Print Media and Self-Regulation:
An experience in provincial Russia

Contribution by Danilo Leonardi, the PCMLP-Oxford based Manager of the Project (Winter 2004-2005)

> Dialogue between an editor and a young journalist who had written about the impressive popularity of the practice of sports among the population in a provincial city in Russia, as told by the editor:
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> *"Shame on you, where did you see all of that?" I asked him. "Oh, sorry, he said, if only I knew you wanted me to write the opposite…"*
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> and equally, a story about a young journalist who had published complete untruths about a legendary aviator, as told by someone from the older generation:
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> *"Why did you do that? I asked her. She explained: 'I am single, I have a small child and an old father to support. If I wrote an article about agriculture nobody would ever print it, while this one was immediately accepted by my newspaper"'[1]*

Introduction

The purpose of this paper is to report on a three year project that created two media complaints commissions in provincial Russia with the sponsorship of the DFID, the UK Department for International Development. DFID selected PCMLP – Programme in Comparative Media Law and Policy and MMLPI – the Moscow Media Law and policy Institute to manage the "Russia Regional Media Law Networking Project". PCMLP and MMLPI provided technical assistance to two local initiatives in Rostov-on-Don and Nizhny Novgorod. In this paper we explore the substance of the technical assistance that was provided as well as the efforts made to make it fit local conditions in Rostov and Nizhny. The experience of running the project may illustrate some of the debates in media development work and more generally, on issues of transplantation of laws, institutions and international experience to a recipient society.

The overall aim of the "Russia Regional Media Law Networking Project" was to rely on media self-regulation at the local level in Russia to help reduce judicial and administrative interference with the media, encourage higher journalistic standards and make available information about European regulatory models. The complaints commissions created by the project were modelled after the press council system of media self-regulation which is quite widespread in Western Europe. For present purposes press councils are defined as independent bodies which deal with complaints from the public about the content of the print media. Press councils are a mechanism for media accountability. Although there is no single model for a press council, most press

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[1] An amusing story going around circles of the press about alleged lack of professionalism among young journalists.

councils in Western Europe administer their own code of journalistic ethics. In all cases proprietors of media outlets fund - or help to fund - the running of the press council. Some receive state subsidies. Representatives of proprietors, journalists and in some cases members of the public sit as members of the council.[2]

The project was launched at the end of 2001. Two years of preparatory work with involvement of two provincial centres in Russia served to raise awareness and to disseminate information about the self-regulatory approach towards disputes over media coverage. The project set up the media councils at the beginning of the third and final project year. At the end of the project in November 2004 the two councils are fully functional and the provincial centres that created them are sustainable.

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[2] For a a general definition applicable worldwide, see http://www.presscouncils.org/html/frameset.php?page=index
See also: Cohen-Almagor, Raphael Speech, Media and Ethics, The Limits of Free Expression, Critical Studies on Freedom of Expression, Freedom of the Press and the Public's Right to Know, New York: Palgrave (2001), chapter 7: "The Work of the Press Councils in Great Britain, Canada and Israel: a Comparative Appraisal".

Self-regulation of the media

Two relevant expressions need to be clarified. One is regulation, which is understood in this project as an arrangement limiting certain behaviour while at the same time facilitating specified actions to take place in an ordered manner.[3] Regulation has three components:[4] a) legislation; b) enforcement and c) adjudication. And government involvement is very much likely at any stage, for example government may establish regulations but delegate enforcement to the private sector.[5] The second is self-regulation, which on the other hand, is a sub-category of regulation that takes place when a group (for example, of firms or individuals) controls membership and behaviour within that group. Self-regulation "means that the industry or profession rather than the government is doing the regulation."[6] Baldwin and Cave identify three variables present in self-regulatory schemes: the first concerns whether there is governmental intervention or self-regulation is purely private. The second variable addresses the role played by actors in setting out and monitoring rules. And a third variable is the binding force of the rules.[7] In the Russia Media Law Networking project the self-regulatory initiative is purely private, designed by the actors themselves with international collaboration, and the rulings are purely recommendations.

The case for self-regulation rests on considerations of expertise and efficiency. Is self-regulation is better than statutory regulation? The issues mentioned in the literature as advantages of self-regulation involve a mixture of principles and practical considerations.[8] Advantages cut both ways: the speed of decision-making, the lower costs, the ready availability of expertise, and objectivity (ideological considerations are not taken into account or at least less likely to be taken into account). In addition, the literature indicates that self-regulation helps foster understanding by the public at large which in turn may help reduce the claim for state regulation. On the contrary, state regulation is presented as slow, more costly, and some writers mention lack of expertise (i.e. government staff are outsiders to the industry). In the context of self-regulation we should distinguish: regulation of the market, infrastructure, etc. and regulation of content. The focus in this project is on the regulation of content, in particular ethical standards.

The location of the Project: Nizhny Novgorod and Rostov-on-Don

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[3] Baldwin, Robert and Cave, Martin, <u>Understanding Regulation: Theory, Strategy and Practice</u>, OUP: Oxford and New York, 1999, p. 2

[4] Campbell, Angela J. "Self-Regulation and the Media", (1999) 51 Federal Communications Law Journal, 711.

[5] Campbell, A *Ibid.*

[6] Campbell, A *Ibid*.

[7] Robert Baldwin and Martin Cave, op. cit, pp. 125-126.

[8] Munro, Colin "Self-regulation in the media" [1997] PL – Public Law 6, at p. 6

The Project sites were Nizhny Novgorod and Rostov-on-Don. The Nizhny Novgorod region is one of the largest in the Russian Federation. It is situated in the centre of the European area of the country and is subdivided into 48 districts and 28 cities. The region has 3.6 million inhabitants with a workforce of 1.1 million. The city of Nizhny Novgorod is the administrative centre. It is now the fourth largest city in Russia, with a population of 1.4 million.

