125; 131.

<sup>435</sup> PACE, ‘Public Service Broadcasting’, 21 January 2004, Doc. 10029 Addendum.

<sup>436</sup> See SOVA, ‘Winter 2010-2011’ (note 257).

state broadcaster, with programming that reflect the country's ethnic pluralism, in a genuine inter-culturalist effort.

### **6.3 Conclusion: Tensions between Centralism and Localism**

This and the previous chapter, on 'Homogenisation', revealed egregious complexities in the preservation of Russia's cultural wealth that international law is not equipped to withstand. Processes for the promotion of minority languages and cultures in Russia's educational space are caught between localising and centralising tendencies. Centralising tendencies are those that raise the status and financial viability of the Russian language and culture, such as the requirement to take the state examination in Russian, as well as legal reform 'from above', short of consultation with minority groups. Localising moves place new rights and responsibilities on individual schools through Law 309 by expanding the segment of the curriculum which they can, at least nominally, independently devise. Federal involvement seems to fluctuate between the two coexisting poles of macro- and micro-management - with the imposition of regulations without consultation in some areas and *laissez-faire* attitudes in others. Meanwhile, the role of the 'middle level' - that of the subjects of the Federation - has been downgraded.

If we accept Grin's contention that participation is facilitated through decentralised arrangements,<sup>437</sup> localism at the sub-regional level may represent a progression towards the satisfaction of the needs and wishes of minorities, and with greater compliance with international standards. Russia's history includes a legacy of local self-organisation to cater for the needs of the local populace.<sup>438</sup> In post-

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<sup>437</sup> See Section 2.3.

<sup>438</sup> See Section 2.3.

Soviet Russia, data from the interviews<sup>439</sup> indicate that schools interact with parents and students and, in a number of cases, accommodate them. However, this chapter has shown that devolution is not enough. Specific efforts need to be made by the federal state for the preservation of minority languages and cultures through the education system. Such efforts entail legal clarity, and, even more crucially, a coherent educational policy. Minorities and individual schools are not part of a Federation-led coordinated framework that can revitalise minority language use, and reverse processes of linguistic assimilation. Rather, the Russian-language EGE encourages assimilation as an instrument for full integration in society; these processes appear to be linked to current moves towards the promulgation of a Russian patriotic discourse, built around a Russian civic identity (Daucé et al. 2010). The aim is not necessarily that of ‘Russianising’ nationalities, but rather to simplify and strengthen Russia’s governance. Still, such discourses - reflected in the media - together with prevalent socio-economic conditions inimical to minority language use, make the preservation of minority cultural heritage a remote possibility without a more proactive stance by the state. Indeed, in a republic like Karelia, where Karelian speakers are a small minority, the use of the language continues to decline.

Having reduced the republics’ legal powers, there is an increased atomisation of the Russian educational space, broken down to individual schools operating along loose federal standards. The rights of minorities remain opaque and difficult to pin down, exacerbating the difficulties of solidifying guarantees around them. New forms of centralism and localism are therefore needed, namely: efforts from the centre in delineating and implementing a coherent strategy for minority education and inter-culturalism - in cooperatoin with the regions and minorities;

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<sup>439</sup> Particularly with school employees in Petrozavodsk and Kazan [5.1; 5.2].

and localities and schools that are equipped to implement this strategy. Rather than a dichotomous system, the two sides need to be part of incessant, sustained efforts to preserve culturally-distinctive identities, and prevent the progressive impoverishment of Russia's linguistic and cultural pluralism. The media as educator has a crucial role to play in these processes.

The Russian authorities' approach suggests a dilution of ethnicity as a route to levelling difference, perceived as a shortcut to a social equality based on standardised values. The reassertion of Russianness appears to be fed by a perceived 'threat' of multi-ethnicity well captured by a statement by M.N. Kuz'min. A former Director of the Institute of National Issues in Education of the Ministry of Education and Science, in 2004 Kuz'min argued:

Compared to mono-ethnic countries, multi-ethnicity predestines a country to less stability, to the presence of additional areas of inner contradictions (2005: 16).

This was echoed by the observation of one of the respondents from Tatarstan:

In Moscow there is a prejudice, a fear that if Russia has too many strong ethnicities and languages there will be problems. [4.7]

Similarly, a high-ranking public official working on nationality issues argued in an interview that state policies for the preservation of ethnic diversity are 'both good and bad' [4.18]. Although 'positive' in allowing the preservation of minority cultures, they are 'negative' inasmuch as they create fragmentation. There is an echo of anti-multiculturalist arguments, and of Anderson's preoccupation with forms of sub-nationalisms surfacing with force to de-stabilise the country.<sup>440</sup> Indeed, the Tatars who called for the use of the Latin, rather than Cyrillic, alphabet

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<sup>440</sup> See Section 2.2.

in Tatar-language texts have been linked to separatism and described as a ‘threat to national security’.<sup>441</sup>

The interviews revealed negative perceptions of contemporary nationality policies by persons belonging to minorities. A recurring perception is that the authorities, while to some extent accommodating minorities, prevent alternative ethnic identities from flourishing into something more than marginal - for example, preventing children from becoming more fluent in Karelian than in Russian, as in the above example of ‘language nest’ nurseries. It reinforces the feeling of ethnic minorities not having a ‘real choice’ over the preservation of their distinctiveness, and of being forced into a cultural straitjacket. In this context, then, the key international standards concerning minority rights were largely unable to withstand Russia’s homogenising dynamics. In turn, for international standards to make a difference, Russia has to embrace its positive responsibilities in the areas of education and the media, transcending forms of *laissez-faire* and benign neglect, and encouraging minority participation in decision-making in both spheres. In light of this, it is on minority participation that the final part of the thesis focuses.

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<sup>441</sup> In a report presented before the Russian parliament, cited in Saiganova, S. 8-2-2001. ‘Turki Royut pod Russiyu cherez Tatarstan’ (‘Turks Get into Russia through Tatarstan’), *Vremya i Den’gi*, p. 24. On the issue of the Latin script, see Sections 4.2 and 5.1.

## **PART 3: EXCLUSION**



## 7. PARTICIPATION THROUGH COOPERATION? CIVIL SOCIETY AND MINORITIES' CULTURAL RIGHTS

*'Я имею право...'*  
*'Да, Вы имеете право.'*  
*'Не закончил, имею право...'*  
*'Да, конечно.'*  
*'...Тогда я могу...'*  
*'Нет, не можете!'*

*'I have the right...'*  
*Yes, you have the right.'*  
*'I didn't finish, I have the*  
*right...'*  
*'Yes, you have the right.'*  
*'... Then I can...'*  
*'No, you can't!'*  
*[Russian joke]*

Part II has shown that international standards on minority protection have been unable to withstand the homogenising tendencies under Putin and Medvedev. In Part III of the thesis, 'Exclusion' (Chapters 7, 8 and 9), I focus on whether international standards have a role in promoting the participatory rights of national minorities. I analyse opportunities for minorities in Russia to participate in decision-making and programme implementation on cultural matters; and I ask how, if at all, international mechanisms play a role in these dynamics.

In the three chapters of Part III, I differentiate between general cooperation between the state organs and civil society (analysed in Chapter 7) *and* official mechanisms of participation, such as advisory councils and elected bodies (Chapters 8 and 9). Chapter 7 further incorporates considerations on the right of association (Article 7 FCNM<sup>442</sup> and Article 11 ECHR<sup>443</sup>), while Chapters 8 and 9

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<sup>442</sup> Article 7 FCNM:

focus on the right to participation as provided by Article 15 FCNM.<sup>444</sup> The right to association and participation overlap and form a continuum: in line with the FCNM, minority groups have the right to self-organise without interference from the government; and, in turn, the government must involve these self-established groups in decision-making processes.

In the context of cultural identity, participatory rights are essential in the formulation of effective minority policies, reflecting minorities' claims, but they are probably the most complex rights to delineate and regulate. Difficulties in implementing participatory rights exist in all countries: international standards are so flexible as to sometimes seem ephemeral, and there are logistical difficulties in the establishment of effective mechanisms to channel stakeholders' needs to higher, decision-making levels. These are due to an interplay of factors, including possible majority-minority tensions, in-group differences, and the issue of accountability of representation. At the same time, the benefits of participation are manifold. The inclusion of the various societal groups in the political and cultural life of a country facilitates a sense of 'joint ownership' of the state and its policies. It lessens possible feelings by minority groups of being subdued by a dominant group, and helps maintain peace and stability, through harmonious minority-majority relations. Ultimately, it assists the social integration of all groups, facilitating their genuine equality (Hofmann 2006: 6; 17).

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The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

<sup>443</sup> Article 11(1) ECHR:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others...

Paragraph 2 contains some narrowly-defined restrictions to this general right. The right to association is discussed particularly in Section 7.3.

<sup>444</sup> Article 15 FCNM:

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

The right to association, analysed in this chapter, refers to an organisation's right to 'exist', through its recognition as a legal person, and to freely operate.<sup>445</sup> The importance of this right is stressed by Machnyikova, and linked to minorities' ability to promote their rights *as a group*:

The right to freedom of assembly and association is one of the central rights, whose free enjoyment is essential for the preservation of the identity of persons belonging to national minorities, since it is geared towards persons uniting and associating to express and protect their common characteristics and interests. In fact, the right to associate is a precondition for the existence of a group (2005: 204).

By uniting, minorities accumulate force to more strongly call for their rights.

In addition to the FCNM provisions already cited, of relevance to participation is Article 8 FCNM (right to manifest one's religion or belief, including by establishing religious associations), and Article 7(4) ECRML, which states:

In determining their policy with regard to regional or minority languages, the Parties shall take into consideration the needs and wishes expressed by the groups which use such languages.

Similarly, one of the subparagraphs of Article 12 ECRML, on 'cultural activities and facilities' is:

[T]o encourage direct participation by representatives of the users of a given regional or minority language in providing facilities and planning cultural activities.<sup>446</sup>

The implementation of these provisions requires special mechanisms such as advisory councils: institutionalised points of contact between the authorities and

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<sup>445</sup> Article 7 FCNM and the Article 11 ECHR also provide for the right to freedom of assembly: the right to engage in peaceful demonstrations.

<sup>446</sup> Article 12(1)(f). 'Soft law' standards are also found in the Lund Recommendations (note 131).

stakeholders.<sup>447</sup> In addition to these mechanisms, an essential ingredient in effective participation is an environment that is favourable to pluralism and receptive to input from society's different groups. Optimal conditions are created by a common 'Civil Society' composed of different ethnic communities (Klinke & Renn 1997: 257). This guarantees a 'civic culture' for democratic stability (Almond & Verba 1989), with mutual respect and recognition (Shils 1991), and the appreciation of pluralism (Ghai 2000: 16).

In Chapters 7 to 9 I argue that in Russia there are hindrances to the application of both international obligations on freedom of association (Article 7 FCNM and 11 ECHR) and to the right to participation (Article 15 FCNM). In particular, Chapter 7 shows that international standards have a limited role in advancing the rights of Russian civil society associations - a role that is largely confined to mediation in internationally-sponsored events, and to the protection of the (negative) rights of associations, through non-interference in their operations.<sup>448</sup> The limitations of the role of international standards stem from the fact that Russian civil society operates in an environment that is, overall, unfavourable to its input in decision-making and in the implementation of programmes on minorities. Three main reasons are identified and addressed below. First, public discourse on minority issues - and, thus, dialogue between the state and civil society - is confined to themes that do not overstep pre-established boundaries, remaining in the realm of 'culture' per se, rather than 'cultural rights' or 'minority rights'. Second, the state's approach to civil society rests on a limited receptiveness of civil society initiatives, and on essentially *ad hoc*, and therefore precarious, modalities of cooperation. Informal practices and political considerations are variable factors affecting the fortunes of civil society, in an environment where windows of opportunity appear

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<sup>447</sup> These are analysed in chapters 8 and 9.

<sup>448</sup> The latter stems from the jurisprudence under Article 11 ECHR.

and vanish *ad hoc*. Third, civil society is in a position of vulnerability, due to legal restrictions to its activities - with occasional direct infringements of the right to association - and a paucity of funds available to it. Hence, depending on the circumstances, the Russian authorities may respond to civil society's activities on minority cultures in any of the following ways: though cooperation and support; with indifference and disinterest; or with the creation of obstacles by erecting walls around civil society activity.

By the expression 'civil society' I mean Russia-based non-profit organisations, many of which are run by minorities themselves, that promote minority rights in Russia. In this chapter I also consider research institutes working on minority issues, both at the federal and regional levels. I exclude National Cultural Autonomies, which are analysed in Chapter 8; reference to National Cultural Autonomies is made in this chapter only with regard to funding.<sup>449</sup> The interviews that provided data for this chapter were held with representatives of: minority NGOs (9), cultural associations (4), congresses of peoples (3), National Cultural Autonomies (2), human rights NGOs (7), academics (14) and public officials (7).

## **7.1 The Boundaries of Public Discourse**

In this and the next two sections I examine the three factors listed above, inhibiting the potential impact of international standards on minority participation in shaping the nationality discourse. The first factor consists in the boundaries placed around this discourse by the Russian authorities. The interviews revealed a selective response by the authorities to issues raised by minorities, with a disinclination to

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<sup>449</sup> Analysed in Section 7.3.

engage in ‘hard talk’<sup>450</sup> - discussion on politically sensitive matters not fully aligned to the official position - *or* to deviate from consolidated patterns of approaching nationality issues. This has led to a public discourse on the *cultural development* of national minorities, rather than their *rights*. In a report to the Parliamentary Assembly of the Council of Europe, this process has been called ‘folklorisation’ of minorities - a perception that minorities’ linguistic and cultural rights are approached as folklore.<sup>451</sup>

In line with this approach, the Russian state typically encourages the celebration of diversity, yet in its archaic, frozen forms, with festivals celebrating national dances and customs - a form that bears little resemblance to minorities’ post-Soviet conditions. And, one may add, it is a form that is for the most part extinct, and therefore presents no threat to Russianness. Writing about Mordovia, Abramov traces the origins of ‘folklorisation’ to the Soviet period. In the 1960s, he writes, the teaching of the Mordovian languages in schools was abolished, with ‘colossal harm’ for national culture in education, journalism and literature:

[T]he national aspect, in essence, was limited only to folklore, which strengthened its primitive character and precluded the development into modern forms (2010: 121).<sup>452</sup>

A respondent from Karelia, working on the promotion of the Karelian language in the republic, echoed this, saying that ‘language issues are mixed with folklore’ [1.2.2]; if the two issues were disaggregated, she suggested, it could lead to more nuanced (and effective) state policies on language teaching and language development. In one ethnic festival observed by the author,<sup>453</sup> the participants declared their satisfaction at their freedom to express themselves through their

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<sup>450</sup> The expression ‘hard talk’ is mine, and used to summarise the points made by the respondents.

<sup>451</sup> PACE, Doc. 11087 (note 235).

<sup>452</sup> Citation translated from the Russian by the author.

<sup>453</sup> A Mordovian festival outside the Republic of Mordovia, June 2010.

national forms, primarily national music. The participants belonging to minorities celebrated their ‘wonderful neighbours’ - other nationalities with whom they had peacefully shared the same territory. The event was imbued with a theme supposedly unifying nationalities living in Russia but also with sentiments of ‘Russian pride and patriotism’ derived from the ‘Great Patriotic War’.<sup>454</sup> The party United Russia had flags scattered around the festival area.<sup>455</sup>

Some respondents (civil society and academia) believed that celebration of minority cultures was superficial - a palliative not reaching underlying problems [1.2.1; 1.2.2; 1.2.9; 1.5.7; 4.14; 2.16]. Indeed, the specificities of cultural and linguistic rights tend to be left at the periphery of the minority rights discourse, and circumscribed to narratives of the coexistence of cultures and ‘tolerance’. At the opposite end of the spectrum is the flip-side of ‘tolerance’, ‘extremism’ (Osipov 2010), which also enters the public discourse through official pronouncements featured in the media. The duality tolerance-extremism oversimplifies complexities relating to, for example, social integration, discrimination and stereotyping. It singles out a few problematic elements in society (the ‘extremists’) rather than highlighting patterns right across Russian society. In 2006 the Russian authorities reacted angrily to a report by the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, that had found widespread discrimination against and harassment of certain, particularly disadvantaged, minorities - principally darker-skinned people, such as Central Asians, Caucasians and African immigrants.<sup>456</sup> A representative of the Russian

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<sup>454</sup> Several mentions of the Second World War were made at the event, as the year 2010 marked the 65th anniversary of the Allies’ victory.

<sup>455</sup> On United Russia, see Section 9.2.

<sup>456</sup> See note 200.

authorities condemned the report and its ‘far-reaching conclusions [...] based on unproven data and falsifications [...]’.<sup>457</sup>

This is not to say that folklore and ethnography are unimportant. On the contrary, their importance was stressed by some of the respondents. Karelians from the Republic of Karelia and from Tver noted that, after what they perceived as their ethnicity’s repression during the Soviet period,<sup>458</sup> they were able to overcome feelings of shame about their ethnic origins, and find pride in their nationality, through festivals, as they enabled them to openly celebrate their cultural uniqueness. Tatars similarly noted the importance of celebrating traditional Tatar national holidays and festivals. The representative of an NGO and analyst believed that Russia’s support of festivals indicated the Russian government’s symbolic acceptance and respect for minorities [1.5.1]. Another respondent saw them as occasions for persons belonging to minority associations to bond and attract new recruits [1.2.1]. Yet the Russian authorities might be effectively instrumentalising these events and cultural programmes to channel nationalistic sentiments in a purely cultural direction. The focus on festivals can detract from opportunities to implement more profound, long-lasting changes - or from in-depth public discussions on legal reform likely to impact on minorities, such as Law 309.<sup>459</sup> The respondents (civil society and academia) referred to other issues that do not commonly reach the public domain, including the low salaries of language teachers [1.2.2; 2.7], and the closure of ethnic schools on the grounds that they are not financially viable [1.2.2; 1.1.4; 2.5].<sup>460</sup>

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<sup>457</sup> See note 201.

<sup>458</sup> The word ‘repression’ was used by Karelian respondents (academics) in Petrozavodsk and Tver [2.4; 2.5].

<sup>459</sup> See Chapter 6.

<sup>460</sup> As noted (Section 6.1) this can leave students that had been studying in their national languages with no choice but to join schools with Russian-only education.



As an example, I reproduce an excerpt from an interview with a respondent from Karelia (a representative of a civil society organisation working on minority cultures), illustrating what she perceived to be the superficial approach of post-Soviet nationalities policy:

The [Karelian] Ministry on Nationality Policy<sup>461</sup> doesn't look for solutions to serious problems [...]. When you want to talk about things that are serious, they just don't want to [...]. For example, we talk about the publication of children's books [in minority languages]. Already for years we have said that if we have a Finnish magazine for children, let's also have one for Karelians and Veps, or otherwise divide the money available in equal parts. Nothing happened. One starts getting tired by how difficult it is. But the money is there for events [festivals] [...] [these events] are empty of meaning [...]. They need to go much deeper. [1.2.1]

Similarly, another respondent belonging to the same category said: 'When we want to discuss something serious it is avoided by the authorities' [1.2.2]. Issues such as the one raised by the first respondent (minority language publications) relate to non-political, cultural matters, but they may be vulnerable to marginalisation if they do not correspond to the local authorities' priorities and consolidated modalities of approaching nationality issues. A Mordovian academic and activist observed that the beneficial effects of festivals, noted above, could be achieved with much fewer events so that other activities could be more adequately funded [2.14].<sup>462</sup> His interpretation was that the Russian authorities had made festivals the centrepiece of their nationality programmes as they were relatively easy to organise, allowing them to demonstrate a commitment to a multi-ethnic country without engaging in complex, wide-ranging reforms for the accommodation of minorities. This interpretation fits with the theory of Russia pursuing stability through an all-encompassing Russian patriotic idea rather than the promotion of diversity - while

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<sup>461</sup> The full name is Ministry of the Republic of Karelia on Issues of Nationalities Policy and Relations with Religious Associations.

<sup>462</sup> None of the respondents from civil society had been involved in decision-making on the use of government funds, or participated in targeted discussions on this issue. Minority organisations may submit project proposals that may or may not be approved by the authorities. See Section 7.3.

also maintaining the (superficial) image of a multicultural, multi-ethnic and multi-faith country. Meanwhile, the tendency to folklorisation and the superficiality of the minority discourse was found by some respondents to hamper their activities and cooperation with the authorities. Restricting the scope of debate to an emollient language on cultural programmes limits the options for minority needs (as *rights*) to be articulated and taken into account in policy-making. A respondent from a minority NGO in St Petersburg said:

I must say that they [the authorities] prefer to make beautiful things. Like different folkloral festivals for example. Something you can show. We did something good [that fits into this framework]: an [itinerant] museum, moving from place to place, for Finno-Ugric people from the region. But I think the main problem for us is losing our national identity and most importantly losing our language. [1.2.8]

This respondent implied that the state's preconceptions over the formats of cultural programmes for national minorities forced his organisation to reformulate its priorities. While overall satisfied with the itinerant museum, this initiative had not assisted the minority NGO with what it identified as the ethnic group's primary concern - that of the loss of its linguistic identity.

## **7.2 Civil Society and the Authorities: Working Together, Sometimes**

A second hindrance to the application of international standards on minority participation can be found in the over-reliance on personal networks that characterises the cooperation between the Russian authorities and civil society. While these networks may benefit minorities, their regulation remains undefined, impeding the application of international standards - particularly the principle that

the needs of minorities should be taken into account prior to decision-making affecting them.<sup>463</sup>

Civil society and the state can be mutually reinforcing. Respondents from civil society saw support from and cooperation with the authorities as a fundamental vehicle for the success of their activities. One activist working on the education of children of a national minority described the importance of cooperation in this way: ‘there is no point in producing educational materials that will not be institutionalised [and therefore remain unused]’ [4.14]. In turn, the state, given its finite resources, can benefit from civil society. In the ethnic republics visited, the state had outsourced grammar books for the teaching of minority languages and financed Sunday schools and adult education classes on minority languages, as well as events such as the traditional Tatar festival *Sabantui*. Such events were all organised by minority associations. The respondents from the ‘civil society’ category (in Petrozavodsk, Saransk and Voronezh) noted that in some such cases they had forged fruitful cooperation with the authorities, primarily at the local level - perhaps due to the distance from the ‘core’ policies formulated in Moscow - allowing them to further their interests [1.1.1; 1.1.2; 1.2.6; 1.2.9; 1.3.1; 1.3.2; 1.4.3]. Civil society’s most significant contribution is where it complements, and sometimes substitutes, state programmes. Among the respondents were representatives of organisations that: acted as focal points for other minority organisations and groups, facilitating joint activities; engaged in capacity-building of younger organisations; provided training for activists (on human rights in Russian and international law); trained law-enforcement officers or public officials on minority issues; provided legal advice and representation in court to minorities, particularly in discrimination cases; provided *fora* for discussion for representatives

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<sup>463</sup> This is linked to effective participation. See Section 8.1 and Chapter 9.

of government and civil society, including minority groups, to promote dialogue and joint problem-solving. The respondents also cited cases in which the Russian authorities had solicited input from civil society specialists and academics in the formulation of policies. An example from Tatarstan concerned an active exchange in the preparation of federal educational standards for primary schools. A representative of the Institute of History of Tatarstan's Academy of Sciences noted in an interview that the Institute had been consulted by the federal Ministry of Education throughout the entire process. [2.7]. In Karelia, one of the respondents, an academic in Petrozavodsk, was among the drafters of a nationalities policy for the republic [2.4].

Analysts interviewed saw as an essential ingredient for cooperation between civil society and the authorities - and for furthering minority rights generally - the maintenance of good relations between them [1.5.1; 2.14; 2.15; 2.17; 2.19]. Indeed, most respondents of the 'civil society' category had sought cooperation rather than confrontation or lobbying, and had relied on personal networks. The drawback of such informal arrangements is that much is left to the discretion of the local authorities, or even individual public officials - and the commitment of local authorities was sometimes found to be wanting by the respondents. They cited varying levels of commitment and support in different cities or regions; or even at different times in the same region, as a supportive public official's position could be left vacant, through personnel cuts or internal restructuring,<sup>464</sup> or occupied by a person with different priorities. A respondent from a minority NGO in St Petersburg said:

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<sup>464</sup> A respondent said that, shortly before the interview, the Ministry of Education of Karelia had lost a committed public official, who had been active in the area of minority education for Karelians and Veps [1.2.1].

Any level of the administration [...] depends on the public officials. And also on their position, and whether a particular position exists. Before there was no department on nationality issues [in St Petersburg], then a public official requested it, and they created it [...]. Some of the work is decorative but we still managed to do important things [with the new department], like new publications. [1.2.9]

Some respondents believed that regional imperatives also influence performance.

The director of a minority NGO in Karelia said that ‘all authorities have their own priorities’ [1.2.1]. She particularly saw as problematic what she believed was an attitude of indifference often displayed by the authorities. With regard to the teaching of minority language, she said:

If there wasn't a group of activists nobody would do anything. The state doesn't take the initiative. [An NGO] started to prepare materials [for schools]. Then they distribute them. And the authorities never admitted that this type of materials has to be provided [by the state] by law. Instead [the NGO] takes the materials to schools, and, if the local authorities are not against, they can be used [...]. The federal authorities are completely uninterested. [1.2.1]<sup>465</sup>

Practical considerations also come into play: for example, cities tend to have more funds than rural areas. A respondent, an academic and Tatar activist from Kazan, summarised the situation as follows:

The authorities have things that they absolutely must do, and things that they can do if they wish to. Nationality issues are in the second category, they are optional. [2.6]

Similarly, another respondent, the director of an NGO working on inter-ethnic relations in Moscow, believed that interest in and commitment to international standards depended on individual public officials and institutions. Even allowing for exaggeration from some of the respondents, the absence of precise programmes

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<sup>465</sup> The government of Karelia does provide materials for the study of minority languages free of charge, but these were deemed to be insufficient by the respondent. A school employee in Karelia noted that her school had to make do on the limited resources available [5.1].

for the preservation of minority cultures point to a volatility of these initiatives. Meanwhile, the vertical system of appointment that has replaced elections<sup>466</sup> has led to a situation where local authorities have a higher degree of accountability to their superiors than to the public. According to Russian civil society organisations that authored the 2006 Shadow Report to the ACFC, in the period 2004-2006 contacts between minority NGOs and federal ministries were only sporadic, with ‘no overall cooperation’.<sup>467</sup>

While establishing optimal mechanisms for representation is certainly a challenge everywhere,<sup>468</sup> in Russia the Soviet legacy of centralisation has led to the marginalisation of bottom-up initiatives. The Soviet Union hinged on hyper-centralism - hardly a likely precursor to participatory democracy. A Tatar scholar interviewed in Kazan expressed the following opinion during an interview:

During the Socialist period all was based on collectivisation [...]. All private life was controlled, people lived off what came from above [...]. The first secretary [of the Tatar Autonomous Soviet Socialist Republic] was a Tatar, with the second secretary a Russian, who was there to control him. The centre established all. [2.6]

The interviews included no questions on the Soviet period, but the respondent introduced the theme to emphasise the origins of centralised, top-down decision-making, while also noting restricted regional autonomy vis-à-vis Moscow. In post-Soviet Russia, Putin’s power vertical, by centralising decision-making and favouring appointments over elections, has created a system that limits entry points for civil society in decision-making. This was emphasised by an activist from Karelia, who believed that opportunities for campaigning and consultation had

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<sup>466</sup> See Section 5.2.

<sup>467</sup> Shadow Report ‘On the Implementation of the Framework Convention for the Protection of National Minorities by the Russian Federation’, February 2006, § 348, and ACFC, (Second Opinion on Russia (note 133), § 90. The ACFC, in the Second Opinion, added that advisory councils ‘are expected to implement rather than contribute to the preparation of minority-relevant legislation’ (§ 90).

