Legal Reform in Russia: A View from the State Duma

INTERVIEW WITH OLEG O. MIRONOV

Demokratizatsiya: The mass media of the world, and of the United States in particular, describe the Russian situation as a legal mess, corruption, mafia, and complete lawlessness. One cannot abide by the law in Russia and no legal reforms will be successful. To what extent do these conclusions represent the real state of affairs?

Mironov: I think that this assertion is incorrectly rooted. The mafia and crime by no means reflect that the whole country is in a state of chaos, that no one here respects the law and acts in accordance with it. Yes, Russia is at a critical point, we are going from one set of political and ideological doctrines to new ones. We need to renew the legislation, but I am largely on the side of succession in legislation. We are finally starting to understand that not everything done in our country since October 1917 was bad, but some things were done in the interest of wide social strata. But we had a rigid system where all of the links were interconnected. When the foundation of that system was swept away, which was the Communist Party of the Soviet Union, the entire edifice, including its legislative portion, fell apart. Moreover, the party itself was not homogeneous, there were the orthodox, those who held the concepts of the 1930s, but there were also reformers.

Demokratizatsiya: For example, who?

Mironov: From the past, I would name Alexei Kosygin; then there was Nikolai Ryzhkov; Yuri Maslyukov; Anatoly Lukyanov—who I know had an excellent understanding, being a specialist in the system of soviets, that no soviet had complete power in the USSR. But even then, that system allowed millions of people to gain a lot of experience in participating in the government process. Now power is alienated from the people, and the people from power. A very uncomfortable situation has emerged where being involved in the government has lost the sup-

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port of most of the population, and the people, it turn, see that they have no influ-
ence in the formation of politics. This is the basis of social outbursts, especially
in the face of economic crisis and mass poverty.

Demokratizatsiya: Can judicial-legislative reform change anything? What,
particularly, is going on in the area of law, and what kind of matters is the Duma
dealing with?

Mironov: You know that the State Duma was elected in December of 1993.
Its first term lasted two years; the term of the current constituency is four years.
Let’s look at the foundation of Russian law documentation. At the head of it is,
of course, the Constitution. This is the law of laws. There is no country in the
world that has accepted a constitution without making amendments and changes.
The Russian Constitution was written urgently, in a rushed fashion; that is why
it is already in need of considerable change. In order to change the constitution,
there came a need for a law to regulate it. We worked it out, the Duma passed it,
now it is in the Federation Council, then the president must sign it. As soon as—
and if—this happens, we will begin working on changes to the actual text of the
Constitution. That is, we will go from procedural questions to the essence of the
foundation of law. We already have a whole file of changes.

Demokratizatsiya: What is the nature of these changes?

Mironov: For example, we consider it abnormal when Parliament, in partic-
ular, one of its houses, the Duma, chosen by the entire population of the country,
has no influence in the formation of government. The Duma should not only
approve the appointment of the prime minister but also the appointments of other
key ministers, such as those for economics, defense, foreign affairs, interior, and
federal security. By the current Constitution, all ministers are appointed and dis-
missed only by the president of the Russian Federation. This is extremely wrong.
Really, a paradoxical situation can emerge if all 450 seats of the Duma are won
by one party that still has no influence in the formation of the government. Actu-
ally, we feel that there has to be a great widening of the authority of the Parlia-
ment in respect to the executive branch. According to the Constitution, we can
control only the execution of the budget, which is obviously not enough.

The next sphere of documents is what lawyers call Federal Constitutional Law.
These are laws about the government, referendum, the constitutional courts, the
federal courts, martial law, states of emergency, and so forth. Gradually, we are
passing these kinds of laws. There was a law passed for the Constitutional Court.
This court was formed and is now acting on the basis of this law. We have not,
for example, been able to pass a law authorizing individual human rights. It has
gone through the Duma nearly ten times but has never been able to get past the
Federation Council. I think that this is not right. This is an important democratic
institution that is found widely across Europe, especially in Scandinavia. Right
now, in Russia, when a lot of people have lost the opportunity to defend their
interests, for them to have the right to turn to such authority, to put it mildly, is
no luxury. There is just nowhere else for a person to go. Even the heads of local
administrations, it would seem, are appointed by the president. If we pick them next time, they will be rather interested in their ties to the population and their reputation among the people. I am currently working with one of the important federal constitutional laws, the law of the government of the Russian Federation.

