

# BEHIND THE FAÇADE: ‘TELEPHONE JUSTICE’ IN PUTIN’S RUSSIA<sup>1</sup>

Alena Ledeneva

In an interview broadcast on *Ekho Moskvy* radio, in December 2003, a well-known author Arkady Vaksberg identified the worst tendency in contemporary Russia as *basmannoe pravosudie* (“Basmanny justice”):

*This is the rapid and demonstrative transformation of law enforcement agencies: not only into simply obedient but into zealous executors of political orders, who break the law and don’t even bother to camouflage it, who present it as a merit, and show off their muscle and impunity to the world.*<sup>2</sup>

Such dependence of the legal system on political orders is in fact a reinvented Soviet practice known as *telefonnoe pravo*, or “telephone justice”. The new term appeared in conjunction with a book published in 2003 by a non-governmental organisation, the Centre for Aid to International Defence and entitled *Basmannoe pravosudie* (“Basmanny justice”).<sup>3</sup> It included notes taken by observers who sat through daily hearings of the Basmanny district court as part of a wider project to monitor the city’s courts. Many of the reports in the book pointed to a special relationship, a mutual understanding or “trust” (*doveritel’nost’*) that seemed to exist between prosecutors and

---

<sup>1</sup> **Acknowledgements:** Alena Ledeneva is grateful to Professor Peter Solomon for his comments on earlier drafts of her paper and for his generous help with materials; and to Alexei Trochev for his help with information on the current state of affairs with “telephone justice”.

<sup>2</sup>See “Fakty i mneniia. 2003 god: optimism, pessimism, siurprizy.” Roundtable with Lev Roitman and guests: Yuri Boldyrev, Arkadii Vaksberg, Leonid Radzikhovskii, December 30, 2003. <http://www.svoboda.org/programs/rt/2003/rt.123003.asp>.

<sup>3</sup>Another NGO, the Institute of Collective Action, held a press-conference on *Basmannoe pravosudie-2* on March 20, 2006. They disclosed facts regarding law breaking by judges of the Russian Federation. See [http://ikd.ru/Aficha/News\\_Item.2006-03-03.0968](http://ikd.ru/Aficha/News_Item.2006-03-03.0968).

judge. The name itself was picked at random – *basmannoe pravo* could have referred to any other court in Russia – it should be noted that this particular court often ends up with political cases due to its proximity to the main investigative department of the prosecutor-general’s office.

Thus the term *basmannoe pravo* came to denote a biased or – in the words of Karinna Moskalenko, one of Mikhail Khodorkovsky’s former lawyers – a prejudged (*predvziatoe*) kind of court hearing in Russia, and thus it soon became associated with the wrong and unfair decisions taken by the court, presumably on political orders. In this essay, however, I use the older term, *telefonnoe pravo*, meaning “telephone justice”, to describe the extent to which political influence is exercised informally in Russia’s legal system.

### **What do we know about “telephone justice”?**

For outsiders, the term *telefonnoe pravo* does not mean much, even when translated as “telephone justice”. It is a metaphor that describes the phenomenon by what it is not – it refers to an unfair overruling of legal procedures as “justice”. It would be more accurate, perhaps, to translate this phrase as “telephone injustice” or “telephone overrule” but then it would lose its irony. Rasma Karkins suggests that “telephone justice” illustrates a crucial legacy of Communist regimes that were ruled by a handful of Party elites who had exceptional powers and were above the law: “An example involves the so-called telephone law whereby Communist party leaders would pick up the telephone and call prosecutors and judges and tell them what outcome the party expected in specific cases.”

Although the phenomenon of “telephone justice” is often referred to in academic literature, it has not been researched directly. Looking for etymological roots or explanatory notes for this phrase in Russian and Soviet dictionaries, one soon discovers that the entry *telefonnoe pravo* does not exist. The phrase *telefonnoe pravo* is rare even in post-Soviet dictionaries, though it made headlines of *Pravda* during Gorbachev’s *glasnost* in an open discussion on “Democratisation

and Legality”.<sup>4</sup> The term refers to the non-transparency and corruption of the legal system; it emphasises prevalence of oral commands over written instructions; hints at the effectiveness of informal ways of conflict resolution and the culture of informality; points to the limitations of Soviet and post-Soviet bureaucracy; and implies that networks and mediation are essential instruments of governance. Let us look at the Soviet roots of this phenomenon in more detail.