<sup>468</sup> See, for example, Phillips (1991).

decreased with the consolidation of Putin's power [1.2.1]. Indeed, many achievements in the area of minority rights, such as the opening of schools in national languages, were secured immediately following the Soviet Union's collapse. In some, more recent, cases, even concerted action, along with substantial numbers and the influence of lobbyists, have not borne fruit (as in the case of Law 309<sup>469</sup>). With activists restricted in their scope of action, a highly centralised political system has discouraged grassroots initiative, leading to inertia, as suggested by Konuykhov:

The leading role of the state shaping virtually all life aspects of ethnicities has, possibly, formed a paternalistic and latent model of interaction. Their paternalistic pattern of interaction brings inertia in the ethno-state development, constraints a search for new forms of interaction between people and authorities. Paternalism is typical for all the society in Russia today [...] (2009: 93).<sup>470</sup>

Interview data and secondary sources<sup>471</sup> indicate that the marginalisation and limited impact of civil society in the area of minority rights does not tend to be linked to the direct repression of organisations, although intimidation may also play a role in shaping state-civil society relations.<sup>472</sup> Rather, problems identified were: the already mentioned indifference by the authorities to minority issues in some instances; and approaches to nationality issues that reproduce Soviet models. In the latter case, cultural programmes for minorities, at both the federal and regional levels, continue to repeat existing blueprints. It results in the perpetuation of the nationality programmes in line with notions first conceptualised in the Soviet period, with a strong folkloristic slant. Whether new approaches are introduced appears to depend on individual public officials or institutions, and to be

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<sup>469</sup> See Chapter 6.

<sup>470</sup> This is reinforced by a centralised taxation system. See also Section 5.2.

<sup>471</sup> ACFC Opinions and Shadow Report submitted to the ACFC, 2006 (note 467).

<sup>472</sup> See Section 7.3.

circumstantial. For example, a shift was noted in St Petersburg by one of the respondents, from a minority NGO:

Two years ago nationality issues were seen as just festivals. Now there are new public officials [in St Petersburg] and with them we work on a different level. The discussion is not only on the preservation of [minority] cultures, but also on ethnic identity. This is a new understanding of ‘culture’ [...]. It’s good that these public officials came, it all depends on them [...]. Before national issues only meant music groups [playing traditional music], but now it’s also education, publications, etc. This new situation has created new conflicts [between the public officials with a more traditional outlook and civil society] [...]. [The former] try to get their festivals, civil society wants to have conferences, education.

But I am happy that things have changed. Before nationalities were like exotic animals in a zoo. Some public officials just say: ‘I love Veps, beautiful costumes, tasty pies’, and nationalities only mean this to them. They don’t realise that nationalities have their own unique mythology and much else. [1.2.9]<sup>473</sup>

She placed the St Petersburg House of Nationalities among the more traditional institutions for the promotion of nationalities programmes:

The [St Petersburg] House of Nationalities is the typical Soviet institution... it’s Soviet in style. They mostly focus on festivals. The House wants to have festivals with a lot of different nationalities. Their message with these events is ‘Look how many nationalities we have!’ [1.2.9]

Another respondent from St Petersburg, representative of a different minority agreed:

A: The House of Nationalities tries [to be helpful] but [its approach] is losing touch with the times.<sup>474</sup> It’s not the work, but the format of their work. Mostly it is the way it was in the past. There is a certain conservatism.

Q: Is it ‘Soviet’ in style?

A: Something like that. [1.2.11]

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<sup>473</sup> This respondent was the only one who spoke about a new emphasis on education rather than folklore on the part of public officials.

<sup>474</sup> The respondent used the expression ‘it is getting old’ (*staraetsiya*).



These respondents, then, complained of a trivialisation of their minority status, and of a simplification of the nationality discourse - with institutions such as the House of Nationalities unable to meet existing challenges. They saw a tendency by the authorities to default to pre-established modalities of interaction with civil society. Transcending, by modernising, these dynamics depends on public officials, as the state 'nationalities policy' consists in a general set of principles devoid of concrete targets.<sup>475</sup> The open-endedness of nationalities policy can facilitate flexible arrangements, meeting the particular needs of minorities, but also exempt public officials from specific responsibilities. It can only result in a varied (and unpredictable) level of consultation.

### **Consultation: Varied Impact**

The respondents (academics and civil society alike) referred to Law 309, amending the Law 'On Education',<sup>476</sup> as the principal example of reform affecting the cultural rights of minorities that excluded minorities from consultation. Those respondents who said they had been excluded from public debate on legal reform encompassed representatives of minorities working for specialised bodies. These were: a section of the Ministry of Education [4.14], the Kazan's Institute of History of the Academy of Science of the Republic of Tatarstan [2.7], and a Federal National Cultural Autonomy [1.1.6]. The adoption of Law 309 led to an extraordinary response, with numerous nationalities and their representative bodies protesting in unison. Among the most influential figures opposed to it was former Tatar President Mintimer Shaimiev.<sup>477</sup> Yet the results were not what the campaigners had hoped for:

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<sup>475</sup> As in the Concept of State Nationalities Policy of the Russian Federation (note 210).

<sup>476</sup> See Chapter 6.

<sup>477</sup> Lobjakas, A. 23-4-2009. 'Apparently Russia Needs Just One 'National Component'', *Radio Free*

At first we thought that Law 309 might be repealed quickly, or at least that there could be amendments, but it hasn't happened [...]. All agree that the law is bad and there was a lot of noise, but there was no positive response from the authorities. [2.7]

The absence of public discussions and the swiftness of the law's adoption, noted by the respondents working in the area of minority education [2.7; 4.7; 4.14] generated widespread concern among minorities. This reaction appears disproportionate when compared to the actual impact of the law, whose practical application, by 2011, had remained marginal.<sup>478</sup> Yet a scarcity of information fuelled suspicions and feelings of uncertainty among Russia's minorities.

Other specialists (academics and members of advisory committees on nationality issues) similarly noted difficulties in inputting into decision-making. It was only one respondent in Karelia who said that the local authorities took stakeholders' (minorities') opinions into account in decision-making - the representative of a quasi-state institution, the Centre of National Cultures in Petrozavodsk [1.3.2]. Other civil society representatives noted that the discussions were 'useful', without referring to possible impacts on decision-making [1.1.1; 1.1.5; 1.2.5; 1.2.6; 1.2.7] - with a few exceptions noted below. The disparity between respondents who felt excluded and those who felt included might be explained through the respondents' differing interpretations of participation in decision-making and the format of stakeholders' input. The civil society representatives who saw impediments to their contribution to decision-making referred to specific issues, such as minority education [1.2.1; 1.2.2]; those who found discussions satisfactory, or partially so, referred to the promotion of minority

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*Europe/Radio Liberty.*

[http://www.rferl.org/content/Apparently\\_Russia\\_Needs\\_Just\\_One\\_National\\_Component/1614655.html](http://www.rferl.org/content/Apparently_Russia_Needs_Just_One_National_Component/1614655.html) (accessed 12-4-2011).

<sup>478</sup> Mostly due to a lack of clarity as to the modalities of implementation and as to the schools' new responsibilities.

cultures and tolerance generally. While both aims correspond to FCNM principles, the latter is more closely aligned with an official Russian discourse on nationality issues based on general notions of ‘tolerance’, rather than singling out specific issues - for example in the spheres of education and participation. In sum, the more satisfied minority representatives might be those who do not hit the invisible boundaries of minority activism.

Despite this, respondents provided some examples of minorities’ participation in decision-making affecting them. In Karelia, respondents cited the opening of Karelian-language nurseries, following a petition organised by local civil society activists [1.3.2]. A respondent from the Centre of National Cultures in Petrozavodsk stated that the institution was itself opened as a result of public calls for it, which won the support of the government of the Republic of Karelia [1.3.1]. The representative of the House of Nationalities in Moscow had a similar story over the establishment of the institution [1.3.4]. Another example in Karelia was the granting of the status of ‘indigenous people’ to the Veps minority<sup>479</sup> [1.2.1], a long and somewhat tortuous journey to that had lasted 20 years (1987-2007). A few thoughts should be added here. First, none of these claims was of a political, controversial nature (with the exception, perhaps, of the status of indigenous people for the Veps minority). Second, none of them required wide-ranging reforms, while there have been no cases of successful campaigns for administrative or legal reform.<sup>480</sup> Third, results might not be long-lasting. The Karelian-language nurseries, referred to above, were subsequently closed.<sup>481</sup> Newly-established institutions might also function poorly. In the case of new schools or courses teaching minority languages, a respondent referred to scarce resources in terms of

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<sup>479</sup> One of the three autochthonous minorities of Karelia, together with Karelians and Finns.

<sup>480</sup> As noted, protests against Law 309 did not lead to the amendment of the relevant provisions. See Section 6.1.

<sup>481</sup> See Section 6.1.

materials and teachers [1.4.2]. In the case of Houses of Nationalities, respondents (representatives of minorities and NGOs), while valuing their existence and support, noted their limited impact [1.2.4; 1.2.5; 1.2.11]. In other words, such concessions might not lead to a net improvement in the enjoyment of minorities' cultural rights.

Opportunities for minorities to input in decision-making can be further reduced, in some cases, by the fragmentation of minority bodies. Two analysts in Moscow pointed to the fact that nationalities rarely build bridges for concerted action [2.17; 2.18]. At the same time, institutions representing minorities proliferate.<sup>482</sup> Although some groups with common affiliations do join forces, as in the case of the overarching Association of Finno-Ugric Peoples, competition and collisions also exist. During the interviews there were innumerable references to these tensions: by analysts and observers; and directly by representatives of minority organisations, who expressed hostility towards other stakeholders (including persons belonging to the same minority). In some cases tensions were observed between organisations that cultivated good relations with the authorities and those that distanced themselves from the establishment and were more openly critical. Some respondents also saw opportunism on the part of some persons belonging to minorities. For example, the representative of a minority organisation in Moscow referred with contempt to another, larger organisation representing the same minority, whose head had substantial business interests. In the opinion of the respondent, his counterpart used the minority organisation simply as a means to promote himself [1.2.4].<sup>483</sup> Fragmentation resulting from in-group tensions

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<sup>482</sup> In at least one case, from Tatarstan, a splinter organisation separated from the 'mother' organisation. See also Chapter 8.3 on the fragmentation of minority institutions.

<sup>483</sup> See also Section 8.2.

complicates any consideration of the needs of minorities by the authorities, with a proliferation of interlocutors.

Some respondents mentioned written appeals to the authorities as the most appropriate way for civil society to put forth their claims [1.2.1; 2.6; 4.14]. The prime minister and president of Russia, seen as the true holders of power, are the primary targets. A respondent summarised the situation as such: decisions (on education programmes in this case) are taken by the presidential administration; writing to the President is, therefore, ‘the only hope that something will change’ [4.14]. This attitude reveals an absence of trust in consultation, or in lobbying institutions such as Committee of the State Duma on Nationality Affairs, as, in this respondent’s view, it had no influence. The highest echelons of power are seen as the only hope - but also a very remote hope given the respondents had received no replies to their appeals. The view of the president (or prime minister) as the ‘only hope’ mirrors a pattern already seen, for example, in the case of a conflict on the payment of wages in a factory in Pikalevo.<sup>484</sup> It led to the workers’ representatives calling on Prime Minister Putin to intervene directly as only *he*, they believed, could solve the impasse. Putin was implicitly likened to the ‘good leader’ (*dobryi tsar*), intervening to restore order among recalcitrant public officials<sup>485</sup> - akin to a benevolent tsar’s intercession. Even those who are less in awe of Putin and Medvedev recognise the power of the duo. Putin has reinforced the perceptions of ‘good leader’, for example by establishing a channel of communication with particular members of the public during his annual (since 2000) televised question-and-answer session. He has provided an immediate resolution of, or final say on,

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<sup>484</sup> Among the many articles on this issue, see, for example, Zarkhovich, Y. 9-6-2009. ‘Putin Resolves Protest in Pikalevo’, *Eurasia Daily Monitor*. [http://georgiandaily.com/index.php?option=com\\_content&task=view&id=12076&Itemid=68](http://georgiandaily.com/index.php?option=com_content&task=view&id=12076&Itemid=68) (accessed 5-1-2011).

<sup>485</sup> In this case, oligarch Oleg Deripaska.

the issues raised during the programme.<sup>486</sup> This is an informal practice, and a way of circumventing ordinary systems *par excellence*. It consolidates the perception that *networks* are the way forward, while *systems* are unreliable. In line with this, the respondents saw contacts and networks as prerequisites for impact - although the fact that some well-connected minority activists also complained of the minimal impact of their activities indicates that networks are a necessary, but not a sufficient, condition for it. The cumulative effect of the unreliability of systems for cooperation, the volatility of public officials' support, and the reliance on personal and local circumstances, offers barren ground for the application of international standards in the area of consultation.

### 7.3 Civil Society's Vulnerability

The last section of this chapter discusses another hindrance to the application of international standards on participation: civil society's vulnerability vis-à-vis the authorities. Two main sources of vulnerability are identified: possible direct interference in the right to freedom of association, and the limited availability of funds for civil society. The right to association, as for other principles of international law, can be applied selectively in Russia. This right, protected at Articles 7 FCNM and 11 ECHR, is itself not absolute, and can be subjected to restrictions. These are not detailed in Article 7 FCNM, but those limitations listed in Article 11(2) ECHR are applied.<sup>487</sup> The resulting intersection of the ECHR and FCNM is justified by the FCNM's *travaux préparatoires* and its Article 19<sup>488</sup> and

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<sup>486</sup> See, for example, *RIA Novosti*, 4-12-2009. 'The People and Putin: Four Hours Live on the Air'. <http://en.rian.ru/columnists/20111028/168223487.html> (accessed 10-6-2011).

<sup>487</sup> Pursuant to Article 11(2) ECHR, the right to free association can be limited by restrictions that are: [P]rescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

<sup>488</sup> Article 19 FCNM states:

Article 23<sup>489</sup> - which strongly indicate that the rights protected in Article 7 FCNM are analogous to those protected in Article 11 ECHR. Not itself a minority rights instrument, the ECHR nevertheless crystallises the minimum standards of freedom of association, which can of course be applied to minority groups. Similarly, the FCNM's restrictions cannot go beyond those of the ECHR, as detailed in ECtHR jurisprudence (Machnyikova 2005: 128-9; 202). Member states have a margin of appreciation in ECHR implementation,<sup>490</sup> and a state should develop its own *modus operandi* to guarantee the right to participation. Yet, as per Article 11(2) ECHR, restrictions must be 'necessary in a democratic society', and proportional to a legitimate aim pursued.<sup>491</sup> Selective implementation occurs when a state oversteps the boundaries of these legitimate restrictions to further limit the right.

While in the other cases described in this thesis Russian law does not come into direct conflict with international standards - rather, it tends to be vague and declarative, and to have limited enforcement - in the case of the right of association such a conflict does arise. General guarantees of freedom of association can be found in the Russian Constitution's Article 30, but legislation on NGOs, particularly following amendments in 2006,<sup>492</sup> permits wide-ranging controls on the activities of civil society and their receipt of foreign funds.<sup>493</sup> Russia's regulations on registration have also been applied selectively, as in the arbitrary non-

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The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.

<sup>489</sup> Article 23 FCNM states:

The rights and freedoms flowing from the principles enshrined in the present framework Convention, in so far as they are the subject of a corresponding provision in the Convention for the Protection of Human Rights and Fundamental Freedoms or in the Protocols thereto, shall be understood so as to conform to the latter provisions.

<sup>490</sup> See note 31.

<sup>491</sup> See *Manoussakis and Others v Greece*, Application No. 18748/91, 26 September 1996, § 44; and ACFC, (Second) Opinion on Russia (note 133), § 163.

<sup>492</sup> Law No. 18-FZ of 10 January 2006 'On Introducing Amendments into Certain Legislative Acts of the Russian Federation'. Among others, it amended Law No. 82-FZ of 19 May 1995 'On Public Organisations'. Law No. 82-FZ was amended 13 times between 1997 and 2010.

<sup>493</sup> On this, see below (same section).

registration of certain groups. Relevant ECtHR case-law on Russia includes: *Presidential Party of Mordovia v Russia*;<sup>494</sup> *Vatan v Russia*;<sup>495</sup> and three cases in which re-registration of organisations was denied: *Moscow Branch of the Salvation Army v Russia*,<sup>496</sup> *Church of Scientology Moscow v Russia*<sup>497</sup> and *Jehovah's Witnesses of Moscow v Russia*.<sup>498</sup> In the last case, the ECtHR ruled that the denial of re-registration had 'no legal basis', given that the Jehova's Witnesses institution in question had presented the required documents on several occasions.<sup>499</sup> In practice, the Russian authorities have had the discretion to deny permission to establish certain organisations. Civil society representatives who authored the 2006 Shadow Report to the ACFC on Russia argued that obstacles to registration arose when the 'authorities [we]re not comfortable with an association'.<sup>500</sup> On some occasions, registration has been denied for administrative reasons - minutiae such as imprecisions in 'founding documents' (i.e. data on founders).<sup>501</sup> Additionally, the law permits the suspension of activities or closure of an NGO by court order when it repeatedly violates the law or its activities are 'contrary to the charter goals'.<sup>502</sup> In these cases, Russian courts assess whether an organisation's activities fully correspond to what is stated in the objectives of the organisation's own charter, rather than examining the potential threat to society of the organisation's activities themselves, and whether banning them is 'necessary in a democratic society' - as per Article 11(2) ECHR. Meanwhile, Russian legislation includes overly-general provisions left open to elastic interpretation which might be used to threaten an

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<sup>494</sup> Application No. 65659/01, 4 October 2004.

<sup>495</sup> Application No. 47978/99, 7 October 2004. There was no analysis of merits as the applicant was not found to be a victim.

<sup>496</sup> Application No. 72881/01, 5 October 2006.

<sup>497</sup> Application No. 18147/02, 5 April 2007.

<sup>498</sup> Application No. 302/02, 10 June 2010.

<sup>499</sup> § 76.

<sup>500</sup> Shadow Report submitted to the ACFC, 2006 (note 467), § 197.

<sup>501</sup> Ibid.

<sup>502</sup> Law No. 82-FZ (note 492), Articles 42 and 44. The charter is a document that an NGO is required to submit at the time of registration, outlining its mandate.



organisation.<sup>503</sup> A respondent, a public official and Tatar activist in Kazan, commented on the authorities' powers on civil society:

They can always find something wrong with you [your organisation] if they want. It could just be something like fire regulations. In Russia you don't violate the law only if you're dead. [4.7]

Overall, issues of registration, arbitrary closure and obstacles to free association have rarely affected minority groups,<sup>504</sup> and a number of organisations have succeeded in pursuing their projects while maintaining amicable relations with the authorities. The low number of cases of disbandment of minority organisations might be linked to the fact that their activities remain in the cultural sphere, without raising politically controversial issues. This can indicate: an organisational choice and a lack of interest in becoming politically involved; the existence of a (government-supported) gulf between the cultural and political spheres in the activities of minority groups; a possible 'chilling effect' on minority organisations by the mere existence of punishing provisions; and the preference for informal practices in raising claims, rather than confrontation or even open and frank discussions.

A respondent, the leader of a minority institution in Kazan, referred to another possible means to eliminate minority organisations' political threats, involving informal, covert practices. He believed that Russia's Federal Security Service (FSB) was 'very active' in scrutinising minority organisations' operations [1.4.2]. Similarly, the Shadow Report to the ACFC refers to FSB's 'warnings' to

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<sup>503</sup> The ACFC stated that Law No. 82-FZ leaves 'a large amount of discretion to the competent authorities to deny registration and to interfere with the activities of associations, especially those receiving foreign funding' - many provisions being left 'open to interpretation'. ACFC, (Second) Opinion on Russia (note 133), § 159. On foreign funding, see below (same section).

<sup>504</sup> See Shadow Report submitted to the ACFC, 2006 (note 467), § 195-7.

intimidate organisations, including minority groups.<sup>505</sup> The representative of a minority in St Petersburg referred to a different type of surveillance:

There is some freedom in working on nationality issues, but in this freedom one is also under control. There is a feeling that you need to *regulate* nationalities. This is why there are institutions like the Houses of Nationalities. If all [nationalities] worked separately it would be difficult [to monitor them], but if you gather them all in the same place, then all is in front of your eyes, all can be seen. [1.2.11]<sup>506</sup>

To conclude, civil society's scope of action is restricted by a need to maintain good relations with the authorities, and by legal uncertainty - the threat of possible abuse of legal and administrative provisions by the authorities. The perception is that in Russia 'nobody is safe', as one respondent was cited as saying earlier [6.3 - Chapter 3]. Meanwhile, the last two cited respondents felt that there was a governmental effort to control (regulate) minority organisations, through overt or covert means. Institutions that should supposedly aid pluralism and participation, such as Houses of Nationality, might effectively end up as agents of control. A final source of vulnerability relates to funding.

## Funding Pains

*The adoption of the Law on National Cultural Authority raised expectations of state financial support [for minority organisations]. We quickly came to the understanding that there would be no such support.*<sup>507</sup>

Programmes to preserve a country's cultural and linguistic diversity require investment on the part of the state. In its reports to the ACFC, Russia has

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<sup>505</sup> The Shadow Report cites the case of the Khemshils in Krasnodar krai, which were 'warned' between 2001 and 2005 not to establish an organisation to promote their interests. Ibid, § 199.

<sup>506</sup> Despite this, the respondent also saw a positive role for the House of Nationalities: its events provided opportunities for exchanges between persons belonging to different nationalities, and for the coordination of activities.

<sup>507</sup> Representative of a minority organisation in Moscow [1.2.4].

emphasised that substantial funds have been made available for cultural programmes of national minorities.<sup>508</sup> Despite this, respondents of the various ‘civil society’ categories reported operational difficulties linked to funding. The issues raised can be grouped into two main areas, relating to funds originating from the Russian state and non-state funds. In the case of state funds, the issues related to their limited availability, and to the limited autonomy in the management of funds. In the case of non-state funds the main issue concerned impediments to their free use, particularly in the case of foreign donors. The two types of funding are analysed below.

With regard to *state* funding, the ACFC has recommended that representatives of national minorities participate in decision-making over the allocation of financial resources, including through a ‘greater portion’ of the available funds being ‘managed directly’ by NCAs and other associations.<sup>509</sup> The issue of limited finances was raised by numerous respondents. In the case of NCAs, only minuscule resources are allocated to them (Osipov 2004): the bigger NCAs interviewed reported that they operated primarily through funds from sponsors rather than from the government.<sup>510</sup> Other respondents reported working without payment for some activities [1.2.3; 1.2.4], and developing strategies to minimise costs. For example, a respondent described expenditure as such: the members of his organisation were volunteers, thereby incurring no salary costs; their expenses only related to venue rental at events or printing costs for publications, as a rent-free venue for events was normally provided by the Moscow House of Nationalities; the House of Nationalities further provided some financial help for events; other costs

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<sup>508</sup> 240 million roubles per year (approximately 5.7 million euro) for ‘events for the realisation of the national policy’. ACFC, (Third) Report submitted by Russia (note 132), p. 82. This figure was included in Law No. 198-FZ of 24 July 2007 ‘On the Federal Budget for 2008 and for the Planning Period of 2009-2010’.

<sup>509</sup> ACFC, (Second) Opinion on Russia (note 133), § 85.

<sup>510</sup> Russia-based sponsors in the case of Tatar NCAs; international sponsors in the case of the Jewish Federal NCA.

were covered by the organisers' own funds and by *ad hoc* sponsors. He added that 'the rest is taken care of by our enthusiasm' [1.2.4]. Yet the ACFC has recommended not a greater *amount* of funds to be made available to minorities, but rather greater minority *participation* in decision-making on funding allocation, as well as *autonomy* in the management of funds.

I subdivide the state funds into three categories. The first category includes funds managed by the authorities themselves, for centrally-conceived and centrally-managed programmes. Among these are events organised by the (Federal) Ministry of Regional Development - for example, 65 events in 2008, including youth forums, festivals, youth camps, conferences - and sociological studies on inter-ethnic relations and extremism.<sup>511</sup> Second, funds are allocated to certain institutions in receipt of regular state contributions, primarily through the budgets of the republics.<sup>512</sup> The main targets of federal funds have been cultural institutions: the already-cited Centres of National Cultures (i.e. in Petrozavodsk), Houses of Nationalities (Moscow and St Petersburg), or similar.<sup>513</sup> These are effectively semi-official institutions, affiliated to, as well as funded by, regional or local government. Their function is to coordinate local activities and events, and provide fora for discussions, as well as venues for events and activities organised by minority organisations.<sup>514</sup> Other organisations in receipt of federal funds, whose representatives were interviewed, included the Inter-regional Social Movement of Mordovian (Moksha and Erzya) Peoples [1.4.3]; and regional minority media, such as Moksha and Erzya-language newspapers published in Saransk [3.3; 3.5]. These respondents reported the continued receipt of state support, even though in modest amounts, despite the global financial crisis from 2008 onwards.

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<sup>511</sup> ACFC, (Third) Report submitted by Russia (note 132), p. 33.

<sup>512</sup> Article 16, Law No. 74-FZ of 17 June 1996 'On National Cultural Autonomy'. See Chapter 8.

<sup>513</sup> ACFC, (Second) Opinion on Russia (note 133), § 80.

<sup>514</sup> According to a respondent in Moscow, the Moscow House of Nationalities provided small sums of money to the groups loosely affiliated with it - mostly minority NGOs or NCAs.

Third, alongside those institutions in receipt of regular funding are other organisations that apply for funding from the authorities for individual projects - at the local, regional or federal levels. The modalities of funding allocation vary from region to region in the case of local and regional, rather than federal, funds.<sup>515</sup> The grantees in some cases reported continuity in the inflow of funds - with regular funding applications followed by regular awards [1.3.5; 1.1.2]. This suggests the building of a relationship of cooperation between the authorities and the grantees. It could simultaneously mean the marginalisation of organisations that have not developed the needed contacts and networks. In Tver, for example, a public official in the local administration stated that, on the one hand, the choice of winning projects was made by assessing the quality of the proposed *projects*, rather than the organisations per se; on the other, organisations registered for less than a year were automatically excluded from competition. This was justified by the need to eliminate from the selection process those organisations that exist only on paper (in the interview referred to as ‘dead organisations’) [4.6]. Indeed, respondents across different categories noted the volatility of organisations - many of which appeared and, shortly after, disappeared, for reasons including both external factors (paucity of funds and bureaucratic difficulties) and the organisations’ internal weaknesses (inadequate management skills and human resources). In Tver, the representative of an (established) organisation commented that the exclusion of young organisations from competition prevented them from developing [2.5].