Demokratizatsiya: I see that on your desk you have a handwritten rough draft of a law. What is its main idea? Is it to put the federal government under the control of the Parliament?

Mironov: No. We must step away from the current Constitution, under which only Parliament has the right to control the budget. That is why our idea is a strong, powerful government, yet open and formed democratically. It must act in accordance with the law. For example, I have put a section in the law which I am not sure how it will be accepted. It is mainly that the administration of the president and the head of the administration of the president does not have total power in the government. Right now the administration, and Anatoly Chubais personally, are attempting to put themselves over the government. I propose that the administration of the president, since it is just a branch of the government, that the power of Chubais should extend only to matters of the administration. That is why this law, which on the surface seems quite harmless, raises colossal controversy and disagreement.

Demokratizatsiya: Do you hope to save this idea in the law?

Mironov: I think that I will get the support not only of the deputies but of the entire government. I am also working on a very difficult law about federal executive power. We want to create a list of federal ministries, so that they are formed by law rather than by presidential decree. According to the Constitution, the president has the right to appoint ministers but not to create their posts. We need to make a law to stop him in this. Do not forget that the Constitution was written in a hurry, carelessly, with many contradictions.

The third set of legal documents is codified acts that, in accordance with world tradition, are not discussed in the Constitution. The Criminal Code has been passed and will be active as of 1 January 1997. A new Criminal Procedural Code is being worked on, for it is understood that material and procedure should be in agreement. Since it has not yet been passed, we are constantly having to make corrections to the old acting code. This is a very difficult job, since our prison system, holding facilities, and places of detention are in terrible shape. Crime is rising, we need to build new places, but there are no funds. On the other hand, prisoners are people also, not all of them are angry and hardened criminals to give up as totally lost. A prisoner needs to be limited in freedom, but at the same time, his self-esteem should not be destroyed, as often happens here, partially because of the conditions in which people are held in places of detention.

The first and second parts of the Civil Code have been passed. In it are the many forms of property to be defended equally: private, collective, government, and municipal.
**Demokratizatsiya**: Do you have the feeling that the executive branch has taken on too much of the work involved in the code and passing it?

**Mironov**: This is not true. The Parliament had a large role, although the code was written by a large number of people and organizations. Honestly, it was not all that difficult, for during the time when the USSR still existed in 1990 to 1991, we accepted the main direction this was to take. This was a progressive document at that time, and later it was easy for us, based on it, to work out the different codes, including the Civil Code. From a legal perspective, it was made very well. We now need to pass the third part of the Civil Code, inheritance and intellectual property rights.

**Demokratizatsiya**: In the same vein, American businessmen and lawyers are waiting for a decision on the land code.

**Mironov**: With the land code, things are much more complicated. It has been passed by the State Duma but declined by the Federation Council. A conciliatory commission has been formed. The main problem lies in the unlimited buying and selling of large amounts of agricultural land. Russia is large, but we have very little farmland. That is why some deputies are against uncontrolled buying and selling of farmlands. In the code, there are laws regarding private ownership of land, but that refers to farmhouses and personal plots, summer homes or plots of land, or the land under a house. As far as the right to freely sell farmland, the deputies feel that that cannot be allowed. And although a code with those limitations has passed through the Duma, the Federation Council and president propose that the rights to land ownership be widened. Because of that we will probably have to go toward a compromise, and maybe the size of land area that can be the object of sale can change, or maybe the right to buy and sell land to one region can be limited so that the especially rich farmland will not be sold off.

**Demokratizatsiya**: Is the goal to keep out monopolization?

**Mironov**: We do not want to see good land not be used for agriculture.

**Demokratizatsiya**: Can land be sold to foreign citizens?

**Mironov**: No. It is clearly stated in the code that foreigners may only rent or lease land. I, personally, think that this is right. We could even lease to our own citizens to start with rather than selling them thousands of hectares of farmland.

The Water Code has been passed. It is not clear how things will go with the Forest Code. It has been passed by the Duma and withstood the veto of the Federation Council, but how the president will act is hard to say. The main disagreement is who holds ownership of forests, especially those surrounding mining areas. In the code, it says that this is federal property, but subjects of the federation want it as their property.

