

# **RUSSIAN KLEPTOCRACY AND THE RULE OF LAW: HOW THE KREMLIN UNDERMINES EUROPEAN JUDICIAL SYSTEMS**

BY DR ANDREW FOXALL



DEMOCRACY | FREEDOM | HUMAN RIGHTS

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## Foreword

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All systems of international legal co-operation and mutual legal assistance between States operate on the basis of a presumption of integrity on the part of the States involved. This principle of international trust used to be known as the respect for the comity of nations. It is reflected in the practice of judicial deference to the positions taken by States in the exercise of their national sovereignty, and in the progressive relaxation of due process safeguards in areas such as extradition, judicial co-operation and the mutual enforcement of foreign judgments. But what happens when politicians deeply enmeshed in global organised crime gain control of the levers of power? How does the international legal community protect itself from abuse of the privileges that are uniquely available to a State?

This timely report examines the numerous ways in which a criminal regime can abuse international legal co-operation to further its nefarious objectives. Under the current administration in power in Russia, it begins with the exercise of complete political control over the domestic judiciary – a legacy of the post-Soviet tradition of totalitarianism. In the absence of anything resembling an effective separation of powers, there are almost endless opportunities for the criminal elements associated with the Kremlin to clothe their operations with a veneer of legal respectability.

Political opponents, or those who simply refuse to co-operate with the objectives of Russian organised crime find themselves targeted by the FSB, the GRU, or the Investigative Committee of the Russian Federation – all of which operate as part of the personal praetorian guard surrounding President Putin. Those who have fallen foul of the cabal of corruption that surrounds the present administration are targeted for harassment, arrest, prosecution, or worse. Judgments are recorded by a supine judiciary with no concept of resilience to the abuse of State power, and the machinery of justice is put at the disposal of those who seek to abuse it for their own unjust enrichment and political control.

That, however, is only the starting point for the range of challenges that are addressed in this report. This is because the current international systems for the enforcement of foreign court judgments are simply not equipped to deal with a situation in which a State is under the control of a small but fiercely powerful knot of corrupt officials, all paying their dues to the person immediately above them in the political food chain. Everything from counter-terrorism co-operation to international banking reform is vulnerable to abuse.

In a State where corruption lies at the very epicentre of power, all our assumptions about the operation of the rule of law are inverted. It is those running honest business ventures that are prosecuted. It is those who refuse to collaborate with corruption that find their businesses confiscated by court order. It is those who oppose the kleptocratic hegemony of the tiny group that maintains a stranglehold on power in Moscow that find themselves branded criminals, or become the losing party in major commercial litigation. It is those who speak out publicly against the regime that are targeted for assassination at home or abroad. Lawlessness has become the norm in Putin's Russia.

This dystopian vision of a social order has spilled beyond Russia's borders – to parts of the territories of its neighbours in Ukraine, Georgia and Moldova that have been occupied by military force. But the insidious and almost transparent web of corruption has spread much wider than that – transmitted globally through the cynical abuse of the network of international judicial co-operation. Over the past decade or so, the Russian State authorities have set about consciously misusing international judicial mechanisms by stealth, pursuing perceived opponents around the globe. Blatant lies, forged documents, and utterly implausible explanations are put before courts and tribunals around the world, in the expectation that the judicial authorities

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established by liberal democracies will be slow to challenge a direct assertion made on behalf of a sovereign State, or to subject it to the sort of scrutiny that the current situation demands.

What was once a strategy of plausible deniability has been gradually replaced with an increasingly audacious strategy that dares us to disbelieve. From the perspective of those in power in the Kremlin, it is a win-win strategy. Even if they fail to achieve the result they seek, they make a mockery of us, and prove the sheer vulnerability of western systems for the protection of liberal democracy. If we continue to do nothing to protect those systems, we too will progressively be drawn into a world of inverted morality.

Over the same period of time, Russia has been steadily acquiring, or seeking to acquire, positions of influence in international organisations that will provide yet further opportunities to distort multinational mechanisms for law enforcement co-operation. A Russian official, Vladimiar Voronkov now heads the United Nations Office of Counter-Terrorism, a key position in the UN's architecture for international law enforcement. As this report notes, in October 2018, Alexander Prokopchuk, a general in Russia's Interior Ministry, was narrowly defeated in an election for the post of President of Interpol following a last-minute campaign and a public outcry in Parliaments from Westminster to Vilnius. The reason this debacle sent shock waves through the international community was because Interpol is perhaps the clearest example of an international law enforcement mechanism that has been deliberately and repeatedly misused and suborned by the Russian Federation to pursue those the Kremlin perceives as a political threat to its global investment in organised crime.

The United States has belatedly woken up to the extent of the problem, and is exploring a range of new legislative initiatives to protect its judicial institutions against Russian interference. These include subjecting Russian State claims to a more penetrating level of judicial scrutiny that appropriately reflects its recent history of dishonest manipulation of law enforcement co-operation. Among these reforms is a proposal for US courts to apply a heightened level of scrutiny to Russian red notices issued through Interpol.

The United Kingdom must now recognise this critical national security threat and take effective action. The visa reforms introduced so far, the limited economic sanctions, and unexplained wealth orders do not begin to go far enough. The Foreign Secretary announced at the last Conservative Party conference that the Government would bring the Magnitsky sanctions regime into force, and this should be an urgent priority. Of course, the Prime Minister is quite right to resist calls to stigmatise all Russian expatriates living in the country as a threat to our national security. Russophobia should have no place in our national security policy. Many of those who have made London their home have done so precisely because they can no longer live under the regime that currently grips their motherland by the throat.

The threat to liberal democracy and the rule of law comes not from Russia itself, nor from Russians who have every right to expect us to extend a hand of international friendship. The threat comes from a small but tight-knit conspiracy whose tenure in power in Moscow is beginning to ebb away as the end of the Putin era approaches. But it will take decades, and a huge amount of political determination, to put Russia into the position of a trusted international partner. Until then, it is vital that the United Kingdom should work with its international partners, in NATO and beyond, to develop legal and political strategies to protect its domestic institutions and the international organisations of which it forms a part.

Vladimir Putin and those around him represent a critical threat to the international rule of law. The time has come to respond to his threat with decisive action that will protect our institutions, and pave the way for Russia's eventual transition into a state that respects the rule of law, so that it can take its rightful place in the community of nations.

## About the Author

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Dr Andrew Foxall has been Director of the Russia and Eurasia Studies Centre at the Henry Jackson Society since 2013, and in 2017 became Director of Research. Previously, he held academic positions at the University of Oxford and Queen's University Belfast.

Andrew is the author of *Ethnic Relations in Post-Soviet Russia* (Routledge, 2014 and 2017) and has written for publications including *The New York Times*, *Wall Street Journal*, *The Washington Post*, *The Daily Telegraph*, *The Times*, *Foreign Affairs*, *TIME*, and *Foreign Policy*. He holds a DPhil from the University of Oxford.

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## Executive Summary

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- Since Vladimir Putin came to power in 2000, he has overseen the creation of a grotesque kleptocracy in Russia. This kleptocracy is based on the “rule of law”, but not in the Western sense of the phrase. In Russia, the law serves to control and coerce the majority of the population while allowing Putin, his cronies, and other regime insiders to act with impunity.
- In Russia, state agencies collude with business and organised crime in criminal activities to the material benefit of all involved. It is well established that this process began in the 1990s, when the lines between “state” and “non-state” became blurred. Today, these crimes are supported by the Kremlin, facilitated by a multitude of state agencies, and legally justified by the courts.
- Putin, his cronies, and other regime insiders are able to rely on selective – and baseless – prosecutions to attack their critics and opponents. Russia’s courts are not only complicit in this – they also enable it. In a series of high-profile incidents over the last two decades, Russia’s courts have issued rulings that legitimise government-sanctioned expropriation and misconduct.
- The existence of high-level lawlessness in Russia has allowed the Kremlin and regime insiders to take advantage of the court systems of European states. In doing so, they have been able to undermine the rule of law in European states and multilateral treaty organisations in order to further their own interests. In essence, European courts have, on occasions, become a tool of Russian foreign policy.
- This report does not litigate or re-litigate particular legal cases, but instead highlights six case studies which, taken together, demonstrate the ways through which the Kremlin, regime insiders, and Kremlin-connected individuals undermine Europe’s judicial systems. These case studies are drawn from across Europe: Cyprus, via Germany and Lithuania; the Netherlands, via Armenia; Monaco, via France and Switzerland; the UK; and, the European Court of Human Rights.
- This report makes a series of recommendations specifically for the UK. These recommendations include: UK Parliament should launch an inquiry into Russia’s abuse of the international legal system as part of the Kremlin’s broader efforts to undermine the rules-based international order; and, the UK government should issue clear guidance to the judiciary on the validity of Russia’s justice system.
- Because Russia uses different tools in different places at different times, there is no “one size fits all” response to its activities. Nevertheless, the report’s recommendations can be applied in other countries. Most obviously, national parliaments could hold hearings or inquiries into the extent to which Russia or its proxies have undermined domestic judicial systems.



## 1. Introduction

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In November 2018, the 192 member countries of Interpol, the international police cooperation organisation, met to appoint a new president. In the run-up to the vote, Alexander Prokopchuk, a major general in the Russian police force, was widely tipped as favourite. In some ways, Prokopchuk was an obvious choice: he had been named deputy head of Russia's bureau of Interpol in 2006, and five years later was appointed as its head. In 2016, he became an Interpol vice-president. But in other ways, Prokopchuk was controversial: during his time at Interpol's Moscow bureau, Russia's law enforcement agencies regularly used the "Red Notice" system – which enables an individual's arrest, detention, and potential extradition – to target political activists, businesspersons, human rights defenders, and others.

In the final vote, Prokopchuk was defeated by Kim Jong-yang, a former South Korean police officer, who had been serving as acting president of Interpol. This followed a concerted campaign by the businessman-turned-human rights campaigner Bill Browder, the oligarch-turned-human rights activist Mikhail Khodorkovsky, US Secretary of State Mike Pompeo, and others to support Jong-yang. Why did they do this? Because the Interpol presidential election revealed to a wider audience something that had long been apparent to those who pay attention to Russia: the Kremlin sees Western legal institutions not as tools to uphold the rule of law but instead as tools to undermine the rule of law itself. Installing Prokopchuk as head of Interpol would have been, in the words of a group of senior US senators, "akin to putting a fox in charge of a henhouse".<sup>1</sup>

Russia is not alone in using international police cooperation to pursue its critics and opponents beyond its own borders, but it is among the most active. Interpol's Constitution is supposed to prevent the use of its system for politically motivated persecution, stating that such action is "strictly forbidden".<sup>2</sup> However, Interpol's provisions have proved hard to enforce because the system relies on national police agencies to submit reliable data. In the case of Russia, law enforcement agencies maintain that there are justifiable grounds to detain such individuals in Russia under Russian law. To grasp how this seemingly contradictory situation can make sense it is necessary to recognise that, in Russia, the law is used to protect the regime and its interests rather than the state or its people.

