

TELEPHONE JUSTICE IN RUSSIA: AN UPDATE

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This report continues our investigation into the predicament of the Russian legal system when faced by ‘telephone justice’ (*telefonnoye pravo*), various types of informal influence and pressure on the judiciary. The data were obtained from a nationwide survey conducted jointly in 2010 by the author, the Levada Research Centre and the EU-Russia Centre. Those findings were complemented by in-depth interviews with experts. The questions of the 2010 Survey repeat those asked in 2007 (Ledeneva 2008) in a survey aimed at monitoring public perceptions of ‘telephone justice’.

In political terms the two surveys reflect the changes associated with the presidency of Dmitry Medvedev, who was elected in March 2008. The first survey was conducted in June 2007, well before Medvedev’s nomination as a presidential candidate, and was representative of Putin’s Russia. The 2010 Survey was conducted in November, a month before the end of Mikhail Khodorkovsky’s second trial and his new 14-year-sentence,² and a short while before the sensation caused by the revelations of Natalya Vasilyeva, press aide to the trial Judge Viktor Danilkin. In stating that this particular ‘emperor has no clothes’ Vasilyeva provided a predictable yet still shocking insider account of the ‘atmosphere’ surrounding the trial.³ The three years separating the surveys thus coincided with a period of hope.

In chronological order, the following developments shaped high expectations. One, a political will to address the issue of judicial independence emerged. Dmitry Medvedev, himself a lawyer, famously criticised Russia’s “legal nihilism” during his election campaign and after becoming president he continued to focus his efforts on issues surrounding the independence of the judiciary. Two, the need for an independent judiciary became part of the wider agenda of modernization, aimed at improving the climate for domestic businesses and foreign investors, as well as targeting social aspects of modernization. Three, a succession of public scandals in Moscow provided an opportunity to launch investigations and to fire law-enforcement officials. In 2009 Russian lawyer Sergei Magnitsky died in prison after being incarcerated for a year without charge for exposing deep corruption at the Interior Ministry. Businesswoman Vera Trifonova, denied medical treatment in a Moscow pre-trial detention centre, also died in custody in April 2010. Life-threatening and grave assaults were made on

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² Having been sentenced to 14 years but already having served 7, Mikhail Khodorkovsky and Platon Lebedev will be jailed for another 7 years.

³ See ‘Sensation: An Interview with Judge Danilkin’s Assistant,’ *Gazeta.ru*, hro.org, 14 February 2011. Go to <http://www.khodorkovskycenter.com/sites/khodorkovskycenter.com/files/Gazeta%20140211T.pdf> for an English translation of the interview in its entirety.

journalists Mikhail Beketov in late 2008 and Oleg Kashin in November 2010⁴. Four, signs of resistance and demands for change⁵ were communicated through personal appeals to the President. Businessmen who found themselves subject to the aggressive attention of the tax police⁶, and the likes of Alexei Dymovsky who was the first police officer } } to place his video appeal on YouTube, [tried to reach over the heads of intervening officials].⁷ The most influential of all, perhaps, was the investigative blog of lawyer-activist Alexei Navalny who waged a personal campaign to expose corruption.⁸ In October 2010 Navalny became ‘virtual Mayor of Moscow’. In an Internet poll that month, conducted jointly by the Kommersant and Vedomosti newspapers, Navalny took more than 45% of the overall vote.⁹ Finally, overwhelming evidence of the pressure exerted on judges and the courts was made public by the judiciary itself.

⁴ Mikhail Beketov, chief editor of “Khimkinskaya Pravda”, was beaten and left for dead in the Moscow suburb of Khimki. Oleg Kashin, a journalist with the “Kommersant” daily, was brutally attacked in the city centre.

⁵ There has emerged a new form of civic action – bottom-up, Internet-coordinated, and legally informed. The most pronounced, perhaps, was the campaign against the privileges of officialdom on the streets and roads. It was organized by the Federation of Russian Automobilists (FAR) and the campaign slogan “Servant of the people, turn off that flashing beacon” spread the movement across fifty cities. An independent poll conducted by the Levada Centre found that 78 percent of the population expressed support for the campaign begun by FAR. See Alisa Shtykina, “Grazhdane podderzhivaiut bor’bu s migalkami,” *Kommersant. Daily*, No. 77, April 30, 2010, page: 4, <http://dlib.eastview.com/browse/doc/21808531> Another Internet community called on its members to follow the example of Moscow businessman Andrei Hartley who refused to give way to the car of presidential advisor Vladimir Shevchenko. Supporters should use their mobile phones to film violations of traffic regulations by official cars, they were told, and make them public on the Internet. See Aleksandr Kolesnichenko, Valerii Iakov, “Problek Pobedy nad migalkami” *Novye izvestiia*, No. 77, April 30, 2010, page(s): 4 <http://dlib.eastview.com/browse/doc/21806809>

⁶ Evgeny Chichvarkin made his Internet appeal to President Medvedev from London, naming 11 [police]} officers and two generals who were behind the corporate raiding on Evroset, of which he was co-owner. The investigation of the related criminal cases was } }closed on 25 January 2011. Evgeny Lebedev published an open letter to Prime Minister Putin in February 2011.

⁷ <http://www.youtube.com/watch?v=R4vB2a15dOU> .

⁸ Before becoming a “civic activist,” Navalny was a leading member of the Yabloko party. In 2007, under the banner of their Democratic Alternative (Demokraticeskaya alternative) Movement (aka “DA!”), he and Masha Gaidar held a debate in a Moscow bar that turned ugly. After a drunken group of United Russia youths disrupted the event, Navalny confronted them outside on the street. When the thugs refused to leave, Navalny shot their foolish leader twice with an air-pistol and ended up wrestling him on the ground. Nobody pressed charges but Yabloko threw Navalny out of the party for “causing it political damage”. He has since acted as a consultant to the Governor of the Kirov Region, Nikita Belykh. (A former member of the Union of Right Forces, Belykh is now despised in liberal circles after abandoning the party and the Solidarity movement in late 2008 to take up the Kirov appointment. Masha Gaidar, incidentally, followed } }Navalny there.)

