

<LRH>**Can Medvedev Change *Sistema*?** </LRH>

<RRH>Alena Ledeneva</RRH>

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<CT>**Can Medvedev Change *Sistema*? Informal Networks and Public Administration in Russia**</CT>

*Alena Ledeneva*

<H1>**2.1 Introduction** </H1>

Every ruler who aims to modernize Russia faces the problem of reforming its specific ways of governance – namely its dependence on informal practices and reliance on informal networks – and of solving the so-called governance puzzle (Ledeneva 2006). In this chapter I will focus on the latter, which might be summed up as a vicious circle of non-transparency.

The rules of the game are kept non-transparent or frequently change so that the existing legal framework does not function coherently. The complexity and/or incoherence of formal rules compels almost all Russians, willingly or unwillingly, to violate them.

Anybody can be framed and found guilty of violating some formal rules because the economy operates in such a way that everyone is bound to disregard at least some of those rules. For example, national army conscription results in only 11 per cent recruitment, while the remaining majority of young men find a way to dodge it (Daucé and Sieca-Kozłowski 2006). Nearly everybody is compelled to work in the informal economy – a practice that is punishable, or could be made so (Guariglia and Kim 2001). Businesses are taxed at a rate that forces them to evade taxes in order to do well, and additionally taxed in the form of kickbacks to state officials (Radaev 2000; Barsukova 2009). The ubiquitous nature of such practices makes it impossible to punish everyone. Thus punishment becomes a resource in short supply.

Where it does occur, punishment is selective and applied on the basis of criteria developed outside the legal domain. While everybody is under threat of punishment, the actual punishment is ‘suspended’ but can be enforced at any time. The principle of ‘suspended punishment’ became a routine practice for the authorities as formal rules were impossible to follow and it was not feasible to prosecute everyone.

‘Unwritten rules’ compensate for defects in the rules of the game. The violation of unwritten rules can result in the enforcement of written ones, which paradoxically makes it just as, if not more, important to observe the unwritten rules as the written ones.<sup>1</sup> This perpetuates the reliance of governance structures on the non-transparent rules of the game.<sup>2</sup>

Given the dependence of the Russian governance system on the unwritten rules – otherwise known as *sistema* (the system) – restructuring the formal rules of the game has a limited effect. This is partly because top-down efforts are difficult to sustain, and partly because changes in the formal rules are simply interpreted as yet another constraint to be dealt with informally. This often results in the readjustment and reconfiguration of the informal workings of the system around the new constraints, rather than a decline in the significance of the unwritten rules. When the USSR collapsed, so too did the political system whereby the Communist Party directed affairs from behind a façade of bogus institutions. During the Yeltsin period, these highly personalized arrangements were supposed to be replaced by new, transparent institutions and market mechanisms. However, the new institutions proved to be weak and ineffective. It was not long before informal practices, modelled on those of the Soviet period while differing from them in important respects, sprang up to bridge the gap. The combination of the defects in formal institutions and the use of informal means to make up for them is what Russians are referring to when they speak of *sistema*.

The intricacies of the unwritten rules, informal exchanges and inner workings of the informal networks at the top or even at the regional levels of state institutions constitute a ‘black box’ for a number of reasons. First and foremost, it is a problem of access – physical access to the ‘sites’ of the workings of the state does not include exposure to the workings of *sistema*. Secondly, the formal sites of the workings of the state lose their relevance due to the ‘network’ character of the state that emerges through the personal contact between state officials in various branches of public administration

and/or between them and their counterparts in politics and business, law enforcement, the judiciary and the legislative system. Thirdly, the hidden nature of the workings of *sistema* leaves no trace or record, making it impossible for researchers to substantiate their findings.

To date, ‘elite studies’ have focused on the quantitative and qualitative analysis of discourse (Drobizheva 1996; Dubin et al. 2007, 2008; Oleinik 2008); the formation of clans (Kryshtanovskaya and White 2003; Wedel 2003; Mukhin 2005; Kosals 2007; Mitrokhin 2008); anti-modern networks (Rose 2000, 2005); the network state (Steen 2006) and the network society (Castells 2000), and the association of state networks with the middle class (Brym and Gimpelson 2004; Dubin et al. 2008). Yet little research has been conducted into the inner workings of *sistema*.

## <H1>2.2 What is *sistema*? </H1>

Lilia Shevtsova defines the Russian system as

<Extract>a specific type of governance structure whose characteristics include paternalism, the state domineering over the individual, isolation from the outside world, and ambitions to be a great power. The heart of the system was the all-powerful leader, above the law and a law unto himself, concentrating in his hands all powers, without a balancing accountability, and limiting all other institutions

to auxiliary, administrative functions. The Russian system did not need fixed rules of the game; it needed fixers.</Extract>

<Source>(Shevtsova 2003: 16)</Source>

According to Anton Oleinik (2008b), content analysis of the vocabulary used by the Russian elite showed that *sistema* was among the three most frequently used terms (the other two were business and money).<sup>3</sup> Despite its vagueness, the term highlights important dimensions of the ‘regime’, ‘authority’ and ‘them’, constituting an informal institution with its own initiation rites, unwritten rules, assigned roles and behaviour, as well as sanctions and rewards, and which shadows the workings of formal institutions in Russia. The power of *sistema* rests upon principles of suspended punishment, compromise, *krugovaya poruka* and the sustained vulnerability of individuals vis-à-vis the system, each of which principles has a binding, reproducing quality in itself, and is supported by informal networks.<sup>4</sup>

In Soviet days, an important managerial skill was competence in *sistema*. Verbal and personal commands had to be taken more seriously and followed more closely than written decrees (*ukazy*) and instructions (*rasporiazheniia*). The ‘command’ principle remained important in the post-Soviet context (Colton 2007: 82, 325; Baturin 2001: 424). One of my informants, a former party apparatchik, explained the importance of the process of the ‘selection of cadres’ (*podbor kadrov*) then and now, and its purpose to test character, compatibility and team qualities, which results in independent-minded ‘cadres’ not being recruited or promoted.<sup>5</sup> Colton recounts a story about a post-Soviet official who reproached his subordinate for implementing his written instruction: ‘If I wanted you to

do something, I would have called you.’<sup>6</sup> The punchline of this story not only highlights the significance of verbal communication in the top echelons of power in Russia, but also implies that subordinates must be alert to the status of various documents and be able to interpret them correctly.