The 2016 Litvinenko Inquiry established that, in the early 1990s, the lines between "state" and "non-state" in Russia became blurred. As they did, business, organised crime, and the security services began working together.<sup>3</sup> This took place across the country, but it was particularly noticeable in St Petersburg, where Vladimir Putin worked in a series of positions in Anatoly Sobchak's mayoral office.<sup>4</sup> Since Putin came to power at the turn of the millennium, these processes have intensified. As a number of high-profile incidents illustrate, law enforcement agencies tend to cooperate with organised crime rather than clamp down on it, and criminal investigations often serve not as mechanisms to solve crimes and pursue justice but instead as tools to extort money or steal assets.

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<sup>1</sup> Wicker, Shaheen, Coons, & Rubio Warn Against Russian Leadership of Interpol Ahead of General Assembly Vote', *Roger Wicker*, 19 November 2018, available at: <https://www.wicker.senate.gov/public/index.cfm/2018/11/wicker-shaheen-coons-rubio-warn-against-russian-leadership-of-interpol-ahead-of-general-assembly-vote>, last visited: 9 September 2019.

<sup>2</sup> Article 3 of the General Provisions of Interpol's Constitution, adopted in 1956, states, "It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character." See 'Constitution of the ICPO-Interpol', *Interpol*, available at: <https://www.interpol.int/en/content/download/590/file/Constitution%20of%20the%20ICPO-INTERPOL-EN.pdf>, last visited: 9 September 2019.

<sup>3</sup> 'The Litvinenko Inquiry: Report into the death of Alexander Litvinenko', January 2016, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/493860/The-Litvinenko-Inquiry-H-C-695-web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493860/The-Litvinenko-Inquiry-H-C-695-web.pdf), last visited: 9 September 2019.

<sup>4</sup> For more detail, see 'Putin in St. Petersburg, 1990-1996: Accusation of Illicit Activities', chapter 3 of Dawisha, K., *Putin's Kleptocracy: Who Owns Russia?* (New York: Simon and Schuster, 2014), pp. 104-162.

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Through a series of case studies, this report highlights that the Kremlin's playbook for undermining the West extends well beyond interfering in elections, spreading propaganda, and stealing (or "hacking") and leaking sensitive information. It also extends far beyond the use of corruption as a strategic tool, buzzing the airspace of nation-states, and playing diplomatic divide-and-rule games. These are, to be true, all part of the same toolkit.<sup>5</sup> But while much attention has focused, since 2016, on the Kremlin's attempts to undermine democratic institutions, far less attention has been paid to the Kremlin's attempts to undermine judicial institutions.<sup>6</sup>

The case studies this report cites are drawn from across Europe: Cyprus, via Germany and Lithuania; the Netherlands, via Armenia; Monaco, via France and Switzerland; the UK; and, the European Court of Human Rights (ECtHR). They have been chosen for a number of reasons. First, they highlight the various tactics employed by the Kremlin, regime insiders, and Kremlin-connected individuals to undermine judicial systems, from lawyers for Russian state-owned companies appearing to write court judgments to an oligarch allegedly corrupting a justice minister. Second, they demonstrate the various judicial scales at which this undermining takes place, from a district court in the Caucasus to Europe's highest human rights court in Strasbourg. Third, they underline that no country or institution is immune to this behaviour (although some countries and institutions, by virtue of their circumstances, are more susceptible to it).

This report is divided into four further sections. It begins by highlighting how Vladimir Putin seized control of the Russian state and its institutions, over time building an authoritarian and highly personalised kleptocracy. It moves on to explain the role of Russia's courts in enabling and facilitating this kleptocracy. The bulk of the report outlines how the Kremlin, regime insiders, and Kremlin-connected individuals have undermined European judicial systems, and cites the above-discussed case studies in order to highlight the tactics employed in doing so. The report concludes with a series of suggestions about how this situation can be addressed, and how European states and their judiciaries can fight back.

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<sup>5</sup> Lucas, E., 'Russia's Influence Arsenal', *CEPA*, 28 May 2019, available at: <https://www.cepa.org/russias-influence-arsenal>, last visited: 11 September 2019.

<sup>6</sup> There are two notable exceptions to this, but both are primarily concerned with the US context rather than Europe. See 'Misrule of Law: How the Kremlin Uses Western Institutions to Undermine the West', *Free Russia Foundation*, June 2019, available at: <https://www.4freerussia.org/wp-content/uploads/sites/3/2019/06/MisruleOfLaw-Web.pdf>, last visited: 10 September 2019; and Åslund, A., *Russia's Interference in the US Judiciary*, Atlantic Council, July 2018, available at: [https://publications.atlanticcouncil.org/Russia\\_s\\_Interference\\_WEB.pdf](https://publications.atlanticcouncil.org/Russia_s_Interference_WEB.pdf), last visited: 10 September 2019.

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## 2. Authoritarian Power and Rule of Law in Russia

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Since Vladimir Putin became president of Russia in 2000, he has overseen the development of a grotesque kleptocracy.<sup>7</sup> This system mocks and mimics democracy but in reality is neo-Soviet and based on a “vertical of power”: a top-down, centralised command structure.<sup>8</sup> In this system, civil and political rights have been eroded; media freedoms have been all but eliminated; critical journalists and political opponents are killed; elections and political institutions have been hollowed out; the Federal Security Service (FSB), successor to the Soviet-era KGB, has emerged as the country’s pre-eminent institution; the country frequently breaks its commitments to international institutions; and, state-of-the-art propaganda is used to attempt to control public opinion.<sup>9</sup>

The system is based on massive predation. In 2013, Russia’s National Anti-Corruption Committee estimated the annual cost of bribery to be US\$300 billion,<sup>10</sup> which represented roughly 7% of the country’s Gross Domestic Product (GDP) or about equal to the entire GDP of Israel or Singapore.<sup>11</sup> By 2017, the “shadow economy” was estimated to account for more than one-third of Russia’s GDP, or around US\$615 billion.<sup>12</sup> Such predation is not a flaw in Putin’s system, but is the basis of the system itself. Russia is one of the most unequal major economies in the world. It is a country in which, according to Credit Suisse in 2018, the top 10% of the population controls 82% of the country’s wealth.<sup>13</sup>

In the early years of his presidency, Putin installed in key positions of power men whom he had known for decades, from his time in either St Petersburg (where he lived and worked during the 1950s, 1960s, and 1990s) or the KGB (in which he served during the 1970s and 1980s). In 2001, Alexey Miller, with whom Putin worked in St Petersburg, was appointed Chairman of Gazprom, Russia’s state gas company. Shortly afterwards, Igor Sechin, Putin’s long-time friend from the KGB, was appointed head of Rosneft, Russia’s state oil company. These individuals – who are members of Putin’s so-called “inner circle” – have secured and increased their wealth by bolstering the power of the centralised state.<sup>14</sup>

At the same time as elevating his cronies to power, Putin seized control over the judicial and political systems. In 2001, he appointed his close ally Boris Gryzlov as Interior Minister, securing his command over the police, and announced a reform of the judiciary, ensuring that judges became dependent on the central executive rather than on regional governors. By the end of 2002, Putin effectively controlled the country’s courts. Simultaneously, Putin moved to gain control over the state administration. By the time of his re-election in mid-2004, presidential

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<sup>7</sup> Dawisha, K., *Putin’s Kleptocracy: Who Owns Russia?*

<sup>8</sup> Satter, D., *Darkness at Dawn: The Rise of the Russian Criminal State* (New Haven, CN: Yale University Press, 2003).

<sup>9</sup> On various aspects of this system, see Harding, L., *Mafia State: How One Reporter Became an Enemy of the Brutal New Russia* (London: Guardian Books, 2011); Felshtinsky, Y. and Pribylovsky, V., *The Age of Assassins: The Rise and Rise of Vladimir Putin* (London: Gibson Square, 2008); Soldatov, A. and Borogan, I., *The New Nobility: The Restoration of Russia’s Security State and the Enduring Legacy of the KGB* (New York: PublicAffairs, 2010); and Pomerantsev, P., *Nothing Is True and Everything Is Possible: The Surreal Heart of the New Russia* (New York: PublicAffairs, 2014).

<sup>10</sup> ‘Briefing: Corruption in Russia’, *European Parliamentary Research Service*, 12 March 2014, available at: [http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140742/LDM\\_BRI\(2014\)140742\\_REV1\\_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140742/LDM_BRI(2014)140742_REV1_EN.pdf), last visited: 9 September 2019.

<sup>11</sup> According to the World Bank, Russia’s GDP in 2013 was US\$2.297 trillion. In the same year, Singapore’s GDP was US\$307 billion and Israel’s was US\$292 billion. See ‘GDP (current US\$)’, *The World Bank*, available at: [https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?end=2013&most\\_recent\\_value\\_desc=true&start=2005&year\\_high\\_desc=true](https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?end=2013&most_recent_value_desc=true&start=2005&year_high_desc=true), last visited: 9 September 2019.

<sup>12</sup> ‘Emerging from the Shadows: The shadow economy to 2025’, *Association of Chartered Certified Accountants*, June 2017, available at: [https://www.accaglobal.com/content/dam/ACCA\\_Global/Technical/Future/pi-shadow-economy-report.pdf](https://www.accaglobal.com/content/dam/ACCA_Global/Technical/Future/pi-shadow-economy-report.pdf), last visited: 9 September 2019.

<sup>13</sup> ‘Global Wealth Report 2018’, *Credit Suisse Research Institute*, October 2018, available at: <https://www.credit-suisse.com/media/assets/corporate/docs/about-us/research/publications/global-wealth-report-2018-en.pdf>, last visited: 9 September 2019.

<sup>14</sup> Dawisha, K., *Putin’s Kleptocracy: Who Owns Russia?*

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and parliamentary elections were no longer competitive, and in late 2004 he abolished the elections of regional governors and announced their centralised appointment.

During this period, Putin selectively targeted businessmen who had become rich in the 1990s under Boris Yeltsin – the oligarchs – and who he thought posed a threat to him and the system he sought to build. By 2002, the media moguls Vladimir Gusinsky and Boris Berezovsky had been pressured to sell their extensive assets at below-market prices and forced into exile. In 2003, the oil tycoon Mikhail Khodorkovsky was imprisoned and had his assets seized. In each case, the assets were redistributed to companies controlled by Putin's inner circle; the majority of Khodorkovsky's Yukos oil company, for example, ended up in Sechin's Rosneft. This sent a powerful message to the other oligarchs: that the only way to maintain power and wealth was by remaining loyal to Putin. The treatment meted out to Yukos has long been seen as the pivotal episode by which Putin brought Russia's oligarchs to heel.

All of this took place while the Russian economy was booming. Between 2000 and 2008, GDP growth averaged 7%. But then the global financial crisis struck, and it hit the country hard. Russia's GDP fell by 7.9% in 2009 alone. Recession quickly led to stagnation, with GDP growth down year on year between 2010 and 2013. It was in this context that Putin was re-elected president in 2012. His return to the Kremlin was accompanied by some of the largest protests in Russia's post-Soviet history and, with his legitimacy openly challenged, Putin made moves to loosen his centralised grip on power by, for example, returning the direct election of regional governors. This was mere window-dressing, however.

