

Maria Popova. *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine.* Cambridge: Cambridge University Press, 2012. 197 pp. Cloth.

A book on politicized justice in Russia and Ukraine has long been overdue—and not only because of the topicality and seriousness of the problem, which the author, Maria Popova, recognizes very well. Impartial and independent courts are crucial for Ukraine’s integration into the European Union, and we are only left to hope that sooner or later such courts will become an urgent issue for Russia as well. The problem is made graphic in this book through a photo on the front cover that depicts the 2011 hearing of the case of Iuliia Tymoshenko, the former Prime Minister of Ukraine. Standing behind her in court is a special division of the militia.

The main issues facing emerging democracies are very well captured by the author: once in office, incumbents start negotiating immunity for themselves for the period when they leave politics, thereby acting as political players not as state leaders. The conclusion is obvious: emerging democracies will remain unstable until a new generation of politicians comes to power—a true political elite, not political players caring about their own business and using all possible means to pressure the courts (e.g., *ex parte* communication, telephone law, creating links between the judiciary leadership and state leadership, etc.).

Popova analyzes lower court cases dating to the late 1990s and early 2000s. These are mostly defamation lawsuits and electoral registration disputes, which, while interesting in themselves, are, nonetheless, obsolete from today’s perspective. These cases took place before the Orange Revolution in Ukraine (2004) and before the Khodorkovskii case in Russia (2005)—events that crucially changed (at least temporarily, in the case of Ukraine) court practice. In Russia “the opposition scored [...] victories [in election cases] primarily due to the indifference of the political incumbents” (154), but after Khodorkovskii’s conviction opposition lawyers and human rights activists “suffered serious repercussions” (155). In Ukraine the situation was completely different: the judges, who ruled on behalf of the opposition, but were investigated and fired under Kuchma’s regime, were reinstated to their position after the Orange Revolution (154). Popova briefly analyzes the decision of the Supreme Court of Ukraine from 3 December 2004, which annulled the acts of the Central Election Commission that declared the winner of the November 21 presidential election runoff and ordered a rerun of the runoff. This decision was based on the rule of law that was absolutely new in the context of Ukraine. On the other hand, the Khodorkovskii case in Russia “generated talk about Russia’s

catastrophic failure at building a rule-of-law-based postcommunist state” (10).

Popova provides a thought-provoking analysis of the strategic pressure theory and the traditional political competition theories of judicial independence. At the same time, she also draws an interesting conclusion as to the predictably more politicized Ukrainian courts under the first theory and the more independent courts under the second theory: “Ukraine’s higher level of political competition should serve as an incentive for the incumbents to provide independent courts” (105). However, while political competition has been consistently higher in Ukraine than in Russia (171), the analysis of court practice leads Popova to conclude that the courts were significantly more politicized and their output significantly less independent in Ukraine than in Russia during the late 1990s and early 2000s (173). She explains these “paradoxical results” by the vulnerability of Kuchma’s regime during the entire period of 1998–2003 and the increased sense of security of Putin’s regime after 1998. As a result, she recommends that “rather than focus on institutional building within the judiciary, rule-of-law promoters should turn their attention to the development of important democratic institutions, such as an institutionalized party system and a free and independent press” (174). Unfortunately, in the opinion of this reviewer, the “tales” of two municipal elections in Russia and the two cases of opposition lawyers in Ukraine do not seem to offer enough material to draw conclusions about the level of independence of court systems in these countries.

Furthermore, some statements in the book are highly debatable and contradict historical facts. The author states that “the two countries share a very similar historical, legal, economic, and institutional trajectory since the ninth century” (171), which does not correspond to reality. Russia did not exist in the ninth century and appeared as a state only in the fifteenth. (The term “Russia” was officially used for the first time in 1721.) Since then there were centuries of struggle between Russia and Ukraine because of their different political choices, until both states were united as republics in the USSR as a result of a very harsh and unequal war. Only from 1917 to 1991 did the two republics share a legal, economic and institutional trajectory, which in the Ukrainian Soviet Socialist Republic was coerced through the Holodomor-genocide, extermination of the intellectual elites and the Church, as well as other grave human rights violations. Those seventy-four years of common Soviet statehood turned out to be enough to corrupt the judicial system.

Another disputable point made in the book is that intense political competition hinders the rule of law in emerging democracies. Intense political competition exists in all countries, and, presumably, it might have

hindered the rule of law during the 2004 presidential elections in the United States. However, there is no political competition in Russia and Ukraine; it is a political struggle, uncivilized and cruel, without any rules and with the use of forbidden methods and tactics.

Last but not least, during the Orange Revolution, the democratic opposition came to power in a peaceful way in Ukraine thanks to the decision of the Supreme Court, which, basing itself on the rule of law, annulled the results of the runoff of the 2004 presidential elections. There were also other court decisions taken on the basis of the rule-of-law principle. Though this democracy turned out to be very weak and fragile, and the old regime subsequently took revenge through the absolute control of the courts, those rule-of-law decisions in modern Ukraine will now be the “old tricks” that the “old dogs” (that is, the currently controlled courts) will not forget.

The main question, however, still remains unanswered: how to ensure an effective path to independent courts in emerging democracies?

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