Idiomatic expressions and folk wisdom illustrate the necessity to read signals and to comply with verbal commands competently in a number of ways. As an often-quoted aphorism goes, a ‘get it done’ resolution on a document can mean anything from ‘do it immediately’ to ‘don’t do it no matter what’ (Zhvanetskii 1986). The colloquial advice ‘to avoid falling out with the system’ includes: ‘don’t complicate life for yourself or others’; ‘don’t play with fire’ (*ne igraĭ s ognem*), ‘don’t go overboard’ (*ne lez’ na rozhon*), ‘don’t run in front of the train’ (*ne begi vperedĭ parovoza*), ‘don’t be more saintly than the Pope’ (*ne bud’ svyatee papy rimskogo*), ‘cut corners and don’t focus on them when unnecessary’ (*ne obostryai tam gde eto ne nado*); ‘don’t politicize matters when unnecessary’ and other unspecified instructions that presuppose the skills to distinguish between ‘when necessary’ and ‘when unnecessary’, as well as the sensitivity to perceive threats and signals unnoticeable to outsiders.<sup>7</sup>

Recruitment and promotion procedures are in place to communicate tacitly that loyalty, submissiveness and compliance with the informal code of *sistema* are essential for operating in administrative structures. Viktor Ilyukhin of the State Duma anti-corruption committee explained that the formation of cadres, especially at the top level of managers in presidential and federal administrative structures, is based not on the principles of professionalism but on the basis of acquaintance, personal loyalty, compliance with unwritten rules, and nepotism (*kumovstvo*). He referred to the

recruitment of personnel from St. Petersburg (*piterskie*) as unfair to the rest of Russia. Similar practices are replicated at regional levels (Il'yukhin 2008). Clan-based appointments generate a stifled atmosphere produced by the arbitrary nature of power (Ilyukhin estimates bribes to public officials as equivalent to one third of the federal budget). A recently appointed employee of the state IT services sector, Ivan, who moved from the business sector but maintained his interest in business, said:

<Extract>I had always been sceptical about state officials. But now I hold them in even lower regard. [The atmosphere of] denunciation, set ups, incompetence, and unwillingness to work – [is widespread] not just throughout our service but in most state structures. If people knew the scale of the theft that is occurring, they would come and simply set fire to it all.</Extract>

<Source> (Iusupova 2007)</Source>

Denunciations and set-ups refer to the widespread use of compromising material (*kompromat*), or blackmail files (Ledeneva 2006). Yet *kompromat* is also a mechanism of control in *sistema*. The rise to power is accompanied by one's willingness to compromise oneself in order to pass the informal loyalty test and create collateral for one's liberty in the future (Gambetta 2002). The context of non-transparent governance requires that none of its members has a stake in making the system transparent or changing it. Should such a stake emerge, the compromising information ensures that the credibility of this person is ruined. Appointments which may look arbitrary in terms of professional qualifications are not arbitrary in terms of the informal criteria (Huskey 2005). Such criteria guarantee appointees' submissiveness and cooperation in the future. This is not to say that the values of loyalty and obedience entirely supersede qualifications and

professionalism. However, the impact of closed networks and informal criteria for appointments, as well as other forms of (ab)use of ‘administrative resources’ remain non-transparent (Panfilova and Sheverdiaev 2004).

Personalizing appointments in public administration has more functions than the simple channelling of information or help with obtaining a job. *Blat* appointments tie appointees into informal commitments to the boss and the contact who recommended him/her. As one of my informants, a banker, explained:

<Extract>There is also a system of personal vouching or recommendation (*poruchitel'stvo*). For example, a minister wants to appoint somebody and invites him for a friendly chat, normally to establish who he knows and how, and my name comes up. So the minister calls me and asks me if I recommend this person. I speak very generally: ‘as far as I know he is *korporativnyi chelovek*’ (a man who follows corporate rules). So the appointment goes through. The funny thing is that if there is an issue with the appointee, I will be asked to step in to solve the problem. </Extract>

In societies where loyalty is the essential operating principle in public administration, with rewards distributed through the system of informal kickbacks, an independent professional with whistle-blowing potential is unemployable. Whereas ‘modern’ networks are relatively open and recruit independent agents on the basis of professional expertise, kin and social networks in Russia function in a ‘pre-modern’ way, on the basis of loyalty and compliance with the informal ways of getting things done (Rose 2000, Ledeneva 2001).<sup>8</sup>



When asked why they comply with the demands of *sistema*, the insiders came up with the following typology of arguments:

### <H2>2.2.1 Forced cooperation/ fear </H2>

<List>

- ‘No choice: in order to be appointed in the first place, one must “hang” on a hook (*na kryuke ili v kompromisse*). In other words, leverage is applied to ensure that the appointee is compliant with the unwritten rules and is loyal in daily operations, as well as interested in propagating the system’.
- ‘One such hook is to appoint people who are unworthy of the positions they are given. They constitute the type of state officials who are *a priori* not fit for office, but are keen to gain a position and go along with whatever is required of them. Another hook is the system of *kompromat*. Almost invariably covert, *kompromat* is created when necessary or they appoint people that are dependent, for whom *kompromat* already exists’.
- ‘There are firm agreements at the time of appointment which, of course, can be broken at a later stage, but there are also mechanisms to keep them in place. If some agreement has been broken for some reason (or if one says “no” in a situation where one is supposed to say “yes”), then psychological factors come into play. It’s not even personal, it’s just that you are a member of the team, of a network and everything is defined by a certain code that you can’t deviate from without breaking out of the team or networks. Reliance on such practices backs up the *bezpredel* of the state bureaucratic machine’.</List>