Russia's annexation of Crimea and invasion of eastern Ukraine in 2014 led to the imposition of Western sanctions, and recession returned: according to the World Bank, Russia's GDP decreased from US\$2.2 trillion in 2013 to US\$1.3 trillion in 2015.<sup>15</sup> The fall in the global price of oil contributed to this, but the structure of Russia's economy was ill-equipped to deal with sanctions. With its economy in crisis, the ruble fell to record lows against the US dollar. This hit wealthy Russians the hardest: according to Bloomberg, the 21 most affluent people in the country lost a total of US\$61 billion, a quarter of their combined fortune, in 2015 alone.<sup>16</sup> It also hit Russia's state-owned companies, as they were largely cut off from the Western financial system.

In the years since, Putin has pursued a number of policies in an attempt to return Russia to economic growth, including de-offshorisation and import substitution. These have been successful to an extent: by 2018, its GDP had increased to US\$1.6 trillion. In order to achieve this, however, Putin has recentralised power: in 2016, he created a new National Guard, effectively a paramilitary force, headed by his former bodyguard (and long-standing ally from St Petersburg) Viktor Zolotov. And as part of this, Putin's inner circle, keen to maintain their wealth, have returned to the earlier process of acquiring assets and redistributing them among themselves. This has now been repeated across almost every sector of Russia's economy, as businesses that were previously not on the Kremlin's radar are now firmly in its sights.

The result of all of this is that there exists in Russia a perverse form of state capitalism, which is neither competitive nor focused on development but instead is dysfunctional and inefficient. As Joshua Kurlantzick of the Council on Foreign Relations writes, "just one or two state firms dominate nearly every leading industry, with each company staffed by Putin loyalists".<sup>17</sup> This is a pattern repeated across the judiciary and political systems, where the highest echelons are staffed by individuals loyal to Putin. Because of this, the Kremlin is effectively able to act as it wishes within Russia's borders, with little, if any, recourse.

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<sup>15</sup> 'Russian Federation', *The World Bank*, available at: <http://data.worldbank.org/country/russian-federation>, last visited: 9 September 2019.

<sup>16</sup> Meyer, H. and Reznik, I., 'The Chilly Fallout Between Putin and His Oligarch Pals', *Bloomberg*, 22 January 2015, available at: <https://www.bloomberg.com/news/articles/2015-01-22/putin-said-to-shrink-inner-circle-as-ukraine-hawks-trump-tycoons>, last visited: 9 September 2019.

<sup>17</sup> Kurlantzick, J., *State Capitalism: How the Return of Statism is Transforming the World* (New York: Oxford University Press, 2016).

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### 3. Russia's Courts

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During the course of the 2000 presidential campaign, Putin announced that he wanted to create “a dictatorship of law” in Russia. The system he has created in the two decades since is based on the “rule of law”, but not in the Western sense of the phrase. In Russia, the law serves to control and coerce the majority of the population while allowing Putin, his inner circle, and other regime insiders to act with impunity. Rarely has the adage “For my friends, anything. For my enemies, the law!” been so apt.

In Russia, formal institutions have been replaced by Putin’s personal control. The Russia analyst Mark Galeotti describes this situation as an “adocracy” in which individuals “both seek to serve the Kremlin or are required to do so, often regardless of their formal role”.<sup>18</sup> In such a situation, the unwritten rules of court politics are paramount. The most important of these rules holds that demonstrating loyalty to the Kremlin is the best guarantee of professional development and personal betterment. One consequence of this desire by individuals to distinguish themselves is that they go out of their way to prove their usefulness. For law enforcement officials, for example, this might include bringing charges of tax evasion against business owners, arresting individuals on trumped-up charges, targeting businesses or individuals who might be deemed adversarial, or seizing assets that might be attractive to Putin or regime insiders.<sup>19</sup>

For such officials, particularly lower-ranking ones, the bribes they receive for such actions provide a valuable source of income.<sup>20</sup> The actions themselves can often be in the service of meeting or exceeding monthly targets, which contribute to increases in salary.<sup>21</sup> In this way, it becomes difficult, if not impossible, to differentiate the Kremlin’s interests from an individual’s interests and vice versa. In addition, such behaviour buys a degree of loyalty to the Kremlin while also creating a disciplinary tool among officials: in a situation where everybody has *kompromat* on everybody else, if somebody does not toe the line he or she can be prosecuted. That is not to suggest that such law enforcement officials do not also benefit materially from their actions; they do. These actions are often part of a co-operative exercise between those officials and more powerful people within the system.

As this suggests, it is not only low-ranking officials who are complicit in this corruption. So too are high-ranking ones, including, allegedly, Yury Chaika, the Prosecutor General. According to Alexei Navalny’s Anti-Corruption Foundation, Chaika’s two sons, Artem and Igor, have used their father’s political connections to get rich and to avoid prosecution for illicit business activities.<sup>22</sup> Yury Chaika denies these allegations. Whatever the truth, in December 2017 the United States sanctioned Artem Chaika under the Global Magnitsky Act, stating that he “has leveraged his father’s position and ability to award his subordinates to unfairly win state-owned assets and contracts and put pressure on business competitors”.<sup>23</sup>

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<sup>18</sup> Galeotti, M. ‘Controlling Chaos: How Russia manages its political war in Europe’, *European Council on Foreign Relations*, 1 September 2017, available at: [https://www.ecfr.eu/page/-/ECFR228\\_-\\_CONTROLLING\\_CHAOS1.pdf](https://www.ecfr.eu/page/-/ECFR228_-_CONTROLLING_CHAOS1.pdf), last visited: 7 October 2019.

<sup>19</sup> Shelley, L. and Deane, J., ‘The Rise of Reiderstvo: Implications for Russia and the West’, *Terrorism, Transnational Crime and Corruption Center*, 9 May 2016, available at: [http://reiderstvo.org/sites/default/files/The\\_Rise\\_of\\_Reiderstvo.pdf](http://reiderstvo.org/sites/default/files/The_Rise_of_Reiderstvo.pdf), last visited: 10 September 2019.

<sup>20</sup> Schulze, G. G. and Zakharov, N., ‘Corruption in Russia - Historic Legacy and Systemic Nature’, CESifo Working Paper Series 6864, *CESifo Group Munich*, January 2018, available at: [https://www.ifo.de/DocDL/cesifo1\\_wp6864.pdf](https://www.ifo.de/DocDL/cesifo1_wp6864.pdf), last visited: 10 September 2019.

<sup>21</sup> Bennetts, M., ‘Torture and Abuse by Police Is the Norm in Russian Prisons’, *Newsweek*, 29 March 2016, available at: <http://europe.newsweek.com/russia-police-custody-torture-abuse-441489?rm=eu>, last visited: 10 September 2019.

<sup>22</sup> The documentary ‘Chaika’ was produced by the Anti-Corruption Foundation and released on 1 December 2015. It is available, in Russian but with English subtitles, on *YouTube* at <https://www.youtube.com/watch?v=eXYQbgvzxdM>, last visited: 10 September 2019.

<sup>23</sup> ‘United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe’, *U.S. Department of the Treasury*, 21 December 2017, available at: <https://home.treasury.gov/news/press-releases/sm0243>, last visited: 10 September 2019.

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To be sure, there exist islands of legality within Russia's judicial system. If business parties are in dispute where no state-connected political or economic interests are engaged, it may be possible to obtain a fair ruling based on the law. Ordinary Russian citizens are able to sue for compensation for minor state failures in the administrative courts against state agencies.<sup>24</sup>

But, if nothing else, the last two decades have demonstrated that Putin, his cronies, and other regime insiders are able to rely on selective – and baseless – prosecutions to attack their critics or opponents. Russia's courts are not only complicit in this – they also enable it. According to the Russian journalist Leonid Ragozin, “courts often issue guilty verdicts without establishing whether any party has suffered damages from the defendant's actions”.<sup>25</sup> In addition, the Swedish economist Anders Åslund writes, these same courts “readily issue rulings that attempt to legitimize and justify naked government-sanctioned expropriation and misconduct”.<sup>26</sup>

Perhaps the clearest example of this is *reiderstvo*, which means corporate raiding but is also taken to mean asset-grabbing. This refers to a host of illegal tactics – such as bribery, forgery, corruption, intimidation, and violence – used by the Kremlin or regime insiders to steal companies from their legal owners.

*Reiderstvo* has been practised since Putin's early years in power. The seizure of Yukos, in 2003, set the template. Immediately after Khodorkovsky's arrest in October 2003, Russia's judiciary facilitated the government-led scheme to takeover Yukos. In December 2003, Russia's tax authorities accused Yukos of dodging more than US\$27 billion of taxes, a sum that exceeded the company's total revenues for 2002 and 2003 combined. Russia's courts affirmed these claims, thus manufacturing a justification for the government to seize its assets and transfer Yuganskneftegaz, Yukos' core oil asset, to Rosneft.<sup>27</sup> In May 2005, a show trial saw Khodorkovsky convicted of fraud and tax evasion, and sentenced to nine years in jail (which was reduced to eight years on appeal). Yukos was subsequently declared bankrupt in 2006 and liquidated in 2007.

Throughout this process, the actions of the Russian judiciary gave the appearance that the actions of the Russian government were legitimate; they were not. In the decade between 2002 and 2012, the tactics were rolled out against hundreds of thousands of businesses, with their owners imprisoned primarily as a result of rivals paying corrupt police, prosecutors, and judges to put them away.<sup>28</sup> Despite Putin's appointment of an ombudsman for business rights, Boris Titov, in 2012, this practice has continued. Speaking in 2015, Putin himself acknowledged how dire the situation was. Of the 200,000 economic crimes investigated in the previous year, he explained, only 15% resulted in a conviction; 83%, meanwhile, led to someone losing their business.<sup>29</sup> No formal criminal convictions were necessary since business owners were simply intimidated and threatened. Only when they handed over their assets did the criminal

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<sup>24</sup> Popova, M., 'Putin-Style "Rule of Law" & the Prospects for Change', *DAEDALUS*, 146 (2) Spring 2017, available at: [https://www.mitpressjournals.org/doi/pdf/10.1162/DAED\\_a\\_00435](https://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00435), last visited: 10 September 2019.

<sup>25</sup> Ragozin, L., 'When Russian Officials "Nightmare" Your Business, You Can Lose Everything – Even Your Life', *Bloomberg*, 29 January 2018, available at: <https://www.bloomberg.com/news/features/2018-01-29/when-russian-officials-nightmare-your-business-you-can-lose-everything-even-your-life>, last visited: 10 September 2019.

<sup>26</sup> Åslund, A. *Russia's Interference in the US Judiciary*, p. 12.

<sup>27</sup> Yuganskneftegaz was confiscated from Yukos in July 2004. At the time, the company produced 60% of Yukos' oil and was valued at between US\$14.7 billion and US\$22 billion. Later the same year, in December, Yuganskneftegaz was sold for US\$9.37 billion in a closed-room auction of two just bidders. The successful bidder was a company called Baikal Finance Group, which had been registered only a few days before the auction and was headed by Igor Sechin who was simultaneously Chair of Rosneft's Board of Directors. Within days of the auction, Baikal Finance Group was acquired by Rosneft. See, Åslund, A. *Russia's Crony Capitalism: The Path from Market Economy to Kleptocracy* (New Haven & London: Yale University Press, 2019).