Even in the case of sustained financial support, the respondents referred to bureaucratic hurdles that impeded the smooth unfolding of civil society programmes. I provide three examples to show how cases can vary: from Tver, Mordovia and St Petersburg. In Tver, a respondent described the local funding

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<sup>515</sup> There are also discrepancies in the amount of funds for nationality programmes in different regions. ACFC, (Second) Opinion on Russia (note 133), § 83.

cycle thus: a funding application is submitted at the beginning of the year; in May-June the applicant learns the outcome of the funding proposal; if successful, the funds become available no earlier than July; the grant's financial report has to be prepared in December, before compiling and submitting another application early in the following year [2.5]. There was no option of fundraising for a multiple-phase project, running over a year. The respondent, who managed a newspaper in Karelian language, said in May 2010:

We got a grant this year but we still don't have the money. We used to get a salary automatically every year for the newspaper, now we have to apply every year for a grant. [With the old system] the newspaper used to come out six times a year, now only twice a year, because we have fewer funds and they are not regular. [This system] is fine for festivals, they can be organised any time [of the year]. But it's harder for the newspaper, which has to come out at regular intervals [...]. The money has to be spent in just a few months. We try to have a newspaper come out in the summer, which is prepared very quickly, and another around November. [2.5]

A public official responsible for the management of grants in Tver explained in an interview that, under Russian regulations, the regional authorities, in providing funds, need to follow the calendar year (January to December): administrative procedures, as well as project implementation, have to be completed within this timeframe [4.6]. The regions with fewer human and administrative resources are then likely to be more susceptible to delays that constrain the grantees' activities. In Mordovia, greater expediency was reported by a grantee, with a call for proposals in September, results in mid-December and the possibility of starting a project in January [1.3.5]. In St Petersburg, a respondent from a minority organisation noted a local relaxation of bureaucratic requirements which led to her organisation's receipt, in early 2010, of a long-term (two years) grant. Increased flexibility, with the removal of the rigid one-year timeframe, she said, allowed the organisation to expand its activities, and publish books for dissemination among local schools -

which she saw as an organisational priority. However, she noted that financial uncertainties would re-emerge when the two years elapsed [1.2.9].

In another case, a Karelian respondent talked about funds that were promised but never delivered:

We worked on the preparation of a programme [...]. The [Karelian] Ministry agreed that a budget would be allocated to the project [...] but didn't try to actually get the money, because they had other priorities, for other projects [...]. For three years we didn't get the three millions roubles [promised] [...]. We wrote many times, met many times, but never received the money. [1.2.1]

The respondent, the director of a minority NGO in Petrozavodsk, sat on Karelian and Russia-wide advisory bodies for the protection of Finno-Ugric cultures, and participated in events organised by the local authorities; she was therefore well-placed to cultivate good relations with the regional authorities.

There is little available data to verify the actual delivery of promised or earmarked funds. The figures indicated in Russia's reports to the ACFC appear substantial, but are not accompanied by a detailed breakdown. Governmental data are insufficient to: quantify the financial support to minority groups; analyse what groups are awarded grants; and what types of projects are funded. What the data, including reports to the ACFC, clearly indicate is a high and recurring prominence of cultural programmes including festivals and 'programmes on tolerance', reflecting a centrally-conceived notion of cultural programmes for nationalities. Hence, centralised decision-making affects: funds allocated to the authorities' own projects; and the allocation of grants to minority organisations themselves, as grants are approved by the authorities. In the second case, a respondent from a minority NGO in St Petersburg believed that the awarding of grants was linked to a certain type of performance, rather than simply the organisations' levels of professionalism:

There is no obligation on the authorities to finance our activities, and if we are good, if we are quiet, maybe they will give something, maybe. The state has no obligation, they decide. If we try to criticise them too much I'm not sure that we will get anything. [1.2.8]

The respondent's organisation, he believed, had managed to forge a good working relationship with the city authorities and had been awarded grants. He said that he was generally satisfied at the receptivity of the local authorities to their needs. He noted, however, that the local authorities expressed preferences as to the projects they wished to fund, requiring organisations to tailor their projects accordingly if they wished to maximise their funding chances. The authorities provided funding 'according to their own criteria', he said. He was asked to elaborate:

In all the projects one of the criteria was to organise training for young people, to involve youth. In this case sometimes they demand things that are very strange, that we have to involve other national communities in our activities. They declare ideas of tolerance, which is good in some ways but sometimes it's difficult, because we want to have our own festivals [...]. We won't want to necessarily involve Lithuanians, or Poles. This [type of joint festivals] is very good but it's something different.

This statement points to a need for minority organisations to adjust their activities to reflect government priorities. The respondent saw the loss of its language as his minority's primary concern, but the type of joint festivals encouraged by the city authorities pushed the organisation to prioritise different types of activity.

An area where officialdom might control civil society's activities is in the linkages between networks and funding. One example was provided by a representative of the (Saransk-based) Association of Finno-Ugric Peoples of Russia (AFUN): the nomination of the Ministry of Culture of Mordovia Petr Tultaev as leader of the institution in September 2009 had coincided with the start of a regular inflow of funds to AFUN [1.4.3]. In another case from Tver, a public official stated that, in the case of application for federal funding, a letter of support by the local



authorities was required by the federal authorities - with clear implications of potential vetting. Other respondents pointed to issues of favouritism in relation to loyal groups [1.4.2] and a lack of transparency [2.19]. As one analyst put it, with regard to funding ‘all is negotiable’ [2.15].

It is due to this governmental control over funds that the ACFC recommended that minorities be enabled to directly *manage* the funds that are earmarked for the preservation of minority cultures and languages. The Russian authorities, in their Third Report to the ACFC, responded to the ACFC’s earlier recommendations, stating that the Russian government ‘[t]ake steps in order to ensure the balance between the financing provided to cultural activities and the needs of the national minorities concerned’, and facilitate greater participation in decision-making on funding allocation. The Russian government simply referred to the Law ‘On National Cultural Autonomy’ (NCA Law),<sup>516</sup> whose Article 16 concerns funding from federal, regional and local authorities.<sup>517</sup> This provision has been added by amendments in 2009.<sup>518</sup> A public official interviewed similarly answered a question on the limited funds for NCAs by referring to the same legal provisions, saying: ‘there are special amendments by which NCAs receive funding from the government’ [4.15]. The provisions are not, however, matched by a concurring obligation for the authorities to provide funding - at least not in all cases. A different formulation is used for three levels of authorities in Article 16: the federal authorities ‘*can* provide support’ to NCAs from the federal budget; the authorities of Russia’s subjects ‘provide support’ from the subjects’ budgets; and the organs of local self-government ‘*have the right* to provide support’ [italics

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<sup>516</sup> See note 512 and Chapter 8.

<sup>517</sup> ACFC, (Third) Report submitted by Russia (note 132), p. 104.

<sup>518</sup> Law No. 11-FZ of 9 February 2009 ‘On Introducing Changes to Article 16 of the Federal Law ‘On National Cultural Autonomy’.

added]. Additionally, Article 9 of the NCA Law was amended in 2004,<sup>519</sup> modifying the provision that federal and regional authorities ‘assist’ NCAs to the stipulation that they ‘can support’ NCAs (in their activities in the areas of education and the media). A respondent linked this type of provisions to the Russian joke reported at the beginning of the chapter. She referred to the first formulation (the authorities ‘*can* provide support’), seeing it as symptomatic of the state approach to nationality issues. It made existing systems simply ‘declarative’. She argued that:

The authorities *can* do something, but they also can *not* do it. [Equally] people have a right [to receive funding] but they still cannot do anything [if they don’t have the funds they need]. There are no mechanisms [to exercise their rights] [...]. [In the same way] you can request that your child receive an education in a [particular] language, but you can’t find a [suitable] school. I can do something but I also can’t. [1.2.9]

The absence of specific responsibilities also means that networks and good relations with the authorities are not necessarily a recipe for financial security - for example, if the local authorities, even if sympathetic to the needs of minorities, have other priorities.

An alternative source of funds is that of *non-state* grants, from both international donors and Russia-based donors. In the case of international donors, the respondents referred to funding from Finland and other Finno-Ugric countries (for Finno-Ugric nationalities), Canada and the United States. As part of the programme ‘Minorities in Russia’,<sup>520</sup> the Council of Europe had also financed four projects in Mordovia on the preservation and development of the Mordovian languages. The (civil society) respondents referred to bureaucratic hurdles and financial disincentives over the receipt of foreign funds, particularly following the 2006 amendments to Russian law, increasing the level of state scrutiny over the

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<sup>519</sup> Law No. 122-FZ of 22 August 2004 ‘On the Amendments of Legal Acts of the Russian Federation [...]’, Article 76.

<sup>520</sup> See Section 1.3.

inflow of foreign funds to NGOs.<sup>521</sup> The first notable disincentive is the high taxes for their receipt, with the exceptions of foreign institutions that are on a list of accredited donors whose grants are not taxable. The number of donors on this list was reduced from 101 to 12 in June 2008.<sup>522</sup> Bank checks and tax inspections can be carried out - normally the latter with a prior warning. Bank checks are undertaken directly by banks, on the basis of a financial plan submitted by the organisation at the beginning of the year (known as *kassovaya ditsiplina*); it indeed requires administrative discipline as funds that were initially allocated for an event, for example, may not be used for salaries [1.5.4]. For tax inspections, reports have to be submitted to the local authorities four times a year.<sup>523</sup> In turn, international organisations have themselves been subjected to pressure, sometimes resulting in the closure of their offices in Russia.<sup>524</sup>

These regulations, with the exception of the list of accredited donors, affect all institutions and not only NGOs. The director of a human rights NGO, however, linked human rights activities to enhanced control by the authorities [1.5.5]. The following excerpt from the interview with this respondent provides an example.

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<sup>521</sup> See note 492.

<sup>522</sup> Resolution of the Russian Federation No. 485 of 28 June 2008 'On the List of International Organisations [...] that are not Liable to Taxation for Financial Assistance to Russian Organisations'.

<sup>523</sup> Article 29 of Law 'On Public Organisations', modified through amendments in 2006 (see note 492).

<sup>524</sup> For example, in December 2007 the British Council was required by the Russian authorities to close its offices in St Petersburg and Ekaterinburg by January 2008. The request was justified on the grounds of alleged irregularities, including tax evasion. The allegations denied by the British Council. See *BBC*, 12-12-2007. 'Russia to Limit British Council'. <http://news.bbc.co.uk/2/hi/europe/7139959.stm> (accessed 2-11-2011).

Q: Why do you think that there is a requirement to produce tax reports four times a year? [the question referred to reports to the tax authorities on organisations' activities and sources of funding].

A: I don't know, it's a means of control. If you don't produce the report it's a legal reason for them to sue the NGO and withdraw the registration. The state says that there are many NGOs that are registered and don't work, which is true [...]. By making them produce these reports the state assesses whether the organisation is operational [...]. But we are bothered about the questions about where we got our funds from and [the fact that] they can get back to us to say: 'you got all this foreign funding! You're just spies'<sup>525</sup>[...]. And I'm not sure that officials that are involved in this [reviewing the reports] would not abuse their power with their reports. Once I was really angry by a press release of the press office of the judicial department [of the local administration] that looks at the reports. We reported to them, on how much money we got, from what sources of funding. They then published a press release on their website saying that 3 NGOs in our city are getting this much American money.

Q: Why is that a problem?

A: That shows to people who are patriotic that we are working as spies. It's about reputation... it's not the business of the state to publish information about where we get our funding. That's my view. I didn't like that at all. Then I got phone calls from journalists asking 'it is true that you got that much money from America?' [...]

Q: Is it a way to discredit NGOs?

A: That's true, that's what I think is happening [...] because only human rights groups raise issues that are uncomfortable for the state. Instead of responding to these issues and say 'yes, we violated human rights' they [the government] would rather show that people who raised these issues were just spies, to discredit them, so that the public won't believe us, and take seriously the accusations raised by human rights activists. Instead they decided to show that we are working on foreign money, so people won't believe us. They are just exploiting this old concept of the cold war, that Americans are bad and we are good.

Q: Do you think that if some organisation became too critical the government could abuse the law, referring to irregularities in the reports?

A: I can say that's absolutely possible.

Q: Is that what happened to [organisation A]?<sup>526</sup>

A: That was provocation, 100%. They didn't find anything wrong in their reports, they just opened a criminal case against [the director and deputy director]. [The director] had the best reputation among NGOs and human rights activists. So to

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<sup>525</sup> Foreign institutions have been linked to espionage. The British Embassy in Moscow, which has provided funds to Russian civil society, was accused of espionage. See *BBC*, 'UK Diplomats in Moscow Spying Row', <http://news.bbc.co.uk/2/hi/europe/4638136.stm> (accessed 5-11-2011).

<sup>526</sup> Criminal charges were opened against the director, deputy director and the organisation itself for a minor administrative offence. It led to the confiscation of computers and files from the organisation.

discredit the whole human rights world it was enough to discredit her, in the eyes of the public.

Q: Was it a warning to other organisations?

A: Yes, it was a demonstration, like saying ‘look, we can do that, even to somebody who is the strongest of all of you’.

Q: Are you afraid that something like that could happen to you?

A: I can say that if they want to discredit us and shut us down I probably won’t be able to stop them. The only thing we can do is to be as clear, transparent and in line with the law as possible, to prevent any type of accusations against us. But if the state wants, they can do it, look at [the director of organisation A]. They can do it with her, they can do it with anybody else.

Q: Can tax officials visit your office and look at your documents any time?

A: It’s true. They’re supposed to give you notice beforehand but I’m not sure that there’s a specific time limit. They can notify you this evening that they will come tomorrow, but they have to give you notice [...]. Normally they plan inspections, and they publish the list of organisations that they will inspect on their website [...]. But if there is a complaint against you they do it right after it. The complaint can be from anybody, so if they want to check you they will create a complaint.

Q: What about fire inspections?

A: Normally it doesn’t happen very often [...]. We’ve never had one. But I can tell you if they come they will find violations even in our office, because nobody really knows exactly what has to be done. The fire inspector will assess the situation and list irregularities, and what has to be done to change the situation [rectify irregularities]. They give you a few days or few weeks to deal with it. You do everything you can, but certain things are very difficult to deal with. Like last year I was asked by a friend to help her friend, who is the head an [NGO]. The fire inspection found a lot of irregularities. They [the NGO] dealt with them, but at some point the inspectors said that the ceiling was too low, and they had to raise it. How can you do that? [...] They [the authorities] shut down the organisation for a few weeks. Then we had to go to court. Then we somehow got around it [...], but they might come [later] and find something else. If they are told to do so, they will find something wrong.

This excerpt refers to techniques that could be employed to undermine civil society: the discrediting of NGOs, possible abuse of legislation and fabrication of irregularities, as well as high taxes combined with tax inspections.

One last source of funds for minority organisations is private sponsors - usually wealthy businessmen belonging to national minorities. While these

donations provide release from the dependency on state funds and a break from the red tape, the boundaries of businesses and the state are often blurred - with businesses involved in politics and vice versa. At a minimum, businesses generally do not wish to antagonise politicians and civil servants - particularly where they use informal networks to protect their interests. Private sponsorship of minority activities might not necessarily signify freedom to engage in forms of activism that may be unpalatable to the authorities, but result, for the most part, in cultural events not dissimilar to those sponsored by the Russian state. Some of the respondents who were also leaders of minority groups were themselves businesspeople who used their own private funds to support minority organisations. An academic from Moscow suggested that these associations, when their leaders are themselves wealthy businesspeople, have the dual function of *self*-promotion and promotion of the minority culture [2.19]. As a means of decentralising the funding of minority programmes, private enterprise is only a limited advance.

#### **7.4 Conclusion: Some Cooperation, No Promises**

This chapter has examined the tensions existing in the relationship between civil society and the Russian authorities, highlighting how international standards in the area of minority consultation may be ignored or imperfectly adhered to. Civil society is confronted with many obstacles. Local authorities shy away from debate on minority issues that cross into the political sphere. State-sponsored minority programmes tend to skim the surface, dealing with symptoms rather than causes. In turn, civil society's (frequent) condition of dependency on the state for funding, coupled with its administrative and financial vulnerability, typically makes it reluctant to challenge the authorities. Indeed, good relations with the authorities were perceived by civil society respondents as the most effective tool to advance

minority rights; and in some cases civil society has been able to cooperate quite fruitfully with the authorities, primarily at the local level. At the same time, cooperation is generally contingent on public officials' discretion, while the points of entry into the public discourse and policy-making for minorities seem to have decreased with Putin's centralising measures. Finally, the state has the power to intervene to undermine the activities of civil society, including through the abuse of the legislation and administrative procedures such as tax inspections.<sup>527</sup>

Centralised control of funding greatly restricts opportunities for minorities to distance themselves, if they so wish, from Soviet-inspired approaches to nationality programmes. This is exacerbated by the absence of detailed programmes for minority rights, with precise targets, and their relatively low priority in contemporary Russian politics - compared, for example, to the state's objective in fighting extremism and popularising a Russian patriotic discourse. Putin's vertical, and minorities' reliance on public officials' discretion, has created a tension between centralism and localism: core policies (e.g. the Russian patriotic discourse) coexist with a form of *laissez-faire*, as individual public officials are exempt from well-defined responsibilities in the area of nationalities policy. Civil society is caught between these two poles: on one side, it finds inflexible, centrally-conceived policies; on the other, loose regulations for the upholding of minority rights, with public officials in a position to make arbitrary decisions.

Against this background there are areas in which international standards are effectively powerless to enhance cooperation between civil society and the authorities, and others in which they may carve out a small role for themselves. In the first case, the Russian authorities have ignored the Council of Europe's recommendation to allow minority associations to manage their own financial

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<sup>527</sup> The ECtHR acknowledged that tax inspections can be abused in Russia to intimidate applicants to the ECtHR (in *Fedotova v Russia*, note 188).

resources. International standards can also do little to change the traditional top-down approach to the management of nationality issues, and the limited receptivity to civil society's input. Although the Council of Europe may encourage and facilitate discussions between civil society and the authorities - for example through events linked to FCNM implementation and ECRML ratification - there are no guarantees that the needs of minorities, as articulated during these debates, will be taken into account. The tradition of informal practices, with the fortunes of nationality programmes contingent upon the goodwill of public officials, appears likely to persist - at least under the Putin-Medvedev leadership.

International standards have a more enhanced role in upholding *negative* rights. They can ease some of the pressure on civil society, for example through intervention in cases of non-registration or the closure of organisations, including through ECtHR judgements. Although direct violations of Article 11 ECHR rarely affect minority organisations, the existence of the ECtHR provides potential victims with the option of accessing a supra-national judicial body not susceptible to political considerations that may exist in Russia, in the case of politicised, controversial cases. In turn, the ECtHR may act as a deterrent for the Russian government, causing it to be wary of allowing violations of the ECHR in the knowledge that these could result in international judgements against Russia. The Council of Europe further involves Russian civil society in the FCNM monitoring processes, through the consideration of civil society's shadow reports, and in Council of Europe-sponsored events, such as those promoting the FCNM's implementation and the ECRLM's ratification. Even where these events do not lead to tangible results,<sup>528</sup> they may contribute to shifting political processes to a more open system somewhat more amenable to dialogue - one that is subjected to

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<sup>528</sup> An education expert from Moscow noted that these events were 'just useful for the Council of Europe to collect information', without making a difference to minorities [4.14].



international scrutiny. One expert interviewed noted that events such as those organised under the project ‘Minorities in Russia’ had taken place ‘only because’ of the Council of Europe’s ‘insistence’ upon them; before the Council of Europe’s intervention, he noted, ‘there were no discussions on the Charter’ [2.7].<sup>529</sup> These events can contribute to concretising what tend to be seen as nebulous moral values, providing minorities with rights recognised by legally binding conventions.

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<sup>529</sup> Presumably as a result of these events, respondents had generally greater familiarity with the ECRML than the FCNM.

## 8. NATIONAL CULTURAL AUTONOMY: REAL OR FICTITIOUS PARTICIPATION?

Chapter 7 revealed a limited role for international standards in opening up new opportunities for the cooperation of national minorities with the Russian authorities. The chapter focused on informal means of consultation and cooperation that take place alongside other, official mechanisms, analysed in this and the next chapters. Chapters 8 and 9 introduce a second, major distinction in measures to uphold participatory rights: between consultative mechanisms and representation in elected bodies. Chapter 8 focuses on the main consultative mechanism developed by the Russian authorities for their national minorities - that of National Cultural Autonomy. Representation in elected bodies and other forms of consultative mechanisms are analysed in Chapter 9.

‘National Cultural Autonomy’ (NCA) designates a concept of autonomy for national minorities that is based on ethnic affiliation rather than territory - essentially, the reverse of the notion of ethnic federalism. In Russia the notion of NCA has been reworked into a mechanism for minority groups to form associations, also called NCAs (such as Tatar or Mordovian NCAs). NCAs are relevant to this study not least because the Russian authorities have presented them as the centrepiece of FCNM implementation.<sup>530</sup> Russia has included the operations of NCAs in its reports to the ACFC, and the ACFC has commented on them, raising concerns regarding their effectiveness.<sup>531</sup> Indeed, in 2011, 15 years after the enactment of the Russian Federal Law ‘On National Cultural Autonomy’ (NCA

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<sup>530</sup> ACFC, (Second) Report submitted by Russia (note 158), p. 17.

<sup>531</sup> ACFC, (Second) Opinion on Russia (note 133), § 14; 88-95.

Law),<sup>532</sup> it was apparent that the system it created offered no real ‘autonomy’ to minority groups despite the Russian authorities’ argument that the institution of NCA is based on the principles of ‘self-organization and self-government’.<sup>533</sup> A considerable body of academic research has shown that the Russian NCA system is largely ineffective (Bowring 2005; Bowring 2007; Filippova & Filippov 2008; Osipov 2004; Osipov - forthcoming).<sup>534</sup> One respondent called them a ‘palliative’ [1.4.2].<sup>535</sup> In this chapter I analyse NCAs specifically from the point of view of participatory rights. I argue that the hindrances to effective participation come from two directions: from within the minority organisations themselves (bottom up), and in the conditions surrounding cultural ‘autonomy’ created by the Russian authorities (top down). In the first case, NCAs offer no guarantees that concerns of ‘ordinary’ persons belonging to national minorities will be represented at higher levels by NCA leaders. From the top down, established mechanisms for consultation (consultative councils at various government levels) also offer few guarantees and opportunities for concrete impact. The NCA system, therefore, raises issues of internal democracy within NCAs themselves, while also revealing some genuine difficulties for the authorities in any efforts to concretely incorporate NCA input into their decision-making. The chapter concludes that the NCA system is not conducive to minority groups’ enjoyment of their right to participation. Rather, minority representatives interviewed continue to link decision-making to *territoriality*, seeing national cultural autonomies as merely leading to forms of participation that are little more than ‘fiction’.<sup>536</sup> Against this background,

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<sup>532</sup> Law No. 74-FZ of 17 June 1996 ‘On National Cultural Autonomy’ . On the NCA Law, see also Section 7.3 and note 512.

<sup>533</sup> ACFC, (Second) Report submitted by Russia (note 158), p. 8.

<sup>534</sup> Reasons ranged from financial constraints to the lack of implementation of the NCA Law.

<sup>535</sup> The respondent was a representative of the World Congress of Tatars in Kazan.

<sup>536</sup> The expression was used by two respondents [2.20; 4.14].

international standards have been unable to penetrate the complexities of minority participation in Russia.

As will be seen below, NCAs are multi-layered bodies, that are formed at the local, regional and federal level. These structures increase in complexity as they move higher to the apex of the NCA system; and, with this, NCAs' bureaucratic commitments also increase. This is the reason why, of the three case studies, only the Tatars had a federal NCA. Additionally, given the focus on ethnicity rather than territory, NCAs for a particular nationality are located *outside* 'its' ethnic republic: there are no Karelian NCAs in Karelia, no Mordovian NCAs in Mordovia and no Tatar NCAs in Tatarstan. Hence, of the three case studies, this chapter only includes data on Tatar NCAs (in Moscow), and on the NCA of Tver Karelians (in Tver). I supplemented these data with interviews with NCAs of other nationalities, as well as with academics and public officials, who offered insight on NCAs' structures, functions and operations. The findings relating to the complexity of translating NCA activity into effective participation were consistent across different ethnic groups. The observed differences in perceptions of NCAs were by category of respondents (NCA, non-NCA civil society, public officials and academics), rather than revealing variance based on ethnicity.

After an introduction on the meaning of *effective* participation, I briefly outline the reasons that led to the establishment of NCAs in post-Soviet Russia. I then examine the reasons for the limited guarantees over participation provided by this system: first focusing on the NCAs' internal structure, and subsequently on the conditions in which NCAs operate.

## 8.1 From Territorial to Cultural Autonomy

To assess levels of participation, one first has to clarify the meaning of ‘participation’ and of its qualifier ‘effective’. The right to participation of national minorities is included in Article 15 FCNM, which states:

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

State obligations in the area of participatory rights arise from Article 27 ICCPR, in light of General Comment 23 of the UN Human Rights Committee, stating that the exercise of cultural rights ‘may require [...] measures to ensure the effective participation of members of minority communities in decisions which affect them’.<sup>537</sup> In the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities there are four specific references to ‘participation’, in the context of cultural, religious, social, economic and public life, and decision-making affecting minorities.<sup>538</sup> The UN Convention on the Elimination of All Forms of Racial Discrimination includes provisions on participation in elections and public affairs (Article 5(c)), and on the right to equal participation in cultural activities (Article 5(e)(6)). Soft law standards on participation are provided by the OSCE Lund Recommendations.<sup>539</sup>

The adjective ‘effective’, in relation to participation, is employed, *inter alia*, in Article 2(2) and 2(3) of the UN Declaration, with the importance of effectiveness further stressed in the UN Declaration’s Commentary.<sup>540</sup> Effectiveness is linked in

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<sup>537</sup> General Comment No. 23: The rights of Minorities (Art. 27): 08/04/1994, CCPR/C/21/Rev.1/Add 5, § 7.

<sup>538</sup> Articles 2(2), 4(5) and 5.

<sup>539</sup> Lund Recommendations (note 131). On the Lund Recommendations and participation, see Drzewicki (2010).

<sup>540</sup> De Varennes, ‘Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic

the Commentary to the involvement of minorities in all stages of decision-making affecting them - at the local, national and international levels. The expression 'effective participation' is also found in the OSCE Lund Recommendations, where it is described as an 'essential component of a peaceful and democratic society' (Point 1.1). In its Opinions on periodic country reports by participating states, the ACFC has referred repeatedly to 'effective participation', although it has provided no actual definition of either 'effectiveness' or 'participation'. What transpires from the ACFC's Opinions is that effective participation is closely linked to the achievement of full and effective *equality* (Marko 2006: 3; Verstichel 2008: 454; Weller 2005: 435). The adoption of 'special measures' in the form of affirmative action may be required to achieve real equality, concretely and practically levelling opportunities for minorities and the majority. 'Effectiveness' also means that the voice of minorities should not only be heard but also be taken seriously (Henrard 2005): the *presence* of minorities in consultative and elected bodies has to be matched by their actual *influence* on decision-making (Verstichel 2008: 452-3).<sup>541</sup> While minorities have a particular right to effective participation in matters that affect them,<sup>542</sup> such as linguistic and education policies, it is now recognised that such rights should extend to other areas, such as social and economic ones.<sup>543</sup> This signals that the state also 'belongs to' minorities, paving the way for their integration and, with it, for internal stability (Hofmann 2006: 6-7). International standards afford states wide margins of discretion in developing participatory mechanisms for minorities. Minimum standards involve two forms of participation:

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Minorities', 4 April 2005, UN Doc. E/CN.4/Sub.2/AC.5/2005/2, § 38.

<sup>541</sup> See for example ACFC, (Second) Opinion on Finland, 20 April 2006, ACFC/OP/II(2006)003, § 156. It states that the views of minorities (the Sami Parliament in this case) should be 'fully taken into account in decision-making affecting the protection of the Sami'.

<sup>542</sup> Article 15 FCNM; and Lund Recommendations (note 131), Points 13, 16 and 19.

<sup>543</sup> See ACFC, 'Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and Public Affairs', ACFC31DOC(2008)001, 5 May 2008 (hereinafter ACFC, Commentary on Participation). See also Palermo (2008).

political representation in elected bodies *and* consultation (through consultative mechanisms).<sup>544</sup> It is not an exclusive choice between the two. Rather the two should act in unison and be mutually supporting (Marko 2006: 9).