## <H2>2.2.2 Tradition/habit/everybody does the same</H2>

<List>

- ‘This is not a system that you can choose to enter or avoid. You fall into it from the moment you are born, but there are, of course, also enforcement mechanisms that help to propagate it. In the Soviet Union, everyone possessed corporate loyalty; they were *korporativnye* – nuts and bolts of the same “system”, only now there seems to be more competitiveness within networks and clans’.
- Habitual behaviour (a reflex of compliance created by all large organizations where individual resistance is futile).</List>

## <H2>2.2.3 Emotional ties/obedience/ loyalty</H2>

<List>

- ‘Although appointments might seem arbitrary, it’s a long-term process of “building your inner circle” (*rastyat svoikh lyudei*). In order to get an appointment or to be promoted to a certain position, one should demonstrate compliance – that is the way to get there. *Svoi lyudi* can be built up by emotional ties of friendship, camaraderie or loyalty’.</List>

## <H2>2.2.4 Economic rationality/ pragmatic interests </H2>

<List>

- A consensual or coordinated (*soglasovannye*) relationship between the top and the bottom against a background of generally dysfunctional vertical relationships

(nowadays a policeman won't even go to work unless he receives a backhander: *chto eto ya poedu na obysk bez deneg*). The same principle applies to the controlling organs – nobody finds themselves there by chance, they mostly represent certain corporate interests.

- ‘Kickbacks – a person has to live, right? They make a living for themselves, for the boss, for the whole economy through the mechanism of kickbacks. Law enforcement organs operate on the basis of informal pay for ordinary duties’.

These replies suggest a lack of personal choice and a network-locked economic interest, which account for the so-called *korporativnost*’ of *sistema*. Just like families, ‘corporate’ networks have an intrinsic capacity to propagate themselves. Charles Tilly (2005) notes that ‘rightly fearing that unscrupulous rulers would break them up, seize their resources or submit them to damaging forms of intervention, strong networks of trust such as kinship groups, clandestine religious sects and trade diasporas’ devise measures of self-preservation.

It is often assumed that informal networks are a Soviet legacy that will wither away over time. By contrast, my research shows that informal networks, particularly those based on interaction between public administration and business, or the banking services, are essential for the operation of both the formal and informal economy and for compensating for the defects of impersonal systems of trust in Russia (Ledeneva 2006; Shlapentokh 2006). Informal payments, or kickbacks (*otkat*), have become the core *modus operandi* of the informal exchange of favours and imply a high degree of interpersonal trust, loyalty and dependence on informal transactions.

Measurements of business corruption are an important indicator of the power of the personal networks that link business to the state. Businesspeople report that they fork out considerable sums on interactions with corrupt officials. Added to this, every bribe requires a support network to provide information, introduction, delivery, security and performance. According to a Price Waterhouse Coopers survey, 59 per cent of the 125 biggest Russian companies have reported at least one economic crime in the past year, up from 49 per cent in their 2005 survey (Reuters 2007). Lump-sum corruption is unlikely to contribute to these statistics, but the use of black cash, or the unofficial payments fund (*chernaya kassa*) is. With the expansion of the role of the Russian state in the economy in 2004–6, as indicated in the OECD 2006 report, grey areas emerged and spread, particularly in ‘strategic’ sectors such as oil and gas. The report argues that ‘the expansion of state ownership in important sectors will probably contribute to more rent-seeking, less efficiency and slower growth’ (OECD, Economic Survey of the Russian Federation 2006: 33–8).

According to Alexander Chepurenko of the Higher School of Economics, Moscow, state officials accumulate significant economic resources by combining rent-seeking behaviour and the corresponding income from ‘administrative rent’ with entrepreneurial activities and profits received by their family, relatives or associates. In his view, the rental income from the use of the ‘administrative resource’ is the hidden foundation of the growing middle class in Russia today. Therefore, the social stability associated with the middle class is rather specific as it is based upon shadowy rental incomes that state officials squeeze out of their positions in formal and informal hierarchies – ‘in other words, bribes and kickbacks’ (Iusupova 2007).

At the top end of the hierarchy of kickbacks is rental income associated with state capture. According to expert estimates, the ‘governmental services’ include: introduction of an entry into the budget – from 4 per cent of the allocated sum; signing of additional export quotas – from 10 per cent of market value; kickbacks for the signature of a state order – 20 per cent of the sum; transfer of a budget allocation – from 5 per cent of the sum; and kickbacks for the export of cheap gas – 50 per cent of the difference between the market and agreed price (Davydova 2006).

Actual numeric estimates are not as important as the identified patterns of services – the informal practices that penetrate all branches of power. In the legislative branch, the so-called *deputatskie* services include: custom-made legislation – from \$0.5m; introduction of draft legislation for consideration in the State Duma – from \$0.5m; introduction of amendments to legislation – from \$0.2m; adoption of legislation on tax, customs tariff and customs regulation – from 10 per cent of the potential profit; a vote in favour of a certain outcome – from \$2,000 (per vote); and organizing a deputy request for the General Prosecutor’s Office – from \$50,000 (Davydova 2006; see also Nemtsov and Milov 2008).