<sup>28</sup> Kesby, R., 'Why Russia locks up so many entrepreneurs', *BBC World Service*, 5 July 2012, available at: <http://www.bbc.co.uk/news/magazine-18706597>, last visited: 10 September 2019.

<sup>29</sup> Clark, D., 'Russia's economy won't be fixed by the removal of sanctions', *New Statesman*, 31 January 2017, available at: <http://www.newstatesman.com/politics/staggers/2017/01/russias-economy-wont-be-fixed-removal-sanctions>, last visited: 10 September 2019.

investigations cease. As is evident from this as well as other contexts, the system Putin created has set processes in motion that have taken on a life of their own.<sup>30</sup>

The overall pattern of using Russia's corrupt justice system as a vehicle for regime insiders is clear. So too is the fact that Russia's kleptocracy does not end at its borders. After Khodorkovsky was imprisoned and his company was dismembered, the Kremlin targeted assets and individuals connected to both. To do so, Russia sought legal assistance from a number of Western countries, some of which complied, including Ireland and Switzerland. The Kremlin's politically motivated prosecution of Khodorkovsky and of his allies was only possible because Western judicial systems enabled it.

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<sup>30</sup> Gessen, M., *The Man with No Face: The Unlikely Rise of Vladimir Putin* (London: Granta, 2012).

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## **4. Abuse of European Judicial Systems by the Kremlin, Regime Insiders, and Kremlin-Connected Individuals**

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There is an inclination to view Russia as a normal country. It is not. Russia is a country in which a cabal of criminals has established a system based on an authoritarian kleptocracy. In doing so, this cabal has available to it all the institutions that the international legal order has traditionally made available to states. It uses these institutions not to uphold the rule of law but instead to carry out campaigns of political persecution and economic expropriation. Ilya Zaslavskiy, who is a researcher at the Free Russia Foundation, has coined a phrase to describe such a situation: Russia, he writes, is a “legally failed state”.<sup>31</sup>

In what follows, this report outlines six instances in which the Kremlin, regime insiders, or Kremlin-connected individuals have undermined European judicial systems. To be sure, there are significant differences between them and, to make these differences clear, the instances are divided into two sections.

In the first section, three cases are described which involve individuals employed by the Russian state or Russian state entities. These cases are clear instances wherein the Kremlin has turned European judicial systems into tools of Russian foreign policy. In the second section, three cases are described which involve individuals who are not employed by the Russia state or Russian state entities. In these cases, Kremlin-connected individuals appear to have used European judicial systems in ways that align with Russia’s interests.

What does ‘Kremlin-connected’ mean in this context? As Galeotti notes, it is not necessary for any individual to have any strong ties to Putin personally, nor to act consistently in the interests of the Kremlin.<sup>32</sup> Instead, an individual may be called on or voluntarily perform some services, in either their own interests or the Russian state’s interests or the interests of a representative of the Russian state, as a price for their continued freedom or prosperity, whether that prosperity is based on wealth inside or outside Russia.

This dynamic is well documented in the 2019 Mueller Report, which reported that from late 2016 onward individuals including Petr Aven, head of Alfa-Bank, the largest private sector bank in Russia, and Kirill Dmitriev, CEO of Russian Direct Investment Fund, the sovereign wealth fund of the Russian government, offered to explore personal contacts with the incoming team of President Donald Trump.<sup>33</sup> Not only was it in the direct interests of these individuals to do so, it was also in the interests of the Kremlin. According to Aven, Putin did not ask him to contact Trump’s team but Aven understood that Putin would expect him to do so.

### **4.1 Abuse of European Judicial Systems by Individuals Employed by the Russian State or Russian State Entities**

#### **4.1.1 Rosneft and Yukos CIS Investment**

Few cases highlight the extent to which the Kremlin has undermined European judiciaries quite like that of Yukos. As noted earlier, the Kremlin’s campaign against Yukos, which began in 2003, involved jailing its chief executive Mikhail Khodorkovsky, bankrupting the company with billions of dollars in back-tax demands, and selling its assets at a discount, mostly to the state-controlled oil giant Rosneft.

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<sup>31</sup> Zaslavskiy, I., ‘State Crony Capitalism’ in ‘Russia Scenarios 2030’, *Free Russia Foundation*, April 2019, available at: <https://www.4freerussia.org/wp-content/uploads/sites/3/2019/05/RussiaScenarios2030-FreeRussia-Web.pdf>, pp.131-137, last visited: 10 September 2019.

<sup>32</sup> Galeotti, M., ‘Boris Johnson’s Russian Oligarch Problem’, *Foreign Policy*, 24 July 2019, available at: <https://foreignpolicy.com/2019/07/24/boris-johnsons-russian-oligarch-problem/>, last visited: 19 October 2019.

<sup>33</sup> ‘Report On The Investigation Into Russian Interference In The 2016 Presidential Election’, *US Department of Justice* (2019), available at: <https://www.justice.gov/storage/report.pdf>, last visited: 8 October 2019.

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The dismemberment of Yukos triggered a wave of litigation in various jurisdictions. This was brought by various parties, including Bruce Misamore, formerly Chief Financial Officer of Yukos, on behalf of the company's 55,000 shareholders, and GML Limited, Yukos' holding company. Some of the litigation related to the seizing of Yukos, while other aspects concerned the bankruptcy. Much of the litigation was brought in the Netherlands under the auspices of the Permanent Court of Arbitration in The Hague, under the provisions of the Energy Charter Treaty. The treaty provides arbitration in cases of the unlawful expropriation of investments. But the litigation in the Netherlands was affected by judgments elsewhere.

In the early 2000s, with the Kremlin's pressure on Yukos increasing, the company began to move its assets out of Russia. One way it did this was by creating subsidiaries in other jurisdictions, such as Yukos CIS Investment. Based in Armenia, Yukos CIS established several subsidiaries of its own, including in the Netherlands. In 2007, as part of the Kremlin's dismemberment of Yukos, Rosneft won 100% of Yukos CIS in an auction for only US\$1 million – despite the fact that it held US\$400 million in assets via a Dutch foundation. Because the auction was conducted in Moscow rather than Yerevan, however, Rosneft had to file a suit in Armenia to seek possession of it. The suit was heard in Armenia's Administrative Court, a Yerevan district civil court, and finally the Court of Cassation. In 2011, Rosneft won possession.

A year later, Surik Ghazaryan, an Armenian district court judge, gave sworn written testimony in a related Yukos case in a federal court in the United States in which he alleged that his superiors had ordered him to issue a judgement favourable to Rosneft in a case involving the company. He even alleged that his superiors had provided him with a pre-written copy of the judgement. He wrote:

Every Armenian judge in charge of proceedings having to do with “Yukos” has received a clear and unambiguous signal: either you follow directions from above and hand down judgments in favor of “Rosneft” and against “Yukos,” or you face serious consequence.<sup>34</sup>

For his part, Ghazaryan refused to comply, resigned from his position under pressure, and fled to the US, where he received political asylum. (Yukos provided financial support to Ghazaryan after he fled to the US.)

Ghazaryan later testified for a Dutch court, in a case about a Yukos CIS subsidiary in the Netherlands, that the decisions he rendered in cases related to Yukos had been dictated to him by his superiors. He asserted that in one instance, in 2009, he had to stop court proceedings to take instructions from Arman Mkrtumyan, Chief Justice of the Cassation Court.<sup>35</sup> On another occasion, in February 2011, a senior judge had handed him a ruling on a USB stick. Dutch Chief Judge Jan Peeters, who was overseeing the case, also heard other evidence that appeared to show that lawyers for Rosneft manipulated a series of court rulings in Armenia in order to bolster its case in the Netherlands.<sup>36</sup>

This evidence, which consisted of a trove of emails, was leaked to the *Financial Times* in November 2016. The emails appear to show Rosneft's Armenian legal counsel, Edward Mouradian, giving instructions to a senior member of the Armenian justice system, Armen Nikoghosyan, on the outcomes required in five Yukos-related cases. At the time, Nikoghosyan served as head of the Department for Protection of State interests in the Armenian Prosecutor

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<sup>34</sup> Eckel, M., 'In U.S. Court, Yukos Shareholders Try New Tactic: Go After The Lawyers', *RFE/RL*, 30 June 2017, available at: <https://www.rferl.org/a/russia-yukos-arbitration-shareholders-baker-botts-court-ruling/28588682.html>, last visited: 10 September 2019.

<sup>35</sup> 'Armenia Was an Escape Route for Yukos Money', *OCCRP*, 19 May 2014, available at: <https://www.occrp.org/en/component/content/article?id=2450:armenia-was-an-escape-route-for-yukos-money-ru>, last visited: 10 September 2019.

<sup>36</sup> On this see, Zaslavskiy, I., 'The Yukos Cases: Undermining Western Legal Institutions and Traditions' in 'Misrule of Law: How the Kremlin Uses Western Institutions to Undermine the West', *Free Russia Foundation*, June 2019, available at: <https://www.4freerussia.org/wp-content/uploads/sites/3/2019/06/MisruleOfLaw-Web.pdf>, pp. 27-3, last visited: 10 September 2019.

General's Office. Other emails show Rosneft lawyers drafting rulings in advance for the Armenian court in cases between 2010 and 2011 that related to Rosneft's takeover of Yukos CIS. Emails from May 2011, for example, show Rosneft's Armenian lawyers making substantial track changes and amendments to a draft ruling on a document headed by the official crest of the Armenian court, two weeks before it was handed down. The changes and suggestions were included in the ruling given on 10 June 2011.<sup>37</sup>

Rosneft strongly denied the allegations of judicial misconduct, and described the allegations as "ill-founded contentions" in a statement to the *Financial Times*.<sup>38</sup> It went on to say, "The decisions of the Armenian courts were correct on the merits under Armenian law." In April 2015, Rosneft settled the case with Yukos CIS. Under the settlement, both sides and their subsidiaries ceased all legal proceedings against each other in all jurisdictions.

#### 4.1.2 Kiril Nogotkov and Bill Browder

Bill Browder has long framed himself as Putin's number one enemy.<sup>39</sup> A critic of the Kremlin, Browder has, since the murder of his whistleblowing lawyer Sergei Magnitsky in 2009, championed anti-corruption laws across a range of Western countries. He successfully lobbied the Obama administration to pass the 2012 Magnitsky Act, which denies visas to, and freezes the assets of, Russians who were judged responsible for, or financially benefitted from, Magnitsky's murder. A number of other countries have since followed suit and adopted similar legislation, including Canada, the Baltic states, and the UK. In 2016, the US expanded its law, such that it now applies globally.

It was not always this way. Through Hermitage Capital Management investment fund, which he founded in 1996, Browder was the largest foreign investor in Russia for almost a decade. At the height of its success, Hermitage managed US\$4.5 billion of client investments in Russian companies. His investment strategy was straightforward: he acquired shares in large state-owned or partially state-owned Russian companies, including Gazprom, and then exposed corruption in those companies by shareholder activism, leading to an increase in the value of the shares. The turning point came in 2005, when he was expelled from Russia and declared a threat to the country's national security.