Further down the line are the Air Code, Tax Code, and Budget Code. This is yet another set of legal documents. I think that everybody knows how important tax legislation is for our country. With the help of taxes production can be stimulated or, on the contrary, can wipe out the beginning of any initiative. For exam-
ple, today at a meeting of the Duma there was a law brought to the floor about medicines, where I spoke out against the fact that the law left out the issue that if a medicine is produced by a Russian pharmaceutical company, then an analogous drug may be imported from another nation, but with a solid tax. If that or another medicine is not produced in the Russian Federation, then a foreign company could bring it in with a minimal tax (under 5 percent). We could even exempt them from taxes altogether. I think that this is a normal approach; it protects our own producers and does not leave people without medicine if our own industry does not produce it. Taxes must carry not only a fiscal character, but they must also stimulate industry. Right now we have a completely uncivilized situation where from each ruble ninety-eight kopeks go to taxes. With these conditions nobody will be involved in industry.

Next, there are federal laws, of which there are quite a few. Russia, as you know is a federal government with eighty-nine subject federations.

Demokratizatsiya: Is Chechnya included in these numbers?
Mironov: Constitutionally, yes. In Russia, unlike in the United States where territoriality is predominant, there are also krais and oblasts, national republics and autonomous regions. Two cities are subjects as well, Moscow and St. Petersburg.

Demokratizatsiya: Is there a chance that Sevastopol will become a subject?
Mironov: I don’t think so. We don’t want to go to war with the Ukraine! We will just keep negotiating.

Demokratizatsiya: Let’s get back to the matters of federation. How are relations between the center and the eighty-nine subjects? To what extent and how does the law regulate processes of centralization and decentralization in the country after the breakup of the USSR?
Mironov: On a large seal of the government of the United States it says “out of many, one.” As you know, when the southern states attempted to secede, a civil war broke out. The Supreme Court of the United States in the end found that the federation is indivisible.

The federation must be one that the subjects want to be a part of. We are now in the process of becoming a federal government. Our federal structure is much more complicated. This is not only due to the colossal number of subjects, although it is true that the more of them that there are, the less stable the federation becomes. Secondly, our subjects’ administrations are extremely different. These are twenty-one republics, ten autonomous territories, one autonomous region (a Jewish one), forty-nine regions, six territories, and two cities in subordination. This makes for an asymmetric federation.

Demokratizatsiya: In other words, one law will not be able to regulate all of these relationships.
Mironov: This kind of federal structure is protected by the current Constitution. There are agreements between the federation and subjects. But, the practice
of each such agreement shows that the subject of the federation does not want to give something to the federation but just receive from it. That is why I support some sort of strict economic criteria before this or that territory can become a subject. The territory must, in some way, be able to economically support itself and bring something into the federation, “a drop” even, to help support the federation, the army, and so forth. If a territory is subsidized completely by the center, it cannot be a subject of that federation.

The Duma, I will remind you, writes legislation regarding matters of its own jurisdiction but also of joint jurisdiction. When we pass a law within the framework of joint jurisdiction, we must, in the text, allow for the subject to have the freedom to be able to fulfill its own responsibilities. But the federal Parliament does not pass laws, naturally, that relate exclusively to the jurisdiction of the subjects of the federation. Right now we are examining a whole file of laws regarding the demarcation of the authority of the center and the subjects of the federation and the status of particular territories. In order to calm national tensions, we passed a law dealing with national-cultural autonomy.

Demokratizatsiya: Is anybody else working on the matter of eliminating national criteria for the administrative division of the country?

Mironov: This is [Vladimir] Zhirinovsky’s idea, which is not being taken up anywhere. It is very dangerous. I personally suggested to Zhirinovsky that he go to Kazan and announce that Tatarstan no longer exists but that there is instead a Tatar province. Let him try! The other thing is that all of our national subjects have multiple nationalities. We have to watch carefully that local administrations do not turn them into one nationality. This is extremely dangerous; colossal social conflict would be unavoidable. If with the help of laws we could change real life, we would have no problems. But, unfortunately, we cannot.

Demokratizatsiya: Do you believe, in the end, Russia will become a government du jour?

Mironov: I think that the majority of our people are law-abiding. I do not think that the criminal element includes the entire population yet. They have, however, become very strong and are affecting the development of the country, penetrating the political process and the economy. It is understandable that the racketeers have gotten tribute from all of the businesses, from the smallest outlets to the large government companies. We have worked out some laws to fight against organized crime and corruption. But as wise jurists say, the best criminal policy is social policy. The reason for crime is in the economic policy being carried out in the country. Privatization, as it was carried out, led to the real looting and dismemberment of the country; it is the basis for the current crime situation. We are trying to stop it now, but it continues. So, crime is not rooted in a lack of legislation but in those policies that have been carried out in the last few years in the country.