Nizhny Novgorod (which means 'Lower Novgorod') was founded in 1221 by Grand Prince Yuri Vsevolodovich as a defence post. The city lost its independence in 1632 and was annexed to the Moscow principality. In the nineteenth century the city became one of the most important centres for wholesale and retail trading in the country. Merchants from Russia and many European and Asian countries gathered in the city in order to trade.

For decades during the Soviet era, the region was a very important site for the military-industrial complex and Nizhny Novgorod (then known by its Soviet-era name of "Gorky") was a closed city to international visitors. In the 1970s, in particular, the city became well-known in the West as the place where academician Andrei Sakharov had been internally exiled. Sakharov, 'father of the Soviet H-bomb', was later awarded the Nobel Prize for his work defending human rights.[9]

Since the early 1990s when the region was re-opened it has quickly established an extensive network of sister region and city relations with foreign countries. In the mid-90s a commentator said that: "The future of Russia is being written in Nizhny Novgorod."[10] As a result of its location Nizhny Novgorod today remains a principal linking point of European Russia: an important junction of air-, rail-, motor- and waterways, which go from the west to the east and connect Moscow with the Urals, and from the north to the south along the Volga and Oka Rivers. It is also the site of one of the largest automobile factories in Russia, and its other manufactures include aircraft, textiles, and railroad and electric equipment.

Rostov-on-Don was founded in 1749.[11] The city grew especially rapidly after the opening of its port in 1834. For a long time Rostov-on-Don was known as a land where people would come to seek freedom.[12] Feudal slaves from all Russian cities used to escape there. The Don Cossacks –

[9] http://www.innov.ru/nnov/english/str1.htm Nizhny Novgorod Region website
[10] http://www.russiatrek.com/r_nnovgorod.shtml Russia Trek website
[11] http://www.greatestcities.com/Europe/Russia/Rostov-na-Donu_Rostov-on-Don_or_Rostov_city.html , Greatest Cities, Rostov on Don. Also, http://www.theharbinger.org/xviii/991005/julia.html Life in Rostov, The Harbinger, and http://www.uran.net/docs/rostov/Rostov.html , Uranet Multimedia presentation, Rostov on Don
[12] http://www.swp-berlin.org/biost/beri99/bb9913.htm Migration and Refugees in the Caucasus. A European Problem Bericht des BIOst Nr. 13/1999 (6. April 1999)

former serfs who had fled to the Don to escape the oppression of their owners – settled in the area. The Cossack atamans started the uprisings which shook Russia in the 17th and 18th centuries. Apart from being a major port, where the vessels of Russian, Armenian, Greek, Italian and Turkish merchants tied up, it was an important strategic point; in the 18th century Rostov fortress was the largest on the South of Russia. The city was a grain-exporting centre throughout the 19th century. At the beginning of the 20th century its people vigorously resisted the Communist movement and it became one of the last regions to be taken over by the Red Army.[13] Today the region is the site of many industries. There are ship and locomotive repair yards, plants processing food and tobacco, mechanical engineering works, and factories that manufacture chemicals, building materials, electrical equipment, helicopters, road-making machinery, furniture, clothing and footwear. Due to its relatively mild climate and 'black' soils the Rostov region produces a wide variety of agricultural products.

Rostov-on-Don has rich cultural traditions, and there are many thinkers whose lives and work were associated with the city. Alexander Solzhenitsyn studied at Rostov State University, the place where the famous physiologist Pavlov had performed his research. The works of many writers from the Don area, such as Sholokhov (Nobel prize winner for literature), Zakrutkin and Kalinin have international readership.

The city has about 1.2 million residents. Its position as a centre for trade between European Russia and the Caucasus area gave it the name 'Gateway to the Caucasus'. The Northern Caucasus, however, is currently one of the most unstable parts of the Russian Federation, particularly following the recommencement of armed conflict in Chechnya in September 1999.

The process of transplantation of self-regulatory best practice to two provincial locations in Russia

Two centres were set up in Rostov and Nizhny respectively to introduce the concept of self-regulation, explain and encourage it. The centres sought at the same time the crucial local input that was necessary to take fully into account the difficult conditions in which the Russian provincial media operate.

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[13] http://www.rnd.runnet.ru/region/donreg.html , Don Region, History and Culture

The regional centres started work in 2001 by identifying potential stakeholders interested in building a more constructive climate. The degree of communication between different groups of stakeholders (journalists and editors in private and state media, lawyers, judges, prosecutors, regional authorities) was very low at the beginning of the project.

After a series of meetings, roundtables and other events conducted over two years it became clear that there was interest among these stakeholders, in and outside the media, to create accepted "rules of the game" (i.e. accepted rules of media ethics) for journalistic practice and political discourse. The encouragement of dialogue via meetings, study tours and other events bore fruits and journalists and editors as well as a number of local stakeholders became open to the idea of participation in mechanisms of self-regulation in spite of commercial competition which is quite fierce and despite the less than favourable local conditions. The result was the setting up of the two media councils, which are now functioning in both Rostov and Nizhny. In addition, three Nizhny media outlets started experimenting with the in-house ombudsman idea, and at the end of the project three readers' editors positions were set up in Nizhny.

The technical assistance furnished in this project focused on building the capacity of those media complaints commissions to broker a distribution of functions between the different stakeholders: the state, the self-regulatory bodies created, the public and the press itself that creates a more conducive environment for free media. The focus of the Project was therefore not on the actual laws regulating the media in the two target areas (which, as the legal survey[14] showed, does not differ in any significant measure from federal legislation) but on providing technical expertise[15] on how self-regulatory experiences work in their own context and how the different interests are handled and accommodated. Technical assistance took the form of providing an opportunity to learn for stakeholders about best practice in Western Europe. The Project supported a local initiative that sought to

    a. Develop the capacity of staff at the local level: organised study tours to see first hand the experience of self-regulatory bodies in operation in Western Europe. The goal was to equip the two provincial centres with the abilies and skills necessary to create, and later support, media complaints commissions.

