

judges or Court chairs due to any act ‘disgracing honour and dignity of a judge’ (Henderson, 2022). As such, judicial independence is unattainable in Russia due to systematic executive interference.

Despite this, some level of judicial independence has been attainable due to it being desired in the mundane and commercial claims. According to the 2010 Levada Study, over 70% of Russian court veterans surveyed felt their rulings were mostly fair and based on the law. Only 13% reporting that they were unfair (Hendley in Sakwa, Hale and White, 2018). This is attributed to the fact that most Russians are not part of politically significant decisions. In this regard, particularly in courts of general jurisdiction and especially Arbitrazh commercial matters (Sharipova, 2020), the Russian state has an interest in a predictable legal system and hence to ensure judicial independence. However, this limited attainability should not be mistaken for the entire commercial sphere, all appeals from Arbitrazh courts eventually reach the higher courts (Hendley in Sakwa, Hale and White, 2018). In a 2005 Arbitrazh Court claim against YUKOS for non-payment of VAT, the Constitutional Court (today the case would be referred to the Supreme Court) ruled that time limits do not permit tax evasion - despite legislation setting a statute of limitations of 3 years (Henderson, 2022). This shows that judicial independence is only attainable so far as the claims are inconsequential and therefore is overall unattainable.

In line with Spano's view, an independent judiciary is crucial for democratic oversight. In Russia, though formal acknowledgment exists, executive interference undermines genuine judicial independence. While some limited independence is seen in routine matters, significant cases remain subject to state influence, rendering true independence unattainable.

Bibliography

- *Belhaj and another (Respondents) v Straw and others (Appellants)* [2017] UKSC 3
- Henderson J, *The Constitution of the Russian Federation a Contextual Analysis* (Bloomsbury Publishing Plc 2022)
- Hendley K, *Everyday Law in Russia* (Cornell University Press 2017) 229
- *Human Rights Act 1998*
- Ledeneva A, 'Telephone Justice in Russia' (2008) 24 *Post-Soviet Affairs* 324
- Popova M, *Politicized Justice in Emerging Democracies : A Case Study of Courts in Russia and Ukraine* (Cambridge University Press 2012)
- Sakwa R, Hale HE and White S, 'Assessing the Rule of Law in Russia: the elements in Russian Politics' 9 (Bloomsbury Publishing 2018)
- Sharipova AR, 'The Quality of Justice in Criminal, Arbitrazh, Civil and Administrative Cases: Comparison by Individual Parameters' [2020] *Lex Russica* 53
- *OAO Neftyanaya kompaniya YUKOS v Russia*, Application no. 14902/07
- *Konstitutsiia Rossiiskoi Federatsii* [Konst. RF] [Constitution] art. 119(1), 120, 121, 122 (Russ.).

Russian Entrepreneurship

Question 6 “It is impossible to do business in Russia. Loans are expensive and this means you have to rely on your family and friends to start off or expand your business. You have no guarantee that your contracts will be upheld. Your business can be raided. You can be accused of fraud at the drop of the hat. Judges have no commercial sense whatsoever and their sense of justice is screwed to the extreme.”

Do you agree with the statement above? You could draw a distinction between the legal framework for doing business, on the one hand, and the way in which the rules are applied in real life, on the other. You should support your points with references to the specific legislative provisions. Where relevant, you may wish to illustrate your answer with examples from case law or real-life examples discussed in the news. Please note that you are not expected to cite any Russian case law in full. It is sufficient to include a pointer or two to help the reader to identify the case and/or example used. (992 words)