Demokratizatsiya: Sometimes it seems that the main violators of the law are the authorities, the government and the president.
Mironov: Dozens of presidential decrees do not correspond with the law and constitution. The Constitutional Court has contributed its negative might here as well. In its interpretation of normative acts, it concluded that the president, with his decrees, may “fill” gaps in the law until the Parliament passes a law. I feel that this is incorrect, although the decision of the Constitutional Court is final. I feel that the president can fill these gaps in other ways, through his right to introduce legislation, for example. When decrees take the place of law and law becomes decreed, we are right back in the 1930s.

Demokratizatsiya: What kind of government structure do you feel Russia will have after the formation of legislative reforms? To what extent will it be an executive government?

Mironov: If we are to talk of presidential power, we can find three main types in the world. There is the presidential republic, like in the United States. Second is a Parliamentary republic, where the president is chosen by the Parliament. An example of this would be Germany. There are very few people, you will agree, that know the name of the president of Germany, although everyone knows the head of the government, the chancellor, who has all of the real power. Third, is a funny form. An example of it is France. The president is elected for seven years by the entire population, and there are no term limits. He appoints the head of the government and chairs all of his meetings. In France, there is a very strong executive branch.

Our presidential model, I think, adopted the strongest aspects in favor of the president from all three varieties. The right to veto, for example, is taken from the experience of the United States, appointing a chairman, from the French, and so forth. That is, our current Constitution leaves a lot of powerful decisions to presidential authority. Of course, much of it depends on the personal qualities of the president. It is sad that our president will go down in history as a president who fired on the Parliament, sending the legally chosen representatives of the people scurrying for cover. For his five years in office, honestly, he has done very few positive things. We must come to the perspective that the division of power is not a division of labor but a division of authority. This is what democracy is. Power must be united and indivisible!

Demokratizatsiya: What do you include in the word “democracy” in this case? What is your overall direction? And what criteria do you use for preparing laws?

Mironov: I have only one criterion: Is it of use to Russia and her inhabitants?

Demokratizatsiya: “Use” can be understood in different ways, as can democracy.

Mironov: Democracy is when ownership is in the hands of the people, controlled by officials who are held accountable, chosen by the people, with a mandate of independence, without recall, with the active participation of the people in politics. As far as criteria go, we approach each law with different criteria. It is clear that the democracy of a law about the right to public elections is differ-
ent than the democracy of a law, for example, regarding the Security Council. In that case, the main issue would not be the openness of materials, but the effectiveness of the council in the security of the country.

**Demokratizatsiya:** Is the role and place of a parliament in a country a characteristic of democracy? Are you satisfied with the role of the Duma in Russia today?

**Mironov:** The Duma acts in accordance to the Constitution. We are very limited by it. The executive branch ignores laws that we pass, and we can do nothing about it since it is not subordinate to us.

**Demokratizatsiya:** It should not be subordinate to the Parliament. Is that not so?

**Mironov:** No, but there should be some sort of control. The executive branch is objectively higher than other branches, no matter what we say about equality. For we pass laws about elections, the presidency, the government, the judicial system. The other branches have their own advantages. The executive branch, for example, has real leverage to influence the processes in the country.

**Demokratizatsiya:** A rule-of-law government cannot be possible without an effective judicial system. Has the judicial system in Russia come together? If yes, what shape has it taken?

**Mironov:** No, it is not yet together. It is just forming. We only recently passed a law about the judicial system, and there were several disagreements over some principal questions. For example, which courts should be considered federal? This is extremely important because, according to the Constitution, the president must appoint those judges. At first we wanted to include only the high courts and put the rest under the jurisdiction of the subjects of the federation. Then it became clear that the judicial system could not be put under the subjects, since that would mean leaving the judges completely dependant on the local authorities. And even though I am actively against giving even more power to the president, we agreed that the president would appoint all judges to all courts (I do understand, however, that he could not do this himself and it would be left to his administration). Of course, this is some leverage for the president to have influence over the regions, but I think that it is incomparably better than putting the judges in the pockets of local bosses. On a lower level are justices of the peace. They are under the jurisdiction of local administrations, along with their appointment procedures. We figured that they should be chosen by the people but left that decision to the subjects of the federation. There is one more issue, judicial terms. I feel that judges should have their post for a long time, but some sort of fixed term.