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[14] The legal survey is available on http://www.medialaw.ru/selfregulation/4/1.htm

[15] Price, Monroe and Verhulst, Stefaan, "A Methodological Perspective on the Use of Comparative Media Law, 5 Cardozo Journal of Int'l and Comp. Law, 423 at pages 423-25 (1997). See also: Seidman, Ann and Seidman, Robert, "Drafting Legislation for Development: Lessons from a Chinese Project" in (1996) 44 Am. J. Comp. L – American Journal of Comparative Law 1, at pp. 41-44.

b. Provide international input to seminars and events to make international experience available to stakeholders in Russia.

c. Focus on the "functional"[16] aspects that make possible the operation of the institution of press councils in Western Europe with a view to adjusting it to a Russian context.

The pilot project: why self-regulation of ethical standards in the Russian context

In liberal democracies there is an understanding about the strong connection between democratic institutions and freedom of expression. The media, in order to fulfil the role of watchdog of government, particularly in societies emerging from total state control, need technical expertise in forms of regulation that would enable it to move towards more public involvement in its accountability. The media complaints commissions developed in Nizhny and Rostov offer a "self-regulatory" mechanism, as an institution able to involve civil society in making the media accountable, and at the same time reduce the role of the state in the mass media. The overall goal is to strengthen independent and plural information.

Based on information gathered in the initial stage of this project (including a legal survey), it appeared there were a number of obstacles frustrating the development of a free, independent and professionally responsible media sector in the two regions. For example, the media sector – still emerging from the legacy of the Soviet era – lacked the kind of commercial independence, leadership and professional solidarity that led to self-regulation initiatives in some European Union states.

Although Rostov-on-Don and Nizhny Novgorod enjoy a degree of foreign investment and economic growth, the development of democratic practices and institutions has failed to keep pace with commercial activity. Apart from some legislation that undermines freedom of expression, the media remain vulnerable to administrative harassment and politically distorted market conditions. Subsidies from regional and municipal governments to various media outlets create unfair competition and stifle the development of commercial or editorial independence. With many media companies owned or indirectly controlled by vested political interests and big businesses, the media sector appears ill-equipped to play the role of watchdog, educator or moderator of democratic debate. These vested interests resist efforts to alter the status quo in a manner that

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[16] Zweigert, Konrad and and Hein Kötz. Introduction to Comparative Law. Oxford: Clarendon Press, 1987. vols. I & II. At p. 4

would allow for more open debate, more accountable government or more responsible journalism.[17]

Technical Assistance delivered by PCMLP:

PCMLP's technical assistance focused on providing a learning process for local stakeholders based on making available to them a comparative framework for understanding the background and mechanisms of operation of self-regulatory bodies handling complaints against journalistic ethics. Foreign experience and international best practice was broken down to its components by PCMLP, and the centres in Russia adjusted those building blocks to local conditions.

Self-regulation can take many different shapes. In order to determine suitable forms and avoid the danger of making the pilot experiences detached from the social and political context, the project local stakeholders were fully consulted and involved in the process of the design and the setting up of the pilot councils. But local stakeholders benefited from exposure to international experience, and some of them had opportunities during study tours to see how these experiences operate in their natural context.

The Project's building blocks:

a. Socio-legal research in the two regions aimed at facilitating the adaptation of press councils to the regions:

The quantitative and the qualitative surveys carried out among project stakeholders early in 2002.[18] The aim was to assess whether society in Nizhny Novgorod and Rostov-on-Don were ready for the self-regulatory pilot projects. The surveys were conducted by field staff in the two provincial centres and on a company (VCIOM) hired in the context of the project. One is a survey of the laws and regulations which simply revealed that on the books laws do not differ from federal legislation. The qualitative survey was carried out in collaboration with the Russian

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[17] On the conditions of the media in provincial Russia see: Richter, Andrei "Local Media Legislation in Russian Provinces: An Old and Winding Road", at p. 266 in Price, Monroe, Richter, Andrei and Yu, Peter Russian Media Law and Policy in the Yeltsin Decade, The Hague: Kluwer (2002); Belin, Laura "Political Bias and Self-Censorship in the Russian Media" page 323 in Brown, Archie (ed.) Contemporary Russian Politics: A Reader, Oxford University Press (2001); and also: Coulloudon, Virginie "Russian Regional Media: the Nation's Financial Crisis Threatens journalists' independence" Nieman Reports Fall 1999, at page 30.
[18] The reports of the surveys are available on http://www.medialaw.ru/selfregulation/3/index.htm

Centre for Public Opinion and Market Research (VCIOM). Individual and collective interviews (focus-group) were used as a means of researching various professionals. The selection and recruitment of respondents in the two cities was done by the contacts recommended by Project field staff. The list of respondents included local journalists and editors (7-12 pers.), lawyers, judges and prosecutors who participated in cases of conflict between the local press and the public or the local press and the authorities. In the interviews the local authorities that deal with the press were included (PR officials of the governors, city mayors, local dept of the press).