### **Soviet and post-Soviet times**

Much of the spread of informal practices in politics, economy, and the legal sphere in the Soviet Union can be blamed on the Communist Party. It was the “leading role” of the Party, its status above the law, and its protection vis-à-vis law that undermined the independence of the legal institutions and created the legacy that turned out to be so difficult to undo. Communist governance resulted in what Peter Solomon has called the “logic of intervention” or the logic of the “directive from above” where the Communist party had the last word.<sup>5</sup> Eugene Huskey emphasises the key defects in administration of justice in Soviet Russia that allowed but also depended on informal practices. He points to the principle of “dual subordination” – that is, at each territorial level the officials of the Justice Commissariat answered vertically to their superiors in the commissariat as well as horizontally to local government – and the principle of strict centralisation in the Procuracy (Prosecutor General’s Office). “Behind this carefully cultivated façade of judicial independence functioned a corps of judges who conformed to the expectations, and occasionally the explicit commands, of the Communist Party, the Procuracy, the Ministry of Justice, and even local soviets,” he observes.<sup>6</sup>

---

<sup>4</sup>Arkady Vaksberg, “Kak slovo otzovietsia,” *Pravda*, May 7 1986, p. 12.

<sup>5</sup>Solomon, Peter Jr., “Soviet Politicians and Criminal Prosecutions: The Logic of Intervention”, in James Millar (ed.) *Cracks in the Monolith*. Armonk: M. E. Sharpe, 1992.

<sup>6</sup>Huskey, “The Administration of Justice: Courts, Procuracy, and Ministry of Justice” in *Executive Power and Soviet Politics: The Rise and the Fall of the Soviet State* edited by Eugene Huskey, pp. 221-246, p. 223, 1992.

Judicial and administrative reforms in the post-Soviet era have brought some changes. For example, a business report released in October 2003 by the experts of the International Finance Corporation (IFC) at the World Bank, ranked Russia's legal system the 60<sup>th</sup> out of 130 countries on the basis of efforts to register a new business, to receive a contract enforcement decision in a court, to hire or employ personnel, to receive a loan or to liquidate a firm. The IFC specialists calculate that in Russia one has to go through 12 procedures in order to register a business, which can take under 29 days, and through 16 procedures in order to receive a court decision related to contract enforcement, which is likely to take about 160 days. Liquidation of a firm might take up to one and a half years. Since the year 2000 Russia, alongside Latvia and Slovakia, has reformed its regulatory system most actively.<sup>7</sup> Although post-Soviet reforms resulted in some impressive ratings and in better statistics on the use of courts in civil and commercial disputes, they did not seem to go far enough. It has been reported that legal institutions in Russia are used manipulatively, where court cases serve purposes other than law and justice. Local experts also note that a decision in court does not guarantee enforcement and the implementation of court decisions normally presents a problem. The weakness of the bailiff institution often results in the selective enforcement of court decisions with the use of alternative agencies of contract enforcement. Today's "telephone justice" is associated with the influence of authorities not only over business disputes but also over the enforcement of courts' decisions. Needless to say, such reports undermine the meaning of the statistics and imply that the workings of legal institutions are not fair and independent.

According to the post-Soviet opinion polls conducted by the All-Russia Centre for Public Opinion (VTSIOM) in 2001, references to "telephone justice" occur rather often. The polls show that practices of telephone justice are more associated with prosecutors than judges. When asked about judges, respondents emphasised that corrupt payments are the main incentives for bending the law, while intervention from above or the "telephone justice" is rarely

---

<sup>7</sup> Igor Fedyukin, Alexei Nikolsky 'Den'gi/Vlast'. Arbitrazhnyi proryv.' edomosti, 2003-10-09. See full ranking table of countries in the source.

