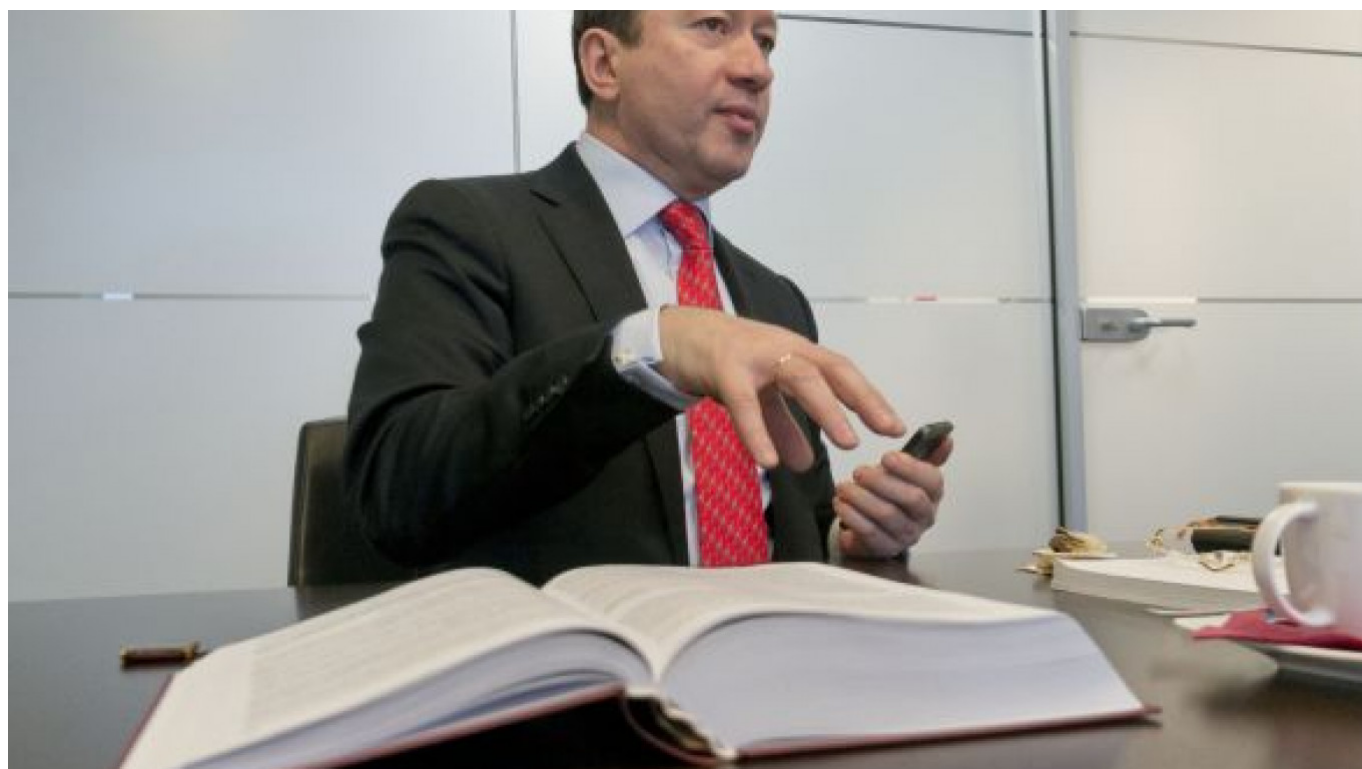


# Q&A: Fate Intertwines Attorney Andrey Goltsblat and Russia's Rule of Law

By [Alexander Panin](#)

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Goltsblat believes the future depends on evolving the mentality of the elite and society's legal consciousness. **Vladimir Filonov**

Andrey Goltsblat had no burning desire to make history.

"I never dreamed of becoming a lawyer, a doctor or a musician. It all happened by accident," said the 51-year-old attorney, who is also one of the legal experts who helped pen the Russian Constitution 20 years ago.

Looking every bit like a modern lawyer, dressed in a well-tailored suit, sitting in a glass-walled office in Moscow City, it is hard to imagine him jumping out of planes relying only on the parachute strapped to his back.