The attitudinal surveys indicated that each group of stakeholders seemed to share negative views about other stakeholders (and/or the way they carry out their activities). Among judges and prosecutors, for example, there is a recurrent complaint over a perceived lack of professional ethics and standards among journalists. This was echoed by journalists of the "older" generation speaking about younger journalists. Dissatisfaction also focused on the media's excessive "commercialism" that allegedly leads to sensational, "yellow" news values. At the same time, a number of judges were attracted to the idea of media self-regulation for a very practical reason: they hoped that a self-regulating media will reduce the caseload in their offices. Journalists, on the other hand, perceive themselves as being under "pressures from above". Among the sources of pressure we could mention the direct state subsidies, the effect of the various interests within government, state or private enterprises, and certainly, the pressures of political advertising and partisanship that become more acute in the proximity of elections or in conditions brought about by anti-terrorism legislation. Pressures come from the laws, and/or from the way laws are interpreted. There are peculiarities in the laws that make them quite different from western models - in cases of defamation, for example, the law puts the burden of proof on the journalist (who has to prove the truth of the statement) and in general, no distinction is made between the privacy rights of public figures and ordinary citizens. In addition, the law on defamation is frequently interpreted by judges in a vacuum, perhaps in light of their own understanding of the words of the statute without reliance on previously decided cases, the case law of the European Court of Human Rights in Strasbourg (to which Russia is a party) or on any other authority.

Although the sense of professional solidarity among journalists was low, journalists and editors would be willing to take part in a collaborative self-regulation pilot project provided that:

- The body to be created is respectable
- The project counts with the 'blessing' or some positive attitude towards the initiative from the governor and the administration

- If the effort to participate in the initiative could add something positive to the popularity of the journalist or his/her paper in the eyes of their bosses.

The surveys revealed the very strong presence of social networks that linked state institutions, the various project stakeholders and the media. The "short" sociological distance between stakeholders is exacerbated in places such as Nizhny Novgorod, which was a "closed" city in Soviet times and has been "open" for little more than a decade. The surveys revealed that in both cities the degree of communication within each group and between different parts of the regional community (lawyers, judges, journalists etc.) is high due to the comparatively narrow social space in the sites researched. The surveys confirmed the results of recent research into social networks that indicate that in post-communist societies social networks matter more than any formal legal and institutional ties and they keep society working these networks are more important than.[19] Respondents are now capitalizing on this network of their past and using it for their present day purposes in business, promotion or politics. In Nizhny and Rostov even political opponents often know each other from their school days. Social networks give people the additional resource of trust but also makes political borders blurred. People find it a lot easier to organise themselves and associate along the lines of kinship, neighborhood, friendship etc., rather than on the basis of political/ideological positions, views or beliefs.

Networks and informality survived from the recent soviet past. There is also an important generational (age) factor. The generation currently in position of management in the media in the regions were all educated in soviet times. The surveys highlighted the Russian tradition of strong state presence that appeared in the requirement of a "blessing" of the authorities to whatever institution was to be created. The centres created by the project kept the authorities involved in the initiative.

b. International best practice

PCMLP sought to offer to the Russian centres, and through them, to the stakeholders in the regions, an opportunity to learn from comparative research. There is a wealth of international experience in the field of media self-regulation. The print media are subject to a variety of codes

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[19] On the subject of informal networks and their influence on the operation of law and the legal system see: Galligan, Denis and Kurkchiyan, Marina (eds.) Law and Informal Practices: the Post-Communist Experience, Oxford University Press (2003).

of conduct that set out standards of journalistic ethics.[20] Some of those codes are internal to a media outlet, or specific to a publication, or adopted by professional associations of journalists. Some publications, for example, have an in-house ombudsman[21], which applies a code (e.g. the newspapers such as *The Guardian*, *The Observer* and *The Independent on Sunday* in the UK; *El País* and *La Vanguardia* in Spain; *Politiken* in Denmark). There is a plethora of codes of ethics available for application to the print media in the countries of the EU.

Press councils have received a high degree of acceptance in Western European countries. The statistics suggest that the press councils in Western Europe are very active institutions.   In the UK, the Press Complaints Commission deals with the highest volume of complaints in the group of councils surveyed. The Commission received 2,630 complaints in 2002, a significantly higher number than the average of the previous three years. 56% of complaints concerned accuracy, while approx. 25 % of complaints dealt with privacy.[22] In Germany, the Press Council receives between 500 and 600 complaints per year. Approximately two thirds of all complaints can be dealt with at an early stage without a formal decision by the complaints commission.   Following its meetings the Council issues Press statements, including public reprimands where necessary. A newspaper or magazine that has been censured must print the reprimand in its next issue- about 90 per cent of the German publishing companies has signed a voluntary agreement committing themselves to do so. In Sweden, the Press Council, which can apply fines of up to approx. Euro 2,500, deals with 350-400 complaints per year. About 30% of the complaints have been reviewed by the Press Council either on the Ombudsman's request or if the Ombudsman has written off the case, on appeal by the complainant. 10-15% of all complaints have resulted in formal criticism of the newspaper in question by the Press Council. While in the Netherlands, the Dutch Press Council hears a much lower number of complaints: 71 judgments were delivered in 2000, 53 judgments were delivered in 2001, 66 judgments were delivered in 2002 and 70 judgments were delivered in 2003.[23]

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[20] The American Society of Newspaper Editors: "Ethics codes and beyond (or create a good code if you don't have one?) Here's a cookbook of the ingredients of codes currently used by 33 papers" http://www.asne.org/kiosk/editor/99.feb/steele1.htm Codes of ethics of various media organizations collected by the American Society of Newspaper Editors www.asne.org/ideas/codes/codes.htm See also: Frost, Chris Media Ethics and Self-Regulation, Harlow: Longman, 2002, in particular chapter 6 "Codes of Conduct and Self-Regulation"
[21] "An ombudsman is a person contracted to a newspaper or television station that monitors the organisation's news coverage and also serves as the public's advocate – a person to whom people can complain if they feel news coverage has been slanted or unfair. Ombudsmen are usually paid by the organization for which they work, but they are not considered employees and have a short-term—usually a two-to-five year contract." Joan Mower, an international programme manager for the Freedom Forum – a U.S. based private foundation. See, Julie Moffett "U.S.: Experts Say Press Functions Through Self-Regulation," Radio Free Europe/Radio Liberty, 27 May 1998, Washington DC.
[22] UK PCC websiste: http://www.pcc.org.uk/2002/statistics_review.html
[23] A.G. Scherphuis, Jaarverslag Raad voor de Journalistiek 2002, http://www.rvdj.nl/jaarv.html

The Project did not encourage blindly copying foreign practice. Far from it, the technical assistance provided insisted on the need for local staff and stakeholders to adapt it. Underpinning the Project was the understanding that legal and political ideas have been transported to very different geographical, political, social and economic conditions, and thus the major ingredients of most legal systems have been borrowed from elsewhere – only Roman law was apparently an exception.[24] Differences between countries did not stop transplants from taking place over the centuries.