⁹ Writing for Grani.ru, political analyst Stanislav Belkovsky explained that Navalny’s victory symbolized the arrival of a new generation of opposition } }politicians, who were both non-confrontational and effective. Navalny fell into a new category of dissident, said Belkovsky: the “civic activist” (*grazhdanskii aktivist*), someone who seeks concessions from the establishment and espouses an “ethical and aesthetic” opposition to the ruling system. This new group of activists enjoys greater popularity, according to Belkovsky, because they are not pursuing political careers and avoid radical, anti-establishment rhetoric.

In 2009 Vladimir Yaroslavtsev and Anatoly Kononov, two judges at the Constitutional Court, were forced to resign because they had talked to foreign media. Their critique of the judiciary's inner workings was as poignant as that of Judge Olga Kudeshkina, herself unfairly suspended five years earlier by Moscow City Court Chairwoman Olga Yegorova. (Kudeshkina took her case to the European Court of Human Rights and won.¹⁰) The First Deputy Chair of the Supreme Arbitration Court of Russia, Elena Valyavina, testified in court that Valery Boyev, an official in the Presidential Administration,¹¹ had approached her with instructions on how to decide a high-profile case¹². In the event of non-compliance he threatened her with career problems. Her statements constituted the 'overwhelming evidence' cited in extradition cases before London courts to illustrate the reality of political pressure on the Russian judiciary.

Kommersant described Navalny's politics as 'balanced'. He did not praise FAR's Sergei Kanaev, Konstantin Doroshok or even Khimki forest activist Evgeniia Chirikova. Instead, Navalny celebrated Democratic Choice (DemVybora), Vladimir Milov's 200-member project, which aims to participate in the 2011 parliamentary elections and the presidential elections next year. (Milov created the group as a Solidarnost breakaway when that movement's leadership refused to become a registered political party.) The DemVybora plug comes as no surprise. Navalny apparently consults Milov about the energy industry, which is presumably very valuable when building his lawsuits against energy monopolies. The heart of Navalny's current work is advocating minority shareholders' rights. The strategy has been to buy shares of State corporations and then demand (legally guaranteed) access to insider company information. He has filed lawsuits against Surgutneftegaz, Transneft, Rosneft, Gazpromneft, TNK-BP and the VTB bank.

Source: <http://www.agoodtreaty.com/2010/10/20/navalnyi-virtual-mayor-of-moscow/> .

¹⁰ECtHR ruling No 29492/05 *Kudeshkina v. Russia*, 26 February 2009. For details see [Judge Olga B. Kudeshkina's speech](#), 1 March 2010, 'Deeds not words: The present failings of judicial reform in Russia' www.eu-russiacentre.org/euro/judge-olga-kudeshkinas-speech.html .

¹¹ Valery Boyev is an assistant in the personnel and State decorations department of the Presidential Administration. The activities of the department were formerly supervised by presidential aide Viktor Ivanov who, on 15 May 2008, was appointed Director of the RF Federal Service for The Control of Narcotics Trade. Boyev's office was not in itself particularly significant. However, he also represents the Presidential Administration on the Supreme Qualification Judges Board, which plays an important role in the appointment and dismissal of high-ranking judges. Among its appointees are the chairpersons and deputy chairpersons of the Supreme Court and the Supreme Arbitration Court, who are appointed by the Federation Council (the upper chamber of the Russian parliament) on the recommendation proposal of the President. In the case of a deputy chairperson of either Court the presidential recommendation proposal must be based on a proposal by the chairperson of the respective court. In any case, a positive opinion by Board is legally required in order to confirm the appointment.

¹² The case concerned the TogliattiAzot joint-stock company, the country's greatest producer of ammonia. In 1996 a State share of 6.1% in the company capital was privatised (sold to a private company). In 2004 the Ministry of Property Relations challenged the privatisation deal in an arbitration court, arguing that it had been in breach of then-current law. After two lower-court decisions upholding the deal, the third-instance Arbitration court decided the case in favor of the State agency. An appeal to the Supreme Arbitration Court followed. Valyavina took the case because none of the other judges at the Court were willing to oversee the hearing because, apparently, they were concerned about possible personal repercussions. Valyavina made certain preliminary decisions on the case, in particular, lifting a preliminary injunction against convening a general meeting of TogliattiAzot shareholders.

Yet these developments, arguably, have not weakened the grip of the “system” (*sistema*) on economic and political actors, and that includes the President himself. A sharp critique of Putin’s *sistema* was provided in Mikhail Khodorkovsky’s earlier publications and in his last words to Moscow’s Khamovnichesky district court on 2 November 2010. In particular he stressed how important it was for the successful modernisation of Russia that the judiciary be made independent of such unwritten instructions and commands (telephone justice)¹³.

“Let’s ask ourselves: What do entrepreneurs, high-ranking industrial managers or just educated and creative people think today when they look at our trial and what, I assume, will be its absolutely predictable result? The obvious conclusion of any rational person is frightening in its simplicity. The security services can do anything. There is no right to private property. Those who clash with the system have no rights whatsoever. Even though rights are enshrined in law they are not defended in court, because the courts are either afraid of the system or form a part of it. Can we be surprised that rational people do not strive for self-fulfilment here, in Russia? Who then will modernize the economy? The prosecutors? The police? The security service?”

In these two surveys our purpose has been to monitor changes in popular perceptions, of ‘telephone justice’ and of the independence of the judiciary, so as to complement other types of analysis made of Russia’s judicial system (Global Corruption Report 2007; Gorbuz, Krasnov, Michina and Satarov 2010; Hendley 2007, 2010; Huskey 1992; Mishina and Krasnov 2006; Sakwa 2010; Satarov 2005; Solomon 2008; Trochev 2008; Volkov 2011).

How do you understand “telefonnoye pravo”?

The 2010 Survey was designed to collect data on popular perceptions of telephone justice and was conducted by the Levada Centre, Russia’s most respected survey institute. A nationwide, stratified random sample of 1,593 adults (aged 18 and over) was interviewed at home between 19 and 22 November 2010, in both urban and rural areas of the Russian Federation. The sample did not include temporary residents – people on business trips, for example, those taking vacations or undergoing medical treatment, servicemen and women in the Russian, or people detained in prison and the wider penitentiary system. } } didn’t understand sentence omitted here (residence status). The sample was built on the basis of a multi-stage, stratified selection of locations for interviewing, as described in detail on the Levada Centre website.¹⁴

To distinguish various contexts in which the term “*telefonnoe pravo*” is used today, and to create an inclusive list of its possible meanings for our main survey question (“What is *telefonnoe pravo*?”), I conducted a content analysis of the } } national and regional press

¹³ Speech by Mikhail Khodorkovsky, www.khodorkovsky.ru, 2 November 2010.

