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Two Landmark Cases that will Change Russia



The year 2017 in Russia is about to end on a very interesting note.

On the one hand, we all recently heard a sigh of relief from the elite (but few gasps of surprise) when President Vladimir Putin announced his decision to run for another term. On the other hand, in the next few days, two Russian courts (an arbitration court and a general jurisdiction court) are about to rule on two of the most resonant cases in recent times.

The first is handling the (constantly growing) claims of Rosneft against AFK Sistema, while the second relates to Alexei Ulyukayev, a former Minister of Economic Development, who is charged with soliciting bribes from the management of Rosneft.

The verdicts — the first to be announced by judge Galina Stolyarenko in Chelyabinsk, the second by judge Larisa Semenova in Moscow — will be much more significant than the votes of the 70 percent of the 70 percent of active Russians who will likely re-elect Putin on 18 March 2018.

The question gripping these courts today is much more important than the issue of what will happen to the resources of Vladimir Yevtushenkov, or the individual fate of Ulyukayev. What we are about to find out is

whether there are still any rules in Russia that prevent state officials from doing what they please.

Murky Privatisation

In the first case, the problem is not really about Yevtushenkov (although he himself might think otherwise). The issue arose back in 2002, when the government of the Republic of Bashkortostan privatised a number of enterprises related to its oil sector. After passing through the hands of several unknown companies, those enterprises eventually came under the control of the son of the man who governed Bashkortostan. Seven years later, as a result of purely democratic procedures, President Murtaza Rakhimov began to prepare for retirement, and this asset was sold to a joint-stock financial corporation — the Moscow-based Sistema — for USD 2.5 billion. This step was described as “appropriation or embezzlement and legalisation of money acquired through criminal means”. We might ask: who legalised what? AFK Sistema had legally earned money which it spent to purchase Bashneft. The president’s son, now living in Austria, may well have evaded taxes on profits. But what does the present company and its new owner actually have to do with that?

The only way this whole chain of transactions can be challenged is the illegal privatisation of 2002. However, privatisation involves not only the buyer but also the seller. That is, the state itself. And it is the seller who bears responsibility for ensuring the legality of the transaction and the interests of the state. Have any charges been brought against any federal or regional officials who were directly responsible for the chain of transactions that created Bashneft? The answer is ‘No’.

A State Beyond Responsibility

So leaving aside the possible losses suffered by Rosneft when purchasing this asset, we can clearly say that the state, which accuses a number of entrepreneurs, does not intend to take responsibility for its own actions: neither for the 2002 privatisation nor for the 2016 privatisation (although there are all reasons to believe that in one of the cases its representatives illegally underestimated the asset, and in another case they overestimated the asset, which was also illegal). In other words, the state of Russia apparently positions itself beyond the law.

In the second case, the situation is even more interesting. This time the question is not about ‘who is right — the state or the business sector?’ (Or rather, who at least has some rights?) It is instead about the different levels of legal personalities that may exist within a country. Even the blatantly absurd accusation against Mikhail Khodorkovsky, claiming that he had stolen more oil than his company had ever produced, may have had some foundation, at least on a conceptual level. By the time of his arrest, after all, he had become the richest man in the country. By contrast, the situation with Ulyukayev is not based on any evidence proving that he extorted a bribe or clearly understood the content of the suitcase handed over to him on that ill-fated evening. This case is a very clear example showing that there are informal gradations inside the Russian power elites: they determine who is untouchable and who can go to jail at almost any time, whenever the interests of ‘the higher authorities’ require it. Similar things have happened many times in our history and in other countries, but they never facilitated the emergence of a stable governance system. Instead, they provoked a multiplication of similar cases that persisted until a change in power.

Both these significant lawsuits involving Rosneft clearly go against the essential foundation of any legal system: equal responsibility of citizens and institutions before the law. One cannot challenge the consequences of transactions without challenging the transactions themselves. The claims in arbitration courts should be actually addressed to officials of Bashkortostan and the Federal Property Agency. One cannot separate the recipient of a bribe from the person who offered a bribe, and accuse only one of the parties. By letting one of its largest state-controlled companies to freely determine who is right and who is guilty, the Russian state placed itself in an exceptionally difficult situation, driving itself out of the legal field without any motive and reason. Upon closer examination, the current landmark lawsuits are much more destructive than both Yukos cases, and it is very sad that the authorities do not understand this.

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