The metaphor of "transplants" provides us with a terminology useful to take a step back and think at a more abstract level about how this project worked on the (complex) relationship between the international best practice of press councils identified through comparative research and the adaptation of key concepts to the conditions of Nizhny and Rostov. Local conditions were the background, the cluster of those many legal and extra-legal factors with which "transplanted" laws and institutions interact, affect and are in turn affected – such as for example the impressionistic characteristics that distinguished countries and societies mentioned long ago by Montesquieu in "The Spirit of the Laws." [25] Although each country's circumstances and conditions may be unique, the Project relied on those factors identified in comparative research that were crucial for the success of self-regulatory bodies. The approach was practical and "problem-solving". The key characteristics of press councils were identified by PCMLP and the centres in Russia laboured to adapt them as follows:

b.1 Independence

The survey of European models revelead that a key consideration was for the press council to be independent from the industry and the authorities. The underpinning principle is that the protection of free speech requires keeping a distance from government. Media self-regulation can contribute to achieving separation between the press and government. At the same time, some self-regulatory bodies are industry-financed, and hence the importance of putting a structure in place that is able to isolate the self-regulatory body from the media outlets that finance its

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[24]Watson, Alan The Nature of Law, Edinburgh University Press, (1977), page 100.

[25] In the eighteenth century Montesquieu gave a very broad and generalised list of non legal factors which affect the operation of the law in general, which was intended to support his thesis that the laws of one country do not readily fit into the legal system of another: Montesquieu, The Spirit of the Laws, translated and edited by Cohler, Anne M et. al. Cambridge University Press (1989) p. 8 and 9. Montesquieu analyses the operation of the law in their relation to various environmental factors, as follows: "On the laws in their relation to the nature of the climate" (Book 14, Part 3); "On the laws in their relation with the principles forming the general spirit, the mores, and the manners of a nation" (Book 19); "On the laws in their relation to commerce, considered in its nature and its distinctions" (Book 20); "On the laws in their relation to the use of money" (Book 22); "On the laws in their relation to the number of inhabitants" (Book 23) and "On the laws in their relation to the religion established in each country, examined in respect to its practices and within itself" (Book 24).

functioning. Independence from the industry is also fundamental, as otherwise the readers might see the council as simply trying to defend the interests of the industry that supports it financially.

The press council must maintain a neutral position. Independence is achieved by making sure that the membership of the board is appointed in a way that there is a balance between the interests of the industry and the consumers or readers. There is lay member in the UK PCC, and the German press council is currently considering moving away from the corporatist model, and towards incorporating civil society representatives.

Independence means also financial independence and that the state grants or the industry financial contribuitions have "no strings attached" and no impact on decisions.   In the UK the industry finances an organ (PRESSBOF) which in turn is isolated from the industry and provides support to the press council. In other European countries the press council receives grants from the government as in Germany, but without the government having a say in the affairs of the council, but there are safeguard in place to ensure that the government does not affect the independence of the council.

In the summer of 2003, on the occasion of the III Privolzhsky Media Festival that took place in Nizhny Novgorod, the need for independence and distance from the state became clear in the following opinion poll conducted by Project staff:

The Nizhny centre carried out a three question survey among participants, and the results are quite revealing of the need for independence of the self-regulatory body:

> *1) Do you agree that the time has come to create a press council in the Privolzhky Federal District?*
> >   *"Yes" - 90 %*
> >   *"No" - 10 %*
> *2) Do you consider possible for a press council to be a state institution?*
> >   *"Yes" - 15 %*
> >   *"No" - 85 %*
> *3) Do you agree with the following statement: the members of the press council should be appointed by the unions dealing with the media, registered in Russia?*
> >   *"Yes" - 5 %*
> >   *"No" - 95 %*

### b.2	Self-regulation as an alternative to state regulation

If we look into the stories of the creation of the press councils in Europe we can see that they are usually the result of a situation of crisis of some sort (e.g. discontent with intrusions into privacy by the press, apparent dissatisfaction of the public with low standards of journalism, etc.) that prompts calls for legislation or there is a threat of legislation, and as a reaction the industry offers to improve its performance by raising its standards. In Russia, we could see the use of self-regulation (or the rhetoric of self-regulation) in the dynamics between the media and the authorities in Moscow after the media coverage of the rescue operation of hostages held by Chechen rebels in the Dubrovka Theatre in 2002. As a result of the alleged excesses in reporting there was a project at the Duma seeking to introduce "anti-terrorist" amendments to the Russian Law on Mass Media. Self-regulation was offered as challenge to the threat of unwelcome legislation. The Moscow media offered to rely on self-regulation in order to "put their house in order" and avert the threat of legislation. The media asked the President of Russia to use his veto. Mr. Putin obliged.[26]

The interplay between the industry and the authorities is patent in the history of press councils. For example, the German Press Council was founded in 1956 in the context of on-going discussions on a project for a federal press law. In 1952 the Federal Ministry of the Interior submitted a draft, which provided for the establishment of a self-monitoring body under public law. The project met with tremendous opposition from the journalist and publisher associations and following the example of the British Press Council of 1953, the journalist and publisher associations formed the German Press Council on 20 November 1956.[27] We can see clearly the corporatist traditions of Germany in the composition of the council. There is no lay membership[28] although in 2004 there are plans to introduce non-industry members and to bring the German Press Council in line with other European councils.