Research conducted by the Moscow-based think tank INDEM shows that although half of the businesspeople approached refused to disclose their experiences of corruption, the answers received to a question about the percentage of the monthly turnover of their firms that goes on bribes suggest that 25 per cent of companies pay up to 5 per cent of their turnover, 13 per cent of firms from 5 to 10 per cent, 5 per cent of firms pay from 10 to 20 per cent, and 2.5 per cent pay state officials as much as 20 to 50 per cent of their turnover. According to INDEM data, only 10 per cent of the corruption

market in Russia serves household needs, and about 90 per cent of bribes are business-related and involve a 'state service' such as export licensing and quotas, state budget transactions and transfers, tax transfers, customs duties, privatization deals and servicing debts to the federal and regional budgets, and land and premises rentals (Satarov 2005).

Small and medium-sized businesses are 'given away' to regional and local officials to 'feed from', thus administrative barriers are often created on purpose in order to extort payments from businesspeople. Administrative rent is a burden that hampers the growth of small and medium-sized businesses. According to INDEM, kickbacks vary from 10 per cent on deliveries of IT equipment to 50 per cent on orders for scientific research. The formalities are preserved: there are open competitions and tenders,<sup>9</sup> but companies often win public tenders because their owners or managers are related to (or financially associated with) the officials appointing tender commissions or are actual members of these commissions.<sup>10</sup>

Just as the structural holes in social networks are filled by intermediaries, or brokers, institutional brokers also function in a similar way. Russian commercial banks play a dual role vis-à-vis the state tax organs by being both taxpayers to, and agents of, the fiscal organs (Hainsworth and Tompson 2007). With a substantial share of tax revenues collected via the payments system, tax authorities rely heavily on banks not only to provide information about clients' finances, but also to cooperate in tax collection (Tompson 2007). This practice creates an incentive for firms to conduct transactions in cash. However, firms' use of black cash strategies is limited, and typically requires the banks' help in obtaining large quantities of cash in violation of restrictions on the use of cash for inter-company transactions. Hence banks play a critical role in so-called 'tax

optimization' strategies. The centrality of banks in managing financial flows is crucial to an understanding of the scale and the *modus operandi* of the informal economy of contemporary Russia.

The relationship between taxpayer and tax collector is not, as a rule, based on negotiation, but in Russia, as **Tompson** (2007) points out, 'The bargained tax bill is no more a paradox than was the bargained plan'. Unlike the use of black cash or bribes (*tenevye skhemy*), many tax schemes are grounded in legal loopholes and can be more appropriately described as tax avoidance/tax optimization than tax evasion. They exploit defects in tax legislation which, according to some respondents, may have purposely remained in place. The centrality of the law in such creative scheming, however, is a noticeable and positive development (Berenson 2004).

In mature democracies, lobbying is associated with the establishment of intermediaries. It is regulated by both the legislation on lobbying and preventative measures to protect legislative, judicial and law enforcement institutions against lobbyism. No such legislation exists in Russia, despite the efforts and initiatives of various think tanks.<sup>11</sup> As mentioned above, efforts by certain groups to influence the country's legislature for their own benefit involve significant cost and expertise. These networks of acquaintances strive to push through amendments to certain laws or new legislation that will bring them economic advantages, often through their own shadowy mechanisms of lobbying (Tolstykh 2006: 140–9).

Given the economic rationale for and dependence on kickbacks, it is little wonder that administrative reform in Russia is struggling and that the principles of the separation of powers and the rule of law are not operational (Manning and Parison 2003; Leksin,

Leksin and Chuchelina 2006). Yet the impact of *sistema* is not seen as exclusively negative, even at the level of public statements by top officials. One cliché about corruption in Russia is that the economy would not be able to function without it – the problems associated with administrative reform, ‘administrative rent’ and the independence of the judiciary have to be resolved before anti-corruption policies can become effective. In the meantime the informal pressure of networks can serve as an effective policy tool. Russian leadership is known for imposing ‘corporate responsibility’ and using informal leverage to promote a modernization agenda and to achieve strategic goals. In the long run, however, informal tactics undermine the strategic goals of modernization: the separation of powers, property rights and equality under the law. This is the ‘modernization trap’ of the network state: once the state uses the potential of informal networks, it becomes locked into the consequences. For example, just as Medvedev’s path to the presidency was being facilitated, it was made correspondingly harder for him to consolidate his own power base. Whereas networks of power enable their participants to mobilize resources effectively in the short term, they also create long-term lock-in effects for the elites that are detrimental to Russia’s modernization.

Thus, much of what has already been initiated by President Medvedev can be viewed, perhaps optimistically, as a significant challenge to the operations of *sistema*. His anti-corruption initiatives, exposure of legal nihilism and dependent courts with their ‘telephone justice’, and creation of alternatives to *blat* appointments pose challenges to *sistema* and have to be monitored as indicators of change. Systemic defects of this kind have never before been publicly acknowledged at the presidential level, and the very existence of such an acknowledgement speaks volumes. The measures to promote



change, if successful, could help to break the vicious circle of Russia's governance model. The following section will focus on these initiatives in more detail.

### <H1>2.3 Challenges to *sistema*: Anti-corruption initiatives </H1>

In the same vein as President Putin's pronouncement on the 'dictatorship of law', an anti-corruption announcement was one of the early undertakings of President Medvedev. Analogous in its timing and concern, the anti-corruption theme was also in accord with what Putin was saying all along: the priorities of his presidency were stability and economic growth, without which the anti-corruption struggle made little sense, and it would be up to his successor to tackle corruption directly (Valdai 2006). Before the economic crisis hit Russia, Medvedev certainly followed that line of thinking by stating that 'we must consider how we can eliminate the conditions that breed corruption' and 'we must do something. The time for waiting is over. Corruption has become a systemic problem and we must respond systemically' (Medvedev in *Gazeta.ru*, 19 May 2008). Medvedev directly acknowledged the systemic nature of corruption<sup>12</sup> and interpreted it as 'a threat to national security' (*Gazeta.ru*, 2008).