But that is what he did when he served in the paratroopers back in the 1980s.

As with his lifelong involvement with the legal profession, skydiving was not his chosen

specialty. He was sent to the Pskov paratroopers division because he had found helicopter pilot school distasteful but was knowledgeable about aircraft.

Andrey Goltsblat

## Education

1987 — Interior Ministry School, Ryazan

1994 — Institute of State and Law, Russian Academy of Sciences, Ph.D. in Law

## Work experience

1991-94 — Constitutional Commission, head of secretariat

1994-02 — Yuridicheskaya Praktika law firm, founder

2002-09 — Pepelyaev, Goltsblat and Partners, partner

2009-present — Goltsblat BLP, managing partner

**Favorite book:** "Hard to Be A God" (1964) by Arkady and Boris Strugatsky

**Reading now:** "Antiquities of the Jews" (93 or 94 AD) by Flavius Josephus

**Movie pick:** "Forrest Gump" (1994) directed by Robert Zemeckis

**Favorite Moscow restaurant:** Cantinetta Antinori, 20 Denezhny Pereulok

**Weekend getaway destination:** My dacha outside of Moscow

Goltsblat said that his two years in the army were sometimes enjoyable, but recalls forced 800-meter jumps from an Ilyushin 76 plane followed by a landing in mud or snow as something that brought "very little pleasure."

He also refrains from the paratrooper tradition of bathing in public fountains on their annual holiday. But it was his military service that led him to a legal career.

"After my army service I was offered to study law by the Interior Ministry, which would not have happened if I had not served," Goltsblat says.

Gaining his degree was the first step on a long road for him to become a trusted expert

for international companies looking for opportunities to do business in Russia.

His first major success was Mars, which was a pioneer private Western company that established local production here in 1995.

It was Goltsblat who helped find the right legal form for a document that suited both the American consumer giant and the local authorities in the Moscow region town of Stupino that led Mars to build the factory there.

This was another act of fate.

"When a project manager from Mars asked people in Russia whether they knew someone who could help adopt what was common-law practice in the West to local standards, they pointed at me," Goltsblat says.

Just prior to the recommendation, the Constitution, which Goltsblat had been working on together with other legal experts, was adopted in its current form.

In his work, Goltsblat was inspired by Valery Zorkin, one of the authors of the original text of the Constitution and now the head of the country's Constitutional Court.

Goltsblat began an interview with The Moscow Times with his hand on the latest edition of the Constitution, edited by Zorkin, as if making a promise before a court of law that all he would say is the truth, the whole truth and nothing but the truth.

This interview has been edited for length and clarity.

### **Q: How did you get involved in writing the first Russian Constitution?**

A: The topic of my doctoral dissertation was: Development of the Idea of Rule of Law in Russia from 1905 to 1917. In Russia, it was actually called the "State of Law" or "Legal State," being taken from the German concept of Rechtsstaat.

Beginning in 1905, Russia began its most dramatic political reforms, which finally brought the October Revolution, the deadliest civil war, and ended in the 70 years of the Soviet era.

My academic advisor, Professor Valery Zorkin, fully supported my choice and actually helped me pick this topic.

The early 1990s was the time when elections were held for the first independent parliament. The Supreme Council of the Russian Soviet Federative Socialist Republic and Boris Yeltsin, in particular, decided that the country needed a constitution, which was actually required by the declaration of the independence of Russia when the Soviet Union disintegrated.

A common thought then was that if Russia were to have a constitution, the country would become a "legal state."

A special constitution commission was set up and Zorkin was invited to join the expert board. My work was directly related to the subject, and I was also invited to take part in making it all come true. This was a chance of a lifetime.

**Q: How did you feel during that transitional period of 1991-93?**

A: Well, I felt very enthusiastic because I knew I was in the middle of creating something new, in the midst of the process with democracy emerging in Russia after 70 years of Soviet rule. It felt as if you were witnessing the birth of a free democratic state. We really believed it then. We had some doubts but were absolutely sure it would happen nonetheless.