The story in Sweden points to similar interactions between the industry and the threat of legislation which lead to the creation, reforms and re-launches of the oldest press council in Europe. The Swedish Press Council was established in 1916.[29] It was the result of an initiative of three press organizations, The Publisher's Club, The Swedish Union of Journalists and The Swedish Newspaper Publisher's Association. It had a slow start and World War II interrupted its work. In

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[26] See: "Media still feels Kremlin Heat" by Caroline McGregor, The Moscow Times, 24 October 2003.
[27] Website of the German Press Council http://www.presserat.de/site/service/lang_english/aufgabe/enghist.html See also: Lutz Tillmanns Media accountability in Germany: the German press council in "Organising Media Accountability" http://www.ejc.nl/hp/mas/tillmanns.html
[28] Peter J. Humphreys, op. cit., p. 61.
[29] See the website of the Department of Journalism and Ethics at Stockholm Univeristy http://www.jmk.su.se/global03/project/ethics/sweden/swe2a.htm

the 1960s a deep reform was carried out when the Swedish Parliament contemplated legislation to curb sensationalism in the press. The industry responded by setting up in 1969 the first Press Ombudsman, which is part of the system of the Press Council, and the code of ethics was strengthened. The Swedish system of self-regulation is therefore entirely organised by the industry, and it consists of three pillars: the code of ethics, the Office of the Press Ombudsman and the Press Council.[30]

The UK PCC is voluntary body. It has been set up in the shadow of implicit and sometimes express threats to impose government regulation if self-regulation cannot be made to work. In the UK a Press Council was originally established in 1953, and a revised Press Complaints Commission (PCC) was established in 1991. The UK Press Council's apparent inability to deal with privacy issues led to its demise: "The main reason for the abolition of the Council was the increasing intrusion by the press, especially the tabloids, into private lives of people and the inability of the Council to curb it. The main difference between Press Council and Press Complaints Commission[31] is that while the Council was also responsible for preservation of the freedom of the press, the latter only ensures a decent standard of conduct by newspapers."[32]

Although the press council in the Netherlands was also the result of a struggle between the authorities and the profession about plans to legislate on journalistic standards, the press council eventually created in 1960 involved the presence of the judiciary in it. The great discontent and criticism on the part of the union of journalists led to the withdrawal of the bill. However, the origins of the Press council in The Netherlands date back to 1948. After World War II, and once the press in The Netherlands was rebuilt, the organisations of journalists became concerned about the standing of the profession. They founded a tribunal in 1948 - the *"Raad van Tucht"* - which functioned until 1960.

There were exceptions to the rule. In complete contrast with the countries surveyed up to this point, the press councils in Luxembourg and in Denmark are statutory creations.[33] However, there are guarantees built into the statutes of the independence from government.

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[30] Pär-Arne Jigenius Media accountability in Sweden: the Swedish press ombudsman and press council, in Organising Media Accountability http://www.ejc.nl/hp/mas/jigenius.html

[31] The UK PCC's website www.pcc.org.uk

[32] S. Shivakumar, *Press Council of India*, background paper for the workshop on Press, Ethics and Law jointly organized by Indian Society of Interdisciplinary Studies and Press Club, Thiruvananthapuram on 23rd & 24th of March, 1998 in Thiruvananthapuram, Kerala, India.

[33] The Calcutt report recommended a statutory tribunal for the UK if self-regulation were to fail. The Press Complaints Tribunal envisaged would be able to award compensation (within statutory limitations unless complainant can show financial loss), and in privacy cases it would be able to restrain publication by injunction. The Chairman would be a judge or senior lawyer appointed by the Lord Chancellor. See: Review of Press Self-Regulation

b.3   Sense of local "ownership" of the experience

The technical assistance delivered did not seek to bring an "off the shelf" ready model from outside, but provided a variety of models to what is a local initiative. Local staff and local stakeholders. Stakeholder participation is a component of successful self-regulation. There can be stakeholder participation in the creation stage as well, and the feeling of stakeholder ownership can furnish the Council and its code with legitimacy and credibility. At a Roundtable in Moscow Mikhail Fedotov[34] wondered about the reason that apparently prevented Russia from implementing self-regulatory proposals. In Russia everything seems to depend on people and their moral strength. The launching of the project involved signing a document that stressed the voluntary and consensual character of the council and code, which was highlighted by the formal signature of a document of creation, and the fact that the council was established for a limited period of time, which is renewable. The protocol in question was signed in 1996 during the 3rd. Congress of Catalan Journalists.[35]   Similarly, the Nizhny Novgorod pilot is based on a Statement signed by local stakeholders. The occasion of the Privolzhky Media Festival in the summer of 2003 was used to seek the acceptance and the signature of stakeholders to this Mission Statement.[36]

Continuation of activities to build consensus and trust among stakeholders in the two regions: the baseline surveys confirmed that knowledge about what self-regulation means and the benefits that could be derived from it are not well known. Therefore, the regional centres have continued fostering dialogue between legislators, authorities, the judiciary and media groups via meetings. After the UK study tour their views become clearer and they were able to give more details to while presenting self-regulation as a real possibility for their regions.

The purpose of the roundtables was to form the steering groups from among the participants who had been previously identified by the directors of the centres. The roundtables marked the culmination of a first year of work in the regions. The roundtables were used to produce the mission statements for Nizhny Novgorod and Rostov on Don which could be felt as "owned" by the stakeholders and to facilitate the cross community (media/legal/judicial) support for the pilot projects.

(Chairman Sir D. Calcutt QC), Department of National Heritage, London: HMSO, Cm 2135, 1990. A summary of the report is available in the Entertainment Law Review: Ent. L. R. 1990, 1 (5), E 84-86, full text on Westlaw.