¹⁴ See methodological reports and statistics of success rates of home visits at www.levada.ru.

in Russia since 2000. The source was the Eastview electronic database, which contains 65 national and 111 regional publications.¹⁵ This helped us to assess, albeit impressionistically, what people might associate with the term.

Table 1: Q. “What, in your opinion, is 'telephone justice'?”
Respondents were invited to make multiple choices

Responses (<i>in decreasing order of frequency; responses in text thus [2]</i>)	2010
1. Hard to say	35
2. Court decisions made on orders “from above” (<i>sverkh</i>)	29
3. Pressure on judges / prosecutors by State officials (<i>chinovniki</i>)	20
4. Court decisions that result from bribery (<i>po zakazu</i>)	14
5. Cases are opened and closed in response to bribery (<i>po zakazu</i>)	13
6. Pressure on judges / prosecutors by State security services (<i>spetssluzhby</i>)	10
7. Pressure on judges / prosecutors by criminal groups	9
8. Selective law enforcement: the opening and closing of cases is influenced by the status of the opponent	9
9. Selective law enforcement: court decisions are influenced by the status of the opponent	8
10. Pressure on judges by prosecutors	7
11. Right of the detained to make a phone call (or calls)	6
12. Legislation in the area of telephone communications, tariffs etc.	6
13. “ <i>Basmannoye</i> -style” justice: the way the Khodorkovsky case was heard, conducted and judged	2
14. Other	1

One example. I included a post-Soviet connotation of the term that has appeared in media headlines concerning the introduction of tariffs for local calls (these were formerly covered by the monthly line rental). Then there was a literal reading of the idiom to mean the “right to make a telephone call”. These two usages were included in order to filter out those unsure about the term’s application but unwilling to acknowledge the fact (Vaksberg 1986, 2003). To avoid an artificial inflation of certain answers the multiple choice options kept close to the phrases used in the media. Respondents were likewise invited to choose as many prompts on the card as they needed to define the term. The answers in Table 1 are organized in order of decreasing frequency.

More than one third of respondents (35%) found it “hard to say” [1] what *telefonnoye pravo* meant.¹⁶ This percentage has hardly changed since 2007 (34%), despite the growth

¹⁵ “The Universal Database of Regional Russian Newspapers (UDB-REG) provides close-up coverage of developments throughout Russia’s regions,” says its online description. “This database currently presents newspapers from all seven Federal Districts of the Russian Federation and includes coverage of local issues in Moscow and St. Petersburg. The database represents such noteworthy regions as the troubled Northern Caucasus (Groznskii rabochii from Chechnya, Severnaia Osetiia from Northern Osetiia-Alania, etc.), oil & gas rich Western Siberia (Tiumenskie izvestiia, etc.), the investment-friendly Volga region (Nizhegorodskie novosti from Nizhny Novgorod, Samarskie Izvestia from Samara), and many others. The selected newspapers have the largest circulation in their regions and are considered as most authoritative.” See <http://dlib.eastview.com/sources/publications> .

(from 30 to 36%) in the proportion saying they had experience of dealing with the judicial system, either personally or through family and friends. People who struggled to define the term tended to be young (43% of those aged 18-24) or older than 55 (39%), and more often women (38%) than men (32%). Younger respondents' choices tended to deviate significantly and most frequently from the average: only 14% of the 18-24 age group, for example, chose "pressure on judges / prosecutors by State officials" [3] compared with 20% overall. With the exception of two test prompts ("legislation in the area of telephone communications" [11] and "right of the detained to make a phone call" [10]) the percentage of responses from the younger age group was significantly less in all cases than that of other groups. These findings confirm that younger people are less familiar with a practice that has its origins in the Soviet period.

The basic meaning of the term "telephone justice" [2] was selected by 29% of respondents, making it the most frequently chosen definition. It would be useful to identify the most stable clusters of definitions for those selecting more than one prompt (an average of 1.7 responses per person). The two thirds of respondents who did not find it "hard to say" what the term meant, however, most favoured the basic meaning of "orders from above". Respondents identified other forms of pressure [3], which do not necessarily come directly from above but are external to the judicial hierarchy (e.g. pressure by State officials). These they associated with informal influence) or [3, 4] financial inducements (*zakaz*). Interestingly, although the second Khodorkovsky trial was held in the period between the two surveys, the percentage of respondents who associated "telephone justice" with 'Basmannoye' (now 'Khamovnicheskoye') justice [13], i.e. the way this case was heard, conducted and judged, slightly decreased – from 4% in 2007 to 2% in 2010.

The data from another national survey recently showed that over a third (37%) of respondents consider the Khodorkovsky-Lebedev case to be an example of "pre-ordered" decision-making in court but the number of people directly linking "telephone justice" (*telefonnoye pravo*) to this case was exiguous. Arguably, this figure would have been different if either Judge Olga Kudeshkina's case or the Vasilyeva interview had been reported on national television. According to Radio Echo Moskv, however, only one TV channel reported an interview with Vasilyeva.

Unlawful use of the Russian courts

Table 2 shows that about a quarter of respondents (26%) also had difficulty in answering the second main survey question, "Do you think that the Russian judicial system has been used for unlawful purposes in the last seven years?" Those who did volunteer judgments on the multiple choices in this table produced a somewhat shocking result.

¹⁶ I have conducted a survey on *blat* (influence, connections) to compare perceptions of different informal practices in Russia. In that survey people found it much less "hard to say" what was meant (9%) than in the "telephone justice" survey (30%).

