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In Need of Judicial Cleansing

By Sergey Matyunin

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Someone must be trusted. Let it be the judges."

The famous words of Lord Denning, a maverick yet great British judge, could be a good depiction of what many Russians were thinking 20 years ago.

Back in 1991, when the Soviet state collapsed, the judiciary was seen as the force that could bring integrity to the troubled country and prop up the wrenching stature of the country's ruling elite.

Today judges are one the most despised, mistrusted groups in Russia's establishment. According to state pollster VTsIOM, just one in four respondents trust the justice system. This is remarkably less than the number of people who trust the president, police, politicians or even journalists, which in itself is quite extraordinary.

There is nothing strange in that people have little faith in public figures. "They all lie" is a time-tested, universal presumption in politics all over the word. What's odd is that in the

public eyes judges fell deeper than all those proverbial liars.

“Don’t we know that judges take bribes?” asked President Dmitry Medvedev. “They do. Who is easier to catch red-handed, a policeman or a judge? A policeman, of course, or an investigator, or a prosecutor, or a civil servant. Go and try catching a judge!” According to the president, the judiciary has become a solid, “reinforced concrete corporation” incapable of self-purification.

He has reason to be angry. When Medvedev, a former professor of law, came to power three years ago, it was widely believed that putting the justice system right could shore up his position on the 2012 elections. It turns out that the judiciary will not bring him popularity but shame.

Soviet law, which existed until 1991, didn’t provide for division of powers, a multiparty political system, private ownership of means of production, an independent judiciary and many other things that Russian law today attempts to incorporate. Many areas of law like companies, commercial contracts or an adversarial system of dispute resolution — the legal system’s bread and butter — did not exist or existed in a rudimentary form.

A judge and a lawyer in the Soviet system meant something much different than it does in the West, where the idea of the separation of power has dominated public and political life since the mid-18th century when Montesquieu published his “Spirit of the Laws.” In the Soviet Union, judges were a group of gray bureaucrats who were nothing less than a profanation of the judicial institution.

Though in every country there are those who feel antipathy toward lawyers, in Russia strong dislike of the judiciary is an ingrained part of the culture. As the Russian proverb says, “Where there is judgment, there is injustice.” You can hardly find a judge as a positive character in Russian literature — rather Gogol’s Lyapkin-Tyapkin, whose intellectual claim to fame was that he had read five or six books and who considered himself honest because he took bribes of greyhound puppies rather than money.

Looking back to 1991, it is astonishing how naive the Russians were when they hoped that they could transform the system by changing all the laws, while keeping those who execute those laws in their places.

After the fall of the Berlin Wall, the judiciary in East Germany was effectively dissolved and formed anew. There was no such cleansing in Russia. Though fresh blood was injected into the profession, often there was little logic why a particular lawyer was working in his specialty.

For example, a professor of legal history who specializes in the customary law of the 12th century can suddenly become the head of an appellate court or a specialist in the theory of criminal law elevated to the chairman of a special court that deals primarily with constitutional law, something that is only remotely connected to the area of his expertise.

If Medvedev really wants to transform the justice system, he should care less about new laws but more about how the existing laws are being followed. Above all, he should pay particular attention to those whose job is to implement the law in practice. In the end, the best legislation is absolutely meaningless when it is placed in the wrong hands.

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