In Russia there are no ‘special measures’ to uphold minorities’ participatory rights such as mechanisms to guarantee their presence in elected bodies. This regulatory vacuum is examined in the next chapter. In the case of consultation, Russia has chosen to use NCAs as the principal mechanism. The model of National Cultural Autonomy was developed by Karl Renner in his article *State and Nation* ([1899] 2005). Renner’s objective was the creation of a confederation of nations from the Austro-Hungarian Empire. The model is based on the ‘personality principle’ - the idea that communities may be autonomous and sovereign within a multinational state, regardless of whether they have, or identify with, a particular territory (Renner [1899] 2005). Although this concept has not found wide support, there have been attempts by modern scholars to revive it (Kymlicka 2007b; Nimni 2005; Nimni 2007). There has also been experimentation with NCA in countries other than Russia.<sup>545</sup>

The appeal of NCAs in post-Soviet Russia was exactly the disassociation of nationality and territoriality - a rejection of the territoriality-centred Soviet approach to the ‘national question’. This approach had rested on the forging of a strong link between ethnicity and territory.<sup>546</sup> Placing territoriality at the heart of nationality policy had led to difficulties: the system’s inability to accommodate non-titular nationalities, or titular nationalities residing outside ‘their’ territory;<sup>547</sup> and post-Soviet ethnic mobilisation, with republics claiming independence from

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<sup>544</sup> See ACFC, (First) Opinion on Albania (note 418), § 72.

<sup>545</sup> For example, in Hungary. See Dobos (2007).

<sup>546</sup> See Section 2.3.

<sup>547</sup> See also Chapter 5. The reasons are analogous to those for homogenisation.

Russia en masse following the Soviet Union's collapse.<sup>548</sup> The intelligentsia started to distance themselves from the principle of territoriality, which had become associated with ethnic claims (Codagnone & Filippov 2000). Thus, in 1992 the (then) Ministry for Nationalities Valerii Tishkov first proposed introducing NCAs: these would not displace existing territorial autonomies but simply act as a complementary institution, moulding themselves around the existing system (Codagnone & Filippov 2000; Filippova and Filippov 2008). NCAs were defined in Article 1 of the 1996 NCA Law as:

[A] form of national and cultural self-determination constituting a public association of citizens of the Russian Federation, identifying with a particular ethnic community, finding themselves in a situation of national minority in a particular territory, based on their voluntary chosen identity for the purpose of independently regulating the issues of their identity preservation and their linguistic, educational and national cultural development.<sup>549</sup>

That NCAs would not substitute territorial autonomy was made clear by the NCA Law itself<sup>550</sup> and public officials' statements.<sup>551</sup> A respondent, a scholar and former advisor to Yeltsin on nationality issues, said in an interview:

I never thought that [the NCA system] was realistic. Never. When ethnic federalism was strong NCAs were not needed. Nowadays that the problems of migrants and diasporas are growing there could be some opportunities for NCAs, but as an *addition* to ethnic federalism. [2.18]

Theorists accept that the concept of NCAs, although in principle transcending territory, can coexist with it (Nimni 2007: 356). Tishkov's theoretical approach (1996) certainly seems a sensible one: while not stripping the titular nationalities of

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<sup>548</sup> A phenomenon known as the 'parade of sovereignties'. See Hale (2000).

<sup>549</sup> Article 1, NCA Law.

<sup>550</sup> Article 4 states: 'The right to national cultural autonomy does not correspond to the right to national territorial self-determination'.

<sup>551</sup> For example, by Vladimir Zorin, chair of the State Duma Nationalities Committee (1996-1999) and the state minister in charge of nationalities affairs (2001-2004), as cited in Osipov (forthcoming).



their acquired rights, it introduces an additional mechanism to accommodate those minority groups that Soviet ethnic federalism had neglected. According to Russia's Third Report to the ACFC, 18 federal, 208 regional and 501 local NCAs were registered in Russia at the end of 2008.<sup>552</sup> However, the specific formulae developed in Russia are not sufficiently wide-ranging to guarantee minorities' right to participation. The remainder of the chapter illustrates this argument from two points of view: 'from below' (NCAs' internal shortcomings); and 'from above' (conditions created by the Russian authorities).

## **8.2 NCAs' Internal Shortcomings: Insufficient Representation and Accountability**

NCAs' internal shortcomings relate to the absence of guarantees of a wide representative base for minorities, reflecting the multiplicity of the group's views and concerns. Two reasons are identified: first, an assumption of group homogeneity in the NCA system; and, second, a tenuous link of accountability between the representatives (leaders of NCAs) and the represented ('ordinary' members of the same minority).

The NCA system, established through the 1996 NCA Law, was meant to create a pyramidal structure of representation, with local, regional and federal NCAs. The system would carry the concerns of minorities from the local sections up to the highest political institutions. The NCA system would act as the main form of exchange between the authorities and minorities, condensing the various messages from minority institutions into manageable 'bites', to which the government could respond. It was envisaged that each minority as a group would speak with one voice, reducing redundant or contradictory messages, and distilling

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<sup>552</sup> ACFC, (Third) Report submitted by Russia (note 132), p. 24.

‘core’ messages that should lay the foundations of nationalities policy. Hence, the NCA system is based on the assumption of homogeneity in groups, and it fundamentally presupposes *one* local institution (one ‘autonomy’) per nationality per territory.<sup>553</sup>

The assumption of homogeneity is what Phillips calls an ‘essentialist’ and ‘reified’ understanding of culture (2007: 8-9). Other authors echo the criticism of a reductionist model that stresses internal homogeneity, together with a clear-cut separateness from other groups (Benhabib 2002: 4; Tully 1995: 10).<sup>554</sup> Narayan talks about a ‘package picture of cultures’ (2000: 1084). These concepts are closely connected to what Brubaker calls ‘groupism’, or:

[T]he tendency to take discrete, sharply differentiated, internally homogeneous and externally bounded groups as basic constituents of social life, chief protagonists of social conflict, and fundamental units of social analysis (2002).

This approach ignores the nuances and the multiple facets of a group, and their dynamic, ever-changing character. It reflects a perception of minorities as static, compared with the dynamism of dominant cultures (Musschenga 1998: 206). Similarly, the Russian NCA system (and Russia’s overall approach to nationalities policy) reduces minorities to their skeletal structures and oversimplifies them. It mirrors the Soviet essentialist approach to ethnicity, in which ‘core’ attributes are assigned to each minority, so as to enable their codification and subdivision - as described by Tishkov (1997). Each nationality is homogenised, and effectively the

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<sup>553</sup> Local NCAs can then merge to form regional autonomies, and then federal ones. Immediately following the adoption of the NCA Law several minority groups established multiple NCAs for the same nationality, in the same area. This threatened the concept of an organised, unitary system of representation. To halt this process, in 2004 the Russian Constitutional Court ruled that no more than one local or regional autonomy per minority could be established in a municipality or a region. RCC, Judgement of 3 March 2004, No.5 ‘On the Constitutionality of Article 5(3) of the Federal Law on National Cultural Autonomy with regard to the Complaint submitted by A.H.Ditsa i O.A.Shumacher’.

<sup>554</sup> Tully criticises the notion of each culture as ‘separate, bounded and internally uniform’ (1995: 10).

perceived essence of an ethnicity tends to revolve around festivals, customs, traditional music and literature - overlooking other facets.

The internal complexity of minority groups behind the homogenising façade is one of the reasons why the idea of a consultative system with a neat pyramidal structure could not be translated into reality. Some of the respondents linked this to rivalries between competing leaders of minority organisations. For example, a respondent from a cultural association said:

NCA's were established because they [the authorities] wanted to have a system that was like a pyramid. There would be local, regional and federal NCA's. At the top there would be the Federal Consultative Council on NCA's,<sup>555</sup> that would bring groups together. But not all [groups] have formed a federal NCA. The reason is that people have their own ambitions. Two people would want to be leaders of the Federal NCA, and the people supporting one would not support the other [the rival], so it just didn't happen. The reason why there are NCA's and *also* public organisations [NGOs] is this, because of personal ambitions, and more than one person wants to be leader. [1.3.4]

Yet this only explains a diversity of views and priorities within the leadership of minority groups. The problem runs much deeper. There are multiple identities and traits in each person belonging to a minority. In addition to being the representative of a minority, a person has a gender, age, profession, level of education, as well as variegated allegiances and affiliations. An individual's identity is not shaped solely by his/her ethnic background. Given these multiple layers of identity there should, at least, be an attempt to engage with this diversity by widening the potential for participation, enabling different segments of the minority population to become involved. Phillips describes this position:

[I]n however occasional and patchy a way, modern democracies need to increase and widen that participation in discussion and decision that stretches our sense of alternative, and requires us to confront those who are different from ourselves (2002: 21).

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<sup>555</sup> See Section 8.3.

Similarly, Palermo argues that ‘the benchmark of the effectiveness of participation is its degree of pluralism’ (2008: 411). The Russian authorities’ chosen system of representation is antithetical to the notion of broad representation. While minorities should be allowed to develop a ‘group-oriented dimension’ through the right of association (Marko 2006: 4), a group’s internal differences should also be recognised, through a system of representation that allows a wider range of voices to receive attention during consultation. There should also be space for internal dissent within the collective persona created by the group (Nimni 2007: 360).<sup>556</sup>

### **A Missing Link of Accountability**

In practice, not all people can (or wish to) be politically active, but accountable representatives can act as delegates for the group as a whole. Thus, the rules for the appointment of delegates and for their accountability have paramount importance. A loose system of participation, based primarily (or solely) on all-inclusive procedures such as open meetings, leads to what Phillips calls one of the ‘paradoxes of participation’: in theory all can participate, but in practice many encounter obstacles. Participation requires an investment in time, energy and possibly funds - through loss of earnings - which only some people can afford. Clearly, the particular societal segments that can make these ‘sacrifices’ cannot be representative of the group - they might, for example, have greater financial stability and higher levels of education than average. Ultimately only the vote guarantees a basic right enjoyed by all members of a group (Phillips 1991: 140-6).

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<sup>556</sup> The expectation, within and outside the group, of general consent, can cause a stultified debate and even self-censorship. See, for example, the effects of this phenomenon on the women’s movement, with ‘women being pressured to pretend to agree’ (Phillips 1991: 126). The issue of internal dissent is addressed in the next chapter.

The NCAs' hierarchical structure operates on the assumption that local concerns (from local NCAs) will be elevated to the federal level (through the various federal NCAs' access to their special federal consultative body - the Federal Consultative Council). The system is not based on voting for the selection of delegates but effectively on self-appointment.<sup>557</sup> In the absence of voting or other guarantees of broad representation, this seemingly inclusive process masks communication channels whose trajectory is merely from the local elite to the federal, via the regional, elite. This type of elite 'representation' can extend beyond NCAs, to other minority associations, when their leaders assume the function not only of leaders of their associations, but also of the nationality as a whole. Two of the respondents expressed the opinion that these leaders belong to minority groups' intelligentsia. They both referred to the exclusion of 'ordinary' minority members, particularly in the case of disadvantaged minorities, such as the Roma and nationalities from Central Asia. In the case of Central Asian nationalities, the first respondent, an academic in Moscow, noted:

There is a gap between the minority leaders and the rest of the group, and not even communication between them [...]. The leaders represent the intelligentsia, people who have lived in Russia for a long time, have status and work. [2.19]<sup>558</sup>

The second respondent, an activist on Roma rights in St Petersburg, herself a Russian, said:

There was a roundtable I attended, where there was a discussion on [Roma] settlements of the town of [X].<sup>559</sup> There was a conflict between the Roma and the administration, on houses that were built without permission, and

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<sup>557</sup> Although not the case for NCAs, there are other minority institutions in which elections take place, such as the Congress of Tatars, the Congress of Karelians and the Inter-regional Movement of Mordovian (Moksha and Erzya) Peoples. Abramov argues that in the Mordovian case voting results might be controlled by the Russian authorities (2010). See Section 9.1. On Congresses of Peoples see also Osipov (2011).

<sup>558</sup> Many Central Asians, instead, are migrants living in precarious conditions.

<sup>559</sup> Not specified in the interests of confidentiality.

some were destroyed by a decision of the court. At the roundtable there was nobody from the community, only a representative of the Roma Federal NCA, a famous singer and actor. He is the picture of Roma life that corresponds to the stereotype, not to reality. He didn't defend the Roma, he said that the authorities were right. [1.5.8]

The Russian NCA system is based on a 'descriptive', rather than a 'substantial', form of representation - the former assuming that belonging to a certain (ethnic) group will automatically guarantee the representation of the group's interests (Pitkin 1967).<sup>560</sup> More important than ethnic affiliation, argues Verstichel, is a strong 'link of accountability' between the representatives and the represented (2008: 459). This link is tenuous in Russia, in the absence of procedures to elect or remove representatives.

Similarly, the motivations for establishing an NCA do not always appear linked to a concern for accountability and group interests in the leaders. Once the NCA Law was adopted, an 'offer' was implicitly made to nationalities to organise themselves into NCAs. Osipov argues that minority groups accepted the 'offer' for reasons that are not necessarily (or solely) linked to cultural preservation, but also to calculations over potential material benefits with expectations of government support, and to ingratiate themselves with the authorities by demonstrating loyalty (2004). On the basis of the model of one NCA per minority per territory, minority organisations were eager to seize the opportunity to become *the* NCA for their area, filling the niche that would otherwise be occupied by another organisation (Osipov 2004). The NCA system was established on a first-come, first-served basis - or in a form of 'survival of the fastest'.

These motivations indicate loyalty to and preoccupation with the authorities rather than the group. Registering as an NCA, in particular, signals to the

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<sup>560</sup> The issue of descriptive representation and the 'link of accountability' are further discussed in Chapter 9.

authorities that the organisation wishes to focus on culture, distancing itself from politics - and therefore remaining non-threatening to the *status quo*. Although some respondents indicated cases of cooperation with the local authorities, one respondent, an academic and analyst from Moscow, noted that cooperation came with a 'contract' of loyalty [2.21]. Daucé believes that NCAs are no more than a system for handpicking loyalists: in describing the Tatar associations in Moscow, she suggests that the NCA Law was a tool of political control over independent Tatar associations. NCA leaders were selected for their loyalty to the authorities, and are rewarded with state support while other Tatar associations are marginalised (Daucé 2008).

In practice, NCAs are not necessarily given preference compared to other minority organisations, while financial and other government support is minimal (Osipov 2004). Yet NCAs continue to be established. According to a respondent, an academic belonging to a national minority in Moscow, leadership of an NCA is sometimes seen as a step towards a political career [2.20]. Another respondent, head of a minority institution in Kazan, expressed the opinion that the flexibility and non-transparency of the regulation of NCAs meant that these institutions might give access to opportunities to enrich oneself through illicit means [1.4.2]. Some noted other potential benefits of loyalty to the authorities: speaking about a NCA in a Petrozavodsk, the director of an NGO in the same city said:

[The representatives of this NCA] are not interested in the *kopeks* that they might get from the government. They have their own festivals. What they need is visas and work permits for their relatives and friends [fellow minority members]. [1.2.1]

In this case, NCAs may become an instrument to facilitate amicable relations with the authorities, and the resulting networks may be used to benefit certain other members of the same minority. In an environment where unpredictability and

informal practices permeate society (Ledeneva 2006a), these networks may in practice be necessary. The leader of the NCA in Petrozavodsk - referred to by respondent 1.2.1 - was asked whether members of his minority, some of whom are recent (post-Soviet) immigrants, experienced discrimination in Russia; he said that citizenship was the priority in seeing one's rights respected [1.1.1]. If NCAs' networks are indeed employed to obtain work permits and citizenship, leadership of an NCA might enable the resolution of some very real concerns for minorities, including immigrants - yet in a circuitous and opaque manner, through behind-the-scenes negotiations and informal networks.

Respondents of both the 'civil society' and 'academia' categories argued that the ethnic leaders might be driven more by self-interest than altruism. Approximately half of the minority leaders interviewed were wealthy businessmen: informal networks might help protect their businesses from the unpredictability of the Russian economic and legal environment, where, again, informal practices are ubiquitous (Ledeneva 2006a). The reality is likely to be an amalgam of motivations. Helping fellow minorities will reconfirm one's position as the leader of a particular minority and ultimately serve his/her interests. For the cultivation of good relations with the authorities, membership in bodies such as Public Chambers<sup>561</sup> and parliamentary assemblies are of further benefit to one's status.<sup>562</sup> This form of 'representation' might in practice be beneficial to the group generally, even when it originates from self-interest. The leaders of minority organisations may use their informal networks with the local authorities to help fellow minorities - for example, if the latter are harassed by law-enforcement officials. One respondent, the leader of

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<sup>561</sup> Public Chambers are another form of consultative body. See Section 9.1.

<sup>562</sup> Some of the minority leaders interviewed had passes to access the federal Duma by virtue of their leadership roles within minority groups in their regions.



a minority group in a city (not in an ethnic republic), and the head of a Public Chamber advising the local authorities on nationality issues, said:

When people [minority members] get stopped by the police they call me. They ask me to go and speak to the police. [1.2.6]

The potential benefits of this system come with a risk of bestowing excessive discretionary powers on the group's leaders. An excessive reliance on informal practices also means that those who do not have the necessary networks to benefit from them may remain without support from both the authorities and the group. As noted by a respondent, a Russian scholar in Moscow:

For the elites [the NCA system] is an instrument of self-realisation. They [the leaders] do represent the interests of the group, but they have the right to [the control of] the point of contact between the group and the authorities. This unique channel is monopolised by these leaders. The majority of them are good, they want to help. But the system is built in a way that even good people become corrupted by it [...]. They have to show their loyalty. [2.21]

Limited accountability and uncertain responsiveness to the needs of minority members point to the questionable internal democracy of NCAs.<sup>563</sup> Ultimately, NCAs' minority leaders are complicit in perpetuating the (government's) unwritten rules for the regulation of nationality issues. As Osipov puts it, it is a matter of:

[...] "governmentality" (*gouvernementalité*) in Foucault's terms, in the sense that power means general acknowledgement of certain ideas and rules as part of the natural and unavoidable order. Power functions as a wide range of control techniques embedded in society itself, and it remains invisible, being literally kept out of politics in the narrow sense. Thus, the Russian system of diversity governance looks stable and rests on a silent agreement between the government and the citizenry (Osipov - forthcoming).

To conclude, in Russia there is a stultified system of representation, which fails to involve any but the leaders of minority institutions. The NCA system is a loose

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<sup>563</sup> This issue is addressed in Chapter 9.

arrangement for the ‘consultation’ of the few, rather than an institutionalised form of participation encompassing the minority group’s many diverse segments.

### **8.3 NCAs: A Framework ‘From Above’**

The issues analysed thus far have been internal to NCAs. I now focus on the (external) conditions in which NCAs operate. It has been argued that NCAs are structures that originate ‘from above’, being established by law by the Russian government, and minorities having no co-ownership of them (Filippova & Filippov 2008). The Russian authorities also shape the framework in which NCAs operate, placing boundaries around their scope of action. In particular, inhibitors to effective participation are: the NCAs’ limited autonomy and opportunities for consultation; the unrepresentativeness of the NCA federal consultative body; the fragmentation of minority representative institutions; and the inadequate legal entrenchment of NCAs. All four obstacles to participation are addressed below.

The first obstacle is found in the limited opportunities for autonomy and effective consultation offered by the NCA system. In principle NCAs could facilitate the realisation of minorities’ participatory rights in two ways: by granting genuine autonomy in decision-making on specific issues affecting minorities, or by guaranteeing participation in governmental decision-making through consultative mechanisms. The NCA Law opens up opportunities for autonomy, stipulating, at Article 1, that NCAs are established to ‘independently regulate the issues of their identity preservation’. This form of autonomy can transcend the limitations of federalism, which is, instead, constrained by the territoriality principle (Nimni 2007: 355). This was noted by an analyst from Moscow, who argued in an interview that NCAs can benefit dispersed minorities by upholding the rights of minorities ‘regardless of where they are’ [2.17]. Similarly, Brubaker notes:

National autonomy requires not the convergence of territorial administration and national culture, but their independence; it requires cultural rights [...] for members of nations *wherever they live* [italics added]. (Brubaker 1996: 41)

If true autonomy is reached, Nimni argues, the need for ‘special measures’ to accommodate minorities is eliminated, as minorities are equipped with the authority and resources to manage their cultural distinctiveness autonomously (2007: 360). In practice this is not the case in Russia: NCAs have no authority to make decisions on matters concerning minorities, such as the teaching of minority languages in state schools. On this issue, a Russian scholar in Moscow stated in an interview that, of the three words in the expression ‘national cultural autonomy’, the first two may be accurate but ‘autonomy’ is ‘unfortunate’ [2.21]. In addition to the absence of autonomous decision-making, the dependence upon (precarious) financial support, from the government or other sources, means that NCAs have no ‘autonomy’ (Filippova & Filippov 2008).<sup>564</sup>

The NCA Law also carves out a role for NCAs as advisors of governmental authorities.<sup>565</sup> In reality, the Russian NCA system is only at the periphery of commonly-endorsed mechanisms for minority consultation arising from international standards for minority protection. These include mechanisms for co-decision, which may be divided into ‘soft’ and ‘hard powers of co-decision’. ‘Soft powers of co-decision’ designate arrangements by which the views of minorities must be heard before decisions are taken or laws adopted on matters concerning them; ‘hard powers of co-decision’ are those in which minorities have the right of legislative initiative and veto powers in the case of legislation affecting their interests. Mechanisms of minority participation further encompass fully

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<sup>564</sup> See 7.3 on the funding of NCAs.

<sup>565</sup> Article 7 envisages the creation of an advisory council on national cultural autonomy, to provide advice to the Russian government. The article adds that similar advisory councils ‘can be’ established at the regional and local levels.

independent decision-making in specific areas, including through forms of self-government. In these cases the government provides a 'general framework' on nationalities policy, but decision-making in specific areas, such as minority education, and on the use of funds allocated to minority programmes, are left to minorities themselves (Weller 2008: 430-1). Set against these models, the Russian NCA system does not fare well. As the ACFC put it, consultative councils in Russia 'meet sporadically and are expected to implement rather than contribute to the preparation of minority-relevant legislation'.<sup>566</sup> There is no specific obligation to hear minorities' views prior to decisions or the adoption of laws affecting them: in 2002 amendments to the NCA Law<sup>567</sup> removed the obligation for the Russian authorities to take into account proposals from NCAs in the formulation and realisation of federal programmes on the development of minority cultures.<sup>568</sup> A respondent from a minority NGO in Moscow, who had taken part in public discussions on minority issues, commented on their overly general nature, followed by 'no outcome' [1.2.5].

Despite the scarcity of opportunities for impact, the respondents noted some positive examples of cooperation between the authorities and the NCAs or other minority associations. Interviews in Tver with members of this NCA indeed pointed to some fruitful cooperation with the local authorities [1.1.2; 2.5]. The ACFC had also cited the NCA of Tver Karelians as a positive example of cooperation.<sup>569</sup> In the case of the Mordovian NCA in Ul'yanovsk, Abramov writes that 'a mutual understanding was established with the leadership of the Ul'yanovsk oblast, which

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<sup>566</sup> ACFC, (Second) Opinion on Russia (note 133), § 90. Overall, these consultative councils have been viewed by the ACFC as ineffective in advising the authorities (§ 14). Concerns were echoed by the Committee of Ministers in Resolution CM/ResCMN(2007)7 (note 134).

<sup>567</sup> Law No. 122-FZ (note 519), Article 76.

<sup>568</sup> The requirement to take such proposals into account was only preserved in the case of regional programmes (Article 14 of the NCA Law). Even in this case, there is no obligation to implement the proposals after they have been heard.

<sup>569</sup> ACFC, (Second) Opinion on Russia (note 133), § 89.

favourably related to the issues of survival and development of Mordovians' (2010: 173).<sup>570</sup> Other positive examples cited were: the Mordovian NCA of Tatarstan, and NCAs in cities with high concentrations of Mordovians such as Penz and Samara (Abramov 2010: 173-5). Among the NCA activities mentioned in interviews were: the publication of newspapers in minority languages; the teaching of minority languages; the celebration of 'days of national languages', festivals and events on national cultures, concerts and cultural programmes; and the establishment and running of cultural centres for minorities. The NCAs' objectives include the raising of national consciousness: the Tatar NCA for Moscow oblast developed programmes to encourage Tatars to self-identify as Tatars in the 2010 census, rather than as (ethnic) Russians.<sup>571</sup>

At the same time, as seen in Chapter 7, some respondents noted a tendency by the authorities to restrict exchanges with civil society to a discourse confined to pre-existing boundaries, centring around general policies and cultural programmes, such as minority festivals - with a disinclination to discuss, for example, the intricacies of educational policies.<sup>572</sup> A representative of the Jewish Federal NCA warned of the 'alarming tendencies' of placing inter-ethnic dialogue on a superficial level, by 'trying to revive the hypocritical form of *druzhba narodov* of the Soviet period.'<sup>573</sup> He would have liked, instead, for NCAs to have a more meaningful role, by becoming 'partners' to the lawmakers in formulating legislation.

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<sup>570</sup> Author's translation. 'Survival' is intended in the sense of retention of Mordovian ethnic identity, as opposed to assimilation with the Russian majority.

<sup>571</sup> The information is from an interview with a representative of the Tatar NCA of Moscow [1.1.5]. The higher the number of persons declaring themselves Tatar in the census, the greater the allocation of federal funds for the minority.

<sup>572</sup> See Section 7.1.

<sup>573</sup> 'Friendship of peoples', a Soviet-sponsored discourse based on general notions of multi-ethnic tolerance. The citation is from a speech delivered at a conference on national cultural autonomies in Kazan, 2009 (unpublished).

A respondent, an academic in Moscow, believed that NCAs, having been prevented from acquiring a meaningful function, have tended to become inward-looking: focusing on their own short-term projects, rather than fulfilling the functions listed in the NCA Law. He said:

As a rule they [NCAs] don't solve problems. They have no influence at higher levels. They only solve their own issues, such as getting their own grants. [2.20]

This thesis does not wish to belittle the importance of NCAs' activities, and the role that NCAs and other minority institutions play in the lives of some persons belonging to minorities. Many NCA members are motivated volunteers who wish to preserve their traditions, and assist others in the same goal, for example by organising - sometimes teaching themselves - language classes.<sup>574</sup> Some respondents indicated that these activities are very much essential to the preservation of their cultural uniqueness and ethnic consciousness. Popov argues that cultural autonomies fulfil a social function, by creating an internal support system for minority communities - once provided by Soviet institutions - as well as, in the case he examines, a system of moral values (2008).<sup>575</sup> I argue, however, that the NCA system is insufficient to satisfy the participatory rights of minorities in Russia. As Osipov contends, NCAs are entities virtually undistinguishable from NGOs, devoid of specific rights and guarantees (2004). For example, NCAs were offered no opportunity to debate the adoption of Law 309 and reform in education, despite their being closely connected with the teaching of minority languages, history and cultures.<sup>576</sup>

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<sup>574</sup> This was the case in Tver, in the youth branch of the NCA of Tver Karelians, as reported by one of its members [1.1.3].

<sup>575</sup> He examines the case of Greek communities in Southern Russia.

<sup>576</sup> The information was provided by a member of the FCC representing a minority, in an interview [1.1.6].