Table 2: Q. “Do you think that the Russian judicial system has been used for unlawful purposes in the last seven years?” Respondents were invited to make multiple choices

Responses (in decreasing order of frequency; responses in text thus [2])	2007	2010
1. Hard to say	27	26
2. Yes, show trials are conducted to demonstrate to society the attitude of the authorities to certain actions or phenomena	27	23
3. Yes, the judicial system is used for political ends, in order to harass and get rid of political opponents	21	19
4. Yes, the judicial system is used to undermine business competitors, to ruin their reputation or to capture their business	20	19
5. It might be used, but little is known about it	19	19
6. Yes, the judicial system is used to settle personal conflicts and for revenge	16	18
7. Even if it is so used, it serves the right purposes	3	2
8. No, the judicial system in Russia is not used for any unlawful purposes	4	4

A dismally low share of respondents associated the judicial system with the rule of law: only 4% (3% in 2007) were convinced that the judicial system was not used for any unlawful purposes [8]. The remaining responses emphasized the misuse of law [2, 3] for political purposes (19% political ends; 23% show trials), closely followed [4] by commercial purposes (19%) and [6] personal purposes (18%). Almost one in five (19%) assumed that the judicial system could be used manipulatively but lacked specific information [5].

These data show that no substantial change has taken place in the last three years, either in the popular perception of these matters or in Russian citizens’ distrust of institutions. They also point to possible reasons for the “legal nihilism” widely publicized by President Medvedev (Medvedev, 2008). It must be stressed that the spirit of ‘legal nihilism’ relies on formal and outward compliance with the law. This, in turn, produces informal practices based on an “emphasis on the letter of the law and the increasing expertise of players in its manipulation” (Ledeneva, 2006, p. 190). In other words, the law becomes an integral part of strategy in politics and business. Statistics from the past decade show, on the one hand, more use being made of the courts but, on the other hand, a rise in the incidence of corporate raiding and other “legal” forms of capturing businesses (Firestone 2008, 2010; Volkov 2004; Yakovlev 2006; Woodruff 2008; Biberman 2008). It is also indicative that the positive trend in statistics and in *modus*

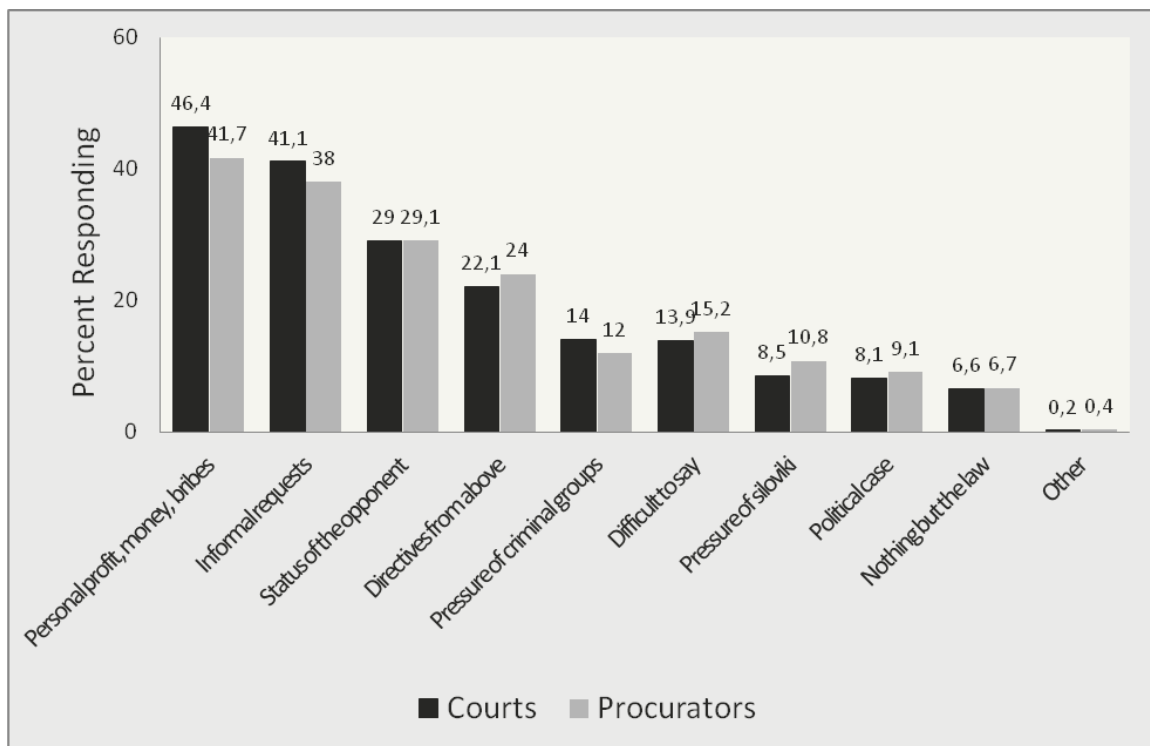
operandi, especially in arbitration courts (Hendley 2007), has not yet found expression in an overall respect for the law and trust in legal institutions.¹⁷

Close examination of Tables 1 and 2 helps to uncover the multiple uses to which the judicial system is put in Russia. The most disturbing finding, perhaps, is that only 4% of respondents consistently say that the judicial system is not used for any unlawful purposes. This figure was cross-checked in other questions concerning, respectively, the courts and the prosecutor’s office.

Graph 1:

Q. “In your opinion, what, aside from the law, exerts the strongest influence on the work of Russian courts and judges?” and Q. “What, aside from the law, guides the activities of Russian procurators (prosecutors) and what influences their actions?”