Since his expulsion, Browder has been subject to a sustained campaign by the Russian state. The country's courts have twice tried him in absentia and both times sentenced him to nine years in prison. He has been charged with myriad crimes, including, preposterously, of murdering Magnitsky himself. The UK Home Office has refused repeated mutual legal assistance requests from the Russian authorities in criminal proceedings against Browder, including requests to extradite him. On seven occasions Russia has asked Interpol to arrest Browder, and on seven occasions Interpol has rejected this request.<sup>40</sup> The campaign has also involved non-state actors. In 2013, Pavel Karpov, a retired Russian police officer, unsuccessfully brought libel action against Browder in the High Court.<sup>41</sup>

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<sup>37</sup> Dohmen, J. and Postma, R., 'Rosneft had the verdict delivered on a usb-stick', *NRC*, 26 November 2016, available at: <https://g8fip1kplyr33r3krz5b97d1-wpengine.netdna-ssl.com/wp-content/uploads/2016/11/161124-NRC-Online-EN2.pdf>, last visited: 10 September 2019.

<sup>38</sup> Belton, C. and Stott, M., 'Rosneft lawyers manipulated Yukos rulings, emails suggest', *Financial Times*, 28 November 2016, available at: <https://www.ft.com/content/56650382-b495-11e6-ba85-95d1533d9a62>, last visited: 10 September 2019.

<sup>39</sup> See, most obviously, the title of Browder's book: *Red Notice: How I Became Putin's No.1 Enemy* (London: Penguin Random House, 2015).

<sup>40</sup> The most recent request by Russia to issue a Red Notice through Interpol was in January 2019.

<sup>41</sup> Karpov's case was thrown out by the High Court, with Justice Simon remarking that Russia would have been a "natural forum" for Karpov to have brought his case and that bringing the case in the UK had "a degree of artificiality" to it. See 'Karpov v Browder & Ors [2013] EWHC 3071 (QB) (14 October 2013)', *England and Wales High Court (Queen's Bench Division) Decisions*, available at: <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2013/3071.html>, last visited: 10 September 2019.

As Russia's authorities turned against Browder, the Federal Tax Service played a central role.<sup>42</sup> In 2004, the tax authority decided to undertake a repeat audit of the taxes declared in 2001 by Dalnyaya Step, a subsidiary of Hermitage which had been established in 1998. Following Browder's expulsion from Russia in 2005, Dalnyaya went into liquidation in 2006 and was dissolved in 2007. The sole creditor was the Federal Tax Service. The same year, Magnitsky uncovered the US\$230 million tax fraud carried out with the approval and assistance of the Federal Tax Service and Ministry of Internal Affairs.

Eight years later, in 2015, the Federal Tax Service applied to have Dalnyaya's insolvency case reopened. The tax authority claimed that Dalnyaya had been asset-stripped before the original insolvency filing: between 2004 and 2005, more than €24 million was allegedly funnelled from the company's accounts to other entities in the Hermitage group, leaving an outstanding tax bill exceeding €16 million. The tax authority's argument was accepted by the Russian court and Dalnyaya Step LLC was reinstated in the companies' register. Kiril Nogotkov, a Russian national, was appointed as the company's liquidator.

Nogotkov swiftly applied for a Recognition Order under the Cross-Border Insolvency Regulations 2006. This would mean that the insolvency proceedings against Dalnyaya in Russia would be recognised in the UK. On 8 July 2016, Nogotkov's application was granted. What Nogotkov wanted, under section 236 of the Insolvency Act 1986, was for Hermitage to provide documents and information relating to the tax affairs of Dalnyaya.

The following month, Browder applied to the High Court to set aside the Recognition Order. He claimed that Nogotkov had failed to make a full and frank disclosure of the criminal proceedings commenced by the Russian authorities against Dalnyaya. In September 2017, Nogotkov applied to terminate the Recognition Order because a separate judgement had gone in his favour and he felt further proceedings were unnecessary – a court in Russia had judged that HSBC (where Dalnyaya's accounts were held) had been responsible for causing Dalnyaya's insolvency because it had allowed money to be transferred out of Dalnyaya's accounts, in breach of Russian banking regulations. HSBC appealed the judgement.

Browder, for his part, argued that it would be in the public interest for the Court to decide whether Nogotkov had breached his duty of full and frank disclosure. He also argued that Nogotkov sought Hermitage's tax documents relating to Dalnyaya not for the purposes of liquidating the company but instead for the purposes of sharing them with Russian authorities and assisting with the Kremlin's broader campaign against him.

In its judgment in late 2017, the High Court found that Nogotkov had not given a full and frank disclosure, that Nogotkov was aware of the UK government's negative responses to the previous legal assistance requests from Russia in relation to Hermitage's tax liabilities, and, that Nogotkov was a likely participant in a politically motivated campaign against Browder. The Court concluded that the Recognition Order was simply another attempt by the Russian authorities to obtain legal assistance from the UK in criminal proceedings against Browder.

#### **4.1.3 Russia, Georgia, and the European Court of Human Rights**

On the night of 7 August 2008, Russia sent its armed forces to South Ossetia, a separatist region within Georgia. It was the first time since the collapse of the Soviet Union that Russia had invaded a foreign country. Over the following week, Russia routed Georgian forces, pushing them back towards Tbilisi, Georgia's capital. Along the way, Russian troops destroyed infrastructure, blocked key roads, and bombed towns. It also expanded the war into Abkhazia, another separatist region. While the world's attention was focused on the Summer Olympics

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<sup>42</sup> Much of the information contained within this section is taken from 'Cherkasov & Ors v Olegovich, the Official Receiver of Danyaya Step LLC [2017] EWHC 3153 (Ch) (05 December 2017)', *England and Wales High Court (Chancery Division) Decisions*, available at: <https://www.bailii.org/ew/cases/EWHC/Ch/2017/3153.html>, last visited: 10 September 2019.

in Beijing, Russia occupied Abkhazia and South Ossetia – which together account for one-fifth of Georgia’s territory – and then recognised them as independent states. Russia’s occupation continues to this day.

Days after the war began, on 11 August, Georgia lodged an inter-state application to the European Court of Human Rights (ECtHR) under the European Convention.<sup>43</sup> The following day, the ECtHR adopted an interim measure inviting both Georgia and Russia to respect their obligations under the Convention. The decision is still in force.<sup>44</sup> A little over three years later, on 22 September 2011, the ECtHR finally held a hearing in response to Georgia’s application. Later the same year, on 13 December, Georgia’s application was declared admissible by the Chamber to which the case had been allocated, and on 3 April 2012 the Chamber relinquished jurisdiction to the Grand Chamber. In June 2016, a hearing was held in which 33 witnesses – 16 summoned by Georgia, 12 by Russia, and six directly by the court – gave evidence. Their evidence, like the documentary and other evidence submitted, is not available to the public.

Almost a decade after the war had begun, on 23 May 2018, a public hearing was held in the Grand Chamber. The nature of Georgia’s application meant that the case was not *jus ad bellum* about how the war began, but *jus in bello* about how the war was fought. During the hearing, Ben Emmerson QC, representing Georgia, argued that the evidence presented to the Court established, in his view, that Russia had failed to distinguish between civilian and military targets during the war, at the least, and deliberately targeted civilians during the war, at the most. Emmerson cited the murder of Dutch journalist Stan Storimans during Russia’s attack on Gori as an example of this.

On 12 August 2008, Gori town centre was subject to an Iskander SS-26 rocket attack, releasing cluster munitions. The attack killed Storimans and 11 other civilians. Pockmarks, characteristic of cluster munitions, were found in the town square. During a post-mortem carried out on Storiman’s body after it had been repatriated to the Netherlands, parts of an Iskander missile were removed from his flesh. Witness testimonies all corroborated that the attack had taken place, and photographic and video evidence corroborated that the missile was an Iskander, a piece of weaponry possessed at the time only by Russia.

Michael Swainston QC, representing Russia, did not offer any justification for the missile attack. Nor did he attempt to identify any legitimate military targets in the vicinity that might explain why an Iskander missile was fired at Gori. Instead, Swainston claimed that “propaganda” was “being put forward as proof” in the Court,<sup>45</sup> that the US State Department had staged the pockmarks in Gori town square, and, that the chain of custody of Storiman’s body had been falsified in order that it could be interfered with prior to the Dutch post-mortem. Swainston argued both that no attack had taken place and, if an attack had taken place, that Georgia had carried it out in order to frame Russia.

Summing up Russia’s argument, Emmerson said:

Here was the Russian Federation, a member state of the Council of Europe, seriously trying to persuade the Grand Chamber that the missile-engine that had been photographed in situ in another member state of the Council of Europe was a plywood fake, a piece of

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<sup>43</sup> Georgia’s application raised issues under Article 2 (right to life); Article 3 (prohibition against torture, inhuman and degrading treatment); Article 5 (right to liberty and security); Article 8 (right to respect for family life); and Article 13 (right to an effective remedy). Georgia’s application also raised issues under Protocol No. 1 to the Convention (concerning the right to property and an education) and Protocol No. 4 (freedom of movement).

<sup>44</sup> ‘Press Release: Grand Chamber hearing in case brought by Georgia against Russia over 2008 conflict’, *European Court of Human Rights*, ECHR 183 (2018), 23 May 2018, available at: <http://hudoc.echr.coe.int/eng-press?i=003-6091112-7849853>, last visited: 11 September 2019.

<sup>45</sup> The official video of the hearing is available on the ECtHR website. The video lasts for 3 hours, 1 minute and 44 seconds. Swainston makes this comment at 1 hour, 20 minutes and 57 seconds: [https://www.echr.coe.int/Pages/home.aspx?p=hearings&w=3826308\\_23052018&language=lang&c=&py=2018](https://www.echr.coe.int/Pages/home.aspx?p=hearings&w=3826308_23052018&language=lang&c=&py=2018), last visited: 11 September 2019.



anti-Russian propaganda, and that the hole it had made in the roof of a nearby property was all part of some fake crime scene rapidly put together to blame Russia.<sup>46</sup>

He went on to say that the “Russian Federation deliberately set out to mislead this court”. Referring to Swainston’s claims that the evidence was “fake”, he said, “This, then, was the quality of the Russian response ... They can’t even be bothered to make up” believable lies.<sup>47</sup>

A final verdict in the case is expected later in 2020. It will have implications far beyond Georgia, for Russia has threatened to repudiate the European Convention on Human Rights and to withdraw from the ECtHR because many of the Court’s decisions run counter to Russia’s interests.<sup>48</sup>

Russia’s voting rights within the Council of Europe were suspended in 2014 following the annexation of Crimea, in response to which Russia ceased its payments to the Council three years later. As one of the five largest contributors – at €33 million per year – this created a considerable budgetary challenge. In June 2019, amid discussions over proposed budgetary cutbacks, Russia’s voting rights were restored.