## **The Federal Consultative Council: Exclusive Consultation**

The second obstacle to participation facing NCAs is the ‘exclusive consultation’ system found at the apex of the NCA structure: the Federal Consultative Council (FCC). Although in Russia there is a plethora of consultative councils - with multiple councils both at the local and regional levels - the FCC is the only consultative institution at the federal level. It consists of representatives of federal NCAs: these may be formed when local NCAs choose to unite to form a regional NCA, and regional NCAs, in turn, converge to form a federal NCA (FNCA) per minority. It is envisaged as a forum for discussion and consultation for representatives of the various minorities in Russia, yet only 18 FNCA<sup>577</sup> were registered at the end of 2008, out of the over 170 nationalities recognised Russia - a glaring imbalance. The FCC’s representative deficiency is primarily due to the bureaucratic efforts that an FNCA entails, both for its creation and maintenance [1.1.5; 1.1.6; 3.2].<sup>578</sup>

A complicating factor in creating a wide representative base for minorities through NCAs is that these instruments are normally only allowed to be established in regions where a particular minority is not ‘titular’.<sup>579</sup> On this basis NCAs can be formed only by minority groups that have no ethnic territory at all (e.g. the Roma) or titular groups residing outside their titular region (e.g. Tatars outside Tatarstan). This non-titularity requirement originates from the fact that NCAs are conceptualised as a mechanism for the representation of minorities in a disadvantaged position - and titular nationalities are regarded a dominant in the

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<sup>577</sup> Of these, the Ukrainian and the Armenian Federal NCAs were closed in 2010.

<sup>578</sup> The respondents who provided this information were, or had been, active in FNCA.

<sup>579</sup> Article 1 of the NCA Law states that NCAs can be formed by groups ‘finding themselves in a situation of national minority in a particular territory.’ This follows amendments introduced by Law No. 136-FZ of 10 November 2003 ‘On the Amendment of the Federal Law on National Cultural Autonomy. In practice there have been no official interpretations of this provision, whose application vary. In some cases, NCAs have been allowed to be established on behalf of titular groups in their regions. What is presented here is the general rule.

ethnic republics.<sup>580</sup> Hence, for example, there are no Mordovian NCAs in Mordovia. The main organisation promoting Mordovian interests is the Inter-regional Social Movement of Mordovian (Moksha and Erzya) Peoples (Mordovian Movement). The Mordovian Movement's members, however, are unable to access the FCC, being outside the NCA system. Meanwhile, a Mordovian FNCA had not been set up by 2011. The Tatar minority had a Tatar FNCA in 2011, but no regional or local Tatar NCAs within the Republic of Tatarstan. Consequently, alternative institutions have been established in the republic, primarily the World Congress of Tatars, with headquarters in Kazan. The FNCA brings together the Tatar NCAs from outside Tatarstan. Similarly, in Petrozavodsk the main institution uniting Karelian activists was the Congress of Karelians, with no Karelian NCA in Karelia. These regulations complicate the system of representation, giving it an asymmetric structure and fragmenting it.

Ultimately, alternative (often informal) channels of communications between non-NCA structures and the authorities have been forged. For example, the Mordovian Movement approaches the Russian authorities to further Mordovian interests as this is its *raison d'être*.<sup>581</sup> NCA and non-NCA structures are not necessarily placed antagonistically toward each other. For example, the NCA of Ul'yanovsk oblast was registered in 2000 following the 3<sup>rd</sup> Congress of Mordovian Peoples (Abramov 2010: 173). The same members can sometimes be found in Tatar NCAs and *also* in the World Congress of Tatars.<sup>582</sup> Yet with the plurality of communication channels the opportunities for bilateral, informal negotiations multiply, with a proliferation of parallel minority institutions.

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<sup>580</sup> Despite the fact that members of titular nationalities in 'their' republics are often numerically inferior to the Russian population.

<sup>581</sup> Despite their titularity, Mordovians are far from 'dominant' within Mordovia, and the republic is far from being autonomous: the Republic of Mordovia is dependent on the federal centre with regard to, among others, standards of education and funding.

<sup>582</sup> This information was provided by a respondent from the Tatar NCA for Moscow oblast [1.1.5].



## **Proliferation and Fragmentation of Minority Representative Institutions**

This takes us to the third obstacle to effective participation: the proliferation and fragmentation of minority representative institutions. In addition to the institutions already cited, such as the Mordovian Movement, below the FCC there is a complex web of consultative bodies. Pursuant to the NCA Law, these bodies are building blocks of the NCA structure: Article 7 stipulates that government bodies are to form ‘advisory councils on national-cultural autonomy’. A number of advisory councils have been established, although they do not represent an integral, distinct feature of the NCA system: in these councils no distinction is made between NCAs, NGOs and other ethnicity-based organisations. In reports to the ACFC, the Russian authorities, in listing forms of consultation present in Russia, refer not only to NCA-based consultative bodies but to general consultative bodies and Public Chambers.<sup>583</sup> Hence, NCAs do not serve as the main channel of communication and cooperation between the authorities and minorities. Some incoherencies thus emerge: on one side, there are attempts to maintain a unified structure of representation - not allowing more than one NCA per region; on the other, there is a great deal of elasticity, in the absence of membership rules for consultative councils. The exclusivity rule of one NCA per minority per region is immaterial if an alternative (non-NCA) institution may be established for the same minority, whose treatment is indistinguishable from the treatment of an NCA.

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<sup>583</sup> See, for example, ACFC, (Third) Report submitted by Russia (note 132). On Public Chambers, see Section 9.1.

In principle a plurality of voices is conducive to the proper functioning of a democratic society.<sup>584</sup> In line with this, ACFC recommendations focus on inclusiveness, urging the Russian authorities to promote ‘high levels of representativeness’ of NCAs, while also involving other groups in consultation processes alongside them - to ‘ensure pluralism among the state’s interlocutors’.<sup>585</sup> Certainly in addition to more formal systems of representation there is space for pressure groups and campaign organisations. These may operate and lobby alongside more formal, institutionalised structures, which enjoy specific rights and (preferably constitutional) guarantees. The Russian system is simultaneously inclusive *and* exclusive - in both cases remaining largely ineffective. It strips NCAs of their special function in the nationality discourse, by failing to institutionalise their role, and involves other institutions in discussions that have little practical impact. Rather than ensuring pluralism in decision-making, this ostensibly inclusive system muffles voices that are already feeble. No specific guidelines are established for negotiations with minority groups and for participation in decision-making, with nebulous provisions in the NCA Law.<sup>586</sup>

Two basic standards emerge from the ACFC’s Opinions with regard to consultative bodies: they ought to be ‘institutionalised’ and in ‘permanent dialogue’ with the authorities (Marko 2006: 7). These institutionalised consultative bodies

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<sup>584</sup> See for example, *Handyside v the United Kingdom*, European Court of Human Rights, Application No. 5493/72, 7 December 1976, § 49.

<sup>585</sup> ACFC, (Second) Opinion on Russia (note 133), § 164.

<sup>586</sup> Article 7 of the NCA law, on advisory boards, states;

The government of the Russian Federation shall determine which federal executive body will create an advisory board on national-cultural autonomies [...]

An Advisory Council on national cultural autonomies:

guarantee the coordination of activities among national cultural autonomies [...]

represent and defends, in the organs of the Russian Federation, the cultural and social interests of ethnic communities [...]

are involved in preparing programmes for the preservation and development of the national language and national culture, draft laws and regulations, as well as in the preparation of other decisions affecting the rights and lawful interests of Russian citizens that consider themselves to belong to certain ethnic communities [...].

need to fulfil numerous functions,<sup>587</sup> which one consultative body, on its own, is unlikely to encompass. For this reason, responsibilities may be distributed among several bodies (Weller 2008: 439). Internationally one can find consultative bodies with both a vertical, multi-layered structure (from local to nationwide bodies), or a horizontal one (specialised bodies). Specialised bodies might be thematic (e.g. education or cultural issues) or work with specific minorities (Weller 2008: 434-5).<sup>588</sup> What is of paramount importance is that responsibilities are spread across bodies that are part of the same cohesive structure. The bodies should be interlocking and multi-layered,<sup>589</sup> rather than duplicating each other's functions. The Council of Europe recommends 'a comprehensive and integrated design of minority consultative structures', with '[a]n overall minority consultative council operating at the national level, and including all minorities'. Other institutions should radiate from this focal point - for example, special mechanisms for particularly disadvantaged and marginalised minorities.<sup>590</sup> Weller suggests that, when there is no one single institution recognised by different minorities (or by different groups within the same minority) as a single umbrella organisation representing their interests, the state might encourage minorities to reach consensus

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In 2011 there were no guidelines or codes of practice for the practical implementation of these provisions.

<sup>587</sup> These functions include participation in the area of minority issues, in: needs assessment, devising policy priorities, decision-making on funding, monitoring and evaluation of programmes, devising legislative and other proposals (Weller 2008: 438). See also Lund Recommendations (note 131), Point 13.

<sup>588</sup> For example, Germany has separate consultative mechanisms for three minorities: Sorbs, Frisians and Danes (parliament and the executive). Consultative bodies may also be mixed: on a particular issue affecting an individual minority (i.e. education for Roma children). See Council of Europe, Committee of Experts on Issues relating to the Protection of National Minorities, 'Handbook on Minority Consultative Mechanisms', 20 October 2006, DH-MIN(2006)012, § 25. In Russia an Expert Group on Roma was established in August 2003 (ACFC, (Second) Report by Russia, p. 62), but stopped functioning in 2004 (ACFC, (Second) Opinion on Russia (note 133), § 66; 68). There was no mention of the Expert Group in Russia's Third Report to the ACFC, in 2010.

<sup>589</sup> For example, this is the case in Croatia, Finland, Germany, Hungary, Slovak Republic, Slovenia and the United Kingdom.

<sup>590</sup> 'Handbook on Minority Consultative Mechanisms' (note 588), § 33.

on a single representative body (2008: 443).<sup>591</sup> In this way, institutions can converge into a single interlocutor, thereby simplifying negotiations.

While this model may be an example of good practice, international standards of minority protection do not delineate precise guidelines, which have instead to be devised by individual states. To be sure, it is no easy task to strike a satisfactory balance between the establishment of a coherent, effective system for minority participation and guarantee minorities independence of action as to their own systems of representation. Even in the presence of adequate mechanisms, minorities might encounter difficulties in effectively representing their interests through these bodies (Marko 2006: 8; Weller 2008: 443). These complexities are multiplied in the case of Russia, given the extremely high number of minorities residing within its boundaries, and their atomisation into different structures of representation.

### **Participation without Legal Guarantees**

The fourth and last obstacle to NCAs' effective participation is the inadequate legal guarantees provided to them as consultative bodies. Consultative bodies should not be seen in a vacuum, but as part of a system providing legal guarantees and judicial remedies. The shedding of the requirement of territoriality that cultural autonomy implies should by no means create an overly flexible, amorphous system, devoid of strong rights and guarantees. NCA theorists argue that NCAs should be guaranteed exclusive decision-making in spheres of culture - in the form of constitutionally-enshrined rights (Nimni 2007: 347). This approach is close to international standards relating to the participation of minorities, which call for the legal

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<sup>591</sup> The state should avoid preferential treatment of an organisation over another. ACFC, (First) Opinion on Romania, 6 April 2001 ACFC/INF/OP/I(2002)001, § 67.

entrenchment of mechanisms for participation.<sup>592</sup> A corollary to this, of course, is that such legal provisions must be fully implemented. It means that consultation processes should not merely end with recommendations being submitted to the relevant governmental bodies: explanations ought to be provided where recommendations are not complied with.<sup>593</sup>

Russian law and practice on NCAs distance themselves from these standards in two ways. First, mechanisms for minority participation are not constitutionally guaranteed: provisions are only found in the NCA Law, and there has been no sustained effort to implement it (Osipov - forthcoming). Second, the vagueness of the legislation means that the rights of NCAs tend to be ambiguous and open to interpretation. Respondents (civil society) referred to the fact that the NCA Law provides vague provisions on funding from the authorities, without an automatic obligation on these bodies to provide such support.<sup>594</sup> The fact that the NCA Law lacks detailed provisions on the relations between NCAs and the authorities, and on financing, precludes long-term and fruitful cooperation (Osipov 2004). The vagueness of the rights of NCAs means that it is difficult to pin down what the ‘violations’ are, and therefore to argue them in courts. Thus in the event that the authorities fail to provide funding to NCAs, there is no legal redress as the NCA Law’s provisions do not establish a legal obligation over financing. Similarly, legal vagueness exempts public structures from specific responsibilities to follow advice and recommendations originating from NCAs and advisory councils.

Hence, the environment in which NCAs operate offers scarce opportunities for the effective participation of minorities in decision-making. This might be the reason why some respondents, cited below, stated what was, in their opinion, the

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<sup>592</sup> The ACFC has stressed that ‘it is important to ensure that consultative bodies have a clear legal status’. ACFC, Commentary on Participation (note 543), § 107.

<sup>593</sup> ACFC (First) Opinion on Romania (note 591), § 66.

<sup>594</sup> See Section 7.3 above.

importance of the nexus between nationality and territoriality. They believed that territoriality provided more substantial powers of decision-making and autonomy than NCAs. During the Soviet era territoriality advanced the rights of education, facilitated the establishment of cultural institutions and promoted languages (Harris 1993). In post-Soviet Russia, ethnic Russians in the republics of Tatarstan and Mordovia are obliged to study titular languages. Although the respondents referred to instances of non-compliances with these regulations, as well as to the sometimes dubious quality of teaching and language-learning facilities, the regulations unequivocally signalled that titular languages enjoyed a special status in the ethnic republics.<sup>595</sup> They were recognised as ‘state languages of the republics’ in the republics’ laws of languages.<sup>596</sup>

Perceptions as to the importance of territory are illustrated in the following excerpts from interviews. The first is from an interview with a scholar from Moscow’s Russian Academy of Sciences:

People see that with territorial autonomy much more can be achieved [than with NCAs]. [In an ethnic republic] you can have a national theatre, and regular financing. In schools there is education, students have to learn the [titular] language, there are textbooks, there are strong ethnological institutions, culture. People can see the difference, the type of guarantees that are there for ethnic groups. NCAs don’t give the opportunity to print textbooks and disseminate them - or maybe they can disseminate them but they can’t do anything else with them [such as ensuring that they are used in school]. [2.20]

A minority activist employed in the Ministry of Education strongly criticised the NCA system, saying that cultural autonomy, without territory, is ‘fiction’ [4.14]. She referred to the special case of Roma, a particularly disadvantaged minority: the cultural and educational needs of Roma, she argued, could not be met by an NCA.

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<sup>595</sup> See also the RCC’s judgement on the constitutionality of the obligation to study Tatar and Russian ‘in equal measure’ in the Republic of Tatarstan (Section 4.2, note 264).

<sup>596</sup> The only exception in Russia’s 21 ethnic republics is Karelia.

She believed that those nationalities benefitting from territoriality have the freedom and concrete opportunities to formulate and implement their own cultural and education projects in their own regions. She said:

Other nationalities, like Tatars and Bashkirs, have their own territorial administrative divisions and own budgets, through which they realise their own cultural policies. Those [nationalities] that have no territory [...] have no opportunity to realise their rights and develop the native culture and language.

While territoriality is not synonymous with autonomy and financial prosperity,<sup>597</sup> these statements seem to indicate that there is little faith among Russian experts in the ability of NCAs to influence the fate of minorities through participation. Both respondents referred to the cultural ‘autonomy’ offered by the NCA system as mere ‘fiction’.

#### **8.4 Conclusion: More Fiction than Reality**

NCAs do not satisfy the participatory rights of minorities in Russia. They offer no guarantees that the concerns of ‘ordinary’ persons belonging to national minorities will be represented at a higher level. NCAs’ leaders are unelected members of individual minorities’ elites. In some cases, they appear to defend their own interests in addition to, or rather than, the interests of their fellow minorities. A proliferation of consultative bodies fragments and dilutes the voices of minorities, defusing their messages. The system is mono-dimensional - with one (homogenising) NCA per minority per region - yet also coexisting with an (uncoordinated) proliferation of bodies. There are numerous standards on participatory rights arising from the ACFC’s Opinions that are not guaranteed in the Russian system, namely: the absence of legal entrenchment of the status, role and

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<sup>597</sup> See, among others, Alexander (2002).

functions of the consultative bodies; the absence of systematic and effective exchanges on matters that affect minorities, including legislation; and the failure to provide explanations when minorities' recommendations are not followed.

Informal networks may benefit minorities in some instances. Yet the downside of an overreliance on informal networks is the lack of transparency and the absence of a 'link of accountability' between the leaders of minority groups and minority members. Without strong guarantees and a clear role for NCAs, minority leaders and the government alike are exempted from specific responsibilities. Ultimately, what happens is *ad hoc*: minority leaders might help their fellow minorities, but also they might not. Public officials might cooperate with minority groups, but also they might not. Rather than a pluralistic, coherent and institutionalised system, the Russian NCAs system encompasses various leaders at the apex of multiple organisations, whose activities are entangled in a web of informal networks.

The recommendations by the ACFC in the area of NCAs have not resulted in any alteration of the NCAs structure by the Russian authorities, suggesting that international standards are having little or no impact in this sphere. At the end of the section on 'Exclusion' I address in greater depth the role of international standards in the area of participation, including with regard to the issues of internal democracy and 'groupism' raised above. Before that I complete the outline of participatory mechanisms for minorities by introducing the Russian approach to remaining vehicles for participation: representation in elected bodies and (non-NCA) consultative bodies.



## 9. AD HOC CONSULTATION AND (A)POLITICAL REPRESENTATION

This chapter concludes the section on ‘Exclusion’. Together with the data from the previous two chapters, it addresses the question as to how, if at all, international standards can contribute to the effective participation of minorities in decision-making in Russia. The chapter is divided into three parts: first, I analyse (non-NCA) consultative mechanisms, and, second, the representation of minorities in elected bodies. Third, I bring together the three chapters on ‘Exclusion’ to analyse whether international standards can facilitate the transition towards a more substantive form of representation for minorities in Russia. As in the case of NCAs, I argue that the requirements of Article 15 FCNM are not being met owing to the fact that the form of participation offered to minorities is devoid of guarantees that it will be ‘effective’. Hence, international standards on minority participation are unlikely to induce a substantial shift in minority policies in Russia. The reasons are twofold: first, the flexibility of the international standards themselves, and limits to their reach; and, second, the Russian mechanisms of participation themselves, some of which present features inimical to *effective* participation.

Obstacles to the participation of minorities in decision-making have led to the formulation of minority policies that tend to be centrally-defined and top-down. As argued in Chapter 1, this approach has its foundations in a tradition, already present in the Soviet period, of *managing* rather than *engaging* diversity. In post-Soviet Russia, although some general mechanisms for participation exist, they are not accompanied by guarantees that bottom-up initiatives will be effectively elevated to decision-making levels. As previously noted, this is due to the prevalence of informal practices in Russian society (Ledeneva 2006a). This means

that mechanisms that ought to enable minority participation are themselves immersed in informal practices and as such lack institutionalisation. The *ad hoc* nature of these practices fails to guarantee the accountability of the main actors in majority-minority relations: public officials and institutions, *and* leaders of minority groups themselves. Unlike in the cases analysed by Ledeneva with regard to business practices and politics, the use of informal networks to advance minority interests does not tend to signify a disregard or direct violation of the law, but rather it is a (perhaps inevitable) response to the lack of clear, legally-entrenched guarantees for minority groups. The absence of guarantees for effective participation is shown in relation to what have been identified as the two principal forms of participation (Marko 2006): mechanisms for consultation and political representation in elected bodies.<sup>598</sup>

In addition to NCAs Russia has a plethora of consultative and coordination bodies. The types of bodies vary geographically as well as in their format. They can be nationality-specific or cover a wider range of issues, including those of relevance to minorities. To the first category belong advisory bodies devoted to nationalities in city or regional governments, such as the Consultative Council on Nationality Issues of Moscow oblast and the National Chamber of Voronezh oblast. To the second category belong the previously-mentioned Public Chambers (*obshchestvennye palaty*). These are not specialised bodies focusing on minority issues, but they count among their members representatives of minorities. In Mordovia, the republic's Public Chamber is an instrument for minority participation, with *de facto* reserved seats for the three autochthonous nationalities (Mordovians - both Moksha and Erzya speakers - Russians and Tatars). Other,

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<sup>598</sup> In this chapter I include considerations on elected bodies given that, when minority interests are represented therein, they provide a forum for the participation of minorities in all spheres of political and social life, including the formulation of policies and legislation on cultural rights. Consultative bodies are also seen in the context of participation in decision- and policy-making on cultural matters affecting minorities.

smaller advisory bodies also exist in Russia, for example at the level of city mayors. Discussions are further conducted in institutions such as Houses of Nationalities (in Moscow and St Petersburg among the regions visited), and in Congresses of Peoples. The latter are institutions established by minorities themselves to advance their interests in Russia, and used to manage internal decision-making. The presence of public officials at some of the meetings means that they can also facilitate dialogue and consultation.

Consultative bodies are at times confused with what Weller describes as ‘mechanisms for coordination’.<sup>599</sup> The latter are not mechanisms to facilitate consultation, but rather *state* bodies for the coordination of activities on minority issues across governmental bodies. In Russia the epicentre of this activity is in the Russian Ministry of Regional Development, and its Department of Inter-ethnic Relations. Ministries on nationality issues are also found at the level of the republics.<sup>600</sup> There is permanent representation of the ethnic republics under the president - for example, the Permanent Representation of the Republic of Karelia under the President of the Russian Federation.<sup>601</sup> Although these organs can facilitate the expression of regional minority interests vis-à-vis the federal authorities, they are part of the executive apparatus rather than consultative bodies *stricto sensu*.

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<sup>599</sup> ‘Handbook on Minority Consultative Mechanisms’ (note 588), § 19.

<sup>600</sup> Of the three focus ethnic republics, there were special ministries in Karelia and Mordovia: the Ministry of the Republic of Karelia on Issues of Nationalities Policy and Relations with Religious Associations; and the Ministry on National Policy of the Republic of Mordovia. In Tatarstan nationality issues are incorporated into the work of other ministries, such as the Ministry of Culture and the Ministry of Education and Science, and the Cabinet of Ministers itself.

<sup>601</sup> Established by the Decree of the President of the Russian Federation No. 318 of 26 December 1991 and, in the case of Karelia, by a decision of the Ministry Council of the Republic of Karelia of 6 February 1992. See <http://gov.karelia.ru/Power/Mission/index.html> (accessed 1-9-2011).

## 9.1 Consultative Mechanisms: Cooperation or Infiltration?

In his book *Virtual Democracy* Wilson describes behind-the-scenes manipulation of political parties, through infiltration and other illicit measures (2005). Interview data indicate that similar patterns might be replicated at the level of mechanisms for the representation of minority interests. There is a blurring of the distinction between minority consultative mechanisms and the executive, with the same persons involved in both. Among others: in 2010 the head of the Federal Consultative Council of NCAs was also the deputy minister in the Ministry of Regional Development; in 2011 the head of the National Council of Voronezh oblast, which advises the governor on nationalities policy, was the governor himself;<sup>602</sup> and the speaker of the Tatar Duma in 2011 was also a member of the Assembly of Peoples of Tatarstan - itself a semi-official body, financially supported by the Republic of Tatarstan. Joint consultative bodies, formed by minority representatives and public officials are not per se contrary to international standards. In principle, this type of cooperation can further dialogue, and elevate the concerns of minorities to higher levels. For example, in the case of the Assembly of Peoples of Tatarstan, the views of minorities could be heard in the Tatar Duma through its speaker and member of the Assembly of Peoples. It will depend on the circumstances of each case as to whether these mixed consultative institutions function as genuine consultative bodies, or effectively just as 'mechanisms of coordination'.

The respondents referred to public officials attending meetings or being members of minority associations per se. For example, the Minister of Culture of

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<sup>602</sup> The National Chamber in Voronezh was established by the Decree of the Governor of Voronezh oblast No. 300 of 7 September 2010 'On the Establishment of the National Chamber of the Governor of Voronezh oblast'. It is a permanent consultative organ whose goal is to 'improve ... the realisation of national policy on the territory of Voronezh oblast' (Part 1, Point 2.1). The decree states that the head of the body is the governor of Voronezh oblast (Part 2, Point 1.1).

Mordovia in 2011 was also the head of the Association of Finno-Ugric Peoples of Russia. A member of the Assembly of Peoples of Tatarstan noted that ‘several representatives of ministries’ attend their sessions [4.8]. A member of the Congress of Karelians argued that the presence of public officials at their meetings did not lead to servility but it meant that issues of concern could be brought directly to the attention of public officials; he added that he did not refrain from criticising decisions by public officials at these meetings [1.4.1]. At the same time, the presence of public officials can develop into monitoring activity. Consultative bodies and minority associations might be vulnerable to co-optation by the authorities. Abramov suggests this scenario in the case of the Inter-regional Social Movement of Mordovian (Moksha and Erzya) Peoples Movement (the Movement). The Movement operates through a voting system to elect its representatives, and has a vertical structure (at district, regional and federal levels). Abramov argues that the Movement holds ‘joint meetings with the participation of the state structures of power [and] ministers [...]’ (2010: 164). He adds that the elections to the Movement’s executive committee have been rigged in support of candidates loyal to the authorities (2010).

A respondent, director of an NGO in Voronezh, expressed the following view on the National Chamber of Voronezh oblast:

Our regional National Chamber was established by governmental decree. And the governor is the head of this body, which shows that it’s not totally independent and more of a way for representatives of [national] diasporas to be close to the authorities. They don’t raise their voices. They try to deal with issues using personal contacts and avoiding media coverage. That explains a lot. [1.5.5]

One example - external to the case studies - is indicative of possible political manipulation of minority associations. In 2009, when a United Russia MP of the Republic of Buryatia became the head of the All-Buryat Association for the

Development of Culture, it was described by *Nezavisimaya Gazeta* as a case of ‘infiltration’.<sup>603</sup> The article argued that the MP, Vladimir Buldayev, was handpicked as a Putin loyalist to support the merger of Buryat regions with predominantly Slavic ones, which the Association had strongly opposed in 2007. The appointment, it was suggested, aimed at de-politicising the activity of the Association, transforming it into a loyal body. Interview data suggest that similar patterns in the activities of Public Chambers.

### **Public Chambers: Serving the Public?**

A number of characteristics of Public Chambers<sup>604</sup> are exemplified by the interview with a representative of the Public Chamber for her city (not in an ethnic republic), as well as the city Police Department’s Public Chamber. The respondent had also been invited to join the Public Chamber for the whole district (the regional Public Chamber), but had refused, as discussed below. Neither the respondent’s work nor the Public Chambers she had joined focused specifically on minority issues, but this interview was selected as an illustration of the dynamics behind Public Chambers, given the details provided by this respondent, and her openness in discussing controversial subjects.<sup>605</sup>

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<sup>603</sup> Berezin, S. 2-6-2009. ‘Buryatskoi Intelligentsii Podobrali Partiinogo Lidera’ (‘A Party Leader was Chosen for the Buryat Intelligentsia’), *Nezavisimaya Gazeta*.

<sup>604</sup> The federal Public Chamber was established by Law No. 32-FZ of 4 April 2005 ‘On the Public Chamber of the Russian Federation’, to facilitate state consultation with civil society. One third of its 126 members are appointed by presidential decree, the others by ‘public associations’. Public Chambers, with similar responsibilities and procedures, were also established at the regional level, including in the republics.

<sup>605</sup> Other respondents who were asked questions on discussions in advisory bodies and Houses of Nationalities noted that the discussions were on ‘current issues’ affecting minorities, without isolating specific cases - despite requests to provide examples during interviews. The reason for this vagueness might be that discussions themselves were overly general, not identifying specific issues or corresponding solutions. It may have also been a screen protecting the respondents from scrutiny by a foreign researcher.

Q: How do you find the Public Chamber (PC)?

A: It's not very efficient in my mind. In general PCs are not really effective, probably because they are not formed out of *active* members of civil society. They are formed out of *respected* members of society, like the deans of universities, writers or artists, or actors.

Q: How does it actually work in practice? Is there a programme for meetings? Are there decisions and recommendations?