Respondents were invited to make multiple choices



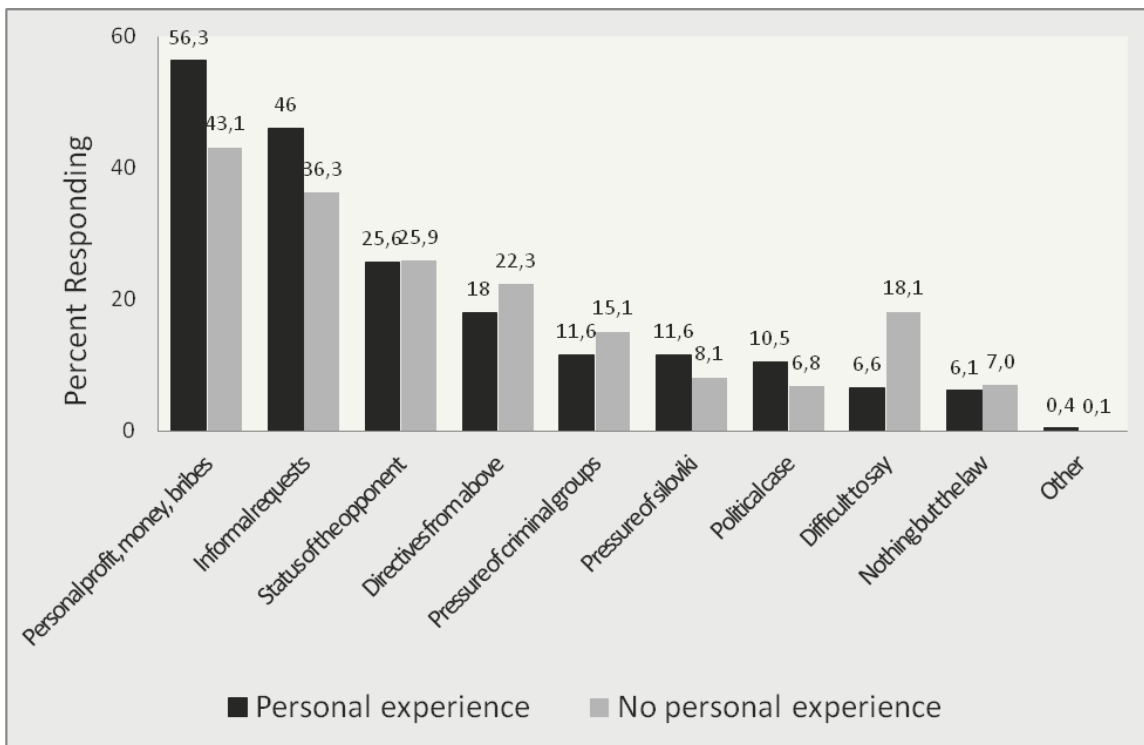
As Graph 1 illustrates, a comparable proportion of respondents (just under 7%) chose to say that ‘nothing but the law’ influences the workings of the courts and the procurator’s (prosecutors) office in Russia. The 2010 data also show a range of unlawful incentives used to manipulate the judiciary. Still, there are signs of some positive trends. Compared to the findings of our 2007 Survey the attributed influence exerted over judges by certain factors (personal gain, money, and bribes) is perceived to have declined to 46% in 2010:

¹⁷ See data on trust in courts.

in 2007 55% of respondents acknowledged their significance. The use of personal connections and informal relationships has also decreased, respondents say, from 47% to 41% while the influence of oral commands and other forms of influence “from above” has been reduced from 24% to 22%.

The factors which respondents saw as influencing the work of the prosecutor’s office follow a similar pattern. As selected by the general sample, 42% named bribery; 38% named informal requests; and 29% singled out the status of opponents. One particular point of interest: the response “directives from above” came fourth in people’s perceptions of other extra-legal factors of influence on “telephone justice” (22% for the courts, 24% for the prosecutor’s office).

Graph 2.
Differences in assessing pressure / influence on judges between those with, and without, personal experience of the judicial system
 Respondents were invited to make multiple choices



However, the findings of both the 2007 and 2010 surveys also suggest people’s perception of the behaviour of the prosecutor’s office¹⁸ does have certain nuances. Judges

¹⁸ (JC) The years from 2007 to 2010 saw certain potentially major changes in the functions and powers of the prosecutor’s office (more correctly speaking, the procuracy). Its investigative activities, overseeing investigations into more serious crimes and offences committed by officials (including the police), were given greater departmental autonomy within the Prosecutor General’s Office in 2007 and then constituted in 2010 as an independent agency, the Investigative Committee.

were seen as more corrupt and receptive to material stimuli. Prosecutors were considered more obedient and responsive to directives from above, though the proportion holding the latter view has decreased over the three intervening years from 28% to 24%.

If we contrast the opinions of those who rely on the media and hearsay with the views of individuals who have had direct experience of the system (“as a litigant, plaintiff or defendant, a victim or a suspect, a witness or a jury member etc.”) the percentages in 2010 rise to 56% for bribery and 46% for informal requests, but decrease to 26% for the status of opponents. Graph 2 shows that those in Russia with personal exposure to the judicial system (14% of total respondents) seem to hold more negative views about almost every type of influence to which a judge might be subjected, from material interest to political pressure.

Overall the data from both surveys reveal the public to be aware of telephone justice – exercised both through directives from above and informal requests – and those with direct experience of the judicial system are more likely to believe in its existence. Low expectations of State institutions in politics and business, as I have argued, lead over time to the proliferation of informal practices (Ledeneva, 2006, p.26). This has created an additional incentive for cheating the State and placing trust elsewhere. The same argument applies to the courts.

The most convincing evidence about “telephone justice”, however, comes from the judges themselves and from experts. Increasingly such evidence can be found in official reports. “Formally speaking, judges are independent and must be guided solely by the law. In practice they do not possess genuine, as opposed to declaratory, independence,” states the President’s Advisory Council on Civil Society and Human Rights. It continues

“... The powers of a judge who does not agree to carry out the requests may be prematurely terminated, whether it is the court chairman or another influential person who indicates the desired outcome of the case. In such a situation the conscientious judge finds himself (or herself) open to pressure from within the judicial system and has no chance of defending his or her own rights. As a result, fewer conscientious judges remain and their other colleagues fear to cross the court chairman and take decisions based on the law. The dependence of judges on officials within the judicial system is intensified. Our findings show that the subordinate position of judges is deepened by a simulated combating of violations, and the pretence of struggling against infringements of the law among judges. In reality, under the guise of combating these infringements conscientious judges are being expelled from the profession.”

Similar conclusions were reached in a report commissioned by Moscow’s Institute for Contemporary Development and published in October 2009 by the Centre for Political Technologies as “The judicial system in Russia: its present condition and the issues it

The office has retained its functions of oversight of law-enforcement by all agencies and prosecution in court. The formal innovations of the past three years are still untried and as yet unlikely to have penetrated or in any way altered public perceptions of the procuracy or prosecutor’s office.

faces”. Both reports have been cited by Judge Kudeshkina to support her account of the pressure she experienced at the hands of the Moscow City Court chairwoman.

