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Legal System Gets Bad Rap

By Sergey Matyunin

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In 1923, a British motorcyclist named McCarthy was arrested for reckless driving when his motorcycle collided into a car. It was a simple case with irrefutable evidence, but luckily for McCarthy, the judge's clerk who assisted in the case also worked for the private law firm representing the car's owner who sued McCarthy for third-party damages. As a result, the decision against McCarthy was quashed because even a suspicion of bias was enough to vitiate the proceedings.

"Not only must justice be done," Lord Hewart said. "It must also be seen to be done." What a remarkable twist of judicial reasoning. A good name matters more than the law.

In February, Natalya Vasilyeva, then-assistant to Judge Viktor Danilkin, who presided over the second criminal case against former Yukos CEO Mikhail Khodorkovsky, said in an interview that the decision in the Khodorkovsky trial was not made by the judge but sent over from a superior court.

Last week, Igor Kravchenko, a former administrator in Khamovnichesky District Court,

where Danilkin works, told Novaya Gazeta that Vasilyeva's allegations were true and that Danilkin had admitted taking orders on judicial decisions from other people.

Whether Danilkin was the actual decision maker or a mere puppet is no longer relevant. The problem is deeper. Too many people are convinced that the judicial system is crippled and judges are corrupt.

"I don't think it's right that so many Russian cases are decided in a British court or foreign arbitration in Stockholm, The Hague, London or somewhere else." Justice Minister Alexander Konovalov said in November. "Ninety percent of the Russian legal market has been taken over by foreign law firms, mainly American ones."

Last week, a deal between Chevron and Rosneft over a planned joint venture to explore oil in the Black Sea reached a deadlock. Among the principal differences are where the project company should be domiciled and which court should resolve disputes. The notion that Chevron — which operates in 180 countries, including many developing or unstable regimes — could walk away from a $32 billion deal but not face Russian justice seems preposterous and insulting.

The distrust of Russian law is beginning to shift from businessmen and the general public to the elites. In Yukos SARL vs. Rosneft, the Supreme Court of the Netherlands enforced an arbitration award that had been annulled by a Russian court. Strictly speaking, the decision does not contradict international law, but it is highly unusual and essentially based on the notion that there was no fair trial in Russia.

Recent decisions of the European Parliament on the Sergei Magnitsky case threaten more than 60 Russian government officials — none of whom have been found guilty of any offense with sanctions. This suggests that the Russian legal system is not capable of dealing with the above case.

It is unfair to say there is no law in Russia and all judges are dishonest. This is simply not true. Russian taxpayers, for instance, win two out of three cases against the treasury, an indication that the judiciary do not perceive themselves as mere executioners of the state's will, at least in commercial courts. This year the European Court of Human Rights is expected to decide on the Yukos case. Now, after Vasilyeva and Kravchenko have spoken out, it seems even more likely that the ruling is going to be another blow to the reputation of the Russian legal system.

In a curious move, the Public Chamber has decided to review the Khodorkovsky case. The chamber members, mostly non-lawyers, will try to sift through the piles of complicated court documents and hand down a verdict that will have no legal effect whatsoever. Another group of activists close to the Kremlin wrote "the letter of 55," which suggested that the reason why only one in five in Russia trusts the legal system is a result of a dirty propaganda campaign organized and disseminated by Khodorkovsky supporters.

It is unfortunate that the reputation of Russian courts has fallen so much that most people within and outside Russia are left with the biased impression that there is no justice at all in the country. There are countless problems with the legal system, to be sure, but it is not as bad as it seems. What the government should do — instead of exposing itself to ridicule through extravagant public relations campaigns — is to keep explaining, calmly and patiently, what it

is doing to make the system better.

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