A: Usually there is an agenda and we all receive it by email beforehand. At the meeting we discuss the items on the agenda. The chairperson will give us some information at the beginning, then there is an open discussion, and then we decide what we can do to raise the issue [discussed] before the mayor's office or before the city Duma, or how we could involve civil society, for example in dealing with the fires [...].<sup>606</sup> We involve organisations that we represent and our friends', we use our networks to bring help. We also decided to send a representative of the city PC to each session of the city Duma [...]. Still I believe this is not all what we can do for optimal effectiveness...

Q: Have you felt any pressure in the PC?

A: Well, sometimes they sort of push us to agree with certain decisions. It might not be that serious but still I don't like it when it happens. Like the last time we voted on the 'honoured citizens' of our town [...]. This year we all received the portfolios of seven people who were nominated, and basically I was told who had to be picked. I said: 'what if I don't want this particular person?' And it was explained to me that the mayor and the head of the PC had already met and decided that those two would be preferable, so [they said] 'we kindly ask you to vote for these people'. They have their own games that are not transparent and democratic. Maybe these two are good people - in fact I wanted to vote for one of them. But I don't like it when I'm being told what to do. Or once last year [...] we were invited to an event to plant trees in the city, initiated by the members of the PC. I went and I found a lot of people with signs of United Russia (UR). And I didn't like it, I don't want to be associated with UR, if it's an event to plant trees. So they exploited that as well, because the head of the PC is a [public] official from UR, so he probably decided to combine the two things to show that he is also doing something for UR.

Q: Do you feel that certain decisions that concern the PC are being made at the top (as in the 'honoured citizens' episode)? Are instructions handed down?

A: I can't say for sure, because those instructions would mostly be given to a chairperson, and then he would be promoting certain ideas, when discussing things with us. Then another question is whether the members of the PC themselves want to be independent. I feel that they are quite passive, I don't see any active initiative, something substantial [...] [besides the] little things that they would also do within their NGOs or institutes, universities, or [legal] clinics. [What they do] is so small

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<sup>606</sup> Wildfires affected Russia in the summer of 2010, due to the high temperatures and drought. A state of emergency was declared in seven regions of Russia.

and irrelevant, and if they wished to do something major, I think they could, but they don't raise these issues that are uncomfortable for the authorities.

*In a second interview the same respondent added:*

The PC is a small step towards more transparency. The police PC is more effective than the regional PC, there are more possibilities. It's an individual thing, the head of the police [in our town] is quite charismatic, and the administration is more closed than the police. In other regions it could be the opposite, like in [Town X<sup>607</sup>], where there is a better administration.

To raise an issue you don't need to be a member of the [regional] PC. But if you are a member they will use you 10 times more than you benefit from them. They will say that a decision has been approved after discussion with the PC, and will not even tell you the details of the decision. Your name will be there. They will abuse your name, your good reputation. That's why I did not want to get involved. At least in the city PC and in the police PC we have some control [...].

In our society the further away you are from the authorities, the more respect you get from civil society. If people see you sitting with the authorities you lose your independence. In a PC [the authorities] can use you to cover their own stuff. If you are everywhere [in many different bodies] and you try to sell yourself you can get many advantages [...]. I have a special ID from being the member of the police PC but I never showed it to anybody. I could show it to people when I need to [...]. Some of the members of the PC are there only to have this police ID and avoid possible conflicts - for example, if they are stopped by the police when they drive. Or otherwise [being on these bodies] can be useful if you have a business. Normally the authorities can put pressure on you through tax inspections and fire regulations. If you have affiliation with the authorities you don't have these problems. It has nothing to do with law and democracy. The system is abused by both the authorities and civil society, who try to get personal gain. The PC is more a platform for people to raise their profile and it's not independent.

To summarise, this respondent believed that: membership in the PC can be sought for opportunistic reasons; the PC can be used by its members and the authorities alike to further their interests; where PC membership is not abused, its members might tend towards passivity; the benefits that the PC may provide to society are variable, and depend on individuals and regions. In the particular circumstances of her region, the respondent believed that the PC members had more freedom in the city and police PCs, and less so in the regional PC, headed by the governor.

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<sup>607</sup> Not specified in the interests of confidentiality.



Another respondent, working for the Russian human rights ombudsman in Moscow came to similar conclusions. He believed that the function of the PC system, which should be that of a ‘social parliament’, was not realised in Russia. He identified two reasons. First, he said, some of the members of PCs were ‘not experts’ in human rights or social issues. Second, the members had only limited, and variable, influence:

The PCs’ members can get the authorities’ attention [on particular issues] but they can’t change the *system*. Sometimes they can raise some issues, complain vigorously [...]. If there is a very bad bill they might be able to stop it [...]. When issues are raised there can be publicity, through the media [...]. But the effectiveness of PCs depends. Mostly it only amounts to discussions [...]. Their role is purely consultative and there is no obligation to follow their recommendations. It’s important to what extent the leader [of a PC] is authoritative. Some PCs are very servile. In some cases it’s possible to have some influence, in others it’s just a beautiful façade. [1.5.3]

Another respondent, a member of St Petersburg’s city PC, similarly noted that ‘the PC can only make recommendations’. The authorities could simply respond to PC’s recommendations by noting that there were no funds to realise them [1.2.9].<sup>608</sup> She had, however, observed that when funds had become available in 2010 for a two-year project, the PC’s suggestions for a project had been accepted by the local authorities.

Several points can be drawn from the interview data. First, they indicate that there are no measures, such as rules on conflicts of interest, to guarantee that those who join these bodies do not abuse their networks and influence for personal advantage. Second, the members tend to be ‘respected’ persons, but not necessarily with a specialisation in human or minority rights. Only part of the members are nominated or appointed by civil society, including minority groups,<sup>609</sup> raising an

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<sup>608</sup> She added that the PC in St Petersburg had only existed for a few months at the time of the interview, complicating its assessment.

<sup>609</sup> In the case of PCs, two thirds of the members are appointed by ‘public associations’, the others

issue of representativeness; and the groups that do nominate or appoint may well be part of the same web of informal networks described in Chapter 8. Some exceptions were also noted, with reference to appointments as PCs' members of persons known for their political independence [1.5.2].

The representatives of semi-state structures on nationality issues such as Houses of Nationalities noted in interviews that they were open to any group that wished to approach them [1.3.6; 1.3.7]. The interviews with stakeholders did not reveal cases in which the opposite was true. At the same time, the problem rests on the ineffectiveness of the system of consultation. There are no specific advantages to its being fully inclusive, as it is ultimately ineffective. A respondent, the representative of a minority NGO in St Petersburg, expressed the following views on the meetings held in the House of Nationality in her city:

A: Sometimes the discussions are important because you meet other people, colleagues. It's good to know that there is a place where people can meet. The discussions sometimes are constructive, sometimes they haven't been well prepared - they are too spontaneous.

Q: At these meetings can you provide feedback on events [organised by the House], and recommendations for future events?

A: This feedback hasn't been requested. Usually the approach is: the event took place, all was good, and who was there [...]. [1.2.11]<sup>610</sup>

After examining consultative bodies, I now turn to the second form of participation of national minorities: participation in the political life of the country and representation in elected bodies.

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by the executive (see note 604).

<sup>610</sup> She further noted that most meetings were held in the afternoon, meaning that minority representatives in full time employment could attend only with difficulty. She had not been given the option of feeding into the discussion by email.

## 9.2 (A)political Participation of Minorities

In Russia special measures for the presence of minorities in elected bodies do not exist, while legislation stipulates that political parties cannot be established on the basis of professional affiliation, racial, ethnic or religious identity.<sup>611</sup> This particular provision was found constitutional by the RCC on the grounds that the existence of these parties could exacerbate existing ethnic or religious tensions.<sup>612</sup> The ACFC has criticised the excessive breadth of this form of pre-emptive measure,<sup>613</sup> and stated that ‘it is essential that persons belonging to national minorities have a possibility to pursue their legitimate interests also through political parties’.<sup>614</sup> Moreover, the ban is incompatible with Lund Recommendation No. 8, on the ‘formation and activity of political parties’, stating that the principle of freedom of association ‘includes the freedom to establish political parties based on communal identities’.<sup>615</sup> Albania, which, like Russia, has prohibited the establishment of political parties by minorities, lifted the ban in 2000;<sup>616</sup> Russia has not done so.<sup>617</sup> The potential scope of the Russian provision arguably goes even further than the banning of ethnicity-based political parties. If broadly interpreted, it could be used to ban political parties simply for including in their platforms advocacy designed to further the interests of national minorities.<sup>618</sup> The ban is hardly needed to exclude minority issues from politics: for example, in 1995, before the ban was established,

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<sup>611</sup> Article 9(3) of Law No. 95-FZ of 11 July 2001 ‘On Political Parties’.

<sup>612</sup> RCC, Judgement of 15 December 2004, No. 18-P, ‘Concerning the Orthodox Party of Russia’, on Article 9(3) of the Law No. 95-FZ of 11 July 2001 ‘On Political Parties’.

<sup>613</sup> ACFC, (Second) Opinion on Russia (note 133), § 162.

<sup>614</sup> ACFC, (First) Opinion on Russia (note 133), § 69.

<sup>615</sup> Lund Recommendation (note 131). See also PACE Recommendation 1201 (1993) ‘On an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights’, 1 February 1993. The proposed text of Article 6 states: ‘All persons belonging to a national minority shall have the right to set up their own organisations, including political parties.’ See also Weller (2005: 440).

<sup>616</sup> Albania’s legal reform was welcomed by the ACFC. See ACFC, (First) Opinion on Albania (note 418), § 42; 72.

<sup>617</sup> The Tatar opposition nationalist party *Ittifak* remained banned in 2011.

<sup>618</sup> Shadow Report submitted to the ACFC, 2006 (note 467), § 341.

the 5% threshold for parliamentary access was insurmountable for any single ethnic group. The Muslim bloc ‘Nur’ had less than 1% of votes. At the same time, the fact that most minorities are small and dispersed means that there is no wooing of their representatives by the main parties to attract ethnic votes (Moser 2000: 83).

Electoral reform has created new challenges for smaller parties. Legal requirements were introduced in 2004, stipulating that political parties must have regional branches in at least half of Russia’s federal subjects, while a political party’s minimum membership requirement was raised from 10,000 to 50,000 members.<sup>619</sup> The following year, a 7% threshold to access representative bodies, up from 5%, was introduced, along with a prohibition on the formation of electoral blocs.<sup>620</sup> This has diluted the influence of the regions as political players (Hashim 2005: 36) - and advanced centralisation policies.<sup>621</sup>

### **Minorities in Parliament Representing... United Russia**

Even if minorities do not have their own political parties, their representatives can still reach elected bodies.<sup>622</sup> Representation in elected bodies is seen as a *sine qua non* for the effective participation of minorities. As Hofmann writes:

[A] seat in elected bodies is seen as a necessary requirement for effective political participation. In my opinion, this means that there are good

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<sup>619</sup> Articles 3(2)(b)(5) of Law No. 95-FZ (note 611), following the adoption of Law 168-FZ of 20 December 2004 ‘On the Amendment of Federal Law ‘On Political Parties’’. The requirement was upheld in the RCC, Judgement of 1 February 2005, No. 1-P, ‘Concerning ‘The Baltic Republican Party’ in the Kaliningrad region’. The ACFC noted that the requirement to have regional branches in at least half the subjects impairs the ability of minorities concentrated in a particular territory to form political parties. ACFC, (Second) Opinion on Russia (note 133), § 261.

<sup>620</sup> These requirements were introduced through Law No. 93-FZ of 21 July 2005 ‘Amending the Laws of the Russian Federation on Elections and Referenda and other Legal Acts of the Russian Federation’. Subjects of the Russian Federation, however, may set lower thresholds in their own Dumas. Shadow Report submitted to the ACFC, 2006 (note 467), § 342. The amendments to election legislation were criticized not only by the ACFC, but also by the Committee of Ministers of the Council of Europe. See Resolution CM/ResCMN(2007)7 (note 134), Point 1(b).

<sup>621</sup> The ACFC recommended a revision of the electoral system, with a view to introducing modifications to enhance the effective participation of persons belonging to minorities. ACFC, (Second) Opinion on Russia (note 133), § 265.

<sup>622</sup> On minorities and elections, see also the OSCE Warsaw Guidelines to Assist National Minority Participation in the Electoral Process, 2001.

arguments to consider the mere existence of consultative mechanisms [...] as not sufficient for effective political participation. (Hofmann 2006: 13)

As noted in the Explanatory Note to Lund Recommendation No. 7, states should establish electoral systems that will result in a representative government, particularly by facilitating adequate representation of national minorities.<sup>623</sup> The ACFC has stressed the need for small, non-territorial minorities to also be guaranteed representation.<sup>624</sup> Special measures for minority representation might involve different forms of proportional representation, the use of quotas, and the lowering of, or exemptions from, threshold requirements to access legislative bodies.<sup>625</sup> More broadly, Article 21(3) of the Universal Declaration of Human Rights states that ‘The will of the people shall be the basis of the authority of government.’<sup>626</sup> The Russian Constitution offers solid foundations for this, by enshrining the principle that ‘[t]he bearer of sovereignty and the only source of power in the Russian Federation shall be its *multinational* people.’ (Article 3(1)) [italics added]

A margin of appreciation in devising special measures for electoral representation is afforded to states - yet they are responsible for ensuring that measures are effective.<sup>627</sup> When low levels of representation of national minorities have been noted in the parliaments of the member states, the ACFC has encouraged

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<sup>623</sup> Explanatory Note, Lund Recommendations (note 131).

<sup>624</sup> See for example the ACFC, (First) Opinion on Switzerland (note 409), § 76.

<sup>625</sup> Lund Recommendations and Explanatory Note (note 131), Point 9. In particular, this will facilitate access to elected bodies by smaller minorities (Weller 2005: 443-4).

<sup>626</sup> Provisions of this kind are also found in the ICCPR (Article 25) and the ECHR (Article 3, Protocol 1). See also the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990, § 6.

<sup>627</sup> For example, ACFC, (First) Opinion on Hungary, 22 September 2000, ACFC/INF/OP/I(2001)004, § 49.

the adoption of measures to rectify this.<sup>628</sup> An inclusive decision-making process is particularly important in decisions that are likely to affect minorities directly.<sup>629</sup>

Special measures for minority representation are not employed in Russia.<sup>630</sup> It is a decisive rupture with the Soviet system, with its highly-regulated model for minority representation based on *korenizatsiya*.<sup>631</sup> The absence of special measures affects primarily smaller, non-titular minorities, particularly the dispersed, non-territorial ones, such as the Roma. This deficiency is captured in the statement of a Roma activist interviewed in Moscow, who stated:

The Roma [in Russia] are nationalities without status [...]. The situation of Tatars, for example, is very different. Tatars are represented in Ministries. They have their own Ministry of Education in Tatarstan [4.14].

This is borne out by the comments of a Tatar activist and a member of a Tatar National Cultural Autonomy:

The head of the federal Tatar National Cultural Autonomy is also an MP. I can call him any time. I can also go to the Duma any time [1.1.5].

A substantive minority like the Tatars can benefit from both territoriality and contacts. Similarly, despite the exclusion of smaller groups, in practice there have been, overall, high levels of representation of minorities in both federal and regional representative bodies.<sup>632</sup> But what type of representation is it? Pitkin differentiates between two types: descriptive and substantial. As already noted, *descriptive* representation means that representatives resemble, or are even a

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<sup>628</sup> For example, ACFC, (First) Opinion on the United Kingdom, 20 November 2001, ACFC/INF/OP/I(2002)006, § 126.

<sup>629</sup> For example, ACFC, (First) Opinion on the Czech Republic, 6 April 2001, ACFC/INF/OP/I(2002)002, § 70.

<sup>630</sup> The ACFC criticised the removal, in 2004, of quotas for indigenous people in the Dumas of Russia's federal subjects - a move defined as a 'step backwards' in the implementation of the FCNM's Article 15. ACFC, (Second) Opinion on Russia (note 133), § 260. The provision in question (Article 13 of the 1999 Law No. 82-FZ, 'On the Guarantees of the Rights of Small-in-Number Indigenous Peoples') was repealed by the 2004 Law No. 122-FZ (note 519).

<sup>631</sup> See Section 2.3.

<sup>632</sup> This has been welcomed by the ACFC. ACFC, (Second) Opinion on Russia (note 133), § 258.

replica, of the represented (Pitkin 1967). One example would be a minority group represented by persons belonging to the same minority, hinging on the assumption that the representatives and represented strive towards the same goals. *Substantive* representation is not based on this assumption, and instead requires that representatives 'be *responsive* to the people' they represent [italics added] (Pitkin 1967: 232). Through analysis of the legislation adopted by the Duma,<sup>633</sup> Chaisty shows that in the second (1996-1999) and third (2000-2003) Dumas there was a degree of substantive representation of minority interests, but that this was much reduced by the United Russia party predominance in the fourth Duma (2004-2007); at this stage numerous minority leaders joined its ranks (Chaisty - forthcoming). What happened between the third and fourth Duma?

### **United Russia, the 'Power Vertical' and the Duma: Political Homogeneity**

Among the most wide-ranging repercussions of Putin's centralised power structure has been the creation of a solid parliamentary majority since 2003 under United Russia, a party strongly associated with Putin himself as its leader.<sup>634</sup> As a consequence the Duma has effectively been incorporated into the 'vertical of power', shaping its performance to accommodate the demands of the executive (Chaisty 2006). For national minorities United Russia's predominance in Parliament has consolidated the predominantly *descriptive* nature of minority representation.

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<sup>633</sup> In the Soviet period there were also high levels of minority representation in Parliament, which in practice was 'negatively correlated with power and influence' (Chaisty - forthcoming).

<sup>634</sup> Putin officially became the leader of United Russia in 2008. Even prior to 2008 the party was widely regarded as reflecting Putin's interests. The parliamentary elections of 4 December 2011 saw a reduction of the seats for United Russia from 70% of seats (2007 elections) to 53%. Although the decrease is substantial, United Russia continued to count on an absolute majority.

Moser shows that while representatives of geographically concentrated minorities in Russia tend to be elected by their co-ethnics, this is not the case for those minorities that are more dispersed: these minorities enter Parliament through ‘support from the Russian majority’ and through ‘assimilation’ (2008). In ethnic regions local minorities receive more votes, but local politics is dominated by the party apparatus: in turn, non-Russian elites seek integration into power politics (Moser 2000: 89). Moser also shows a shift from the 1990s, when ethnic federalism tended to further minority representation, to Putin’s centralisation policies in the 2000s, and the resulting marked increase in clientelism and voting manipulation. Vote rigging has become more common in the ethnic regions than in the Russian ones (Moser - forthcoming). Meanwhile, an overwhelming majority of MPs belonging to ethnic minorities have joined United Russia in the fourth Duma. The 2006 Shadow Report on Russia to the ACFC argues that ‘[e]thnic activists wishing to stand in elections become totally dependent on federal political parties.’<sup>635</sup> The leaders of minority organisations<sup>636</sup> interviewed tended to be affiliated to or actual members of United Russia. This assimilation is not in any ethnic sense, but a political one: assimilation to United Russia.

While formally encompassing a multitude of ideologies and positions, in fact United Russia truly accommodates none. A respondent, the director of a human rights NGO in Russia, called United Russia a ‘party of bureaucrats’, in which the interests of national minorities, ethnicity, even forms of Russian nationalism, are unimportant. What matters are the particularistic interests of those in power, closely associated with the Putin-Medvedev duo. She put it this way:

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<sup>635</sup> Shadow Report submitted to the ACFC, 2006 (note 467), § 342.

<sup>636</sup> More frequently National Cultural Autonomies rather than NGOs. See Chapter 8 on National Cultural Autonomies.



In Chechnya for instance there are no ethnic Russians among the authorities<sup>637</sup> but they are all members of United Russia and when Chechnya organises elections the entire population votes for United Russia [...].<sup>638</sup> Bureaucracy is all that people care about, and if you are a member of United Russia you can become a public official, a functionary, [and then] you have privileges, you have good cars, you have businesses, nobody will touch you. People who are in power are all members of United Russia... I feel they just created this kingdom of United Russia, pro-Putin bureaucrats [...]. In all regions the governor is also the head of United Russia... Regional leaders are not fighting for their right to be independent, they want to be 'the same', part of the network and matrix of power [...]. [1.5.5]

This form of personalised politics is a breeding ground for informal practices. On the basis of such practices, the many minority leaders who have joined United Russia might further the interests of their fellow minorities - but equally they might not. They are in parliament not by virtue of their own minority status, providing substantive representation on the basis of a political platform incorporating minority interests, but as members of United Russia. Persons belonging to minorities as 'minority representatives' can only sit in consultative bodies.

Additionally, it needs to be pointed out that the Duma is in itself a weak institution, and legislative decisions take place primarily outside it:

The legislative work of the Parliament and the government became much more closely integrated [under Putin] than had been the case in the previous Dumas: conflicts on legislation were effectively reconciled before bills received their official 'readings' in the assembly. These informal arrangements for resolving disputes before legislation was introduced [...] means that the lobbying opportunities for distributive amendments afforded by the previous regime were restricted (Chaisty 2006: 195).

A respondent, a public official and representative of a minority, reported an analogous interpretation of the adoption of Law 309. She said that, as an employee of the Ministry of Education, she had been invited to submit recommendation to

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<sup>637</sup> According to the 2002 census, ethnic Russians in Chechnya only amounted to 3.7% of the population (against 93.5% Chechens).

<sup>638</sup> In the 2007 Duma elections United Russia had over 99% of the vote in Chechnya. See *RIA Novosti*. 3-12-2007. 'United Russia Wins Over 99% of the Vote in Chechnya'. <http://en.rian.ru/russia/20071203/90609389.html> (accessed 30-6-2011).

draft Law 309, but she believed this to be an empty exercise as the Duma already ‘had a plan’ to adopt the law without changes [4.14].

The Duma does not serve as an effective counterbalance to the executive, including in the areas of federalism and nationalities policy. United Russia has created a web of connections whose common feature is loyalty to the centre. Rather than representing the interests of citizens of and the regions, United Russia is a mechanism for the management of the loyalties of ‘bureaucrats’ at various levels of the executive (Goode 2010: 242). Minorities in the Duma are primarily representatives of United Russia rather than representatives of minority interests (Chaisty - forthcoming).

### **9.3 International Standards: Towards Substantive Representation?**

Can international standards assist in the introduction of a more substantive form of representation in Russia? I focus on two issues raised in the chapters on participation: the representation of minority interests in elected bodies, and the (moral) responsibility of minority leaders towards those they represent. In the second case, I address international standards particularly with regard to the issue of ‘groupism’ raised in Chapter 8.

As noted above, the mere presence of minorities in elected and consultative bodies is not sufficient to meet the criteria of ‘effective participation’. The ACFC has also noted the importance of influence.<sup>639</sup> For example, it commented on administrative reform proposed in 2004 in Denmark, by which the German minority in Denmark would have seats in municipal councils but without voting

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<sup>639</sup> For example, it criticised the limited impact of Romania’s Council of National Minorities. ACFC, (Second) Opinion on Romania, 23 February 2006, ACFC/OP/II(2005)007, § 188.

rights. The ACFC noted that the absence of voting rights would much weaken ‘the room for political manoeuvre’.<sup>640</sup> The ACFC has also brought the state parties’ attention to the fact that minorities in parliament can be outvoted, stripping them of opportunities to genuinely impact on decision- and law-making on matters that affect them. Despite this, Verstichel argues that the Council of Europe’s ACFC, along with the UN and OSCE, traditionally have primarily focused on the ‘presence’ of minorities in elected bodies (2010: 87), thereby mostly attaching importance to descriptive forms of representation. With regard to Russia, the ACFC was broadly positive about the descriptive representation in the Duma, with approximately 30 national minorities represented.<sup>641</sup> Persons belonging to minorities can vote in Parliament, being themselves MPs - so they ostensibly have the wherewithal to exercise influence on law-making. The issue of possible outvoting, and the resulting disempowerment of minority groups, has not been raised by the ACFC in the case of Russia - presumably owing to the fact that there appear to be no instances of minorities being outvoted when pursuing legal initiatives aiming at accommodating minority interests. This is primarily because of the very few laws on minority issues adopted in the period covered by the thesis (Chaisty - forthcoming). Two considerations are of relevance. First, the fact that persons belonging to minorities vote in Parliament does not automatically result in representation of minority *interests*, if we, as Verstichel does, differentiate between ‘participation’ and ‘representation’. Participation involves (usually temporary) affirmative action to ensure the *presence* of minorities in elected bodies - for example to rectify present or past patterns of discrimination. Representation refers to the promotion of minority *interests*. The fact that the Russian Duma has no

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<sup>640</sup> ACFC, (Second) Opinion on Denmark, 11 May 2005, ACFC/INF/OP/II(2004)005, § 167. See also Marko (2006).

<sup>641</sup> ACFC, (Second) Opinion on Russia (note 133), § 258.

parties or individuals MPs devoted to minority interests lessens the chances of such interests being represented. MPs belonging to national minorities provide only descriptive representation, and may or may not advance the interests of their fellow minorities. Second, as already noted, the Duma is an ineffective body where dominant political forces prevail. Hence, descriptive representation in the Russian Duma means very little indeed.

Another complexity is the issue of internal democracy of minority groups. The state needs to ensure the effective participation of minorities in decision-making. At the same time, the state is under an obligation not to interfere with the work of minority groups, so as to respect their right to free association.<sup>642</sup> In this context, how can issues around group inclusiveness be addressed? Should the state intervene to guarantee that a 'link of accountability' between representatives and represented is indeed forged? To answer this question, a distinction has to be made between the electoral systems established by the state and the internal regulation of minority organisations. In the first case, the state has an obligation to intervene to guarantee the effectiveness of the systems it has established. For instance, the ACFC called upon Hungary to intervene directly to guarantee the 'credibility of the system' of minority representation in Hungary's mechanisms for elections to local self-government.<sup>643</sup> The creation of local minority councils had led to the 'cuckoo phenomenon', or the running for elections to these councils of persons *not* belonging to the relevant minority, occupying seats reserved for minorities. These candidates engaged in 'ethnobusiness' - an expression designating the abuse of

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<sup>642</sup> Article 11 ECHR and Article 22 ICCPR.

<sup>643</sup> ACFC, (First) Opinion on Hungary (note 627), § 52. It was established by the 1990 Hungarian Act 64 'On the Election of Mayors and Local Council Representatives'.

opportunities for minority representation to pursue personal political or economic ambitions (Carstocea 2011).<sup>644</sup>

The state is responsible for striking a balance between under-regulation and over-regulation, by establishing effective participatory systems without infringing the rights of minorities. In the ACFC's Second Opinion, Russia was criticised for (regional) legislation of the Republic of Dagestan, regulating minority presence in local councils and the republic's Duma. The legislation allocated districts to the republic's main ethnic groups, mandating that only representatives of those groups could run for elections in the relevant districts. Despite guaranteeing (descriptive) representation, it impinged on the freedoms of minority representatives, by forcing them to identify with their ethnic background, while self-identification with a national minority should be exclusively by individual choice.<sup>645</sup> The ACFC later welcomed the provision's amendment,<sup>646</sup> and the introduction of two distinct lists of candidates - one for persons who identified with national minorities and one for those who did not.

In the Hungarian and Russian cases the ACFC recommended, respectively, increased and decreased regulation. The overarching principle in the two cases consists in the state responsibility to guarantee the effectiveness and credibility of systems of representation, while protecting the freedoms of minorities. Protsyk

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<sup>644</sup> This form of 'ethnobusiness' was made possible in Hungary by the 1993 Hungarian Act 57. The Act established the right to choose one's identity, meaning that anybody could declare his/her identification with a national minority. The Hungarian majority could then cast votes and be elected for seats meant to be for minorities. See Hungarian Helsinki Committee, 1999. 'Report on the Situation of Minorities in Hungary'. [http://www.minelres.lv/reports/hungary/hungary\\_NGO.htm](http://www.minelres.lv/reports/hungary/hungary_NGO.htm) (accessed 3-6-2011).