Our 2010 Survey tested whether these whistle-blowing judges resonate with the public or are viewed, on the contrary, as bitter and resentful at their loss of position. The survey data clearly indicate that the elements of resentment attributed to such judges – desire for vengeance (10%) or to compromise (6%) and slander (3%) their colleagues – are significantly outweighed by what is seen as a loss of fear (36%), a shrugging off of dependence (or *krugovaya poruka*¹⁹) (30%) and efforts to change (13%) or monitor (8%) the judicial system from the outside.

Table 3: “In what way are court decisions in your locality most often made?”
Respondents were invited to choose only one option

Prompts offered for this question	2007	2010
1. All, or practically all, court decisions are made in accordance with the law	12	12
2. There are judges who take bribes and are subject to pressure “from above” but they are few	18	19
3. Judges, as a rule, take bribes and are subject to pressure “from above”, but there are also principled judges	25	25
4. Even principled judges react to pressure “from above” on certain cases	21	18
5. Practically all court decisions are taken for a bribe or under pressure “from above”	7	6
6. Do not agree with any of these	17	21

Data from the 2010 Survey replicated trends noted in 2007. There has been a significant increase, however, in the number of respondents who relate outspoken criticism by former judges to their loss of fear (from 31% in 2007 to 36%). The latter trend may also be ascribed to the growing intimidation of those opposed to the Russian central authorities, creating an atmosphere not only induced by the Khodorkovsky case but also by recent acts of violence against journalists and civic activists.

The regional dimension²⁰

The survey data are more reliable, in all probability, when people are asked about events in their locality. The Moscow controversy over the influence of city authorities on the city’s courts is not unique, as certain analyses confirm (Solov’ev, 2007; Dobrovinski, 2002). Nevertheless one assumes regional variation in Russia.

¹⁹ See Ledeneva 2004, Hosking 2004.

²⁰ In 2010 responses concerning the North Caucasus region were included under those for the Southern Federal District although in 2009 the region was transferred (with the Stavropol Region) out of the Southern Federal District to constitute a separate North Caucasus Federal District.

Table 3 shows the distribution of replies when respondents were asked how court decisions were made in their locality. It included a further option [6] for those who disagreed with the suggested formulae (respondents were asked to choose one response²¹).

Approximately one third of respondents seemed satisfied with the workings of local courts: 12% replied that all court decisions were made in accordance with the law, and 19% said only a few judges take bribes and are subject to pressure [1, 2]. One } }half [3, 4, 5] of respondents, however, acknowledged that judges were not independent and were influenced either by corrupt payments or other forms of pressure.

A quarter of respondents said that judges, as a rule, take bribes although there were also some principled judges [3]. Even these principled judges would react to pressure on certain cases, said another 18% [4] while a further 6% of respondents [5] indicated that “all court decision are taken either for a bribe or under pressure ‘from above’.” Slightly more than one in five respondents (21%) did not agree [6] with any of the suggested choices.

Table 4: Q. “In what way are court decisions in your locality most often made?”
(by Federal Districts²²) Respondents were invited to make one choice

Prompts offered for this question	Average	NW	C	So	V	U	Si	FE
1. All or practically all court decisions are made in accordance with the law	12	1	8	12	17	12	12	30
2. There are judges who take bribes and are subject to pressure “from above”, but they are few	19	14	19	18	25	13	18	15
3. Judges, as a rule, take bribes and are subject to pressure “from above”, but there are also principled judges	25	23	27	28	18	23	26	27
4. Even principled judges react to pressure “from above” on certain cases	18	25	18	14	17	28	18	9
5. Practically all court decisions are taken for a bribe or under pressure “from above”	6	10	4	12	5	2	6	6
6. Do not agree with any of these	21	26	25	16	19	22	20	14

When we look at the 2010 Survey data regionally (Table 4), the curve of averages has not changed significantly in comparison to 2007 (10-18-24-24-6-21%).²³ Yet there were some striking differences in data for two Federal Districts – North Western and Far

²¹ With the kind permission of the Director, I have used the Levada Centre’s data and archives on its surveys about the Russian judicial system to expand a five-fold standard scale of unlawful pressures on judges that is measured in frequency (never, sometimes, frequently, almost always, always) into five formulae that add an interpretative element to the frequencies.

²² } }Respectively, in Table 4, North Western, Central, South, Volga, Urals, Siberian and Far Eastern Federal Districts.

²³ I do not include a complete set of 2007 data, they are available in full in (Ledeneva, 2008).

Eastern. In comparison to its 2007 curve (13-20-17-27-2-21%), the distribution of answers in North Western Federal District indicates sharp deterioration (1-14-23-25-10-26%). Replies to the first prompt [1] that “all or practically all court decisions are made in accordance with the law” have gone down from 13% to 1% in North Western (also down from 13% to 8% in Central, from 15% to 12% in Urals and Siberian Federal Districts). Responses in the Volga, South, and particularly in Far Eastern Federal Districts went up: from 10% in 2007 to 17% in 2010 in Volga, from 10% to 12% in South, and from 14% in 2007 to impressive 30% in 2010 in Far Eastern Federal Districts. It can be argued, therefore, that there were perceptions, respectively, of a significant or small improvement in the enforcement of law. The North Western, Central and Far Eastern Federal Districts certainly displayed diverging trends.

If we analyze the second prompt in Table 4 (“there are judges who take bribes and are subject to pressure ‘from above’ but they are few”) the Volga Federal District (25%) registered above average, while the Central Federal District matched the national response (19%) and the South and Siberian Federal Districts at 18% measured just below average. Three other districts were a little less confident about the prevalence of judicial bribe-taking: North Western (14%), Urals (13%), and Far Eastern (15%). If we combine responses to the first and second prompts, the regional data range from a low of 15% in the North Western Federal District to a high of 44% in the Far Eastern Federal District as against a national average of 30%. (In 2007 the range was smaller and different regions lay at the two extremes, from a low of 22% in the Southern Federal District to a high of 38% in the Ural Federal District. The national average then was also 30%. Prompt 2 was the most popular reply (25%) in the Volga Federal District and combined with prompt 1 gave a total of 42%. This was still a little less than the Far Eastern Federal District, the part of Russia where people’s responses were consistently more optimistic than elsewhere – 30%, 15%, 27%, 9% and 6%, respectively, on prompts 1 to 5. (In 2007 it was the Volga Federal District which displayed a similar trend.)

