

## Experience in Russia

- 1 I am fluent in Russian, and have since 1983 visited Russia and other countries of the former USSR regularly, and have studied the Russian language, history, and Soviet and Russian law and practice. I have published over 100 books, articles and book chapters on these and related subjects.<sup>1</sup>
- 2 From 1997 to the end of 2003 I was the contracted Adviser to the UK Government's Department for International Development on "Human Rights in Russia", and for the latter three years on "Access to Justice and Rights Issues in Russia." In this capacity I initiated and monitored large projects in the Russian Federation in the field of judicial reform, reform of the penitentiary system, human rights monitoring, and alternative dispute resolution. This work took me to all parts of Russia, and allowed me to meet official and civil society actors at all levels.
- 3 The projects included the £1.2m Judicial Support Project working with the Courts of General Jurisdiction and Arbitrazh Courts in Russia, the £600,000 Independent Monitoring Project enabling NGOs to monitor human rights in Russia; and two large projects in the penitentiary system - the Alternatives to Imprisonment Project (with Penal Reform International) introducing community services orders across Russia, and the Prisons Partnership Project (with the International Centre for Prison Studies), twinning Moscow remand prisons with UK prisons.
- 4 In the course of these projects I became one of a relatively small number of Western experts in Russian law and practice, in all fields of law, especially in relation to the administration of justice and judicial reform. I have intimate knowledge of courts administration and practice, the drafting and implementation of judicial procedural laws, and the actuality of the judicial system in Moscow, St Petersburg and many regions of Russia.
- 5 The Russian government and Supreme Court (through its Judicial Department, responsible for administration and training) have on a number of occasions called on me to carry out training for senior judges and court administrators. Two examples are: first, training for senior judges of the Southern Federal District in 2005, when

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<sup>1</sup> A full list of my publications is to be found at my Birbeck web-site, <http://www.bbk.ac.uk/law/our-staff/department-of-law/academic-staff/bowring>

my two fellow trainers were the former Russian Agent (representative) at Strasbourg, Pavel Laptev, and the head of the Russian prison system, Yuri Kalinin; and second, in November 2007, when I trained senior judges of Astrakhan Oblast in the south of Russia. I also became closely acquainted with a wide range of Russian interlocutors, including senior judges, officials, and policy-makers, as appears below.

- 6 I am regularly called upon to assist and advise the Foreign and Commonwealth Office and other UK Government departments, and am also invited to give papers and take part in discussions at the Royal Institute for International Affairs (Chatham House).
- 7 I have also regularly acted and continue to act as an expert on Russian and other post-Soviet law and practice for the Council of Europe, European Union, Organisation on Security and Cooperation in Europe (OSCE), the US Department of Justice, and other national and international organisations.
- 8 I was one of the three experts nominated by the Council of Europe to work with senior Russian officials on the new Criminal Procedural Code which came into force on 1 July 2002. I worked closely with Dmitrii Kozak, formerly in charge of President Putin's judicial reform programme, as well as senior figures from the courts, Ministry of the Interior (Police), Federal Security Service (FSB), and the parliament.
- 9 I was also nominated by the Council of Europe to work on the World Bank's "Diagnostic Project" on the Russian judicial system in early 2002. I presently act regularly as expert and consultant with the European Union and the Council of Europe on human rights and minority rights issues.
- 10 I have worked in an expert capacity for EU projects since 1994, in the fields of reform of social welfare, reform of local government, and presently the establishment of a system of administrative courts in Russia. In October 2004 I hosted a week-long visit to London by the First Deputy Chairmen of the Supreme Court and Higher Arbitrazh Court of the Russian Federation, together with leading parliamentarians and members of the executive branch of government.