The 2008 plan included 'modernization of the anti-corruption legislation', 'countering and prevention of corruption in the economic and social spheres, and the creation of incentives for anti-corruption behaviour', setting up 'an anti-corruption standard of behaviour – nothing will work out without it', and some checks and balances – an 'assessment of corruption on the part of society', the mass media and public organizations. In the context of concerns about the 'network state', Medvedev

emphasized 'transparency in conducting state procedures connected with contracts, tenders, and administrative regulations' and the need to create a favourable business environment (Stanovaya 2008).

As part of his anti-corruption programme, President Medvedev introduced a number of bills in the State Duma that were adopted in the third reading in December 2008. Critics argue that these bills are riddled with loopholes and will be used only in the pursuit of personal vendettas. Originally the legislation was supposed to come into force in 2009, but it has been extended to 2010, allegedly illustrating the power of bureaucratic lobbying and giving top bureaucrats enough time to organize the transfer of assets to offshore locations (Kabanov, 24 April 2009). Enforcement issues are being hotly debated at the time of writing.

A new version of the code of conduct for state officials includes a request for accountability concerning the material situation of state officials and judges. In March 2009, Medvedev submitted a public declaration of his personal income and property as well as those of his family members, just like many other top officials in the government, the president's administration and regional administrations (for details see *Vedomosti*, 9 April 2009). An important first step in the anti-corruption campaign was not without its own loophole: officials are only requested to declare the income and property of their family, including their wives and underage children. The income or property of their adult children is out of consideration, an example of how a formal constraint can be creatively circumvented by an easy transfer of ownership of assets to other relatives and trusted persons. According to **Kabanov**, the public reacted to these declarations with

sarcasm and a sense of hopelessness. Most saw Medvedev's move as a deceptive PR ploy to convey the impression that Russia's leaders are fighting corruption (Kabanov 2009).

The third set of controversies centred around business matters. Medvedev spoke of corruption that 'demoralized the business environment', but critics argued that it was naive to speak about a 'set of measures on anti-raiding issues at a time when the country's main raider was the state power structure' (*Gazeta.ru*, 19 May 2008). Judicial institutions and law enforcement agencies both come under pressure in the context of favourable court decisions and other services that the tax, fire and sanitary authorities are known to perform (Ledeneva 2006: Ch. 7). The pricelist includes: initiation of a legal case against a competitor – from \$100,000; 'purchasing' a court decision on the confiscation of assets – from \$50,000; initiating a decision on the freezing of a bank account or its reversal – from 30 per cent of the sum; facilitating the outcome of a commercial dispute in an arbitration court – from \$50,000; and the arrest of shares or other assets – from \$30,000 (Davydova 2006). The courts, under President Putin, appear to have become instruments of raiding and the redistribution of assets for the benefit of people close to the regime (*Gazeta.ru*, 19 May 2008).

On a positive note, *Vedomosti* reported that President Medvedev's request to stop the harassment (*koshmarit'*) of businesses with unexpected and unjustified inspections resulted in the General Prosecutor's office and the fire authorities taking concrete steps towards change (*Vedomosti*, 31 March 2009). Although not all business needs were met,<sup>13</sup> it showed progress and generated a lively discussion in the *Vedomosti* blog. Public support should not be underrated as Medvedev needs the allegiance of those outside *sistema* if his campaign is to succeed. However, public reactions generate little optimism

for the future of anti-corruption measures. This is not surprising given that corrupt practices are seen as being more the rule than the exception. For example, ‘forced payment’ in the health and education sectors is considered normal by 27 per cent and 23 per cent of the population respectively, and a further 59 per cent are prepared to pay for guarantees of quality (Gudkov et al. 2008: 37). Russian society continues to place its trust in very small communities – rather than in impersonal systems. Most citizens consider themselves defenceless in the face of the arbitrary power exercised by state institutions such as the courts, the police and the tax authorities. Fifty-three per cent of ‘middle class’ respondents rank ‘arbitrariness and extortion by state officials’ as the second most acute problem (Gudkov, Dubin and Zorkaya 2008: 38). Nevertheless, the existence of the anti-corruption plan and the political will to stand behind small and medium-sized businesses is a sign of change.

## <H1>2.4 Challenges to *sistema*: combating ‘telephone justice’ </H1>

If the advent of President Putin was associated with a decline in the influence of criminal groups in favour of the influence of *siloviki*, the arrival of President Medvedev might result, if successful, in the replacement of the influence of *siloviki* with the influence of *civiliki*, a network of graduates from the law department of Leningrad State University, now holding key positions in the Arbitration and Constitutional Courts (Stack 2008: 8–10).<sup>14</sup> Following through on his pre-election promise to tackle society’s ‘legal nihilism’, President Medvedev has declared a crackdown on so-called ‘telephone justice’ – the practice of exerting pressure,

making informal requests or offering money for certain decisions in court (*NEWSru.com*, May 2008).

‘Telephone justice’ can be traced back to Soviet times (Huskey 1992; Solomon 1992; Gorlizki 1997). When a top official wanted a particular outcome in court, he would simply phone the judge and explain the party line. Judges were susceptible to pressure because they relied on local Communist leaders for their jobs – being re-appointed every five years by the local Party boss – and for favours, such as apartments and holidays (Solomon and Foglesong 2000: 29). In Soviet times, the mechanisms of checks and balances that help to ensure patterns of good governance, such as an independent media, public opinion and civil society, were not developed enough to tackle those areas where verbal commands predominated, but this was partly compensated for by party discipline. The Communist Party regime made state intervention the norm and allowed, if not legitimized, certain informal practices in order to help the economy, achieve political goals and support the ideological struggle, including matters in the judicial sphere (Berliner 1957; Nove 1977; Solomon 1992).