The third prompt (“judges, as a rule, take bribes and are subject to pressure ‘from above’, but there are also principled judges”) was the most popular choice overall, selected by an average 25% of all respondents. Among respondents in four of the country’s main regions it did not come first. The Urals Federal District scored highest (28%) on the fourth, even less optimistic, prompt (“even principled judges react to the pressure ‘from above’ on certain cases”). So did the North Western Federal District (25%). The most pessimistic choice [5], indicating that practically all court decisions are taken for a bribe or under pressure “from above”, was also the least popular (6% on average). No doubt, further breakdown of data into the 83 constituent subjects of the Russian Federation would show yet more extensive variation, as even neighbouring Regions (*oblast, krai*) often differ significantly in their political regimes and models of governance.

Finally, when faced by an allegedly unfair sentence to their detriment, it is worthy of note that respondents in 2010 displayed an increased distrust of independent agencies. The proportion who would contact a lawyer for advice, for example, declined from 33% in

2007 to 23% in 2010. There was a parallel growth, on the other hand, in the numbers who would make a complaint to a higher court (from 14% to 22%).

Conclusion

The data of the 2010 Survey do not show substantial change in the trends that emerged in 2007, with an exception of a number of intriguing regional dynamics. Notwithstanding a few encouraging signs of improvement in the popular perception of the Russian judicial system, respondents still consider patterns of extra-legal pressure on the judiciary to be widespread.

What is the relation between people's perceptions and the actual incidence of telephone justice? In studying corruption in Russia Rose and Mishler demonstrated that perception was not a satisfactory proxy for experience: they found a large discrepancy between 86% who perceived most public officials as corrupt and the 23% who said their household had paid a bribe in the past two years (Rose and Mishler, 2007, pp. 7-8).²⁴ The 'Life in Transition' surveys, conducted by the European Bank for Reconstruction and Development, also noted a difference between indicators of perception and experience.²⁵ Perceptions are often criticized as influenced by the circulation of information, locally or through the media, and by the perceived fairness of public officials (Miller, Grodeland and Koshechkina, 2001, pp. 91, 279). Rose and Mishler found that neither the number of bribes nor the number of contacts with public officials significantly affected the perception of corruption. They made their case with regard to health, education, the police, social security and }}permits office, army recruiting and tax inspection. They notably excluded the courts from their study.

Conversely, our 2010 Survey indicated that people who have had personal exposure (14%) to the courts are more critical than those with only mediated knowledge of the judicial system. This finding needs further analysis. It would be useful to see whether the type of court (Lambert-Mogiliansky, Sonin and Zhuravskaya 2007) or type of litigation matters (Volkov et al. 2011); whether the experience in court differs in nature to the experience of other Russian public institutions; or whether corruption in the courts is under-represented in the media. Given our data, however, the perceptions of respondents with personal experience of the judicial system in Russia back up the opinions of others, even if their perceptions may have been influenced by unfavourable court decisions. The patterns of informality persist and require further study.

²⁴ Among the 86% of Russians who perceive public officials as corrupt, 35% believe almost all public officials to be corrupt while 51% think that most officials are corrupt. One in ten (9%) say that less than half of officials are corrupt; only 5% think that very few officials are corrupt. These perceptions are consistent with the opinion that public officials are not trustworthy (Rose and Mishler, 2007, p. 11).

²⁵ For comparison see CEELBAS website.

In 2007 I solicited comments on the survey from a range of experts – lawyers, human rights activists, academics and public intellectuals. They largely agreed on the following formula: while it is ridiculous to suggest that every court case in Russia is decided according to directives from above or on the basis of alternative incentives, it is perfectly possible to imagine that a way to influence a particular case can be found if necessary. The pressure does not have to be pervasive to be effective, in other words. The form of influence, moreover, can be tailored to suit the personality of a judge. Court chairmen and women possess an arsenal of measures to deal with non-compliant judges, and can twist their personal integrity in a calculating way. Direct forms of influence may even be redundant when an atmosphere of “suspended punishment” creates patterns of dependence on the courts’ chairmen and women, and induces } } self-censorship, the need to play by “unwritten rules.”

In 2007 none of the acting judges I approached to provide a commentary on the data would agree to do so. In 2010 there is enough evidence in the public domain from judges to confirm the importance of such inquiries. Both the 2007 and 2010 Surveys indicate low public } } competence in judicial issues. Such competence is essential for the dynamics of contemporary Russian politics and becomes increasingly relevant as Russia becomes more integrated into a global legal sphere.²⁶

REFERENCES

Basmanoe pravosudie. Uroki samooborony. Posobie dlia advokatov. Moskva: Publichnaia reputatsiia, 2003, accessed at <http://www.ip-centre.ru/books/Basmanoe.pdf> (April 2008).

Biberman, Yelena “The Spoils of Success: Dmitry Medvedev Opposes State Confiscation of Privatized Property, In Theory”, Russia Profile, April 10, 2008, accessed at www.russiaprofile.org (April 2008).

} } Bill Bowring, “”

Bureau of Democracy, Human Rights and Labor, Country Report on Human Rights Practices in Russia, 2006, accessed at www.state.gov/g/drl/tls/hrrpt/2006/78835.htm (August 2006).

Corten, Irina H., Vocabulary of Soviet Society and Culture: A Selected Guide to Russian Words, Idioms, and Expressions of the Post-Stalin Era, 1953-1991. London: Adamantine Press, 1992.

Dobrovinskii, Aleksandr, “Kleptomaniia. O malen’kikh sudakh i bol’shikh protsessakh,” Novaia Gazeta, No. 39, June 3, 2002.

²⁶ See (Ledeneva, forthcoming) for the analysis of Russian extradition cases and Russia-related commercial cases in London courts.

Firestone, Thomas, "Armed Injustice: Abuse of the Law and Complex Crime in Post-Soviet Russia," Denver Journal of International Law and Policy 38: 4 (Fall, 2010), 555-580

FOM-Info, Ezhedel'nyi bulleten' sotsiologicheskikh soobshchenii, December 7-13, 2001. Fond "Obshchestvennoe mnenie"—Vserossiiskii opros gorodskogo i sel'skogo naseleniia. December 8, 2001, accessed at archives www.fom.ru (April 2008).

Global Corruption Report 2007: Corruption in Judicial Systems, Transparency International with Cambridge University Press, 2007.