mentioned. In a way, this is hardly surprising given that bribery and extortion have been reported to be one of the important corruption markets in Russia. Thus, the Chairman of the Supreme Court Vyacheslav Lebedev noted that in 2003, sixty eight judges and chairmen of courts were suspended on corruption charges. Two hundred twenty four judges and chairmen of courts received disciplinary warnings. Moreover, the General Prosecutor of the Russian Federation, Vladimir Ustinov, presented seven cases where judges violated the law, and six of them were confirmed. Four judges were prosecuted on this basis. These official figures are impressive.<sup>8</sup>

In relation to the prosecutor-general's office, a significant number of respondents refer to telephone justice. Thus, 54 percent of respondents think that in its actions the prosecution is guided not only by law but also by other considerations.<sup>9</sup> In response to an open question, "What else, apart from the law, guides the prosecutor-general's office in its work?" respondents indicated mainly two factors: directives "from above" and the personal interest of officials. Thus, 16 percent of respondents are convinced that the Prosecutor-General and his office are guided by "their personal ambitions", "kinship" and "material interests". Moreover, 14 percent assume that the actions and decisions of the prosecutor-general's office are influenced by "telephone calls from the Kremlin". "President gives his word, his decision," according to one respondent, "and the prosecutor-general's office takes it into account."<sup>10</sup>

Journalists make a more inclusive claim suggesting that the practice of telephone justice extends to judges as well, and that judges just do Putin's bidding:

---

<sup>8</sup>Rossiiskaya Gazeta, November 30 2004, quoted from Akhmadeev and Rezyanova, 2005.

<sup>9</sup>One should note a general distrust of the General Prosecutor's Office: 29 percent of those surveyed trust the institution; 44 percent – these are younger and better educated people in comparison—do not trust it.

<sup>10</sup>Fond "Obshchestvennoe mnenie" – Vserossiiskii opros gorodskogo i sel'skogo naseleniia. December 8 2001. 1500 respondents. In "Ezhedel'nyi bulleten" sotsiologicheskikh soobshchenii FOM-INFO (07.12.01- 13.12.01). Official website of the Foundation "Public Opinion".

*The Kremlin has ordered them to find Khodorkovsky guilty... so they did. President Putin wants everyone to know that judges will do his bidding, and they do. Not long ago, for example, Chief Justice Valery Zor'kin ruled that Putin's decision to abolish gubernatorial elections was unconstitutional. Now the same judge says his "interpretation" has changed. Just as in Soviet times, Russia's courts are nothing more than a mechanism for the state to get its way.<sup>11</sup>*

A striking parallel has been suggested by the former World chess champion, Garry Kasparov, now the Chairman of the Committee-2008, an alliance of liberal parties:

*It is very important that neither Yeltsin, nor his liberal ministers, say, Gaidar and Chubais – as the most significant figures of that government – targeted the foundations of the nomenklatura state. They conducted a reform that enabled them to renovate the nomenklatura. But we still live in a country where telephone justice predominates. The executive branch of power still controls all the pressure points. No judicial reform has been taking place, and the parliament has turned into an appendix of the executive, just as the Supreme Soviet used to be, while the government is in fact an appendix of the Presidential administration. Thus, in essence, we have the same old scheme: The Central Committee of the CPSU that dominates the Soviet of Ministers and the Supreme Soviet. It's clear to everybody that the decisions are taken in the Central Committee, which is today's Presidential administration.<sup>12</sup>*

This is however only one side of the story.

### **What do judges say about telephone justice?**

When judges are asked about the phenomenon of the telephone justice, it is usually dismissed as the behaviour of particular

---

11 Gessen, *The Week*, January 7, 2006, p. 12.

12 "Ekho Moskv": Interview with Garri Kasparov, a chess champion and the Chairman of the Committee 2008 by Aleksei Vorob'ev. See <http://www.echo.msk.ru/interview/25296/> Accessed December 2005.

irresponsible judges or as “gossip and myth”. The Chairman of the Moscow City Court, the largest city court in Europe, Olga Egorova, says:

*I have worked in the court for 34 years, and for 34 years there has been talk about telefonnoe pravo. I am convinced that those who allow it receive calls. All judges are in the public eye, and people know all about them—who takes bribes, who allows telephone calls and similar approaches to solve some problems. To those who do not allow it, nobody calls or will call because they know that this judge will not cooperate and will take one’s own, rather than the suggested decision.*<sup>13</sup>