Although the Communist ideology is long gone, the pressure on courts prevails – in spite of the judicial system reforms of the 1990s and Putin’s 40 per cent pay rise for judges and financial support for the courts (Pastukhov 2002). After almost two decades of reform, the situation has not improved to any great extent (Hendley 2007). Medvedev’s priority is to eliminate ‘the practice of unfair decisions made through connections or for money’ and ‘to make the judicial system genuinely independent from the executive and legislative branches of power’ (Medvedev 2008).

In September 2005, a woman was sentenced for attempting to influence a court decision by making a telephone call about a property in Central Moscow, pretending to be calling on

behalf of the Chairman of the Supreme Arbitration Court (Kulikov 2005). In an interview for *Parlamentskaya Gazeta* at the time, the Chairman of the Moscow District Federal Arbitration Court, Liudmila Maikova, was asked ‘How prevalent is telephone justice in Russia? Is it hard for a court to be independent?’ She dismissed the whole idea as gossip and myth (Maikova 2005), as did the Chair of the Moscow City Court, Olga Egorova (Yamshanov 2005). But after Medvedev came to power, Maikova was suspended on charges of unethical behaviour (*Kommersant-Online*, 20 May 2008). There was also a defamation case against a journalist who accused a Kremlin official of ‘giving orders to the Supreme Arbitration Court’ in a radio broadcast. This 2008 case is unprecedented: the Deputy Chair of the Supreme Arbitration Court, Elena Valyavina, was summoned as a witness and actually confirmed the use of influence on the part of the presidential administration (Dymarskii 2008). Although her statement must have received clearance from the Court Chairman, Anton Ivanov, the fact of the matter is that political will was exercised at the top. Ivanov himself could have consulted his co-author of an award-winning textbook on the Russian civil code, the man who is now the President (Gutterman 2008).

Just how widespread is telephone justice in courts in Russia in general? In an all-Russia 2007 national survey, almost one third of respondents seemed satisfied with the workings of the courts (12 per cent replied that all court decisions are made by law and 18 per cent replied that only a few judges take bribes and are subject to pressure). More than half of the respondents, however, acknowledged the susceptibility of judges either to corrupt payments or other forms of pressure: 25 per cent of respondents said that judges take bribes as a rule, although principled judges also exist, and a further 20 per cent said that even these principled judges would react to pressure in particular cases. Interestingly, the most pessimistic choice –

indicating that practically all court decisions are taken after a bribe or under pressure ‘from above’ – was also the least popular at 7 per cent. The remaining 18 per cent of respondents were ‘don’t knows’.

In another question, ‘Do you think that the Russian judicial system has been used for unlawful purposes in the last seven years?’ (respondents were invited to select from among multiple choice alternatives), a dismally low percentage of respondents associated the judicial system with the rule of law: only 4 per cent were convinced that the judicial system was not used for any unlawful purposes. The remaining responses emphasized the misuse of law for political purposes (21 per cent for political ends or 27 per cent for show trials), closely followed by commercial purposes (20 per cent) and personal purposes (16 per cent). Nineteen per cent assumed that the judicial system might be used manipulatively, but pointed out the lack of information about it, with 27 per cent finding it difficult to answer (Ledeneva 2009). It is not surprising, therefore, that at any level in the hierarchy, the dependence on superiors and the fear of impending punishment makes their verbal commands and the overall informal order rather effective. Insiders understand the limitations of formal rules and the necessity to work around them, and they develop a routine behaviour which, in fact, makes situations of real choice or a lack of directive uncomfortable.

It is also notable that in response to the question ‘If you were to have a case considered before a court, and, in your opinion, it was unfair, which of the following would you most likely do next?’ 33 per cent of respondents said they would go to a lawyer for advice about further action, 14 per cent stated they would appeal, and 9 per cent replied that they would go to an independent human rights organization.<sup>15</sup>

Russian legal experts largely agree on the following: while not every court case in Russia is decided according to directives from above, the means to influence a particular case could be found if necessary. Thus, pressure does not have to be pervasive to be fully effective. Moreover, the form of influence can be chosen according to the personality of the judge. Court chairs have a variety of ways of dealing with non-compliant judges renowned for their personal integrity. Importantly, direct forms of influence might not even be necessary where the dependence of judges on court chairs facilitates self-censorship – the so-called chilling effect.

The difficulty with tackling ‘telephone justice’ stems from the fact that it relies upon informal rather than formal means – verbal rather than written communication. The difficulties therefore lie in dealing with this informal process formally. Medvedev’s proposed working group will introduce new legislation and measures to push forward judicial reforms such as ensuring the financial independence of courts from local authorities, providing security and social protection for judges, and eliminating administrative influences on judicial appointments and disciplinary procedures. Most measures of this sort have been initiated before and have not worked to date. Perhaps the informal influence is best tackled informally, through verbal commands, thereby turning the tables on the informal system. Just as in July 2000 when Putin redefined the rules of the game for oligarchs by warning them not to meddle in politics, from May 2008 onwards Medvedev may have been sending a ‘verbal command’ (at least to his own presidential administration) not to meddle with the courts.

## <H1>2.5 Challenges to *sistema*: creating alternatives to *blat* appointments</H1>



As suggested above, *sistema* tends to recruit and promote on the basis of personal contacts rather than experience in the specified field of work. The overriding aim is not that an individual will do a good job, but that they will look up to the patron who promoted them. In July 2008, however, President Medvedev raised concerns over appointments through personal contacts or by payment and suggested the creation of a national database of public administrators, as well as a presidential quota for appointing professionals (Viktorova 2008). In *Komsomolskaya Pravda*, the leader of the LDPR faction in the Duma, Vladimir Zhirinovskii, claimed that the trade in appointments is a national practice and revealed the pricelist, with the notable exception of the price for a place on a party list for State Duma elections. His list read as follows: from 5 to 7 million euros for the position of governor, from 5 to 7 million euros for a seat in the Federation Council and between 3 and 4 million euros for the position of head of the Federal Service or head of department (Viktorova 2008). A representative of the committee set up to fight against corruption, Anatolii Golubev, said these figures are realistic, but also added that the price depends on the level of contact through which the appointment has been lobbied (Viktorova 2008). Contacts are the key dimension of appointment procedures, and the figures are indicative of the expectations of the return on the 'investment' for the appointee, but also of the kickbacks to whoever had helped with the appointment.