Gorbuz, A.K., Krasnov, M.A., Mishina, E.A., Satarov, G.A. Transformatsiia rossiiskoi sudebnoi vlasti. St. Petersburg: Norma, 2010.

Hendley, Kathryn, "Varieties of Legal Dualism: Making Sense of the Role of Law in Contemporary Russia" Wisconsin International Law Journal (forthcoming), currently University of Wisconsin Legal Studies Research paper No. 1119 posted June 2, 2010.

Hendley, Kathryn, "Are Russian Judges Still Soviet?" Post-Soviet Affairs, 23, 3: 240-274, July 2007.

Hosking, Geoffrey, "Forms of Social Solidarity in Russia and the Soviet Union" in Markova, Ivana (ed.) Trust and Democratic Transition in Post-Communist Europe. Proceedings of the British Academy, 123 (2004), pp. 47-62.

Huskey, Eugene, "The Administration of Justice: Courts, Procuracy, and Ministry of Justice" in Eugene Huskey (ed.) Executive Power and Soviet Politics: The Rise and the Fall of the Soviet State, 1992, pp. 221-246.

Lambert-Mogiliansky, Ariane, with Konstantin Sonin and Ekaterina Zhuravskaya, "Are Russian commercial courts biased? Evidence from a bankruptcy law transplant" Journal of Comparative Economics 35, 2: 254-277, 2007 accessed at <http://www.sciencedirect.com/> on April 29 2008.

Ledeneva, Alena, Why Russia Cannot Modernise? Cambridge: Cambridge University press, forthcoming.

Ledeneva, Alena, "Corruption in Post-communist Societies in Europe: A Re-examination," Perspectives on European Politics and Society, Vol. 10, No. 1, April 2009, 69-86.

Ledeneva, Alena, "Medvedev's crackdown on corrupt courts," Russia Profile June 6, 2008, also on www.rian.ru

Ledeneva, Alena, "Telephone Justice in Russia," Post-Soviet Affairs 24(4), 2008, 324-350.

Ledeneva, Alena, How Russia Really Works: The Informal Practices That Shaped Post-Soviet Politics and Business. Cornell University Press, 2006.

Ledeneva, Alena, "The Genealogy of Krugovaya Poruka: Forced Trust as a Feature of Russian Political Culture," in Markova, Ivana (ed.) Trust and Democratic Transition in Post-Communist Europe. Proceedings of the British Academy, 123: 85-108, 2004.

Liberal Mission Foundation, "Kto dolzhen byt' sud'ei", Roundtable. Moskva: Fond 'Liberal'naia missiia,' November 16, 2007, accessed at www.liberal.ru (March 2008).

Medvedev, Dmitri, "Speech at the Second All-Russia Civic Forum," Moscow, January 22, 2008 16:06 MCK, accessed at <http://www.edinros.ru/print.html?id=126928> (April 28, 2008).

Medvedev, Dmitri, "Speech at the Vth Krasnoyarsk Economic Forum," Krasnoyarsk, February 15, 2008, accessed at the official site of the presidential candidate, http://www.medvedev2008.ru/english_2008_02_15.htm (April 29, 2008).

Mishina, Ekaterina and Mikhail Krasnov (eds.) Otkrytye Glaza Femidy. Moskva Fond Liberal'naia missiia, 2006.

Mosnews.com, "Russian Judges Protest Political Pressure from the Kremlin," March 21, 2005.

Pastukhov, Vladimir, "Law under Administrative Pressure in Post-Soviet Russia." East European Constitutional Review 11, 3: 66-74, 2002.

Pastukhov, Vladimir, "Mutnye instituty: 'Reforma MVD' i krizis 'regulyarnogo gosudartstva' v Rossii" (Opaque Institutions) on the basis of the lecture given at St. Anthony's College, Oxford, 3 February 2010.

Radio Free Europe /Radio Liberty, Newsline, October 17, 2000, accessed at www.rferl.org/newsline/ (August 2007).

Rose, Richard and William Mishler, Explaining the Gap Between the Experience and Perception of Corruption. Studies in Public Policy No. 432. University of Aberdeen, 2007.

Russian Academy of Science, Sovremennyi Tolkovyi Slovar' Russkogo Yazyka, St. Petersburg: Norint, 2001, p. 824.

Sakwa, Richard, The Dual State in Russia, Cambridge: Cambridge University Press, 2010.

Satarov et al., Corruption Process in Russia: Level, Structure, Trends (INDEM diagnostics of corruption markets on the basis of the 2001 and 2005 ROMIR Monitoring surveys), 2005, accessed at www.indem.ru/en/publicat/2005diag_engV.htm (April 2008).

Solomon, Peter Jr. "Assessing the Courts in Russia: Parameters of Progress under Putin." Demokratizatsiya: The Journal of Post-Soviet Democratization, 16(1), Winter 2008, pp. 63-73.

Solomon, Peter Jr. "Authoritarian Legality and Informal Practices: Judges, Lawyers and the State in Russia and China," Communist and Post-Communist Studies, 43(4) December 2010, pp. 351-362.

Solomon, Peter Jr. and Todd Foglesong, Courts and Transition in Russia: The Challenge of Judicial Reform. Boulder: Westview, 2000.

Solov'ev, Vladimir, "Sudebnyi nihilism," Analitika, September 27, 2007, accessed at www.treli.ru/newstext.mhtml?Part=15&PubID=10591 (February 2008).

Trochev, Alexei, Judging Russia: Constitutional Court in Russian Politics, 1990-2006. Cambridge: Cambridge University Press, 2008.

Vaksberg, Arkadii 'Kak slovo otzovetsia: chto takoe "telefonnoe pravo"?' Literaturnaya Gazeta, May 7, 1986. See also Radio Ekho Moskvyy, "Fakty i mneniia. 2003 god: optimism, pessimism, siurprizy," Roundtable with Lev Roitman and guests: Yuri Boldyrev, Arkadii Vaksberg, Leonid Radzikhovskii, December 30, 2003, accessed at <http://www.svoboda.org/programs/rt/2003/rt.123003.asp> (December 2005)

Volkov, Vadim et al. "Plokhie instituty," Report of the Institute of Law Enforcement, European University at St. Petersburg, 2011.