<sup>645</sup> See Article 3(1) FCNM:

Every person belonging to a national minority shall have the right *freely to choose* to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice [italics added].

Forcing members of national minorities into ethnic categories regardless of their wishes has been considered by the ACFC as impinging on the rights of minorities on the basis of Article 15 taken in conjunction with Article 3 FCNM. ACFC, (First) Opinion on Russia (note 133), § 104. It has been suggested that in some extreme cases even rigid measures involving ethnic categorisation might be indispensable as the only avenue to further minority rights - not renouncing, however, to a degree of flexibility through periodic reviews (Hofmann 2006: 14).

<sup>646</sup> ACFC, (Second) Opinion on Russia (note 133), § 259.

argues for the employment of additional measures, grounded on transparency, to enhance the accountability of elected representatives (2008). States, he believes, should make public roll-call data (the records of legislators' votes) and speeches at parliamentary sessions (2008: 470-1).<sup>647</sup> These data reveal individual legislators' behaviour, enabling stakeholders to make informed electoral choices.

The situation with regard to the *internal* management of minority organisations is significantly different. Literature on international standards on minority protection has devoted little attention to the principle of internal democracy. Certainly it is an issue: the freedom of minorities to self-organise risks the monopolisation of resources by ethnic entrepreneurs, when 'leaders' choose to prioritise their own interests over the group's. And, as has been shown in this chapter, descriptive representation is not sufficient for effective participation - especially when based on essentialist and reductionist attitudes to the group. In all countries, minority groups' commitment to social inclusion reflect the degree of responsiveness to the concerns of group members (Protsyk 2008: 472-3). These vary.

Weller argues that minority organisations themselves have obligations of accountability and transparency (2008: 431) - yet this can only be construed as a moral responsibility towards the members of the group, rather than a legal responsibility. What about a possible *state* responsibility? The issue of group dissenters in the context of representation has been considered by the ECtHR with regard to religious minorities.<sup>648</sup> The ECtHR has upheld the importance of pluralism and tolerance. In *Serif v Greece* it ruled:

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<sup>647</sup> These data could also be made available for MPs who are not minority representatives, as they reveal the (majority) legislators' attitudes to matters that impact upon minority concerns.

<sup>648</sup> See also Pentassuglia on the issue of group dissenters in international law (2009).

Although the Court recognises that it is possible that tension is created in situations where a religious or any other community becomes divided, it considers that this is one of the unavoidable consequences of pluralism. The role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.<sup>649</sup>

The scope of pluralism, as interpreted by the ECtHR, was tested in the case *Cha'are Shalom ve Tsedek v France*.<sup>650</sup> The case related to two groups within the Jewish community in France, with differing practices on the ritual slaughter of animals as per the Jewish religious prescriptions. Access to slaughterhouses was granted to the Jewish Consistorial Association of Paris (ACIP), to which most Jews in France belong, but not to the splinter religious association *Cha'are Shalom ve Tsedek*, which intended to adhere to the strictest orthodox rules through more rigorous checks on slaughtered animals. The Grand Chamber of the ECtHR ruled that there had been no interference by France with the right to freedom of religion (Article 9) taken in conjunction with the right to freedom of discrimination (Article 14). The decision rested on the close similarity of ritual practices of the two groups - which meant that the principle of pluralism was not held to have been undermined by the French state. However, a significant number of judges dissented (seven out of 17 judges of the Grand Chamber) indicating an absence of clear consensus on this issue.

The seven dissenting judges considered 'inappropriate' the Grand Chamber's statement that the applicant association could have reached an agreement with the ACIP.<sup>651</sup> This was not, however, linked to a requirement of inclusiveness in public or religious life, but rather to the issue of *discrimination*, given that only one of the two associations was granted the requested access to

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<sup>649</sup> *Serif v Greece*, Application No. 38178/97, 14 December 1999, § 53. The importance of religious pluralism was also stressed in *Manoussakis and Others v Greece* (note 491), § 44; and *Kokkinakis v Greece*, Application No. 14307/88, 25 May 1993, § 31.

<sup>650</sup> Application No. 27417/95, 27 June 2000.

<sup>651</sup> Joint dissenting opinion of judge Nicolas Bratza and others, Point 2.

slaughter houses. It was ruled, instead, that a state can legitimately interact with preferred interlocutors rather than with a plurality of groups, for logistical reasons:

We certainly do not disregard the interest the authorities may have in dealing with the most representative organisations of a specific community. The fact that the State wishes to avoid dealing with an excessive number of negotiating partners so as not to dissipate its efforts and in order to reach concrete results more easily, whether in its relations with trade unions, political parties or religious denominations, is not illegitimate in itself, or disproportionate.<sup>652</sup>

It was the granting to only one religious institution of ‘the exclusive right’ to authorise ritual slaughterers that failed the test of religious pluralism.<sup>653</sup> The applicant implicitly agreed: the institution had not specifically referred to an issue of representativeness of the Jewish community, but simply sought to obtain permission to practice rituals according to its own convictions.

There are, then, limitations to the principle of pluralism as upheld by the ECtHR. The ACFC has much more clearly spelled out the need to involve different groups in negotiations - particularly in decision-making on issues affecting minorities - indicating international law’s trajectory towards a greater appreciation of diversity within the same minority. Yet, even in this case, the approach to pluralism is that of pluralism between *groups* - equality being understood as equality between groups. In reality there are three layers of diversity: different national minorities (e.g. Tatars and Mordovians in the case of Russia); different groups within the same minority (e.g. Tatar NCAs and Tatar NGOs); and in-group diversity (e.g. individual Tatars): of these, the ACFC concerns itself only with the first two. The ACFC approaches pluralism as a state responsibility to involve all *groups* in negotiations, without favouring one group, or one organisation

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<sup>652</sup> The dissenting judges referred to *The Swedish Engine Drivers’ Union v. Sweden*, Application No. 5614/72, 6 February 1976, § 46.

<sup>653</sup> Joint dissenting opinion (note 651) Point 2.



representing a group, over another. Under international law, complexities in internal (in-group) democracy may effectively only be resolved through the formation of splinter groups, themselves formed through the exercise of their right to association, and themselves having access to debates on matters than concern them through the principle of pluralism (of groups).

International law does not venture so far as to regulate relations between the members of a group and their leaders. In the case of advisory councils, the state must guarantee permanent and constructive exchanges.<sup>654</sup> Minorities, however, organise their own leadership. In practice, the representativeness of groups depends on both the authorities (state actors) and the minority organisations (non-state actors). Weller believes that the two share an ‘equal burden of responsibility’.<sup>655</sup> Despite this, the imposition of legal requirements on minority organisations would unequivocally amount to interference in their internal operations. Thus, international law cannot reach deep down to the complexities posited by the relationships between leaders and ordinary members of minority groups, and eradicate hindrances to wide and accountable representation. In this case, shortcomings in the representation of minority interests are not due to a possible recalcitrance by Russia to apply international standards, but to the fact that standards in this area simply do not exist.

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<sup>654</sup> Some of the advisory councils may be hybrid institutions - counting among their members both minority representatives and public officials. Weller argues that if the government retains influence on consultative councils (‘a practice not to be encouraged’), the government is responsible for their effective functioning (2005: 450). He refers to the ACFC, (First) Opinion on Croatia, where the Croatian government was urged to review the ‘appointment procedures, structures and working methods’ of bodies working on minority issues. 6 April 2001, ACFC/INF/OP/I(2002)003, § 63.

<sup>655</sup> ‘Handbook on Minority Consultative Mechanisms’ (note 588), § 63.

## 9.4 Conclusion: No Impact?

This chapter has revealed numerous challenges to the implementation of international standards in the area of minority participation in Russia. Political parties cannot be formed by minorities, while there is no substantive minority representation in the Duma. In the absence of guarantees for the representation of minority interests in elected bodies, consultative mechanisms automatically acquire an even greater significance - having to compensate for the absence of the other building block to participation. The participatory rights of minorities are to be exclusively channelled through the one remaining outlet. At the same time, consultation mechanisms are fragile, devoid of effective legal guarantees which would enable minorities to have impact upon decision-making in matters that directly concern them.

Minorities are not utterly excluded from decision-making in Russia, but inclusion depends on circumstances rather than on formal systems guaranteeing representation and participation. Meanwhile, the political centralism established by the 'power vertical', with its non-democratic appointment processes, reinforces those arrangements, already present during the Soviet period, that see many leaders of minority groups directing their allegiance to the federal authorities rather than the ethnic groups they supposedly represent.

The situation is complex. At the federal level, a system of co-decision or veto powers would likely be untenable due to the extremely high number of minorities in Russia, a situation which could easily paralyse the legislative bodies. Meanwhile, if specialised political parties were established by minorities, in practice the conditions of minorities might not ultimately see concrete improvement because of electoral manipulation and the Duma's own ineffectiveness. At the same time, the presence of these parties, or the freedom to establish them, may carry

symbolic weight, as it would introduce formal processes for minorities' entry into politics. In 2011 there was no political party platform incorporating the protection of the rights of minorities in parliament.

Most of the principles originating from the ACFC in the area of participation are not met, while, in turn, ACFC Opinions - the main source of (soft) law for participation, given the miniscule international jurisprudence - do not provide sufficient incentives or guidance to induce or facilitate compliance in Russia. The Russian authorities have ignored the fact that ethnicity-based political parties should be permitted to exist. Exchanges for consultation are sporadic, lack institutionalisation and are mostly inconclusive. Recommendations that may arise from consultative bodies tend not to produce state responses, in the absence of requirements to follow such recommendations, or to provide justifications for not complying with them. It results in an only apparent compliance with international standards - with descriptive representation in the Duma and the existence of consultative bodies, but not in actual representation of minority concerns. Ultimately, there is no marked distinction between the general cooperation of civil society and the authorities described in Chapter 7, and 'official' mechanisms for consultation. They replicate the same patterns, with an analogous precariousness resulting from dependence on circumstances and individuals.

## CONCLUSION

Russia is, as it has always been, a multi-cultural, multi-ethnic country. There are schools teaching a myriad of minority languages, in many cases teaching through the medium of these languages. There are governmental institutions, both at the federal and regional levels, working to promote minority cultures and languages. These efforts are the continuation of a long tradition of attention to diversity - made imperative by the coexistence of a plurality of ethnicities in Russia. And, admittedly, minority issues are extremely complex. The state must create a form of integration that stops short of assimilation; provide the opportunity to preserve minority cultures and languages - if minorities so wish - that does not lead to segregation; and balance out the right to equality with special measures for minorities, including affirmative action.

The thesis illustrated the dynamics in the application of international standards on minority rights in Russia, revealing how these practices often contrast with formal standards – both international and sometimes domestic. It delineated the conditions that contribute to, or frustrate, these standards. It has argued that the implementation of international standards is affected by current political, as well as socio-economic, processes as well as specific legacies and practices from Russia's (particularly Soviet) past.

Despite the differences between the three case studies in terms of size and resources, the issues that affected them tended to be similar. The main recorded difference between the three ethnic groups was the higher consciousness of national identity of the respondents in Tatarstan, which at times resulted in more

pronounced activism and greater awareness of nationality issues. Even this had limited practical impact, as the levels of ethnic and political mobilisation, after an upsurge in the 1990s, decreased again in the 2000s (Gorenburg 2003; Giuliano 2011). Then, diverging opinions and interpretations between respondents were linked to their profession and type of relations with the establishment, rather than ethnic affiliation. This can be explained by the fact that the size and resources of ethnic groups or ethnic republics did not provide guarantees, in all cases, of autonomous, or effective participation in, decision-making in relation to cultural matters. Given the centralised tendencies of the Russian state, all national minorities are at risk of being affected by the homogenising impulses of the state, and receive limited protection in preserving their cultural distinctiveness given the *laissez-faire* attitudes of the Russian government. I therefore do not differentiate between nationalities in the conclusions, but present overarching themes.

The findings support Keck and Sikkink's theory on 'transnational advocacy networks', regarding the existence of networks transcending physical borders. Russia should not be seen as a unitary, essentially homogeneous, polity, in relation to values, or legal culture. Some of the respondents in the thesis seemed to fully share the values underlying international standards on minority rights - although the essentialist, folkloristic approach to minorities tended to prevail. Diverging approaches to legality and international standards were present not only among different groups of respondents but also within the same group, for example among judges. The fact that some judges more enthusiastically than others applied international standards indicates that transnational networks have reached some parts of the judiciary.

It can be speculated that attitudes to international law were primarily shaped by the practices of the environment within which individual respondents operated,

instead of, or jointly with, personal choice. Thus, public officials and civil society representatives closer to the establishment tended to espouse traditional views of minority cultures (with minority issues being perceived as related to ‘culture’ rather than ‘rights’). The judges’ environment can be characterised by instances of political pressure (including what Popova calls ‘strategic pressure’ - 2012),<sup>656</sup> in addition to structural difficulties such as precarious financial conditions which, in turn, affect the application of international standards.

Meanwhile, Russian legal history is littered with legal borrowings from Western Europe, revealing legal and cultural traditions that have not proceeded on two parallel, and completely separate trajectories. The framing of Russia as ‘different’ by some respondents might be linked more to a *perception* of difference rather to real difference, or as a means for the Russian authorities to justify a refusal to undergo unwanted change.

The remaining conclusions are divided into the following areas: Russia’s selective implementation of international standards; tensions between localism and centralism; homogenisation; and participatory rights. I conclude by reflecting on what would need to change in Russia for a more comprehensive implementation of international standards in the area of minority rights.

### **International Law and Minorities: Selective Implementation**

The phenomenon of legal transplantation, or the incorporation of external norms into the domestic sphere, is complex. The type of legal transfer analysed in this thesis involves a set of international legal commitments, voluntarily entered into, that are incorporated into domestic law, in an attempt to render the two interlocking, and as part of one functioning mechanism. The scholarship on

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<sup>656</sup> See Section 4.1.

Europeanisation and EU conditionality shows that processes of domestic transformation through international norms is not always predictable, and adaptational pressure not always effective.<sup>657</sup> To this has to be added the issue of causality – by which the causal relation between international pressure and domestic change may well remain tenuous. If this is so with regard to the coercive capacity of EU conditionality, it is more so in the case of the Council of Europe, which only has at its disposal only the ‘mobilisation of shame’ when a country refuses to comply with its obligations (Keck & Sikkink 1999: 97). Despite this, legal reform has been undertaken by Russia after joining the Council of Europe in 1996 and after becoming a state party to the FCNM and the ECHR two years later. While difficulties remain, the increasing application of the ECHR in Russian courts, demonstrated by Russian and international authors, as well as interviews for this study, reveal incremental steps towards the implementation of the standards contained in these instruments. Hence, the reason for the success of some forms of legal transplants cannot be found solely in external influence imposed on a vaguely compliant but reluctant state. Primary and secondary data indicate that Russia may perceive benefits in being a member of the international community, including for pragmatic and utilitarian reasons. Thus, the ECHR and its case law are increasingly referred to in Russian courts. In legal proceedings, the Council of Europe has introduced a third layer above the Russian authorities and civil society - that of a supranational body, with the opportunity for everyone in Russia to submit cases to the ECtHR. This is a relatively new form of empowerment which can lead to highly significant legal precedents.<sup>658</sup> Similarly, the Council of Europe’s ACFC Opinions and Committee of Ministers recommendations provide an alternative interpretation

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<sup>657</sup> See Chapter 2, with reference to Hughes et al (2004), as well as others.

<sup>658</sup> For instance, as described in Section 4.2, a parent submitted a case to Strasbourg over her daughter’s inability to take her final exam in the Tatar language.

of the Russian government's nationality discourse, counteracting the oversimplification of the nationality question as filtered through a narrative of 'tolerance' and 'extremism'. The ACFC focuses on minority *rights* - rather than generally on the preservation of national cultures and languages.

At the same time, the fluidity and flexibility of international minority rights law has helped to produce Russian legislation and practice that are, themselves, flexible. This phenomenon is similar to that of EU conditionality, which has been judged to be fluid and imprecise in some areas - such as regional policy (Hughes et al 2004) - and devoid of specific benchmarks to measure compliance (Grabbe 2001). Similarly, the flexible nature of international standards on minority rights, together with official Russian attitudes and practices, has generally prevented these rights from being translated into precise domestic legal obligations. The flexible nature of international minority rights law means that it is unable to reach down to solve the complexities posited by informal practices and centralised decision-making combined with *laissez faire*. The absence of legal entrenchment of mechanisms for the realisation of minority rights in Russia has resulted in difficulties in pinning down what constitutes a 'violation'. There are no clear obligations on Russian public officials, nor have precise targets been set. The Russian jurisprudence in this area is minimal. While the ECHR has entered Russian legal practice through the ECtHR's and Russia's own jurisprudence, the judges interviewed had very little experience of the application of international standards in the area of minority rights. Few ECHR judgements on issues relating to minority rights mean that, until more pre-packaged legal principles emerge from the ECtHR, the onus remains on Russia to solidify its flexible application of international standards in this area.



International standards may provide an alternative view to that which equates a diverse society with a potential threat - all too often 'resolved' by keeping minorities trapped within a controlled essentialist (and folkloristic) approach. This alternative discourse may coexist with and potentially ultimately penetrate, and revitalise, the current minority discourse. For example, the FCNM Opinions have introduced what in Russia is a novel way of approaching consultation: the fact that minority groups possess not only a right to participate in discussions and parliamentary debates, but also to *influence* policy-making. The role of international law might be to shake the Russian authorities out of their complacent attitude towards minorities - an attitude exemplified by the Russian government's insistence that it fully complies with the FCNM.

It has been argued in this thesis that Russia is resisting international pressure and selective aspects of its international obligations in order to preserve its own (Russian) way of approaching the nationality discourse. One example is its delay in the ratification of the ECRML, thereby postponing indefinitely the selection of real and specific commitments on the active promotion of minority languages. International standards are not designed, in the interests of state sovereignty, to reach deep enough to reverse these patterns. The potential impact of international standards is further reduced by their being dichotomised into two extremes: the focus on victims in specific cases for the ECHR, and on flexible and general arrangements for the FCNM.<sup>659</sup> The state parties to the two conventions can harmonise and integrate these two processes, but they can also operate at the margins of both.

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<sup>659</sup> Moreover, the FCNM, but not the ECHR, involves a *collective* dimension in the enjoyment of particular rights. Article 3(2) FCNM states that 'persons belonging to minorities may exercise the [FCNM] rights [...] individually as well as in community with others.'

## **Localism versus Centralism**

I have argued that the absence of precise, comprehensive legal frameworks for the promotion of the cultural rights of minorities has compounded a shift towards cultural homogenisation in Russian society. I have referred to 'localism' as encompassing the phenomenon by which nationalities policy becomes fragmented and lacks coherence. While localism provides the flexibility to develop mini-policies at the local level, much is left to the goodwill of individual actors. This is when informal practices and networks come into play: as they are highly dependent on individual public officials and minority leaders, and their own particularistic needs and wishes, special measures become further atomised.

Localism has alternated with forms of centralism, by which the centre has adopted policies or legislation that have an impact on minorities without their consultation or involvement. Although some respondents provided examples of consultation, such as in compiling some of the federal educational standards, other policies examined in the thesis were centrally-conceived. These included policies on: minority education (marginalising minority languages and cultures); de-federalisation (merging Slavic with ethnic regions); and de-ethnification (favouring a Russian patriotic rather than a genuinely multicultural discourse). More widely, centralising measures have involved a widening democratic deficit through the replacement of elections to key positions with appointments. This has simultaneously downgraded ethnicity, resulting in the Russian authorities effectively retreating from international standards for the protection of minorities and their cultural distinctiveness. The dilution of diversity is not the only collateral damage of centralisation: it can also contribute to tensions. Several authors have warned about the potential risk of tensions in centralising policies (Artobolevskii et al. 2010; Bowring 2010a; Cashaback 2003; Goode 2010; Melvin 2007).

## Russii-centred Homogenisation

The Russian Federation has inherited both ethnic pluralism and Soviet methods to regulate it, particularly its ethnic federalism. Former President Putin's leadership saw a departure from earlier nationalities policies towards new forms of homogenisation which command greater uniformity and a strong emphasis on a *Russian* identity - policies that have continued under the Putin-Medvedev 'tandem'. Putinite homogenising policies have promoted the development of a common loyalty, a joint identity unifying the country's nationalities, which acts to simultaneously downgrade (non-Russian) ethnicity and reassert Russianness. Although presented as a form of civic, rather than ethnic, nationalism, the general Russian (*rossiiskii*) patriotic discourse borrows from Russian (*ruskii*) cultural themes. The homogenising measures are not necessarily born of a quasi-imperialistic desire to Russianise national minorities, but may simply derive from a drive to strengthen and mainstream the state. Thus, the relationship of the Putin-Medvedev leadership to ethnicity is complex: the party representing the leadership, United Russia, is devoid of a discernible ethnic dimension and is rather seen as a 'party of bureaucrats'; at the same time, the leadership makes use of Russian patriotic messages to convey the image of a strong Russia. The activism of persons belonging to minorities, as *minorities*, is confined to the cultural sphere; but these same persons are not discouraged from entering politics as United Russia representatives - essentially, if they are politically streamlined. Weller's argument on minorities' integration is also relevant:

[M]embers of minorities could not participate in governance and in the economic and social life of the state *as members of their respective minorities* in the absence of a flourishing minority cultural environment [italics added] (2005: 431).

The absence of such an environment would cause persons belonging to minorities to simply assimilate with the majority - politically as well as culturally.

In the area of education, one of the problems plaguing the system is the systemic lack of funding. To adverse socio-economic circumstances one has to add new developments in the sphere of language such as the introduction of Russian-only exams and Law 309. These have effectively elevated the Russian language and culture to a *condition sine qua non* for (economic, social and political) success, giving the Russian language a veneer of superiority. With the exception of committed activists, interviews revealed a perceived need for an either-or choice by minority members, within which full integration into the Russian culture was equated with economic and social welfare, while a decision to maintain one's original identity implied a possible sacrifice in status. Some persons belonging to minorities have thus chosen assimilation with the Russian culture, or selected aspects of it, as dictated by practical considerations - for example by sending their children to Russian-language schools to maximise their job prospects.

The predominance of the Russian language and culture is also favoured in the media. While official pronouncements by the country's leaders featuring in the media refer to a multi-national and multi-religious Russia, in practice the media does not reflect Russia's cultural pluralism. Ongoing efforts to preserve minority cultures take place primarily within small oases for minorities.

Similarly, the notion of overarching civic Russianness, which I have called the 'new Russian citizen', has not been conceptualised through an all-inclusive process. It does not amount to a *fusion* of (majority and minority) cultures, or to the selection of common elements from a plurality of cultures which are all afforded equal respect. Rather, upgrading quintessentially Russian symbolism, while simultaneously downgrading non-Russian ethnicity, signals that the Russian culture

is 'dominant'. Thus, minority cultures are 'tolerated, in Žižek's interpretation of the word (2011: 46), rather than placing an emphasis on their understanding appreciation and respect of minority cultures - rather than their 'tolerance', in Žižek's interpretation of the word (2011: 46).<sup>660</sup> As the national media is the only source of information that reaches the entire population of Russia, Russian patriotism is being produced and disseminated for mass consumption. As the number of minority schools decreases, and many parents opt to send their children to Russian schools, the media acquires an increasingly dominant role as the new 'teacher', shaping social attitudes to diversity. This scenario is one in which minority cultures are seen as the concern of minorities only, rather than their being conceived as enriching, and being intertwined with, society as a whole.

The Russian leadership's objective seems to be that of maintaining the *status quo* through a 'managed' marginalisation of minority cultures. Some respondents discerned a pattern by which the authorities, while to some extent accommodating minorities, and certainly not openly repressing them, prevented alternative ethnic identities from flourishing - thus confining them to marginal roles in Russian society. Whether blaming homogenising tendencies on specific governmental efforts or socio-economic conditions, some respondents belonging to minorities held the view that advancing Russianisation, or even globalisation, could no longer be stopped.

### **Fictitious Participation**

I analysed two different forms of participation: consultative mechanisms and political representation. In Russia there are no guarantees that the concerns of minorities will be represented in elected bodies, as no special measures to this

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<sup>660</sup> See Section 2.2.

effect exist. Meanwhile, consultative mechanisms are afflicted by the absence of guarantees of effective participation. Several underlying causes were identified: among them, the fact that the environment in which civil society operates is fraught with complexity, including burdensome bureaucratic requirements and at times official harassment over technicalities; and the fact that consultative bodies (for minorities and civil society generally) may only issue loose recommendations to law- and policy-makers, to which the authorities have no obligation to respond. The main instruments of consultation, National Cultural Autonomies (NCAs), are in themselves an inadequate response to the requirements of Article 15 FCNM. ACFC Opinions recommend that consultative bodies be ‘institutionalised’,<sup>661</sup> and that the state ‘fully support and consult’ minority councils and ‘establish constructive cooperation’.<sup>662</sup> The flexibility of international standards means that in practice the Russian government can establish a façade of consultation. A tendency to ineffective consultation might be a historical legacy of *managing*, rather than *engaging*, diversity. International standards on minorities’ participatory rights are unable to break through barriers excluding minorities and civil society generally from mainstream politics and policy-making; consequently minority concerns do not reach the public discourse - with the exception of a generalised, simplified discourse of ‘tolerance’ or ‘extremism’, which does not reflect the depth and multiple layers of minorities’ variegated opinions and concerns. Additional issues that emerged from the interviews include: the restriction of the scope for consultation and lobbying which are the result of Putin’s undemocratic reforms and the ‘power vertical’; and the authorities’ disinclination to engage in a discourse of minorities’ linguistic and cultural *rights* as opposed to cultural *programmes*.

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<sup>661</sup>The ACFC does not define the exact meaning of ‘institutionalisation’, although it is linked to regular and systematic consultation. ACFC (Second) Opinion on Switzerland, 2 September 2008, ACFC/OP/II(2008)002, § 22.

<sup>662</sup> ACFC (Second) Opinion on Croatia, 13 April 2005, ACFC/INF/OP/II(2004)002 § 167.

Attempts to disassociate ethnicity and territory with the formation of NCAs have not yielded positive results. NCAs, which should uphold the participatory rights of minorities, are afflicted by the same malaise as numerous other institutions in Russia: a clan mentality and a loyalty to the centres of power. While ‘special relationships’ are forged between some NCA leaders and the authorities, other persons belonging to minorities are marginalised and voiceless, with no access to true political representation. International standards are unable to reach to the root causes of ineffective consultation: the exclusion of ethnicity-based political parties from the political sphere and the missing ‘link of accountability’ between representatives and represented in non-elected bodies. This last issue is one of the main inhibitors to effective participation - and no provisions in international law exist to address it, with the exception of some (still) embryonic jurisprudence.

If we accept Verstichel’s view that IGOs have primarily focused on the *presence* of minority representatives in elected bodies rather than the *representation* of their interests (2010: 87), we conclude that groupism, or the inability to unpack the multi-layered complexity of minority groups, is not seen as a problem under international law. There ought to be not only an appreciation of differentiated citizenship as a way to establish group representation (Young 1989; 1990), but also an acceptance of the multidimensionality *within* a group. The shortcomings of groupism highlighted in Chapter 8, based on Brubaker’s arguments, are combined in Russia with the prevalence of informal practices in minority-majority relations. It can be argued that, with regard to groupism, the Russian government is not only refraining from *interfering* with internal decision-making of minority groups, but rather *facilitating* a system that favours negotiations with particular individuals, at different levels - by not institutionalising the relationship between the state and the minority organisations, and not realising possible recommendations from minority-

based advisory councils. The prevalence of ‘negotiations’ is the consequence of a reliance on informal networks, and of a system with a tradition of handpicking loyalists. At the same time, among minority leaders there are of course varying degrees of professionalism, commitment, and differing priorities. The way in which minority leaders choose to use their networks is circumstantial. For some minority leaders the main drive is the genuine representation of the group’s interests; others (more or less evenly) juggle private interests with those of the groups; for a third category of minority leaders private interests prevail over group interests. The reliance on informal practices and networks reduce the independence and assertiveness of civil society vis-à-vis the organs of power, with ethnicity-based organisations shaping their programmes around government priorities, so as to access funding and other opportunities.