The Head of the Supreme Arbitration Court of the Russian Federation, Anton Ivanov, in a commentary about “telephone justice” to a newspaper, makes a similar statement:

*I am appalled by such situations [attempts to influence a court decision]. In the half year I have worked as the head of the Supreme Arbitration Court, I did not experience a single attempt to pressure me on the telephone or in any other way. But the problem exists nevertheless. Many citizens, it seems, think that like in old times, a big boss can pick up the phone and give an order to a judge.*<sup>14</sup>

Thus, very senior judges clearly and repeatedly state that “telephone justice” is a myth but at the same time acknowledge the problem. Interestingly, the examples given in various interviews are somewhat revealing – they focus on requests by unauthorised callers (outsiders or deputies of the Duma) and judges’ competence to identify them. The following example, given by Olga Egorova, is as much evidence of her resistance to informal influence as it is evidence of an elaborate telephone communication system, an existing formal and

---

<sup>13</sup>Boris Yamshanov, “Basmannoe pravosudie so sluzhebnogo khoda”, Interview with the Chairman of the Moscow City Court Olga Egorova, Rossiiskaya Gazeta, March 24, 2005, at <http://www.rg.ru/2005/03/24/egorova-pravosudie.html>.

<sup>14</sup>Vladislav Kulikov, “Telefonnoe pravo podsudno,” Rossiiskaya Gazeta, September 6, 2005. <http://www.rg.ru/2005/09/06/telefonnoe-pravo.html>.

informal hierarchy of telephone lines, availability of a direct line from the Kremlin, and unwritten rules about what can or cannot be said on a city line (supposedly more vulnerable to surveillance). Consider the following incident.

*‘Well, I can tell you an example. I am sitting in my office. All telephone lines are switched to a secretary, apart from the first, the Kremlin one. Suddenly, my direct city phone rings – this is the number known to very few people.*

*“Hello, Olga Aleksandrovna, this is Rushailo Vladimir Borisovich [former Minister of Interior, head of the Security Council], I need to speak to you. Can you talk?”*

*I say that I can but am thinking to myself: “What is it? On a city line? I am shocked [Italics added].”*

*And suddenly the line is broken. I immediately dial Rushailo’s number from the ATS-1 phonebook [Automated Telephone Station]. A secretary picks up the phone.*

*I say: “Hello, this is the Chairman of the City Court, I have just been talking to Vladimir Borisovich, but we got disconnected.”*

*There’s a pause on the other side: “I did not connect him to anybody.” The secretary passed our conversation to Rushailo, he also became interested and took the phone. His voice is different. And then my city line rings again and I answer it. I ask: “Are you really Rushailo?”*

*“Yes.”*

*“And I am talking to him right now on a direct line, and the voices are really different.” The prank caller hangs up.’*

When a correspondent of the *Parlamentskaya Gazeta* asked the Chairman of the Moscow District Federal Arbitration Court, Liudmila Maikova, “How strong is “telephone justice” in Russia? Is it hard for the Court to be independent?” she replied: “It is hard to work, not because of the ‘telephone law’ but because of the myth about

'telephone justice'."<sup>15</sup> The determination of the acting judges to show that the workings of "telephone justice" are exaggerated is not shared by those judges who lost their positions. Not only are they much more outspoken on the subject of telephone justice, some of them went on record suggesting that at a higher level, influence with judges and prosecutors can yield desired results in criminal, commercial, and civil trials, and if unfavourable judgments are handed down, there are ways to ensure they are not enforced. One former judge, Sergei Pashin, made the following testimony in an interview:

*Q: We hear a lot about political pressure put on judges. How does this work?*

*A: The mechanism is traditional – distributing favours and privileges. Let's say you are the chairman of a court, and you want to become a member of the Supreme Court. Are you going to refuse to take the advice of the chairman of the Supreme Court? No, you're not. Or for example, the mayor calls you up and says you are in a lot of debt. But I'll pretend not to see it, he says, and, by the way, I have a libel case in your court tomorrow. For some reason, the mayor always wins.*<sup>16</sup>

