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Russian Rule of Law Being Imposed by British Courts

By Khristina Narizhnaya

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A Scales of Justice sculpture on the roof of the Old Crown Court in Dorchester, England. England's courts are seeing a large influx of fraud cases from Russia and the CIS, and most law firms in Englan
Mike Kirby

President Dmitry Medvedev's efforts to stamp out "legal nihilism" and improve the rule of law — including a proposal he discussed Tuesday to make communications with judges a matter of public record — aren't yet helping to reduce the caseload of British arbitration courts.

Exiled billionaire Boris Berezovsky, who has been involved in more than 20 legal disputes in Russia and Britain, does not believe Russian courts can be reformed and says English courts offer the best chance for justice.

"The English courts are practically flawless," Berezovsky told The Moscow Times. In Russia, "Putin decides what happens," Berezovsky said.

His enthusiasm is not diminished by a British court ruling late last week that said he must release transcripts of conversations between his former lawyers and a now deceased partner. In the case, Berezovsky is claiming nearly $4 billion in damages from Roman Abramovich, whom he accuses of forcing him — with Kremlin backing — to sell key assets like Sibneft and RusAl at knockdown prices. The trial is slated to begin in October.

Berezovsky and Abramovich are perhaps the best-known Russian businessmen to use the British courts to seek justice, but by far not the only ones.

As Russian and other CIS economies continue to expand but trust in local judicial systems and the rule of law overall remains low, fraud and other business disputes involving the former Soviet Union are becoming more commonplace in British courtrooms and arbitration tribunals.

The caseload from Russia and the CIS is "increasing all the time," said Steven Philippsohn of leading London anti-fraud law firm PCB Litigation. "Last year was more substantial than the year before."

Since January, 17 cases involving Russia and the CIS were filed with the London Court of International Arbitration, a nongovernmental arbitration tribunal that sees the most cases from the former Soviet Union. In 2000, that number was seven.

No official statistics exist for British courts, but Philippsohn said he believes that more than half of all cases in the British High Court commercial division are related to Russia or other CIS countries.

"It has become a trend ... as Russian businesses have become more integrated into international trade where the use of English law is commonplace," said Rupert D'Cruz, secretary of the Russian-British Law Association. "A significant proportion of high-profile, high-value disputes involves a Russian-speaking party."

BTA Bank of Kazakhstan vs. former board of directors chair Mukhtar Ablyazov is one of the top fraud cases pending at the British Commercial Court for 2011 and involves claims of more than $4 billion and a team of more than 50 lawyers. Usually five or six lawyers work on a case.

The growing number of Russia and CIS cases titillate with their astronomical amounts of money and events that at times resemble plots of the latest Russian-mafia-themed blockbuster thriller.

In one recent case involving a $500 million claim, a pregnant woman was caught acting as a decoy for a Central Asian mogul accused of fraud. She allegedly tried to smuggle an attache case containing a small notebook computer with detailed files of compromising financial records out of his posh London residence.

Russian Speakers Sought

To keep up with demand, law firms in England have been hiring Russian specialists — lawyers

that either speak Russian or have an in-depth knowledge of Russian and CIS business culture.

Common characteristics of business deals involving the former Soviet Union include a heavy reliance on personal networks and extremely elaborate business transactions involving offshore trusts and third parties.

Every significant law firm now has a Russia expert, D'Cruz said.

Four of the eight lawyers on PCB Litigation's fraud team are focused on Russia and the CIS. Six years ago it was only two.

Stevenson Harwood's Russia and CIS experts number at least 50, which is more than double what it was 10 years ago, lawyer Peter Bennett said.

Byrne & Partners, a firm that specializes in Russia and CIS, has tripled in size since 2003.

"Certainly the market we're in is very buoyant," said Alastair Shaw, a litigator at Byrne & Partners.

In 2008 there were 17 members of the Russian-British Law Association, the successor to the Soviet-British Law Association. Now the organization has 350 lawyers, forensic investigators, and other professionals participating.

Littleton Chambers, a leading barrister's chamber in London, established at the end of last year the first barrister group entirely dedicated to litigating and arbitrating CIS cases, said D'Cruz, who set up the group.

Solid British Law

British law has long been popular in contracts. International businessmen respect it for its clarity, reliability, flexibility and impartiality.

For the last decade English law has been the choice of arbitration law for Russian and CIS business contracts, such as mergers and acquisitions and bank transactions.

Cases are litigated at the London Court of International Arbitration, the British Commercial Court and the International Commercial Court, or the ICC.

"In the last 10 years English law has become the preferred body of law for major business transactions," said Timothy Stubbs, head of CIS banking and finance practice at Salans international law firm.

"It's the Mercedes Benz of legal practice," he said.

Russia succeeded the Soviet Union as a contracting state to the Convention of the Recognition and Enforcement of Foreign Arbitral Awards — also known as the New York Convention of 1958 — so Russian courts are obligated to recognize and enforce international arbitration tribunal rulings.

Though such enforcement is not always carried out, at least the international mandate provides grounds for further legal action.

A decision from a foreign court not having a mandate to handle international arbitration would not necessarily be binding on a Russian court, and therefore much less likely to be followed through.

Swedish Lawyers Cash In

While most of these cases are heard in London, the phenomena is worldwide. Russian and CIS cases are being heard in Stockholm, New York, Geneva and Paris.

"Russian-speaking clients are a big pie for English lawyers," said Sergei Sokolov, founder of the Marks and Sokolov international law firm. "And it's happening everywhere, in all countries."

After Sweden, Russia consistently ranks as the second biggest origin of cases in Stockholm, according to the Stockholm Chamber of Commerce. The number of Russia cases increased from 16 in 2008 to 20 in 2010.

High-profile, big-value cases are not handled in Russia because of the archaic enforcement infrastructure and lack of trust in the court system, which even Medvedev has acknowledged is riddled with bribe-taking judges.

A popular joke defines an honest Russian judge as one who gives back the losing (lower) bribe to the side that lost.

Salans "absolutely" and "unquestionably" advises clients to include international arbitration in deals that involve significant amounts of money, such as $10 million or more, Stubbs said.

"Nobody can trust the [Russian] courts to be independent from corruption or influence by the executive branch," Stubbs said, citing the trial of former Yukos CEO Mikhail Khodorkovsky.

Improvements at Home

Medvedev approved a formal policy last week that should put Russia on course to improve the legal climate, according to Kremlin officials.

Among the main goals are cultivating respect for the law — particularly among the young — improving the efficiency of law enforcement and fighting corruption.

Next week, St. Petersburg will host the first international legal forum to take place in Russia. Medvedev, government officials and business leaders will mingle with international legal leaders and discuss ways to modernize Russia's legal system.

Meanwhile, local fraud victims are counting on the rule of law being imposed, at least in part, from abroad.

“In Russia our clients invite us for a meeting, and there is genuine surprise so much can be done,” Philippsohn said.

Yet businessmen are slow to trust their native justice systems. Berezovsky said most people continue to leave Russia to litigate.

“The mood among businessmen? Suitcase mood,” Berezovsky said.

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