[34] Roundtable in Moscow in April 2003 http://www.medialaw.ru/selfregulation/en/3/3.htm

[35] http://periodistes.org/cic/cat/Protocol.htm (in Catalan) and http://www.periodistes.org/cic/esp/Protocol.htm (in Spanish)

[36] http://www.medialaw.ru/selfregulation/5/n3.htm for the Nizhny Novgorod Mission Statement

b.4   Membership

The comparative study of press council experience showed that it is important to achieve a good balance between the self-interest of the industry and other considerations, such as the participation of lay members.   Membership is important as regards the credibility and transparency which in turn are sources of legitimacy.

In the pilot projects in NN and RD the idea of independence is to be achieved by means of a board that goes beyond the "corporatist" approach of having a tribunal for ethical issues within a journalists' union (the Russian Union of Journalists already has a tribunal like this but there are plans to open it to civil society representation). The pilot projects include representatives of various sectors – there will be members from academia, who tend to be perceived as neutral (this was confirmed by the surveys carried out in year 1 of the project), journalists, editors, and members of the Union of Journalists.

Best practice of self-regulatory organs suggests that in order to avoid the creation of a 'corporative' body members of the public must be included. In the case of the UK PCC there is a majority of lay members and minority of senior editors from across the industry (one of the advantages claimed for self-regulation is expertise). In addition, there is an independent chairman who is appointed by the industry, but who is not engaged or connected with the industry.[37]

In the pilot projects in Nizhny Novgorod and Rostov-on-Don the board goes beyond the "corporatist" approach of having a tribunal for ethical issues within a journalists' union or a body integrated exclusively by the industry. It includes members from academia, who tend to be perceived as neutral.

The relatively recent Belgian press council (for the Flemish speaking community only) is the result of a transformation of the ethics tribunal of the union of journalists. In December 2002 the council of ethics of the Association of Journalists was replaced by a press council in the Flemish speaking part of Belgium[38] This echoes the initiative of the Russian Union of Journalists of opening membership of the ethics tribunal to civil society, which would bring the current Grand Jury in line

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[37] Membership of the UK PCC: http://www.pcc.org.uk/about/comm_members.htm
[38] Belgian Press Council, description in English http://www.rvdj.be/engels.php and http://www.iit.edu/departments/csep/PublicWWW/codes/coe/jour-belgium.html The Code in English translation is available on: http://www.rvdj.be/ethiek_code.php

with modern Western European experience.[39] his view it seems that Russia suffers from chronic lack of economic transparency and as a society seems not ready to commit to an experience such as self-regulation. However, Russia had experienced, under the initiative of former President Yeltsin, an Arbitration Tribunal for elections in the State Duma.[40] The arbitration tribunal was later to become a court.

b.5   Legitimacy

A challenge for press councils to ensure their legitimacy as regulators is to achieve transparency and disclosure. Annual reports, a searchable adjudications database and other materials about the the self-regulatory body are easily available on the UK PCC's website. Legitimacy can be earned through disclosure over a period of time. This, in turn, helps with ensuring compliance, in view of the weak enforcement powers of press councils.

A good example of a grass roots initiative that helped earn legitimacy to a council is the Catalonian Council for Information. The council was initiated by the Journalists Union of Catalonia, but it was widened to include members of civil society in all stages of its creation and in its functioning. The launching of the project involved signing a document that stressed the voluntary and consensual character of the initiative, this was highlighted by the formal signature of the document and the fact that it was established for a limited period of time, which is renewable. The protocol[41] in question was signed in 1996 during the 3rd. Congress of Catalan Journalists. The Protocol was signed by representatives of the Journalist Union, the Association of Journalists, the Faculties of Journalism, journalists and a total of 48 media companies (press, radio and television). The agreement inovles the provision of support, cooperation and financial support to the Council, a promise to accept its moral authority and its decisions.

The Project in Nizhny and Rostov relied on steering committees and staff. The bodies follow transparent procedures which has been consulted extensively. Social networks matter a lot in

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[39] http://www.cjes.ru/ see 14.12.2004 *В России появится Большое жюри по жалобам на прессу*
[40] There was an experimental use of an Arbitration Information Court (AIC) in the 1993 election campaign. The AIC resolved disputes concerning access to the media by political parties. The experiment went well, and the AIC was turned into a Judicial Chamber for Information Disputes, a statutory tribunal with a very wide range of media conflicts: equality of access to the media, the protection of children and youth in the media, allocation of broadcast time, address mistakes in media reports. See: Ellis, Frank From Glasnost to the Internet: Russia's New Ionosphere, Houndmills and London: Macmillan Press (1999), chapter 2 "Mass Media Legislation of the Russian Federation"
[41] http://periodistes.org/cic/cat/Protocol.htm (in Catalan) and http://www.periodistes.org/cic/esp/Protocol.htm (in Spanish)

Russia, and therefore the ability of the body to function depend not so much on its abstract legal/formal qualities, but on the individuals who will be their board members.

b.6 Decisions:

The designers of the pilot projects did not follow an excessively legalistic approach - the public interest does not always coincide with a strict interpretation of the law. The rules of ethics used by the pilot projects are not law. The emphasis of the pilot projects is on mediation and conciliation. The pilots work towards the creation of a climate of voluntary compliance. The pilots build their reputation from a slow and careful start. The regional centres that support them keep focusing on facilitating the acquisition of legitimacy.

b.7 Sanctions/enforcement:

The case of the Netherlands Council is different, as it has no code of ethics of its own (it endorses the code of the International Federation of Journalists, although it does not systematically refer to it in its decisions). The Council acts as a mediator, and issues opinions on the basis of complaints regarding "good journalistic practice" in the print or the broadcast media. Dispute resolution would take into consideration *inter alia* whatever codes have been adopted by individual media.[42] Similarly, the two pilots created by the Project resort to well known and codes of ethics that they refer to in their decision making. In Nizhny Novgorod the pilot council uses is the "The Code of the Russian Journalist"[43], which is widely known in Russia. In Rostov-on-Don, the pilot uses the Code of the International Federation of Journalists[44] and the Declaration of the Guild of Court Reporters.[45]

The pilot projects do not impose sanctions because that would open the possibility of challenges in court not to say that it would decrease the likelihood of compliance. Strong sanctions could have the effect of discouraging stakeholders from collaborating, and distracting attention from the central task of developing ethical standards and conciliation mechanisms. The regional centers need to keep focusing on facilitating the acquisition of legitimacy for the pilot experience.