In the end, we did manage to incorporate the main ideas laid out by many scholars and philosophers before us. Our final draft was a Constitution that was maximally democratic in consideration of all Russia's realities.

This draft was completed just after the parliament was about to limit the power of the first Russian president. Under the existing Soviet constitution, the parliament had the ability to seriously limit the president's power or even cancel the institution of the presidency. They were about to do something like that in 1993, which was the reason for the parliament coming under fire and being dissolved. That was why the Constitution was modified at the referendum to make a powerful president.

So our version of the Constitution was modified by the newly appointed constitutional assembly to satisfy President Yeltsin. Our project was edited to empower the president over the parliament.

The balance, as is the case in Germany, would have been a strong prime minister who comes to power because he is the leader of the party that wins the elections. Or we could have had an American version, with the president as head of state and the cabinet under him, but he takes all the responsibility.

In our commission's version, not only the prime minister but five other key ministers should have been appointed with the Duma's consent.

However, those who are in power do not understand one simple point. The graveyard is full of indispensable people. Today there is one president, and tomorrow another one may be elected. But no one is thinking 10 or 20 years ahead, it is just tomorrow that matters.

**Q: What other problems limit constitutional development?**

A: The Constitution, in practice, is not applied directly to law, even though this is stated in article 15. When dealing with cases of possible violations of the right to freedom of speech or protection of private property, the judge can make a broader ruling than what is prescribed by the Constitution and this provokes misconduct.

The roots of the criticism of our legal system, talk of the absence of guaranteed protection of private property, are there.

This results in a lack of trust by businessmen and society in general in the legal system and, consequently, in the Constitution and justice.

If you look at any lawsuit in America about protection of honor and dignity, or emotional hardship, they would immediately refer to the constitution. But you would have little luck doing so in a Russian court.

In addition, our legal system is very bureaucratized. Every ruling on the law or the Constitution has hundreds of additional laws explaining their use and supplemented by dozens of instructions.

Anyhow, although not perfect, and although it does not contain all the creators' intentions, the Constitution does have many essential elements that outweigh its drawbacks. It is fundamentally important for our continued democratic development.

Freedom of speech, the right to own private property, the right to equal access to justice. Freedom of religion, freedom of conscience, the right to life, which no one can take away. These are the fundamentals that are there and this is a great achievement, in which the Constitutional Court headed by Valery Zorkin plays a key role.

**Q: What needs to be done to make all of these fundamental principals work properly?**

A: The Constitution is a contract between the state and society. Although we can recall examples of famous cases when private property has been taken away and other constitutional rules have been broken, overall, it appears that the Constitution has been a success.

Now the task is to make this contract function as intended, and the main role in this regard belongs to the justice system.

Here I see one of the main issues as being full observance of the social contract that is called the Constitution. Russia's legal system does not yet fully provide for the implementation of the social contract between the state and society. The courts sometimes take the side of the state or corrupt officials.

In order to achieve the full effect of the Constitution we need a powerful and independent court system made up of professionals capable of making decisions in accordance with the Constitution and the laws of the land. If we achieve that then we will live in a constitutional state with functioning rule-of-law.

**Q: How should the country go about doing that?**

A: There must be political will, as well as further judicial reforms. The role of any court's head should be limited to administrative function only and other judges should not depend on him. Cases should be distributed to judges randomly. Some of these measures have been partially implemented already, but not everywhere.

**Q: Does such a system depend on state support?**

A: Yes, and the ruling elite — the people who make key decisions — should fully grasp the idea that the Constitution is not just some formal document but a social contract. They should know what a constitutional state is. And they should be prepared inside themselves to limit their own power.

Any power represented by the state has the goal of achieving ultimate control and absolute power. Not because this president is good or bad or the former was good or bad. This is just the nature of power, its natural aspiration. The controlling elite is made up of people and, if

they have no internal self-restriction, absolute monarchies and totalitarian regimes appear. A number of them have made history — Russia's in particular.

The self-restraint regarding power has to come from within, from the people who have it. Then what you get is independent courts and so on.