**Demokratizatsiya:** Will there be a jury system?

**Mironov:** There will be, and in some places it already exists. In Saratov, for example, there was an experiment using this system in practice. It revealed both pluses and minuses. I am not sure that, given today’s Russian situation, danger-
ous crimes should be tried with juries. Members of a jury can be intimidated and even killed.

**Demokratizatsiya:** How does the law regulate—if at all—the dealings of certain organs of the government, such as the interior and security ministries and the army? Is there a law on the Security Council in the works?

**Mironov:** There is still no law on the Security Council; it is still being examined by the Duma. There is a law on the Ministry of Defense. But, for now, the Duma plays no role in the appointment or removal of any of the power ministers. The main question right now is, Will we finally have the ability to control their budgets? I have long been working toward changing the budget law from having one line that says “financing of the federal legislative and executive branches,” to having it separated out as president, government, presidential administration, the Federal Assembly, and so forth, with concrete numbers for their budgets. And we will make sure that the financing of the administration of the president is at the same level as that of the government; it is essential that it be cut to, at the most, one-tenth of its current size. For now, in the law we have one line for all of them.

Russia today has the largest government apparatus it has ever had, including the period after October 1917. There are not enough buildings. It is funny that it used to be that the Comecon building housed representatives of all of the countries of Eastern Europe, yet today it is not big enough to house the Moscow mayor’s office. Compared to 1978, the government apparatus has grown two and a half times in size! The pay of its employees has risen in multiples of ten.

**Demokratizatsiya:** Is the Duma or the National Assembly involved in forming and carrying out of foreign policy? If so, in what fashion?

**Mironov:** In the Constitution, it is clearly stated that the foreign policy of the country is to be defined and carried out by the president. But it is also to be based on laws. So, only by passing related laws are we able to influence this area. Other than that, we ratify treaties and express our position on this or that matter. For instance, the Duma spoke out against NATO moving closer to our borders.

**Demokratizatsiya:** But it seems, overall, that it is easy for the Ministry of Foreign Affairs to ignore the decisions of the Duma.

**Mironov:** I think that the ministry will have to consider the opinion of the Duma in the most serious manner. Russia must be present in Europe, especially now with the fear of the rapid strengthening of a united Germany. The presence of Russia will provide the necessary balance of power. If you take the Asia-Pacific region, the nations there, on the one hand, fear China, and on the other, do not want America to dominate there. If Russia is there also, then the balance of three powerful nations could suit everyone. Really, I think the center of world politics will soon shift to the Asia-Pacific region. Russia, we shouldn’t forget, is an Asian country after all. From a bipolar world, it is changing to one that is multipolar.
Demokratizatsiya: Some Americans do not agree with this, believing instead that it will soon be a unipolar world.

Mironov: Making that statement will be counterproductive to the collaboration between our countries.

Demokratizatsiya: The heart operation of Boris Yeltsin raised a lot of legal questions. In particular, How is the ability of the president affected by his health? What is the mechanism for the transfer of power, and so forth? Does Russia need a special law about the president of the Russian Federation?

Mironov: We have no law about the president. The power of the president and the mechanism for the transfer of power are secured in the Constitution. There is one phrase there that says the president may lose his post if it is impossible for him to fulfill his responsibilities. But how can this be defined? We need laws— for example, a law about medical certification for all of the high positions in government. This is a delicate law, for there are illnesses that do not affect one’s abilities. Right now there is some legislation under way on medical criteria. Everybody can get ill, but running the country for an extended time from a hospital bed—that we cannot allow.

We already worked out a law for the transfer of power, but it was refused. But in extreme circumstances, I do not think that complete lawlessness will occur. If something happens with the president, to Yeltsin, I do not think it will be a national tragedy. There are more than enough candidates for another election. Russia is rich with talented people, including politicians.

Demokratizatsiya: How long do you think the laws you write will last? Do you write them with the long term in mind? Are you sure that they will work regardless of which party has control or who the next president will be?

Mironov: Yes, I am completely sure. We work to consider the interests of those who voted for Yeltsin, that is, those in favor of private property and those who voted for the Communists. If you remember over 40 percent of the voters were in favor of collective property. The interests of everyone must be the interest of the law. This makes laws stable.