In sharp contrast to the business sector, personal contacts rather than professionalism are critical in public administration appointments. According to a survey of 170 top Russian managers and owners of large companies in different sectors conducted in 2004 by a headhunting firm, *Rosekspert*, and the Association of Managers of Russia, contacts have been ranked relatively low (5.84) and in 8th place as an important factor of success in

business. The top three factors were professionalism (2.64), leadership qualities (3.08) and education (3.67), with 1 indicating the most important factor of success (Promptova and Chernov 2004). Ten years earlier, VTsIOM data had confirmed that contacts were the key factor for success. The authors of the survey interpreted the decline in the role of contacts as a function of the rise in competitiveness – not a solution for public administration. Qualitative data from the same survey, however, suggest that it is impossible to distinguish between factors, for example between education, professionalism and contacts (Promptova and Chernov 2004). The meaning of ‘contacts’ has undergone a change as well. If in the 1990s the entire business sphere worked on the basis of *a priori* existing relationships and trust – what used to be called *blat* – the development of markets since then has resulted in the need to expand contacts, which implies networking skills rather than *blat*.<sup>16</sup>

In 2008, Medvedev said he was against the practice of placing state officials on the boards of major corporations, stating ‘I think there is no reason for the majority of state officials to sit on the boards of those firms’ (Elder 2008). At present, nearly all of the country’s top officials – from Kremlin Deputy Chief of Staff Igor Sechin, who chairs the oil major Rosneft’, to Finance Minister Alexei Kudrin, who chairs the diamond monopoly Alrosa – also head the boards of state companies. Yet Medvedev maintained that the state continues to play a role. ‘They should be replaced by truly independent directors, whom the state would hire to implement its plans’, he said, but no progress has been reported since then, and is unlikely to occur in the aftermath of the 2008 economic crisis (Elder 2008). ‘True independence’ in the context of strong informal ties and loyalties is unlikely, but a formal dissociation from the government and the Kremlin is possible. For example, German Gref, former Minister of Economic Development and Trade, and one of the past

propagandists of the administrative reform, was elected chief executive of Russia's largest state-controlled bank, Sberbank.<sup>17</sup> Crossing over from state jobs to state-run companies or to private banks and firms is a fairly legitimate practice around the world, but the pressure of informal networks and personal integrity on state officials may vary.<sup>18</sup>

The role of contacts in small and medium-sized businesses is different. According to a study of small entrepreneurs and experts conducted by the Independent Institute of Social and National Problems, personal contacts in local administrations, law enforcement organs and inspectorates (sanitary, fire etc.) took the third, fourth and fifth places respectively when it came to launching a business, with the requisite entrepreneurial spirit and start-up capital coming first and second (Promptova and Chernov 2004). Aidis and Adachi (2007) found that networks between enterprises and officials are significant for business survival and growth, so new businesses without such connections are more likely to fail. In their comparative study of entrepreneurship, Aidis, Estrin and Mickiewicz (2008) discovered that those already in business, 'entrepreneurial insiders', may have more advantages over newcomers in starting new ventures in Russia.

Eight months after Medvedev's complaint about the number of official appointments procured through money or personal connections, and the announcement of his intention to create a national pool of suitable candidates to fill senior management posts in the federal administration, the first one hundred nominees of the planned 1,000-strong 'Golden List' were publicized. While some commentators have welcomed the list as evidence of Medvedev's determination to root out corruption in Russia's inefficient bureaucracy, sceptics have pointed to the lack of transparency with which the list was compiled. Because the list represents a departure from the way in which state officials have been appointed to high

office up to now and contains a national pool of talent, its candidates are worthy of note. None of the nominees are over 50, and the majority are young, dynamic, successful managers and professionals. Such a database for recruiting government officials certainly runs counter to the principles of *sistema*, as do the latest changes in regional appointments (Elder 2009). These measures, however, have to be coupled with persistent effort and a wider set of institutional reforms in order to make a difference.

## <H1>2.6 Conclusions</H1>

It must be acknowledged that signs of change are as yet only tenuous. In one sense, Medvedev himself is a classic product of *sistema* and will find it hard (many would say impossible) to reform the system. I do not argue that Russia's course has changed, just that Russia's discourse has. Modernization claims are important. Yet *sistema* is powerful – it's an informal institution with long roots and, what is more, it is strong. But the fundamental features of *sistema* – verbal commands from the executive branch of power to the judiciary (*telefonnoe pravo*) and corrupt practices in public appointments (*blat* appointments) – have never before been publicly targeted at the presidential level, so the measures to promote change require monitoring. In my view, *sistema* can only be changed by incremental means, through small changes at grassroots level. The paradox of this situation is that, if Medvedev does want to make changes, he will have to work informally through the system in order to do so. One of the latest tendencies, noted by legal experts, for example, is that judges receive telephone calls instructing them to judge cases on their legal merits! Every ruler, president, governor, minister or manager whose goal is to modernize Russia will inevitably find

themselves wrestling with the forces of *sistema*: either *sistema* withstands the challenges and blocks the changes or the manageability of *sistema* will be lost by cutting the branch on which the executive power has been resting. In any event, it's a no-win situation for the Russian leadership.