## **4.2 Abuse of European Judicial Systems by Individuals Acting in the Interests of the Russian State or Russian State Entities**

### **4.2.1 Eleni Loizidou and Cyprus**

In November 2017, the private emails of Eleni Loizidou, Cyprus’ Deputy Attorney General, were published by the Greek Cypriot newspaper *Politis*. The emails appear to show Loizidou offering clandestine advice and assistance to Russia. Loizidou claims that her job was to liaise with foreign counterparts over information relating to extradition cases, but her relationships with members of the Russian judiciary appear to be far closer than her relationships with other foreign representatives.<sup>49</sup>

In a 2013 email exchange with Vladimir Zimin, the Deputy Head of the Department of International Legal Cooperation in the Russian Prosecutor General’s Office, Loizidou thanked him for “excellent hospitality” during a stay in Moscow, privately advised him on a number of asylum cases, and joked, “I hope you will employ me when I am sacked for giving you all this information.”<sup>50</sup> Other emails appear to show that Loizidou directly intervened on behalf of Russia in several cases, even when individuals had applied for asylum in Cyprus.

A case in point is that of Natalia Konovalova, a former lawyer for a subsidiary of Yukos.<sup>51</sup> After Yukos’ collapse, Konovalova left Russia and settled in Cyprus in 2007. Three years later, in December 2010, she was arrested after Russia issued a warrant requesting her extradition. She subsequently applied for political asylum in Cyprus in May 2011. Later that year, Russia’s extradition request was rejected by the Limassol District Court, on the basis that her persecution was politically motivated. But Loizidou’s office appealed the decision. While the appeal was pending, Konovalova also applied for political asylum in Germany.

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<sup>46</sup> Ibid. Emmerson begins his reply at 2 hours, 21 minutes and 52 seconds.

<sup>47</sup> Ibid.

<sup>48</sup> Golubkova, K., ‘Russia may end cooperation with European Court of Human Rights – RIA’, *Reuters*, 1 March 2018, available at: <https://uk.reuters.com/article/uk-russia-court-echr-withdrawal/russia-may-end-cooperation-with-european-court-of-human-rights-ria-idUKKCN1GD48H>, last visited: 11 September 2019.

<sup>49</sup> Kirchgaessner, S., ‘Senior Cyprus prosecutor allegedly offered private advice to Russians’, *The Guardian*, 29 November 2017, available at: <https://www.theguardian.com/world/2017/nov/29/cyprus-prosecutor-allegedly-offered-advice-russia-officials-eleni-loizidou>, last visited: 10 September 2019.

<sup>50</sup> Emails from Eleni Loizidou, available at: <http://pdf.kathimerini.com.cy/issues/Loizidiou-Mails.pdf>, last visited: 10 September 2019.

<sup>51</sup> ‘KISA condemns the illegal extradition/refoulement of asylum seeker to Russia’, *KISA*, 21 October 2015, available at: <https://kisa.org.cy/kisa-condemns-the-illegal-extradition-refoulement-of-asylum-seeker-to-russia/>, last visited: 10 September 2019.

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In an email to the Russian Prosecutor General's Office on 30 April 2012, Loizidou expressed concern that she might not be able to extradite Konovalova to Moscow under these circumstances.<sup>52</sup> She wrote:

I have been informed by colleagues at the Ministry of Interior that there is a possibility of transferring Konovalova's application for political asylum to be examined by Germany ...

I have expressed the concern that if Germany grants her political asylum, then we would NOT [original emphasis] be able to extradite her to you, even if we win the appeal.

What is the situation with Germany and russian [sic] applicants for asylum? Is it possible that this is another game by her lawyers to make sure that she will not be extradited to the Russian Federation?<sup>53</sup>

Loizidou later emailed the Russian Embassy in Nicosia with a number of legal arguments which suggested that Konovalova's application for asylum in Germany would not affect her extradition from Cyprus. While this was happening, Konovalova was tried and found guilty in absentia in 2013 by a Russian court on a number of charges, including embezzlement, and sentenced to five years in jail. In September 2015, Cyprus' Supreme Court ruled that Konovalova should be extradited to Russia - despite the fact that her applications for asylum in Cyprus and Germany had not yet been decided.

In an email sent on 30 September 2015 to Zimin, Loizidou referenced the Konovalova case in a piece of correspondence in which she appeared to request Russia's support for her candidacy to the European Court of Human Rights (ECtHR), which was ultimately unsuccessful. She wrote:

I will probably be put in the new shortlist of three candidates for the post of Cypriot judge of ECtHR. Hope Russia will be voting at the Parliamentary Assembly at the elections in January. Even though, after this victory with Konovalova, the NGO's will make sure nobody votes for me. But I am very happy for winning the case for you, anyway.<sup>54</sup>

Konovalova was extradited to Russia on 15 November 2015. Following this, Loizidou sent an email to Victoria Klevtsova, in the Russian Prosecutor General's Office, saying:

You were the one who motivated me to fight for your cases and provided me with all the evidence we used in court. A super, dedicated and loyal public prosecutor and my best friend.<sup>55</sup>

Another case involves Nikita Kulachenkov, a Russian dissident and member of Alexey Navalny's Anti-Corruption Foundation. Facing trial in Russia over the theft of a street-art drawing valued by its creator at only US\$1.55 (and which, according to its creator, had not been stolen), Kulachenkov fled Russia for Lithuania in 2014.<sup>56</sup> Two years later, he was detained in Cyprus on a Russian arrest warrant issued through Interpol. The warrant had not been endorsed by Interpol. Loizidou's emails appear to show that she immediately notified Russia's authorities of Kulachenkov's detention and assured them he would be extradited once Cyprus received the necessary paperwork.<sup>57</sup> After international outcry over his arrest, Kulachenkov was released by the Cypriot authorities.

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<sup>52</sup> 'KISA condemns the illegal extradition/refoulement of asylum seeker to Russia', *KISA*, 21 October 2015.

<sup>53</sup> Paroutis, S. and Theodorou, M., 'ΕΤΣΙ παρέδωσε την Κονοβάλοβα! (That's how she handled Konovalova!)', *Politis*, 7 December 2017, available at: <https://politis.com.cy/politis-news/kypros/etsi-paredose-tin-konovalova/>, last visited: 10 September 2019.

<sup>54</sup> Emails from Eleni Loizidou, available at: <http://pdf.kathimerini.com.cy/issues/Loizidiou-Mails.pdf>, last visited: 10 September 2019.

<sup>55</sup> Paroutis, S. and Theodorou, M., 'ΕΤΣΙ παρέδωσε την Κονοβάλοβα! (That's how she handled Konovalova!)', *Politis*, 7 December 2017.

<sup>56</sup> Higgins, A., 'How Moscow Uses Interpol to Pursue Its Enemies', *The New York Times*, 6 November 2016, available at: <https://www.nytimes.com/2016/11/07/world/europe/how-moscow-uses-interpol-to-pursue-its-enemies.html>, last visited: 10 September 2019.

<sup>57</sup> Eristavi, M., 'Russia Isn't Just Interfering in Elections Around the World. It's Doing Something Far Worse', *Atlantic Council*, 2 May 2018, available at: <https://www.atlanticcouncil.org/blogs/ukrainealert/russia-isn-t-just-interfering-in-elections-around-the-world-it-s-doing-something-far-worse>, last visited: 10 September 2019.

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In response to the leak of Loizidou's emails, in November 2017 Cyprus' Attorney General Costas Clerides announced an investigation into her contact with Russian officials and transferred Loizidou from the law office's extraditions department into a separate department.<sup>58</sup> He also called for a police investigation into the apparent theft and disclosure of her emails. Three disciplinary charges were subsequently brought against Loizidou before the Public Service Commission.<sup>59</sup> The Commission's decisions are not made public.

#### 4.2.2 Dmitry Rybolovlev and Yves Bouvier

In February 2015, the Swiss art dealer and businessman Yves Bouvier was put under investigation in Monaco on charges of fraud and money laundering following allegations made by the Monaco-based Russian oligarch Dmitry Rybolovlev. Rybolovlev, who – according to Forbes – is worth almost US\$6.8 billion,<sup>60</sup> accused Bouvier of overcharging him up to US\$1 billion on a series of art deals worth more than US\$2 billion that Bouvier was said to have brokered for the Russian over the previous decade.

Rybolovlev made his fortune in the chaotic capitalism that followed the collapse of the Soviet Union, creating Uralkali, a fertiliser producer.<sup>61</sup> However, following a scandal about the environmental damage caused by Uralkali – during which Rybolovlev was publically supported by his close friend Yuri Trutnev, the then Minister of Natural Resources and the Environment<sup>62</sup> – Rybolovlev sold his stake in the company to Suleyman Kerimov, a Kremlin-connected oligarch, in June 2010, and relocated from Russia to Monaco.

The highest profile of the deals that Rybolovlev cited as an example of Bouvier's overcharging (and the case on which Rybolovlev's allegations were based) was Rybolovlev's purchase of Leonardo da Vinci's *Salvator Mundi* for US\$128 million in 2013. Because Rybolovlev's purchase was made through Sotheby's in New York, US investigators initiated a fraud probe into Bouvier. However, the probe was terminated a year or so later following the sale by Rybolovlev of the same *Salvator Mundi* for US\$450.3 million in 2017. At the time of writing, it remains the most expensive piece of art in history.

The US investigators' decision marked a U-turn in the Bouvier–Rybolovlev dispute, as Rybolovlev was soon under investigation himself. Those investigations focused upon allegations of influence peddling and corrupting government officials in Monaco. The allegations – which Rybolovlev denies – centre on whether Rybolovlev had bribed Monaco authorities, including Philippe Narmino its Justice Minister, in order to ensure the arrest, in 2015, of Bouvier and Tania Rappo, one of Bouvier's business partners. In late 2018, Rybolovlev was placed under formal investigation alongside eight other people, including Narmino.<sup>63</sup> At the time of writing, the investigation is ongoing.

Rybolovlev's change of fortune centres on a mobile phone belonging to Tetiana Bersheda, his lawyer. Following Bouvier and Rappo's arrest in 2015, Rappo alleged that Bersheda had

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<sup>58</sup> 'Κληρίδης: Μη μου την Ελένη τάρρατε (Clerides: Don't mess with me Eleni)', *Politis*, 28 November 2017, available at: <https://politis.com.cy/politis-news/kypros/kliridis-mi-moy-tin-eleni-taratte/>, last visited: 10 September 2019.

<sup>59</sup> Andreou, E., 'Supreme Court reserves judgment in Eleni Loizidou emails case', *Cyprus Mail*, 25 February 2019, available at: <https://cyprus-mail.com/2019/02/25/supreme-court-reserves-judgment-in-eleni-loizidou-emails-case/>, last visited: 10 September 2019.

<sup>60</sup> '#224 Dmitry Rybolovlev', *Forbes*, 1 August 2019, available at: <https://www.forbes.com/profile/dmitry-rybolovlev/#6cf5ad73bec4>, last visited: 10 September 2019.

<sup>61</sup> Specifically, he made his money from potash mines in Berezniki and Solikamsk, two towns on the edge of Siberia. As the journalist Oliver Bullough notes, Rybolovlev's negligence of proper safety procedures at his mines led to large swaths of Berezniki literally falling into the earth as huge sinkholes that formed above the mines opened up. See, Bullough, O., *Moneyland: Why Thieves & Crooks Now Rule the World & How to Take It Back* (London: Profile Books, 2018), pp. 219–220.