Places on boards of companies and business opportunities also become part of the "carrot-and-stick" in state-run capitalism. By using "telephone justice" the power holders are able to arrange for criminal cases to be opened or closed, tax evasion charges to be pursued (or conveniently forgotten), law enforcement officials to continue an investigation (or abandon it), and arbitration courts to arrive at certain conclusions – this list could be continued with other abuses of what came to be known as administrative pressure (Pastukhov 2002) or *administrative resource* grounded in the lack of *de facto* separation between branches of power. Such a system is

---

<sup>15</sup> "Interv'iu predsedatelia Federal'nogo Arbitrazhnogo Suda Moskovskogo okruga Liudmily Nikolaevny Maikovoi Parlamentskoi gazete", Parlamentskaia Gazeta, No. 165, September 21, 2005. The official website of the Federal Arbitration Court of the Moscow District at [http://www.fasmo.arbitr.ru/news/msg.asp?id\\_msg=56](http://www.fasmo.arbitr.ru/news/msg.asp?id_msg=56).

<sup>16</sup>RFE/RL Newslines, October 17, 2000, [www.rferl.org/newsline/](http://www.rferl.org/newsline/).

replicated in the regions, where the dependence of the judiciary and other branches of power on a governor makes them vulnerable to the governor's informal pressure.<sup>17</sup> In my forthcoming book *How Russia Really Works*, I argue that interfering with legal procedures – opening, suspending, and closing cases; influencing official investigations and sanctions, on the phone and otherwise; applying informal pressure to legal institutions, state security organs, and recently, the tax police – constitutes only one type of an existing range of informal sanctions, but the one that is most difficult to research.

In his forthcoming biography of Boris Yeltsin, Timothy Colton observes that oral and personal commands used to be much more important, and were more often obeyed, than written decrees (*ukazy*) and instructions in Soviet days and seem to a large extent to be as important today. In one of his interviews, he came across a story about Prime Minister Chernomyrdin, who reproached his subordinate for implementing his written instruction. “If I wanted you to do something,” Chernomyrdin said to his subordinate, “I would have called you.” The punch line of this story offers not simply a commentary about the significance of oral communication in the top echelons of power in Russia but also implies that subordinates have to be alert to the status of various documents and be able to interpret them. This obvious difference between the formal flow of signed documents and the informal (oral) commands to implement them illustrates the degree of discretion and the continuing non-transparency in post-Soviet governance. The governance patterns rest upon, and help reproduce, the “unwritten rules” among those who know them. A key function of such non-transparency, informality, and discretion is to avoid accountability. At any level in the hierarchy, the fear of responsibility, pending punishment, and dependence on one's superiors provide reasons to perform oral commands from above, rather than to stand up to them, yet also to give oral commands to those below. In other words, one must not view “telephone justice” simply as a way of obstructing justice or of

---

17 “Zhizn' dorozhe svobody,” *Novaia Gazeta* No. 16 April 24-30, p. 15, 2000.

pursuing personal interests. It also serves the purposes of preserving the state power and “national interests.”

### **The prospects of “telephone justice” in Russia**

Although it might be difficult to measure the impact of practices of “telephone justice” on the rule of law, it is essential to view them as qualitative indicators pointing to defects in the institutional framework, often described in terms of “de-formalisation of rules” (Radaev 2002), or “de-institutionalisation” as explained by Evgenii Saburov in his criticism of Putin’s administration.

*De-institutionalisation is not the same as the lack of institutions. It’s different. Institutions exist on paper. We have constitutional rights. We have property rights. But institutions designed to help exercise these rights are in fact under heavy influence of informal institutions. Just like in old needy Soviet days, when a fridge went out of order, people did not throw it away but used it as a cupboard. It was good for storage, and the neighbours could see that there was a fridge in the house. Thus there was a fridge but there wasn’t a fridge at the same time. Thus, for example, we announce that privatisation is not going to be reversed but then also start the Yukos affair. And we do not bother to explain how this is possible. “We do have a fridge in the house,” they say. “But it does not work,” we say. In response we only hear the same but on a heavier note: “We do have a fridge in the house.”*