## <H1>Notes</H1>

<sup>1</sup> Oxbridge unwritten rules are spelled out in Cornford (1908).

<sup>2</sup> Arguably, the system cannot be changed because of the human material in Russia. This argument is not related to ‘the culture of corruption’ and other myths about Russia (See Vladimir Medinskii 2008) but to the features of ‘narod’, as depicted in Petr Lutsik’s *Okraina* (1998) and Aleksei Balabanov’s *Trofim* (1996).

<sup>3</sup> The absolute frequency of the term is 142 and it appears in 74.4 per cent of the transcripts of the 43 in-depth interviews (1,483,69 words in total) with 14 experts, 8 businessmen, 13 legislators and 8 high ranking state administrators, conducted in Moscow in 2005–6. See results in Gudkov, Dubin and Levada (2007); for the discussion of the method see Oleinik (2008b).

<sup>4</sup> Note both the vigilance and permissiveness of *krugovaya poruka* (Ledeneva 2004).

<sup>5</sup> I have conducted 26 expert interviews in preparation for the survey on ‘telephone justice’, some in London in June 2006, but mostly in Moscow in August–September 2007.

<sup>6</sup> Timothy Colton’s comment on the paper that I delivered at the Post-communist Comparative Politics Seminar at the Davis Centre, Harvard University, 31 October 2005.

<sup>7</sup> I have assembled the list of idioms from the novels of Pavel Astakhov.

<sup>8</sup> See the discussion of ‘network society’ by Manuel Castells vis-à-vis ‘pre-modern’ institutions in Russia by Richard Rose (Ledeneva, *Global and Local Networks*, 2001).

<sup>9</sup> For example, Dmitri Medvedev declared ‘transparency in conducting state procedures connected with contracts, tenders, and administrative regulations’, but it can remain a formal transparency (*Gazeta.ru* 2008).

<sup>10</sup> See, for example, ‘U Ministerstva oborony RF ukrali 11 millionov rublei s pomoshch’yu fiktivnogo konkursa’ (Ministry of Defence was robbed of 11 million roubles through a fictitious tender). *NEWSru.com*, 15 October 2008, 15:00.

<sup>11</sup> See the anti-corruption analysis of forestry legislation in M. A. Krasnov, E. V. Talapina, Yu. A. Tikhomirov et al. (2004), *Analiz korrupsiogennosti zakonodatel’sтва* [Analysis of Corruption-Linked Loopholes in Legislation: The Case of Forestry]. Moscow: Tsentr Strategicheskikh Razrabotok. The authors propose legislation that would not only prohibit public administrators from getting involved directly or indirectly with entrepreneurial activities or from receiving rewards for pushing through certain decisions, but would also restrict the number of loopholes in the legislation that allow for arbitrariness and lobbying.

<sup>12</sup> ‘In 2007, according to official statistics alone, more than 10,500 cases were investigated,’ he stated (Stoyanova 2008).

<sup>13</sup> The business lobby asked for a special authorization procedure without which the inspections would not be legitimate.

<sup>14</sup> Note that Medvedev’s base in the anti-corruption campaign is the General Prosecutor’s Office, i.e. *siloviki* in general, and Yuriy Chayka in particular (unless there is a change in the General Prosecutor’s Office and SKP [Prosecutor’s Office Investigations] Committee), just as the prosecutor’s office used to be Putin’s chief instrument in suppressing oligarchs. Although the prosecutor’s office is currently a weaker structure institutionally (it was stripped of its investigating functions) and politically (Chayka’s political weight and networks are nothing like Ustinov’s in 2003–6), it is what Medvedev has to work with (Stoyanova 2008).

<sup>15</sup> For more details and a regional distribution of data see Ledeneva (2008a).

<sup>16</sup> Opinions differ on the impact of *blat* on job markets. Some anecdotal evidence suggests that job markets are predominantly dependent on the use of *blat* (a recent advertising slogan was ‘if you don’t have *blat*, come to a job centre’). Another view is that professionalism is essential for large, international firms, where employees are meant to be competent and hardworking, but senior managerial positions, especially in the state-owned enterprises, invite competition not only in professionalism but also in contacts (Elena Nesmachnaya, ‘Ego velichestvo *blat*’, *Pravda Severa*, 9 March 2006).

<sup>17</sup> Former deputy minister of property relations, Zumurud Rustamova, left for a position in business after her marriage to Arkadii Dvorkovich, former deputy minister of economic development and now head of the department of experts in the presidential administration (see Karpov and Salakhitdinova 2007).

<sup>18</sup> The personal integrity of state officials in Russia is undermined by the necessity for them to work in the context of systemic corruption and so-called clan wars. A particularly high profile case, sometimes interpreted as an attack on the Minister of Finance, Aleksei Kudrin, was the arrest on 17 November 2007 of his deputy, Sergei Storchak, who was charged with embezzling \$43.4m in a large-scale fraud scheme. ‘Russian Prosecutors Confirm Arrest of Deputy Finance Minister’, 17 November 2007, accessed at [www.en.rian.ru](http://www.en.rian.ru) December 2007. Storchak was released in October 2008. Recent scandals surrounding the Amur Krai governor, the mayor of Kaliningrad and the mayor of Togliatti reflect developments at the regional and local level. The governor of the Nenets Autonomous District was arrested, as were the mayor and the chairman of the city parliament of Volgograd. The governor of the Vologda oblast, Nikolai Podgorny, was



charged with bribery and embezzlement and sentenced to 7 years in prison, but freed by amnesty. The governor of the Smolensk oblast, Alexander Prokhorov, was also sentenced for theft and unlawful road-building for 3 years, and also freed by amnesty. The governor of Tver', Vladimir Platonov, was sentenced to 5 years for embezzlement and the misuse of public office, but his sentence was reduced to 3 years after appeal (Vyzhutovich 2006).