<sup>62</sup> Levy, C. J., 'In Hard Times, Russia Tries to Reclaim Industries', *The New York Times*, 7 December 2018, available at: <https://www.nytimes.com/2008/12/08/world/europe/08kremlin.html?>, last visited: 10 September 2019.

<sup>63</sup> O'Murchu, C. and Foy, H., 'Russian oligarch at heart of art feud ensnared in Monaco scandal', *Financial Times*, 10 November 2018, available at: <https://www.ft.com/content/58ff1fe6-e42d-11e8-8e70-5e22a430c1ad>, last visited: 10 September 2019.

breached her privacy by recording a phone conversation – in which she spoke about Bouvier – and had then handed it over to the police. As part of the case, Bersheda provided investigators with her mobile phone in order to prove that the recording had not been edited. However, in their trawl of the phone, police found messages between her and Narmino.

According to *Le Monde*, the messages appear to show that Rybolovlev hosted Narmino at his chalet days before Bouvier's arrest, and presented Narmino with an elaborate samovar, a traditional Russian standing tea-brewing cauldron.<sup>64</sup> In addition, the messages appear to show that Bersheda warned the Monegasque police of Bouvier's arrival in the principality in February 2015, when he was initially arrested. *Le Monde* dubbed this situation "Monacogate" and described the messages as being evidence of "a vast influence-peddling scandal at the heart of Monaco institutions". A few hours after *Le Monde* broke the story, in September 2017, Narmino resigned from his position, taking early retirement.<sup>65</sup>

In December 2019, Monaco's Court of Appeal dismissed the criminal proceedings against Bouvier that had been launched by Rybolovlev in early 2015.<sup>66</sup> The Court found that "all investigations were conducted in a biased and unfair way". Rybolovlev has challenged the decision and appealed to the Court of Revision.

Although Rybolovlev appeared to make a clean break with Russia in 2010, he was included on the US Treasury Department's much-maligned "list of senior foreign political figures and oligarchs in the Russian Federation, as determined by their closeness to the Russian regime and their net worth" associated with the 2017 Countering America's Adversaries Through Sanctions Act (CAATSA).<sup>67</sup> In addition, Rybolovlev was a person of interest in Special Counsel Robert Mueller's investigation into the Kremlin's attempts to influence the 2016 US presidential election.<sup>68</sup> According to *Der Spiegel*, one Russia expert from a European intelligence agency assesses that "Rybolovlev is Trutnev's largest bridge to the West".<sup>69</sup>

Bouvier claims that Rybolovlev's allegations against him are not about art, but are instead about free ports. Following Russia's annexation of Crimea and the imposition of EU and US sanctions, in the summer of 2014 Putin announced a "pivot to Asia". As part of this, he announced, in December 2014, that a free port would be created in Vladivostok; the aim of it was to target business from Asian countries as part of a concerted effort to look eastward for trade and investment. The initiative was overseen by Trutnev, who by then had assumed the positions of Deputy Prime Minister and Presidential Envoy to the Far Eastern Federal District.

Shortly after Putin's announcement, Rybolovlev launched his legal attacks on Bouvier. After Rybolovlev's legal attacks on Bouvier stalled, in May 2016 Trutnev approached Bouvier – who

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<sup>64</sup> Davet, G. and Lhomme, F., 'Le milliardaire russe Dmitri Rybolovlev au centre d'un "Monacogate"', *Le Monde*, 14 September 2017, available at: [https://www.lemonde.fr/police-justice/article/2017/09/14/le-milliardaire-russe-dmitri-rybolovlev-au-centre-d-un-monacogate\\_5185432\\_1653578.html](https://www.lemonde.fr/police-justice/article/2017/09/14/le-milliardaire-russe-dmitri-rybolovlev-au-centre-d-un-monacogate_5185432_1653578.html), last visited: 10 September 2019.

<sup>65</sup> Davet and Lhomme, 'Le milliardaire russe Dmitri Rybolovlev au centre d'un "Monacogate"', *Le Monde*, 14 September 2017. See also Balay, S., 'Justice Minister of Monaco Resigns over Murky Relationship with Russian Oligarch', OCCRP, 16 September 2017, available at: <https://www.occrp.org/en/component/content/article?id=6994:justice-minister-of-monaco-resigns-over-murky-relationship-with-russian-oligarch>, last visited: 10 September 2019.

<sup>66</sup> 'Major Development in the Rybolovlev Affair: Case Against Yves Bouvier in Monaco Dismissed After Investigation Found to be Systematically Biased', *PR News Wire*, 13 December 2019, available at: <https://www.prnewswire.com/news-releases/major-development-in-the-rybolovlev-affair-case-against-yves-bouvier-in-monaco-dismissed-after-investigation-found-to-be-systematically-biased-300974735.html>, last visited: 16 December 2019.

<sup>67</sup> 'Report to Congress Pursuant to Section 241 of the Countering America's Adversaries Through Sanctions Act of 2017 Regarding Senior Foreign Political Figures and Oligarchs in the Russian Federation of Russian Parastatal Entities', 29 January 2018, available at: <http://prod-upp-image-read.ft.com/40911a30-057c-11e8-9650-9c0ad2d7c5b5>, last visited: 7 October 2019.

<sup>68</sup> On Rybolovlev's continued connections with Russia, see Zaslavskiy, I., 'Monaco's Minister of Justice implicated by Kremlin's oligarch', *Free Russia Foundation*, 11 June 2019, available at: <https://www.4freerussia.org/monacos-minister-of-justice-implicated-by-kremlins-oligarch/>, last visited: 10 September 2019.

<sup>69</sup> 'A Russian Billionaire's Monaco Fiefdom', *Der Spiegel*, 18 November 2018, available at: <https://www.spiegel.de/international/world/as-monaco-dmitry-rybolovlev-and-his-influence-in-monaco-a-1238822.html>, last visited: 10 September 2019.



is known as ‘The Freeport King’ on account of the free ports he established in Luxembourg, Singapore, and Switzerland – directly and asked him to build the free port in Vladivostok. In Bouvier’s eyes, Rybolovlev’s allegations against him represent an attempt by Rybolovlev to take over his free port in Singapore (and its technology) in order to build a free port in Vladivostok.

#### 4.2.3 Suleiman Kerimov and Ashot Yegiazaryan

Ashot Yegiazaryan, a Russian businessman and former member of the State Duma, fled Russia for the United States in 2010. After he did, Yegiazaryan claimed that the Kremlin-connected billionaire oligarch Suleiman Kerimov conspired with the Moscow city government to forcibly take over his 25% stake in the multi-billion dollar redevelopment of the Moskva Hotel, one of the biggest construction projects in Russia’s capital during the post-Soviet period.<sup>70</sup>

Yegiazaryan appears to have fallen out of favour with the Kremlin around 2005, having spent much of the 1990s and early 2000s operating within its orbit. He founded Moscow National Bank in 1994, and later worked for Uneximbank, which was established by the billionaire oligarchs Vladimir Potanin and Mikhail Prokhorov. In the late 1990s, Yegiazaryan moved from banking into politics, spending the last part of the decade working for Deputy Prime Minister Yuri Maslyukov.<sup>71</sup> In the December 1999 parliamentary elections, Yegiazaryan was elected to the State Duma as a representative of the Liberal Democratic Party of Russia (LDPR).<sup>72</sup> He held this position until late 2010, when he fled Russia.

After fleeing Russia, Yegiazaryan filed a suit in Cyprus and two suits in the London Court of International Arbitration (LCIA)<sup>73</sup> alleging that he faced the threat of criminal prosecution if he did not sign over the rights to his US\$253 million investments in the Moskva Hotel project. A Cypriot court initially froze most of Kerimov’s assets, but this was lifted in early 2011.<sup>74</sup> Within weeks of filing the claims in Cyprus and the UK, Yegiazaryan was stripped of his political immunity at the request of Alexander Bastrykin, head of the Investigative Committee of the Russian Federation. Thereafter, Yegiazaryan claims that he was subjected to a series of actions characteristic of *reiderstvo*.<sup>75</sup>

Most notably, Russian prosecutors instigated criminal action against him in a separate case alleging financial fraud. This case was based on a complaint submitted by Victor Smagin, a businessman who, Åslund writes, has been characterised as “government fixer” in parts of the Russian media.<sup>76</sup> Smagin alleged that Yegiazaryan misappropriated Smagin’s stake in a shopping centre development. That stake, Smagin argued, was used by Yegiazaryan to purchase his own stake in the re-development of the Moskva Hotel. According to Åslund, the

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<sup>70</sup> Egiazaryan & Anor v OJSC OEK Finance & Anor [2015] EWHC 3532 (Comm) (04 December 2015), *England and Wales High Court of Justice (Queen’s Bench Division) Commercial Court*, 4 December 2015, available at: <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Comm/2015/3532.html>, last visited: 25 October 2019.

<sup>71</sup> It appears to be during his time working for Maslyukov that Yegiazaryan made himself most useful to the Kremlin. In March 1999, with President Boris Yeltsin facing calls to resign amid an investigation into corruption being led by Prosecutor General Yuri Skuratov, a state-owned television channel broadcast a video entitled ‘Three in a Bed’. The grainy footage showed a man resembling Skuratov in bed with two unidentified women. The tape’s authenticity was confirmed by the head of the FSB, Vladimir Putin, and this provided a pretext for Yeltsin to sack Skuratov, effectively ending Skuratov’s career – and the corruption investigation. The tape had been recorded, according to *The New York Times*, at Yegiazaryan’s brother’s apartment. There were even suggestions within the Russian media that Yegiazaryan had paid for the prostitutes himself. See, Gordon, M.R., ‘Russian Far-Right Party Is Barred From Parliamentary Election’, *The New York Times*, 12 October 1999, available at: <https://archive.nytimes.com/www.nytimes.com/library/world/europe/101299russia-politics.html>, last visited: 25 October 2019; and, ‘Yeltsin Removes Skuratov Again’, *Jamestown Foundation*, 5 April 1999, available at: <https://jamestown.org/program/yeltsin-removes-skuratov-again/>, last visited: 25 October 2019.

<sup>72</sup> Led by the controversial figure Vladimir Zhirinovskiy, LDPR is neither liberal nor democratic but neo-nationalist and anti-Western.

<sup>73</sup> ‘Egiazaryan & Anor v OJSC OEK Finance & Anor [2015] EWHC 3532 (Comm) (04 December 2015)’.

<sup>74</sup> Belton, C., ‘Suleiman Kerimov, the secret oligarch’, *Financial Times*, 12 February 2012, available at: <https://www.ft.com/content/ad4e8816-52d0-11e1-ae2c-00144feabdc0>, last visited: 25 October 2019.

<sup>75</sup> ‘Egiazaryan & Anor v OJSC OEK Finance & Anor [2015] EWHC 3532 (Comm) (04 December 2015)’.