The statement is largely accurate; conducting business in Russia is arduous. While legal safeguards for general performance exist, pervasive difficulties stem from low-threshold fraud charges exploited by state-affiliated entities. Yet, even when business is feasible, difficulties still arise when dealing with unaffiliated entities due to the legal ambiguities threatening small businesses. The statement erroneously ignores the tangible business protections in Russia. Freedom of economic activity and private ownership are protected under the constitution (Art 8, parts 1 and 2) with explicit rights for entrepreneurship under Art 34(1). The Russian Civil Code's Western European law influence is reflected in the modern day, which proclaims freedom of contract (Art 1) and conclusion of contract on their own terms (Art 421) (Maggs, Schwartz and Burnham, 2015). The Supreme Court case of *Zotkina* demonstrates the Russian legal systems' legitimate framework. In a case of a loan dispute between two private parties, the Supreme Court ruled that the appellate instance court had erred in not taking Articles 807-810 of the Civil Code into

highlighting the primacy of economic considerations in Putin's decision-making. This point should be taken with the nuance that Putin had reportedly ordered Serdyukov to carry out these unpopular reforms (Gorenburg, 2013) some may say this casts doubt on whether Putin was driven by economic considerations at all and in fact endangered his own economy. However, Harvard Professor Dmitry Gorenburg points out that Serdyukov's successor Shoigu was able to prevent spiralling weapons procurement from foreign manufacturers increasing prices on Russia - therefore underscoring Putin's economic considerations.

Secondly, from a social standpoint, the case underscores Putin's adeptness at narrative manipulation for societal backing. Vasilyeva's arrest came after the largest protests in Russian modern history, the 'March of Millions' against rigged elections in Russia (HRW, 2012). By arresting Vasilyeva and Serdyukov whose crimes could be clearly quantified to £60m in losses - Putin created a narrative that he was cracking down on high level corruption. Moreover, Putin appealed the military elite that Serdyukov had alienated, to the Russian people he was tough on crime, to the siloviki he was pro-military. To illustrate Putin's complicity in humiliating Serdyukov, at the time of arrest Serdyukov was under round-the-clock guard due to being entrusted with nuclear launch codes (Presse, 2012). Only Putin or his chief of staff could have authorised the guard to stand down for criminal investigators to raid the apartment and arrest Serdyukov. This strengthens the edifice Putin is a master storyteller who utilises issues to stabilise support (Snyder, 2022). This is further supported by Vasilyeva only serving 4 months of her 5-year sentence (RFE, 2015) and Serdyukov not being charged with any crime. After orchestrating content for propagandists such as Journalists Arkady Mamontov to show that he was tough on corruption (Eremenko, 2014), and receiving the desired reaction from Western outlets (Rubinfeld, 2016) - there was no need to punish his position less friend Serdyukov. This stands in stark contrast from activists like Pussy Riot and Khodorkovsky who served years before being pardoned (RFE, 2015). The difference being that Serdyukov's crimes were a means to create positive narratives, whilst punishing activists served a second purpose of making dissidents afraid.

Politically, it reveals that Putin maintains a balance of power through an competing-pyramid politics between the Kremlin elite. Henry Hale points out patronal politics leads to competing-pyramid power structures, creating powerful factions below the leader (Hale, 2015). Serdyukov's undoing was his own father-in-law Viktor Zubkov, boss of Gazprom, Russia's 2nd largest company - making Zubkov support to Putin an essential factor to prevent misalignment with a powerful ally. Further to Zubkov's importance was the fact that the CEO of Russia's 3rd largest company, Rosneft and a connected siloviki to the nation's law enforcement base, Igor Sechin was a close ally of Zubkov's (Travin, 2012). As such, Serdyukov's infidelity to the Zubkov's daughter made him an unreliable ally to Putin who would rather keep the favor of two of Russia's largest conglomerates over Serdyukov who was his right hand. This shows that despite Putin's position at the top, he had to make the rare and difficult move to depose Serdyukov, a long-time member of his inner circle and his own appointee (Kramer, 2015), to maintain his balance of power.

In summary, the complex case of Yevgeniya Vasilyeva's fraud illuminates key aspects of Russia's economic, social, and political landscape. Putin's tolerance of corruption hinges on its economic impact, while his manipulation of narratives underscores his mastery of public opinion. Politically, the case reveals the intricate power dynamics within Putin's inner circle, shaping his decisions to maintain balance.