*It does not matter that Yukos did not break the law. Basmannoe pravosudie rules according to informal justice and informal codes (po sovesti i ponyatiyam). This is the tradition. This is the custom. When there was a complete institutional mess and no operational laws to speak of, cases were judged according to “revolutionary justice.” Who does not remember the important institution of “telephone justice”?<sup>18</sup>*

---

<sup>18</sup>Evgenii Saburov, “Deinstitutliazatsiia” in Neprikosnovennyi zapas: debaty o politike i kul’ture, Moscow: Novoe Literaturnoe Obozrenie. <http://www.nz-online.ru/print.phtml?aid=25011099> Accessed December 2005.

Recently there have been interesting developments in the area of “telephone justice.” The first sentence for use of “telephone justice” was given in September 2005 to a citizen attempting to influence the outcome of court proceedings.<sup>19</sup> In December 2005, The Chairman of the Supreme Court, Vyacheslav Lebedev, suggested a draft code of administrative court proceedings that contained a detailed instruction to judges and citizens on how to proceed with an appeal against bureaucratic abuse or arbitrariness (December 13, 2005). In March 2006, the Presidium of the Soviet of Judges of the Russian Federation approved the guidelines suggested by the Ethics Commission with regard to interference with court cases and recommended the document “On reaction to inquiries by citizens and civil servants about cases in court proceedings” for practical use.<sup>20</sup> The guidelines suggest various forms in which an inquiry can be registered by a judge. Special record books will include data on the timing of an inquiry, personal details of the person making an inquiry, and the content and nature of it. It is also suggested that such a registration can be backed up technically, by the possibility of tape recording such an inquiry, and somewhat controversially, with a possibility to use these tapes as evidence in criminal cases involving interference in legal proceedings, slander, or in civil cases involving personal reputation, honour, and dignity. In an interview, the Chairman of the St. Petersburg Soviet of Judges, Yuri Kozlov, speaks in support of this document, because “we have to do something about this problem,” and laughs at the implications of a possible automatic message on every judge’s phone “Hello, you have called Justice such and such. Please note that this telephone call is recorded for training purposes.”<sup>21</sup>

---

<sup>19</sup> Vladislav Kulikov, “Telefonnoe pravo podsudno,” *Rossiiskaya Gazeta*, September 6, 2005.

<sup>20</sup> See *Postanovlenie* of 30 March 2006, No. 95, Kislovodsk, on the official site of the Supreme Court [www.supcourt.ru/print\\_page.php?id=4285](http://www.supcourt.ru/print_page.php?id=4285); see the commentary in *Kommersant Rostov-na-Donu*, No. 74, April 26, 2006, [http://www.kommersant.ru/region/rostov/page.htm?ld\\_doc=669733](http://www.kommersant.ru/region/rostov/page.htm?ld_doc=669733)

<sup>21</sup> Artem Kostyukovskii, “Allo, Femida!” *Argumenty i Fakty*, St.Petersburg, No. 17 (662), April 26, 2006. <http://www.aif.ru/online/spb/662/04>.

On suggestion of the Vice Prime Minister German Gref, tackling corruption in the legal sphere was suggested as a key aspect of the program on the “Development of the legal system in Russia for 2007-2012.” After an upset reaction among the judges, the fight against corruption among judges (implying that the judges are corrupt) has been reworded as a necessity of anti-corruption protection for judges (April 25, 2006).

It remains to be seen if these measures will work. The good news is that civil society was able to confront the workings of “telephone justice.” As in the recent case of jailing a driver for killing a speeding politician in a car accident, the pro-Kremlin United Russia party changed its course to support the convicted motorist as the groundswell of public opinion became clear. “That prompted hope that his conviction could be overturned in a country where ‘telephone justice’ is still thought to prevail,” reports the Guardian correspondent in Moscow.<sup>22</sup> The problem, however, is not simply that direct orders are given to the courts but that the courts seem to be under the pressure of opinions expressed by the regional authorities, the President, the Kremlin administration, or the majority party, whether they convict or acquit.

---

<sup>22</sup> The Guardian, March 22, 2006, p. 18.