<sup>76</sup> Åslund, A., *Russia’s Interference in the US Judiciary*, p. 24.

law enforcement officials who investigated Smagin's allegations included five individuals who have since been sanctioned by the United States because of their roles in the Magnitsky affair.<sup>77</sup> Yegiazaryan was subsequently charged in absentia and put on an Interpol list.

In addition to initiating criminal proceedings in Russia, Smagin filed a claim against Yegiazaryan in the LCIA, seeking damages for Yegiazaryan's alleged misappropriation of Smagin's stake in the shopping centre. Smagin's case hinged on an arbitration agreement from 2008 between the two men which, Smagin argued, had been signed by Yegiazaryan. Yegiazaryan denied that he had signed the agreement, and this was corroborated by a handwriting expert who concluded that Yegiazaryan's signature on the agreement was forged. Despite this, the LCIA found in Smagin's favour, and this decision was upheld following Yegiazaryan's appeal. Yegiazaryan was told to pay Smagin in excess of US\$72 million.<sup>78</sup>

In both the initial LCIA case and Yegiazaryan's appeal, there appears to have been no deliberation of the extent to which Smagin's actions may have been facilitated by the politicised nature of the Russian judicial system. Nor does there appear to have been any deliberation of the possibility that Smagin's actions may have been part of a conspiracy, involving various arms of the Russian state, designed to benefit Kerimov. It has long been speculated that the business interests of Kerimov, who was designated by the US Treasury Department in April 2018<sup>79</sup>, are a 'front' for the Kremlin's own investments.<sup>80</sup> Kerimov denies this speculation.

In addition, the fact that Smagin's initial complaint was being investigated by officials sanctioned under the US Magnitsky Act does not appear to have influenced the decision-making process of the courts. In his ruling on the LCIA case, Mr Justice Teare simply noted that, "some [of the Russian criminal investigators] ... were alleged themselves to have been complicit in a criminal fraud and in the death of the Russian lawyer Sergei Magnitsky who uncovered that fraud".<sup>81</sup> In Yegiazaryan's appeal against Mr Justice Teare's decision, Magnitsky's name does not appear in the judgement from the Court of Appeal.<sup>82</sup>

In the two cases that Yegiazaryan filed himself at the LCIA, the results were mixed. In the first, in which Yegiazaryan claimed Kerimov had conspired to steal Yegiazaryan's 25% stake in the Moskva Hotel, press reports suggest that Kerimov was ordered to pay Yegiazaryan US\$250 million.<sup>83</sup> However, it appears that the award has not been made public. In the second, in which Yegiazaryan claimed that the Moscow city government had conspired with Kerimov, the LCIA said it lacked jurisdiction to hear the claims.<sup>84</sup>

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<sup>77</sup> These officials are: Aleksey Drozanov, Viktor Grin, Andrei Krechetov, Oleg Lugunov, and Andrei Strizhov. See, Åslund, A., *Russia's Interference in the US Judiciary*, p. 24. See also, 'Magnitsky Sanctions Listings: Specially Designated Nationals List Update', *U.S. Department of Treasury Office of Foreign Assets Control*, 12 April 2013, available at: <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130412.aspx>, last visited: 25 October 2019; and 'Magnitsky-related Designations: Specially Designated Nationals List Update', *U.S. Department of Treasury Office of Foreign Assets Control*, 29 December 2014, available at: <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20141229.aspx>, last visited: 25 October 2019.

<sup>78</sup> 'Yegiazaryan v Smagin [2016] EWCA Civ 1290', *Blackstone Chambers*, 19 December 2016, available at: <https://www.blackstonechambers.com/news/yegiazaryan-v-smagin/>, last visited: 25 October 2019.

<sup>79</sup> 'Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity', *US Treasury Department*, 6 April 2018, available at: <https://home.treasury.gov/news/press-releases/sm0338>, last visited: 25 October 2019.

<sup>80</sup> Belton, C., 'Suleiman Kerimov, the secret oligarch', *Financial Times*.

<sup>81</sup> 'A v B [2015] EWHC 1944 (Comm) (09 July 2015)', *England and Wales High Court of Justice (Queen's Bench Decision) Commercial Court*, 9 July 2015, available at: <https://www.bailii.org/ew/cases/EWHC/Comm/2015/1944.html>, last visited: 25 October 2019.

<sup>82</sup> 'Yegiazaryan v Vitaly Ivonovich Smagin [2016] EWCA Civ 1290 (19 December 2016)', *England and Wales Court of Appeal (Civil Division) on Appeal from the High Court of Justice (Queen's Bench Decision) Commercial Court*, 19 December 2016, available at: <https://www.bailii.org/cgi-bin/format.cgi?doc=ew/cases/EWCA/Civ/2016/1290.html>, last visited: 25 October 2019.

<sup>83</sup> 'Cyprus Court Freezes Russian Billionaire Kerimov's Assets', *The Moscow Times*, 14 April 2015, available at: <https://www.themoscowtimes.com/2015/04/14/cyprus-court-freezes-russian-billionaire-kerimovs-assets-a45746>, last visited: 25 October 2019.

<sup>84</sup> 'Egiazaryan & Anor v OJSC OEK Finance & Anor [2015] EWHC 3532 (Comm) (04 December 2015)'.

## 5. Conclusion and Recommendations

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This report has sought to demonstrate how Vladimir Putin's regime and individuals close to it undermine the rule of law in European nation states and multilateral treaty organisations and, in doing so, have, on occasions, turned these judiciaries into tools of Russian foreign policy. The existence of high-level lawlessness in Russia has allowed the regime and its cronies to take advantage of court systems of European states in order to advance their interests. This report has not sought to litigate or re-litigate particular legal cases, but instead to highlight the ways through which the Russian state and individuals close to it undermine European judicial systems.

When Russia was invited in the 1990s to join many of the institutions that together comprise the international legal system, the hope was that these organisations would facilitate Russia's transition to democracy. But rather than progressing to democracy, Russia has become what a number of observers call a "mafia state".<sup>85</sup> While this term is insufficient to capture the complexities of shifting power relations and loyalties in and around the Kremlin, it nevertheless hints at a central truth: Putin and his cronies are, in essence, an organised criminal cabal. They have established an authoritarian kleptocracy and, in doing so, have available to them all the institutions that the international legal order has traditionally made available to states.

The Kremlin does not use these institutions to uphold the rule of law but instead to pursue its critics and opponents. As a result, Russia's behaviour undermines these institutions from within. But not only that. While the Kremlin has taken advantage of the international judicial system abroad, it has attempted to protect itself from it at home. In 2015, for example, Putin signed a law allowing Russia's Constitutional Court to disregard international human rights court rulings if Russia believes they violate its Constitution. The law followed the ECtHR's judgement in 2014 that the Kremlin should pay out US\$1.9 billion to Yukos shareholders.

Although this report has focused on European judiciaries, the UK judicial system has a particular importance for the Kremlin and its cronies. The UK has become a frontline in Putin's domestic campaign against critics and opposition figures, and in his foreign campaign to change how Russia is viewed in the West.

It was to the UK that a number of the Kremlin's high-profile critics and opponents fled in the early 2000s, and accordingly it was in the UK that a number of Russian extradition requests were dealt with during Putin's early years in power. Judge Timothy Workman, sitting in Bow Street Magistrates' Court, was quick to recognise that these were politically motivated and threw them out. Many such critics and opponents were subsequently given political asylum. It was also in the UK that the oligarchs Boris Berezovsky, a fierce critic of the Kremlin, and Roman Abramovich squared off in 2012 in a US\$6.5 billion lawsuit, which centred on the privatisation process of the 1990s and the nature of how Putin built his system in the early 2000s. (Berezovsky lost.)

While the UK did recognise the political nature of the Russian judicial system in the early 2000s – and was one of the first countries to do so – there is more that can, and should, be done. This includes:

- **Launching a parliamentary inquiry into Russia and the international legal system.** • UK Parliament should launch an inquiry into Russia's abuse of the international legal system as part of Russia's broader efforts to undermine the rules-based international

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<sup>85</sup> American Embassy Madrid to U.S. Secretary of State, 'Spain Details Its Strategy to Combat the Russian Mafia', *Wikileaks*, 8 February 2010, available at: [https://wikileaks.org/plusd/cables/10MADRID154\\_a.html](https://wikileaks.org/plusd/cables/10MADRID154_a.html), last visited: 11 September 2019.

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order. Upholding this legal system, as well as the order itself, is clearly in the UK's national interests, and any threats to it and to its credibility need to be recognised. Given that the Foreign Affairs Select Committee has recently held inquiries into autocracies and the international rules-based system, it may be best positioned to hold this inquiry too.

- **Issuing political guidance on the validity of Russia's justice system.** The UK government should issue clear guidance to the judiciary on the validity of Russia's justice system. This guidance should be based on both open- and closed-source information and intelligence, collected from both the UK and its allies. In doing so, the National Crime Agency, the UK's National Central Bureau, should be required by statute to subject claims from Russia to a heightened level of scrutiny because of its consistent and demonstrable track record of abusing the international judicial system. The UK government should also issue clear guidance to the judiciary on other foreign justice system.
- **Assuming a strong presumption against Russia.** The Kremlin exerts its power through a variety of state and non-state actors, both within Russia's borders and beyond them. As such, in court cases involving the Russian state, Russian state entities, or individuals representing the Russian state or Russian state entities, there should be a strong presumption against them because of Russia's consistent and demonstrable track record of abusing the international judicial system. While no state consistently acts in "good faith", there is rarely an outright intention to act in "bad faith". This is not true for Russia.
- **Engaging Russia diplomatically.** It is incumbent on UK officials to remind their Russian counterparts during bilateral or multilateral engagements of Russia's commitments under international law. Russia is a signatory to the Vienna Convention on the Law of Treaties and, as such, it is legally obliged to implement rulings of international human rights bodies established by international treaties. This includes the ECtHR, and applies whether Russia withdraws from the ECtHR (as it regularly threatens to) or not. The UK should also urge its allies to confront Russian representatives in the same manner.

Because Russia uses different tools in different places at different times, there is no "one size fits all" response to its activities. Nevertheless, the above recommendations, while specific to the UK, can be applied more broadly. Most obviously, national parliaments could hold hearings or inquiries into the extent to which Russia or its proxies have undermined domestic judicial systems. Executive and judicial branches of government could coordinate at a national level in order that the executive issues clear guidance to the judiciary on the validity of foreign justice systems. There is a role for Western institutions to play too. Through the European Union Agency for Law Enforcement Cooperation (formerly Europol), European allies can identify vulnerabilities, erect defences, and spread awareness of Russia's interference in judiciaries through a pre-existing and valued institutional setting. The same is true, to an extent, of NATO, where judicial safeguards could be incorporated into its resilience framework.

As pressure increases on the rules-based international order, or at least what is left of it, the West risks becoming increasingly vulnerable to hostile state activities across the board, including from Russia and within the judicial system.



## **About the Russia and Eurasia Studies Centre**

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The Russia and Eurasia Studies Centre undertakes in-depth, analytically-focussed research into domestic and foreign policy issues in Russia and the other post-Soviet states. Established in 2010 as the Russia Studies Centre, the programme's geographical scope has widened since 2014, mirroring the high level of importance attached to the region.

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