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[42] http://www.rvdj.nl/index1.html Netherlands Press Council.
[43] The Code of the Russian Journalist" is available on http://www.2001.smi-nn.ru/?id=963
[44] The Code of the International Federation of Journalists, is available on http://www.uta.fj/etticnet/ifj.html
[45] The Declaration of the Guild of Court Reporters is available on http://www.gdf.ru/books/books/liberty/index.shtml

For a Code and a mechanism to be effective, it seems that knowledge about the availability of a mechanism for complaints is crucial. All the press councils under review have websites. Some of the websites are more elaborate and contain guidance on how to complain: the UK PCC and the German Press Council are good examples: decisions of the Council are to be published in a prominent place in the same offending publication.

b.8   Financing:

The Catalan Council has 15 members on its board, all of them respected people in the region. It seeks achieve a balance between the self-interest of the industry and the participation of lay members by appointing 8 members drawn from civil society and 7 connected with the media industry. Its experience can be regarded as successful.[46] There is separation between the Council and its sources of funding. It is financed by a Foundation, the Catalan Information Council Foundation. Art. 8 of its internal rules establish that the industry and the Union of Journalists are the contributors.[47]

In the case of press councils in democratising societies the experience is that they receive funding from international assistance first, and with this support they become established. The Project encouraged the regional centres in both Rostov and Nizhny to obtain local support (e.g. local industry, etc.) to ensure the sustainability of the initiative after the end of the project.

b.9   Statistics: ratio complaints/decisions/breaches:

Voluntary bodies do not have enforcement powers of its decisions, hence compliance depends on the industry agreeing to give publicity to a reprimand, for example, the publication of an adjudication within the columns of a newspaper.[48] Other press councils may be not so "toothless", such as the Swedish Press Council, which can apply fines. Compliance is not contained in the Swedish code of ethics, but on a separate document, the Charter of the Press Council. For breaches of the Code, a newspaper censured by the may be fined up to approx. Euro 1,100 if the circulation of the newspaper is up to 10,000 copies. If the circulation is higher, the fine could be up to almost Euro 3,000.[49] In addition, the Swedish Press Council can order the publication of its decision in offending publication. "A printed or online publication criticized by the Council shall

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[46] Hugo Aznar, Comunicación Responsable: Deontología y autorregulación de los medios (*Responsible communication: deontology and media self-regulation*), Editorial Ariel: Barcelona, (1999), at p. 215.
[47] http://periodistes.org/cic/cat/Reglament.htm#article8 (in Catalan)
[48] The UK PCC: the only sanction is publication of PCC adjudications and by the publication itself (in full and with due prominence: Preamble to the Code)
[49] Art. 11 of the Charter of the Swedish Press Council.

without delay publish the entire, unabridged text of the Council's statement in a prominent place in the publication and without special reminder report to the Council that it has done so."[50]

In the first few months of the functioning of the councils all their decisions had been respected. The international experience warns that if this is not the case the self-regulatory experience is doomed to failure, as it happened with the Austrian press council that ceased its activities in 2001, as it was undermined by refusal of main papers to publish its decisions. A similar fate was that of the American National News Press Council (NNC) which ended its operations after a decade due to lack of support by the press, the public, and lack of funding.[51]

b.10   Reviewability of decisions by courts:

In the case of the pilot councils created in Nizhny Novgorod and Rostov-on-Don courts are not reviewing the decisions, but the reasoning of some of their decisions are being taken up by courts, which is a measure of the acceptance and prestige that they are gaining.

Conclusions

The three year project carried out from 2001 to 2004 provided technical assistance to two local initiatives in Rostov-on-Don and Nizhny Novgorod that set up two media complaints commissions. The technical assistance provided took the form of making available comparative insights into international experience.

The operational pilot councils allow us to observe that:
- ethical guidelines are the basis of the decisions, and this is a source of the gaining legitimacy of the pilot councils
- newspapers comply with the decisions of the councils
- Availability of (in-house) legal expertise: there are lawyers on the board helping to develop a body of case law for the council
- Decisions are published in the project website and by the media found in breach

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[50] Art. 13 of the Charter of the Swedish Press Council.
[51] Campbell, Angela J. "Self-Regulation and the Media", (1999) 51 Federal Communications Law Journal 711, at pp. 746-749.

In addition, the project has offered an opportunity to learn about international best practice for local stakeholders. Local stakeholders were involved in translating that experience to local conditions. Although laws and institutions work differently according to the society in which they operate countries are not so unique or different that they cannot benefit from experience elsewhere.

The idea of self-regulation is gaining strength in other areas of the country through contact with this Project. The Grand Jury of the Russian Union of Journalists (many of whose members have had involvement in this Project) is planning a reform of its composition that will make it closer to international best practice. There is interest in the self-regulatory opportunities brought by the model of the in-house ombudsman or readers' editor. Three newspapers close to the Project in Nizhny Novgorod are experimenting with the idea. Newspapers in Krasnodar have been in contact with Project staff with an interest to learn about self-regulatory options that could be implemented in their outlets.

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