Bibliography

- Carbonnel A de, 'Putin Touts Record Russian Arms Sales of \$14 Billion in 2012' (Mark Heinrich ed, Reuters 2012) <<https://www.reuters.com/article/idUSBRE8BG0NO/>>
- Eremenko A, 'Yevgenia Vasilyeva: Embezzler or Hounded Artiste?' (The Moscow Times 11 August 2014) <<https://www.themoscowtimes.com/2014/08/11/yevgenia-vasilyeva-embezzler-or-hounded-artiste-a38235>> accessed 30 April 2024
- Franchetti M, 'Corruption Raid Nets 57,000 Gems' *www.thetimes.co.uk* (13 October 2013) <<https://www.thetimes.co.uk/article/corruption-raid-nets-57000-gems-50kh785qws9>> accessed 30 April 2024
- Galeotti M, 'The Silovik-Industrial Complex: Russia's National Guard as Coercive, Political, Economic and Cultural Force' (2021) 29 *Demokratizatsiya: The Journal of Post-Soviet Democratization* 3 <<https://muse.jhu.edu/article/780975/summary>> accessed 30 April 2024
- Gorenburg D, 'New Policy Memo: The Russian Military under Sergei Shoigu: Will the Reform Continue? – PONARS Eurasia' <<https://www.ponarseurasia.org/new-policy-memo-the-russian-military-under-sergei-shoigu-will-the-reform-continue/>> accessed 30 April 2024
- Hale HE, *Patronal Politics : Eurasian Regime Dynamics in Comparative Perspective* (Cambridge University Press 2015)
- Kramer AE, 'Putin Ousts Defense Chief, Longtime Ally' *The New York Times* (6 November 2012) <<https://www.nytimes.com/2012/11/07/world/europe/putin-dismisses-russian-defense-minister.html>> accessed 30 April 2024
- Melnikov V and Khretinin A, 'Corporate Crime Update - May 2013 - Russia' (Lexology 23 May 2013) <<https://www.lexology.com/library/detail.aspx?g=26f095ad-d701-436a-b7fd-d7461ef19ed6>> accessed 30 April 2024

- This would worsen the issue by creating an even larger dependence on the state and another incentive to follow its bidding
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Arg 3 - Another concern of the judges is the involvement of the executive in judiciary

- Popova points out the blatant presence of Putin's Presidential Administration office, created by presidential decree
- The PA utilises the FSB to run background checks on every judge, providing personal visits to their spouse's and adult children before proceeding their nominations for judicial posts
 - There are also various commissions in which the PA directly controls the judiciary, The head of the PA Commission on the evaluation of nominees for Judicial Posts at Federal Courts, Viktor Ivanov, was a former deputy head of the FSB in charge of economic security, which further blurred the distinction (President of Russia, 2006).
 - Other PA departments also share commissions with the judicial elite, the chairs of the Supreme Court, Supreme Arbitrazh court, Supreme Qualification Commission and Union of Judges, the deputy director of the FSB, president's representative in the Duma all sit on PA commissions together (Popova) creating a clear image of ex parte communication between the judicial leadership and the executive
- Even their information streams are directly monitored PA performs many tasks for the qualification commission and Court Department at the Supreme Court, such as accumulating court statistics on each judicial institution so that it can trigger disciplinary proceedings against
 - E.P. During Yuriy Sukratov's 2003 campaign, he alleges that PA deputy head Vladislav Surkov spoke personally to Supreme Court chairman Vyacheslav Lebedev about the need to keep Skuratov out of the Duma race. The next day, Judge Lebedev reassigned the case to a close friend, Judge Nikolai who ruled against Sukratov
- This lack of separation of powers entails that even if court chairmen are exceptionally in favour of allowing appeals by the defense, judges must consider the political direction of the country and how the potential for PA information
- **Nuance**
 - In an interview between Popova and a Supreme Court judge on Sukratov's case, the judge said that there was merit to ruling against Skuratov due to his fraudulent representation of himself. Even stating that the President couldn't care less about Skuratov at the time - putting doubt on the PA's pressure
 - However, Popova rightfully points out that this only shows Sukratov was not worthy of PA intervention, not rejecting the proposition of PA intervention
 - More so, Popova notes its telling that a Supreme Court judge even knew of the PA's opinion on the case
- **Money unlikely to work**
 - This shows that the incentive of higher pay cannot dwarf the structures embedded into the justice system