### **What Next?**

In this thesis I have described a situation in which international standards have exerted little influence over the advancement of minority rights in Russia. International law is neither supreme nor acting in full harmony with domestic law. Russia maintains a balance between sufficient engagement to reap some benefits (trade-related or other) from adherence to international systems, without fully immersing itself in them. This is the situation when a country, for example, adopts legislation upholding the rights of minorities, but *de facto* abuses this same legislation, and refuses to bend to the pressure of international bodies in selected cases. I suggest that additional factors are required for a more comprehensive implementation of international law in the area of minority rights: its *bona fide* application, the respect and appreciation of civil society, and the respect and appreciation of diversity.



The application of international law in good faith is one where there is a political will to implementation, rather than a selected effort primarily aiming at creating a façade of minority rights protection. A respondent cynically argued that ‘Russia is very good at writing reports’ [2.12]<sup>663</sup> to international bodies - implying a craft in projecting a positive international image without substantially engaging with its legal obligations. While it has been argued that the legal entrenchment of minority rights, and the crystallisation of state responsibilities, would facilitate the upholding of minority rights, legal provisions are a necessary but *insufficient* condition for minority rights. There has to be a further effort that may not be amenable to legal codification. Marko argues:

[T]he best legal instruments for “effective participation” cannot “ensure” this goal if there is not a political climate and willingness of inter-ethnic dialogue and co-operation to give the members of national minorities a voice which is also “taken seriously.” Hence, in the end, not more or other legal instruments are necessary, but the full implementation of the instruments in place linked with much more effort to provide for the goals foreseen in Article 6 of the Framework Convention, namely to create “a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation.” Hence, the “effectiveness” of Article 15 of the Framework Convention has to be seen in the entire context of the Framework Convention, since the creation of tolerance and intercultural dialogue is a task to be achieved through the education system, the media and civil society empowerment [...] (2006: 9).

Marko traces a continuum between the upholding of minority rights through participation and a favourable political climate, *and* commitment to inter-cultural dialogue - to be realised within the spheres of education, media and civil society. The centralising tendencies of the Russian regime do not provide a ‘favourable political climate’, while, as we have seen, media and education are not, or are only partially, employed to advance inter-cultural dialogue. Similarly, a respondent, a representative of a minority organisation, said:

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<sup>663</sup> Already cited in Section 3.4.

Many things have to be changed before the voices of minorities will be needed. They might be heard now but they are not needed [1.2.5].

Minorities' opinions might be voiced during discussions, but their input is not *used* ('needed') to formulate policies. This approach closely resembles Žižek's 'tolerance' (2011: 46): these voices are tolerated, opinions allowed to be articulated, but the Russian authorities do not *need* them. They are a superfluous addition to policy-making. This approach is expressed in the management of diversity rather than engagement with it, and tends to lead to ghettoisation rather than integration.

Another respondent argued for the need for societal change as the condition for the full effect of international standards to be felt. The respondent was a lawyer who had worked on cases related to freedom of expression and was referring to international human rights standards generally, rather than minority rights law per se. The cases on which she had worked had resulted in adjudications in favour of freedom of expression. She was asked whether these judicial decisions may advance a climate for greater respect of human rights:

These decisions change the legal practice and court practice. To change the journalists' practice is [different]. It's editorial policy, it's independence from the founders, from businesses, from authorities. It's changing of the whole media business. Until [the media situation] changes, [media outlets] won't be able to survive independently from financial resources given to them for being loyal, either from businesses, or from authorities, or from United Russia.

We are going back, then, to informal practices. These practices hold captive large areas of Russian society, such as civil society and the media, which are themselves essential to the construction of a spirit of tolerance and inter-cultural dialogue, as well as for the upholding of human rights. True respect for other nations and cultures is bound up with democratic development (Pain 2005: 366), which is

contingent upon the emancipation of institutions (civil society, education and media) from their dependency on the centre, and from policies based on cultural programmes rather than cultural *rights*.

The current complexities are not about an intrinsic incompatibility of international law and the Russian culture and society, but about aspects of the Putin-Medvedev leadership, and a series of legacies from the Soviet period, that are inimical to international standards' application in the area of minority rights - the same factors that are responsible for a growing democratic deficit. Yet, although Putin's popularity was high early in 2011,<sup>664</sup> one should not assume a perpetual 'power vertical'. It would not be the first case of Russia taking a sharp turn that alters its destiny.

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<sup>664</sup> Although a decline in Putin's approval ratings were registered by polls by the Levada Center (from 78% in 2010, to 72% in January 2011, to 66% in October 2011), they remained high. Data reported in Kulikov, A. 28-1-2011. 'Medvedev and Putin's Popularity Declining?', *Pravda.ru*. [http://english.pravda.ru/russia/politics/28-01-2011/116698-medvedev\\_putin-0/](http://english.pravda.ru/russia/politics/28-01-2011/116698-medvedev_putin-0/) (accessed 1-3-2011); and Tabakov, I. 9-11-2011. 'Poll Shows Drop for Putin Party', *The Moscow Times*.

# APPENDIX 1: LIST OF INTERVIEWEES

## SUMMARY OF RESPONDENTS

- 1.1 civil society - (National Cultural Autonomy) (6 respondents)
- 1.2 civil society - minority NGO (11)
- 1.3 civil society - cultural association (7)
- 1.4 civil society - congress of peoples (3)
- 1.5 civil society - human rights NGO (11)
- 2 academia (23)
- 3 media (11)
- 4 public official (18)
- 5 school employee (2)
- 6 judiciary (3)
- 7 Council of Europe (5)

### Cities where the interviews took place:

Petrozavodsk

Moscow (3 visits)

Tver

Kazan

Saransk (2 visits)

Voronezh

St Petersburg

Strasbourg

## **ABBREVIATIONS**

### **Ethnic Group:**

|      |  |
|------|--|
| KAR  | Karelian                                     |
| MOR  | Mordovian                                    |
| RUS  | Russian                                      |
| TAT  | Tatar  |
| TKAR | Tver Karelian                                |
| MIN  | Minority (other than the three case studies) |

### **Cities:**

|      |               |
|------|---------------|
| KAZ  | Kazan         |
| MOS  | Moscow        |
| PETR | Petrozavodsk  |
| SAR  | Saransk       |
| STPB | St Petersburg |
| VOR  | Voronezh      |
| STR  | Strasbourg    |

## 1.1 MINORITY ASSOCIATION

| Code  | Respondent  | City | M/F | Ethnic group | Interview date |
|-------|---|------|-----|--------------|----------------|
| 1.1.1 | Leader of the NCA of a minority in Petrozavodsk                 | PETR | M   | MIN (a)      | 21/05/10       |
| 1.1.2 | Leader of the NCA of Tver Karelians                             | TVER | F   | TKAR         | 03/06/10       |
| 1.1.3 | Representative of the youth branch of the NCA of Tver Karelians | TVER | M   | TKAR         | 04/06/10       |
| 1.1.4 | Representative of the youth branch of the NCA of Tver Karelians | TVER | M   | TKAR         | 04/06/10       |
| 1.1.5 | Representative of the Tatar NCA for the Moscow oblast           | MOS  | M   | TAT          | 01/06/10       |
| 1.1.6 | Leader of a Federal NCA   | MOS  | M   | MIN (b)      | 18/10/10       |

## 1.2 MINORITY NGO

| Code   | Respondent  | City | M/F | Ethnic group | Interview date |
|--------|---|------|-----|--------------|----------------|
| 1.2.1  | Director of a minority NGO, activist for a Finno-Ugric minority (NGO #1)                          | PETR | F   | MIN (c)      | 21/05/10       |
| 1.2.2  | Activist in an NGO promoting Karelian language through projects in the area of education (NGO #2) | PETR | F   | KAR          | 24/05/10       |
| 1.2.3  | Director of an NGO promoting inter-ethnic tolerance (NGO #3)                                      | MOS  | M   | MIN (a)      | 25/05/10       |
| 1.2.4  | Representative of an NGO promoting a minority culture (NGO #4)                                    | MOS  | M   | MIN (a)      | 13/10/10       |
| 1.2.5  | Representative of an NGO promoting inter-ethnic tolerance (NGO #5)                                | MOS  | M   | MIN (b)      | 21/02/11       |
| 1.2.6  | Leader of a minority association (NGO #6)   | VOR  | M   | MIN (d)      | 14/10/10       |
| 1.2.7  | Leader of a minority association (NGO #7)   | VOR  | M   | MIN (a)      | 14/10/10       |
| 1.2.8  | Representative of an NGO promoting a minority culture (NGO #8)                                    | STPB | F   | MIN (e)      | 22/10/10       |
| 1.2.9  | Representative of an NGO promoting a minority culture (NGO #8)                                    | STPB | M   | MIN (e)      | 23/10/10       |
| 1.2.10 | Representative of an NGO promoting a minority culture (NGO #9)                                    | STPB | F   | MIN (f)      | 24/10/10       |
| 1.2.11 | Representative of an NGO promoting a minority culture (NGO #10)                                   | STPB | F   | MIN (g)      | 25/10/10       |

### 1.3 CULTURAL ASSOCIATION

| Code  | Respondent   | City | M/F | Ethnic group | Interview date |
|-------|--|------|-----|--------------|----------------|
| 1.3.1 | Director of a Centre of National Cultures, Petrozavodsk                | PETR | F   | MIN (c)      | 19/05/10       |
| 1.3.2 | Deputy Director of a Centre of National Cultures, Petrozavodsk         | PETR | F   | KAR          | 19/05/10       |
| 1.3.3 | Project Manager of a Centre of National Cultures, Petrozavodsk         | PETR | F   | KAR          | 20/05/10       |
| 1.3.4 | Representative of the House of Nationalities in Moscow                 | MOS  | M   | MIN          | 11/10/10       |
| 1.3.5 | Representative of a Centre of Cultures of Finno-Ugric Peoples, Saransk | SAR  | M   | MOR          | 21/06/10       |
| 1.3.6 | Representative of the House of Nationalities, St Petersburg            | STPB | M   | TAT          | 22/10/10       |
| 1.3.7 | Representative of the House of Nationalities, St Petersburg            | STPB | F   | RUS          | 22/10/10       |

### 1.4 CONGRESS OF PEOPLE

| Code  | Respondent   | City | M/F | Ethnic group | Interview date |
|-------|--|------|-----|--------------|----------------|
| 1.4.1 | Representative of the Congress of Karelians  | PETR | M   | KAR          | 20/05/10       |
| 1.4.2 | Representative of the World Congress of Tatars   | KAZ  | M   | TAT          | 11/06/10       |
| 1.4.3 | Leader of the Inter-regional Social Movement of Mordovian (Moksha and Erzya) Peoples; academic | SAR  | M   | MOR          | 17/06/10       |

## 1.5 HUMAN RIGHTS NGO

| <b>Code</b>   | <b>Respondent</b>  | <b>City</b> | <b>M/F</b> | <b>Ethnic group</b> | <b>Interview date</b> |
|---------------|--|-------------|------------|---------------------|-----------------------|
| <b>1.5.1</b>  | Lawyer for a human rights NGO (NGO #11); academic specialising in minority issues                | MOS         | M          | RUS                 | 25/05/10              |
| <b>1.5.2</b>  | Director of a human rights NGO (NGO #12); academic   | MOS         | F          | RUS                 | 11/10/10              |
| <b>1.5.3</b>  | Representative of a human rights NGO (NGO #13), also working for Russia's human rights ombudsman | MOS         | M          | RUS                 | 20/10/10              |
| <b>1.5.4</b>  | Representative of an human rights NGO, working on financial and fiscal matters (NGO #14)         | VOR         | F          | RUS                 | 13/10/10              |
| <b>1.5.5</b>  | Director of a human rights NGO (NGO #14)   | VOR         | F          | RUS                 | 16/10/10              |
| <b>1.5.6</b>  | Representative of a minority; cooperating with a human rights NGO (NGO #15)                      | STPB        | F          | MIN (h)             | 25/10/10              |
| <b>1.5.7</b>  | Representative of a human rights NGO, working on minority issues, with a focus on Roma (NGO #15) | STPB        | F          | RUS                 | 25/10/10              |
| <b>1.5.8</b>  | Representative of a human rights NGO, working on minority issues, with a focus on Roma (NGO #15) | STPB        | F          | RUS                 | 25/10/10              |
| <b>1.5.9</b>  | Specialist on inter-ethnic tolerance in schools; cooperating with a human rights NGO (NGO #15)   | STPB        | M          | RUS                 | 25/10/10              |
| <b>1.5.10</b> | Representative of a human rights NGO (NGO #16)   | STPB        | F          | RUS                 | 25/10/10              |
| <b>1.5.11</b> | Director of a human rights NGO (NGO #17)   | STPB        | M          | RUS                 | 26/10/10              |



## 2. ACADEMIA

| Code | Respondent   | City | M/F | Ethnic group | Interview date |
|------|--|------|-----|--------------|----------------|
| 2.1  | Representative of the Pedagogical Academy, Petr; representative of the Congress of Karelians     | PETR | F   | KAR          | 19/05/10       |
| 2.2  | Karelian language expert; member of Orthographic Commission for the Karelian language            | PETR | F   | KAR          | 19/05/10       |
| 2.3  | Professor of Karelian and Veps languages, Faculty of Philology, Petrozavodsk State University    | PETR | M   | KAR          | 20/05/10       |
| 2.4  | Sociologist at the Karelian Research Centre, Russian Academy of Sciences                         | PETR | M   | TKAR         | 20/05/10       |
| 2.5  | Professor, Department of Russian, Tver State University; member of the NCA of Tver Karelians     | TVER | F   | TKAR         | 04/06/10       |
| 2.6  | Researcher, Institute of History of the Academy of Sciences of Tatarstan (ASRT); Tatar activist  | KAZ  | M   | TAT          | 09/06/10       |
| 2.7  | Researcher, Institute of History, ASRT, Department of Tatar Education                            | KAZ  | M   | TAT          | 09/06/10       |
| 2.8  | Sociologist, Institute of History, ASRT, Department of Ethnology                                 | KAZ  | F   | TAT          | 09/06/10       |
| 2.9  | Sociologist, Institute of History, ASRT, Department of Ethnology                                 | KAZ  | F   | TAT          | 09/06/10       |
| 2.10 | Representative of the Russian Islamic University of Kazan  | KAZ  | M   | TAT          | 10/06/10       |
| 2.11 | Language teacher, Kazan State University; working on methodologies to teach minority languages   | KAZ  | F   | RUS          | 14/06/10       |
| 2.12 | Institute for the Development of Education of Tatarstan; former Minister of Education, Tatarstan | KAZ  | M   | TAT          | 14/06/10       |
| 2.13 | Academic, Kazan State University; Tatar activist   | KAZ  | M   | TAT          | 15/06/10       |
| 2.14 | Academic, Dept of History of Peoples of Russia, Mordovian State University; Mordovian activist   | SAR  | M   | MOR          | 20/06/10       |
| 2.15 | Academic, Institute Ethnology and Anthropology, Russian Academy of Sciences (IEA - RAS)          | MOS  | M   | RUS          | 26/05/10       |
| 2.16 | Academic, IEA - RAS  | MOS  | F   | RUS          | 26/05/10       |
| 2.17 | Analyst, Canergie Moscow Center  | MOS  | M   | RUS          | 28/05/10       |
| 2.18 | Scholar; former presidential advisor (under Yeltsin) on nationality issues                       | MOS  | M   | MIN (b)      | 21/09/10       |
| 2.19 | Researcher, IEA - RAS  | MOS  | F   | RUS          | 12/10/10       |
| 2.20 | Researcher, IEA - RAS; specialist on the North Caucasus  | MOS  | M   | MIN (i)      | 12/10/10       |
| 2.21 | Researcher, Institute of Geography, RAS  | MOS  | F   | RUS          | 21/02/11       |
| 2.22 | Researcher, IEA - RAS; specialist on minority education  | MOS  | M   | RUS          | 22/02/11       |
| 2.23 | Researcher, IEA - RAS; specialist on minority education  | MOS  | M   | RUS          | 24/02/11       |

### 3. MEDIA

| Code | Respondent   | City | M/F | Ethnic group | Interview date |
|------|--|------|-----|--------------|----------------|
| 3.1  | Journalist covering minority issues for the media in Karelia   | PETR | F   | RUS          | 20/05/10       |
| 3.2  | Journalist at Radio Free Europe; professor of journalism; former representative of the Federal Tatar NCA | KAZ  | M   | TAT          | 10/06/10       |
| 3.3  | Editor of the (Moksha-language) newspaper <i>Moksha Pravda</i>   | SAR  | M   | MOR          | 18/06/10       |
| 3.4  | Editor of the (Erzya-language) newspaper <i>Erzya Pravda</i>   | SAR  | M   | MOR          | 18/06/10       |
| 3.5  | Editor of the (Moksha-language) magazine <i>Moskha</i>   | SAR  | M   | MOR          | 18/06/10       |
| 3.6  | Editor of a Tatar-language newspaper in Saransk  | SAR  | F   | TAT          | 18/06/10       |
| 3.7  | Journalist for the journal <i>Finno-Ugorskii Mir</i>   | SAR  | M   | MIN (j)      | 18/06/10       |
| 3.8  | Broadcaster for a programme in Mordovian languages, 10 <sup>th</sup> channel                             | SAR  | F   | MOR          | 21/06/10       |
| 3.9  | Journalist; director of a media freedom organisation   | MOS  | M   | RUS          | 21/02/11       |
| 3.10 | Journalist; representative of a media freedom NGO; member of the Russian Union of Journalists            | MOS  | F   | RUS          | 24/02/11       |
| 3.11 | Journalist, specialising in media ethics and diversity   | STPB | F   | RUS          | 24/10/10       |

#### 4. PUBLIC OFFICIAL

| Code | Respondent  | City | M/F | Ethnic group | Interview date |
|------|---|------|-----|--------------|----------------|
| 4.1  | Responsible for programmes on Finno-Ugric peoples, Ministry on Nationality Policy, Karelia          | PETR | F   | KAR          | 18/05/10       |
| 4.2  | Responsible for programme on indigenous peoples of Karelia, Ministry on Nationality Policy, Karelia | PETR | F   | MIN (c)      | 18/05/10       |
| 4.3  | Responsible for external relations (including minority issues), Office of Petrozavodsk Mayor        | PETR | F   | TAT          | 18/05/10       |
| 4.4  | Main specialist on education, Ministry of Education, Karelia  | PETR | F   | KAR          | 19/05/10       |
| 4.5  | Local MP, Lorskii Rayon, Murmansk   | PETR | F   | MIN (k)      | 20/05/10       |
| 4.6  | Public official at of the Tver administration   | TVER | M   | TKAR         | 04/06/10       |
| 4.7  | Public official, city department on national (Tatar) education                                      | KAZ  | M   | TAT          | 09/06/10       |
| 4.8  | Representative of the Assembly of Peoples of Tatarstan  | KAZ  | M   | MIN (l)      | 10/06/10       |
| 4.9  | Advisor, Ministry of Culture; part-time journalist  | KAZ  | F   | TAT          | 12/06/10       |
| 4.10 | Representative of the Cabinet of Ministers, working on nationality issues                           | KAZ  | M   | TAT          | 14/06/10       |
| 4.11 | Representative of the Committee on National Policy, government of the Republic of Mordovia          | SAR  | M   | MOR          | 17/06/10       |
| 4.12 | Representative of the Research Institute of Humanitarian Sciences, government of Mordovia           | SAR  | M   | MOR          | 21/06/10       |
| 4.13 | Manager of IEA - RAS, former high-ranking public official in the area of nationalities              | MOS  | M   | RUS          | 02/06/10       |
| 4.14 | Specialist on minority education (specialising in Roma), Russian Ministry of Education              | MOS  | F   | MIN (m)      | 31/05/10       |
| 4.15 | Representative of the State Committee on Nationality Affairs, State Duma                            | MOS  | M   | MOR          | 01/06/10       |
| 4.16 | Representative of the Russian Ministry of Regional Development                                      | MOS  | M   | RUS          | 23/06/10       |
| 4.17 | Representative of the Voronezh police department  | VOR  | F   | RUS          | 15/10/10       |
| 4.18 | MP, St Petersburg Legislative Assembly; working on relations with religious confessions             | STPB | M   | RUS          | 25/10/10       |

#### 5. SCHOOL EMPLOYEE

| Code | Respondent                  | City | M/F | Ethnic group | Interview date |
|------|-----------------------------|------|-----|--------------|----------------|
| 5.1  | Teacher, Finno-Ugric school | PETR | F   | KAR          | 19/05/10       |
| 5.2  | Director, Tatar Gymnasium   | KAZ  | F   | TAT          | 15/06/10       |

## 6. JUDICIARY

| <b>Code</b> | <b>Respondent</b> | <b>City</b> | <b>M/F</b> | <b>Ethnic group</b> | <b>Interview date</b> |
|-------------|-------------------|-------------|------------|---------------------|-----------------------|
| 6.1         | Judge             | VOR         | F          | RUS                 | 15/10/10              |
| 6.2         | Procurator        | STPB        | F          | RUS                 | 26/10/10              |
| 6.3         | Judge             | STPB        | F          | RUS                 | 26/10/10              |

## 7. COUNCIL OF EUROPE

| <b>Code</b> | <b>Respondent</b>                  | <b>City</b> | <b>M/F</b> | <b>Ethnic group</b> | <b>Interview date</b> |
|-------------|------------------------------------|-------------|------------|---------------------|-----------------------|
| 7.1         | Council of Europe employee         | STR         | M          | N/A                 | 09/04/10              |
| 7.2         | Council of Europe employee         | STR         | M          | N/A                 | 13/04/10              |
| 7.3         | Council of Europe employee         | STR         | M          | N/A                 | 14/04/10              |
| 7.4         | Council of Europe, external expert | Other       | F          | N/A                 | 20/09/10              |
| 7.5         | Council of Europe, external expert | Other       | M          | N/A                 | 21/09/10              |

## APPENDIX 2: INTERVIEW QUESTIONS

*Different questions were put to different respondents, depending on their professional specialisation. Numerous follow-up questions were also asked, which cannot all be reproduced here.*

### INTERNATIONAL STANDARDS

1. Are you familiar with international standards/mechanisms for minority protection?
2. To what extent have you used/come across international mechanisms in your work?
3. What impact have they had, if any? Give examples.
4. If they have not been used, why?
5. Has international involvement (Council of Europe/UN/OSCE) in minority rights issues in Russia led to any consequences (whether positive or negative)?
6. What kind of support is needed from international organisations, if at all, for the promotion of the cultural rights of minorities in Russia? Why?
7. To what extent are efforts made to ensure that federal and regional laws incorporate international standards? Are there plans of legal reform for greater compliance with international standards?
8. How do the regional authorities use international standards, if at all, in their relations with the centre?
9. How is the implementation of the Framework Convention for the Protection of National Minorities (FCNM) coordinated between the federal centre and the regions?
10. How do commitments made by the central authorities trickle down to the regions?
11. How is information collected from the regions and incorporated into reports to Advisory Committee of the FCNM?

12. Is FCNM implementation evaluated? If yes, how?
13. What efforts have been made towards ratification of the European Charter for Regional or Minority Languages (ECRML)? Have these efforts facilitated ratification? Why?

## **GOVERNMENT PROGRAMMES**

1. What projects have the authorities implemented to promote minorities' cultural rights in your region?
2. How effective are state policies (federal, regional and local) in promoting minorities' cultural rights? Give examples.
3. Has the impact of these programmes been assessed? If yes, how?
4. What are the means used to incorporate cultural rights in the relevant government policies? What is your assessment of their effectiveness?
5. How do public officials assess the needs of minorities in the cultural sphere?

## **LANGUAGE**

1. How do you judge the teaching of, or through the medium of, [Karelian/Mordovian/Tatar] in your region?
2. How were the current teaching programmes developed? (e.g. were they initiated by the local/regional authorities, or minority groups?)
3. Do parents tend to value bilingualism in their children? Have there been requests to increase/decrease the teaching of minority languages in your region?
4. Has Law 309 modified teaching in your region? What future consequences, if any, do you expect?
5. What have been the consequences of the introduction of Russian-only state examinations?
6. To what extent is [Karelian/Mordovian/Tatar] used in the public sphere - in the administration and judiciary?
7. What are the main hindrances to fluency in [Karelian/Mordovian/Tatar] in your region?

## **CULTURE**

1. What are the main difficulties affecting [minorities/your minority] in Russia in the preservation of [their/its] culture and language?
2. Why do these difficulties exist?
3. Do you think that cultural rights are important? What about [other] members of minority groups? Why?
4. Have there been court cases in your region concerning cultural rights?
5. What programmes exist, if any, to ensure cultural sensitivity among civil servants/law-enforcement officials?
6. Do centralisation policies have an impact on cultures and diversity? If yes, in what way? Give examples.

## **MEDIA**

1. How many media outlets operate in minority languages in your region? What is your opinion on their outputs?
2. What is the role of minority media [in your region/in Russia]?
3. What are the main problems affecting minority media [in your region/in Russia] (if any)?
4. How are minorities portrayed in the mainstream media?
5. What kind of programmes exist on minorities issues in the mainstream media?
6. How are decisions made on programming for the state federal media? Are minority groups involved in decision-making?
7. Do you believe that there are any nationalistic messages in the media (Russian or for other nationalities)?

## **PARTICIPATION**

1. What measures exist at the local level [in your region] for co-decision and participation?
2. Have [you/minority groups] participated in devising [federal/local] policies for the promotion of minorities' cultural rights?

3. What consultative bodies exist? How do they work? How effective are they? Why?
4. What is the role of Public Chambers? Are they effective?
5. What is your opinion on the mechanisms of election and representation employed in the Congresses of Peoples?
6. Are NCAs effective and successful in representing minorities? Why?
7. How are leaders of NCAs/minority associations appointed/nominated? Why was this particular system chosen?
8. Why do NCAs register as NCAs rather than NGOs? (and vice versa)
9. Do you think that additional mechanisms for participation are needed at all? If yes, which ones?
10. Can you give concrete examples of minorities either having an impact of decision-making, or being excluded from it?
11. Do the authorities involve minorities/NGOs in processes towards the implementation of international standards? (e.g. preparation of the reports to the FCNM). How effective is this type of participation?
12. How do leaders of minority groups communicate with their fellow minority members to ensure that they effectively represent them and their interests?
13. In your opinion, is there favouritism by the authorities of certain organisations over others? Do you have examples?
14. [For NGOs/NCAs] Have you had problems registering, or do you know of organisations that have had such problems?

## **JUDICIARY**

1. What are possible difficulties for judges in applying international law in Russian courts? Why?
2. What do judges do in case of conflict between Russian law and international law? Why?
3. Are you aware of minority issues and cultural rights being raised in court?
4. What role can courts have in advancing human and minority rights?



## **FUNDING**

1. How are state funds allocated to minority organisations for programmes promoting minority cultures and languages?
2. How is federal funding allocated to the regions for programmes promoting minority cultures and languages?
3. Do you believe that the funds earmarked for minority programmes are used effectively?
4. Do minority associations have sufficient funds, and can they decide how to spend them?
5. Are there any restrictions on funding from foreign funding bodies? If yes, how does it affect minority organisations?

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