In Russia sprouts of self-restraint started to appear in 1905 when Nikolai II adopted the freedom manifesto. But it was not because it was his nature or insight or a change of philosophy. He did it out of fear of an uprising after a series of revolutionary events happened that year.

**Q: To what extent is absolute power being executed now?**

A: Today, we have neither absolute monarchy, nor absolute power. We have courts, although they are not perfect. We have the parliament, which can adopt laws. And we have a strong president. But it is impossible to become a classic democracy in just 20 years.

It will take the lives of several generations to make a real change. Yet it will still depend on personality. A leader is a product of the society from which he or she emerges. Which means that the majority of people living in the country demand a leader like the one we currently have. If it had demanded someone else, Putin would not be in power.

And we have history to prove that. Back in 1989, Russia had every chance to become a real democracy and further to develop freely. The elections to its new parliament then were liberal and open; no one ever questioned their legitimacy. This parliament was truly independent. So the question is, how did it end up where it did? Why was the White House shot at from the bridge and the parliament disbanded? We had not yet reached the stage where democratic procedures were the only instrument for resolving conflicts.

The politicians know what the majority of people like and what they would rebel against, and they follow this demand. However, they should realize that there is always a limit to the trust given by society. No one knows how long it will last, unless true democracy is fully implemented.

**Q: How has the legal system changed over the last 20 years?**

A: It has become better, it has become a system. It does actually exist. It is an understandable system. Documents are processed online, for example. These are all positive changes. We hope the creation of the unified Supreme Court will not put a brake on what has been achieved so far.

**Q: Why does Russian business still rely so much on foreign law to settle disputes?**

A: There are a lot of deals, I would say even a majority being concluded between Russian companies, that do not exceed \$10 million or so and they are governed by Russian law. But large deals with international companies and cross-border transactions are usually governed by English law because this is the practice that has become the norm in the last 20 years in Russia.

Russian law is inappropriate for such deals. First, because the traditional Russian legal system

does not support the international institutions through which corporate deals are closed. It has had just 20 years' experience in commercial deals.

We do not have options, deferred payment, warranties, and guarantees in our system. In Russia, we sell shares, whereas in Britain you buy the business as a whole and shares just confirm your rights to the business.

The seller guarantees that he disclosed full information prior to the purchase. If, in the future, this turns out not to be true and results in financial losses for the buyer, it can go to court and has a good chance of being awarded compensation. This is impossible under Russian law now.

**Q: Why does foreign capital not flow into the country in bigger volumes?**

A: I would put corruption as the first reason, as well as law implementation and enforcement. Some international giants do not come to Russia just because they see that corruption exists here.

To this day, the legal system is unstable and the decisions made are not seen as entirely justifiable. For foreign companies, this means that private property can be endangered.

At the same time, big and medium-sized foreign companies, from consumer goods to heavy machinery, do not experience the effects of corruption. Who in their right mind would come to them demanding a bribe? They would be immediately turned in.

**Q: How is it possible to fight corruption?**

A: If I could answer that question in five minutes, we would not have any corruption any more.

It can be countered with the help of legal reform, independent courts and through a change in the mindset of many people, from bureaucrats to businessmen.

But again, the message has to come from within the ruling elite. As soon as they make such a decision among themselves, then the real fight against corruption will commence.

Yet, in order for this to happen, there needs to be an internal change of philosophy, growth of legal consciousness, culture, education and so on. A societal demand has to appear for this to bear greater fruit. The elite can change things but it has to become such an elite.

**Q: What are the specific nuances of managing lawyers?**

A: Partners in law firms are all extraordinary people; they know their worth and the amount of contribution they make to the business. They all demand a unique, tuned approach. This is not a manufacturing facility where you can manage just by placing an order on the wall. Every case is thoroughly discussed, questioned and only then approved. This is a nuance — they are all individuals. And one has to work with them accordingly.

Pressure, for instance, is unacceptable in law firms. It just would not work. The market is open and there is high demand for professionals. Our Constitution states that there is freedom of occupation. A lawyer pressed by his management would just say goodbye and leave

for another firm.

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