- 11 I have also advised professional clients on many occasions on questions of Soviet and Russian law, as well as conflict of laws (English and Russian) in civil cases. Details of these cases are given on my Chambers website.<sup>2</sup>
- 12 In March 2005 I gave written and oral expert evidence to the Bow Street Magistrates' Court in the extradition application *Russian Federation v Chernysheva and Maruev*. On 18 March 2005 Senior District Judge Timothy Workman, referring to my evidence and that of other witnesses, held that the extradition proceedings were barred by virtue of section 81 of the Extradition Act 2003.
- 13 On 25 October 2005 I gave written and oral expert evidence in the Bow Street Magistrates Court in the further extradition case of *Russian Federation v Temerko*. Aleksandr Temerko was second in command to Mikhail Khodorkovsky in YUKOS. On that day there was time only for my evidence in chief, and the hearing was adjourned to 15 December 2005 for cross-examination.
- 14 On 15 November 2005, before my return to the court for cross-examination, I arrived at Moscow Airport at 0500 am and was detained at Passport Control and held for six hours. I was then deported from Russia, and my multi-entry visa was cancelled. On 23 December 2005, Judge Workman made a similar finding to that in *Russian Federation v Chernysheva and Maruev*, based to a large extent on my evidence, and refused extradition.
- 15 In his judgment of 23 December 2005, Judge Workman considered the circumstances of my deportation from Russia, and held:
- In absence of any explanation I have concluded that it is more likely than not that the actions of the Russian authorities [by deporting me - WB] were directly associated with the fact that Professor Bowring had given evidence to this Court.
- 16 In January and February 2006 I also gave written and oral evidence for the Larnaca District Court, Cyprus, in the YUKOS-related extradition case of *Russian Federation v Kolesnikov*. The court refused extradition in that case, but for the

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<sup>2</sup> <http://fielddcourt.co.uk/barrister/bill-bowring/>

reason that Russia had failed to comply with a number of the requirements of the 1957 European Extradition Convention (Article 12).

17 I have acted as expert witness in a number of extradition cases before the English and Cypriot courts. In the period immediately before Christmas 2007 the City of Westminster Magistrates Court (District Judge Nicholas Evans) refused extradition in the case of *Russian Federation v Azarov*, for which I also provided evidence for the defendant. I also gave evidence in late December 2007 in the extradition request against Vladislav Kartashov in the District Court of Nicosia, and was cross-examined on my expert report for six hours.

18 In 2008 I gave evidence in London in further extradition cases concerning the Russian Federation. On 8 December 2008 Senior District Judge Workman gave judgment in the case of *Russian Federation v Nikitin and Skarga*. The defendants in that case were not connected with YUKOS but with shipping interests. On the basis of my evidence and that of Professor Richard Sakwa, Judge Workman held that the prosecution was “mounted of political and economic reasons” and was barred. On the question of diplomatic assurances submitted by the Russian Government, he concluded on the basis of my evidence that “because I find that the charges preferred in this case are politically motivated I have concluded that it is more likely than not that the assurances offered will not be met.” He further held “By virtue of the influences which can be exerted both over the court and over the rights of defence advocates, I am satisfied that there is a strong likelihood of breach of Article 6 of the European Convention on Human Rights.”

19 On 22 December 2008 Judge Workman delivered his judgment in the case of *Russian Federation v Izmaylov and Mikhaylyuk* and reached very similar conclusions. He said as follows:

“16. The evidence of both Professor Bowring and Professor Sakwa is authoritative and compelling. It is, in my view, based on sound foundation based upon the historical evidence of the YUKOS and other cases. On that basis of that unrebutted evidence, I am satisfied that it is more likely than not that the request for their extradition has been made for the purpose of prosecuting them or punishing them on account of their political opinions.

17. For the same reasons I am satisfied that the defendants might, if returned, be prejudiced at their trial or punished, detained or restricted in their personal liberty by reason of their political opinions.”

20 In early 2009 I gave evidence before Judge Workman once more in the case of *Russian Federation v Makhlay and Makarov*. On 8 May 2009 Judge Workman discharged both defendants referring to my “clear, balanced and well informed evidence” and accepting the conclusion I reached. He found that their prosecutions were politically inspired and that there was a risk of prejudice at trial on account of their political opinions.

“On the uncontested evidence before me, I am satisfied that these extradition proceedings are brought for the purpose of prosecuting or punishing the defendants for their political opinions and that they will be prejudiced at their trial or punished, detained or restricted in their personal liberty by reason of their political opinions. Both defendants extradition is therefore barred by reason of extraneous considerations under Section 81(a) and (b).”

21 It is worth referring to an extract from his judgement which illustrates the clear evidence of political interference in the judicial process:

“Judge Valyavina is a Judge of the Supreme Arbitration Court in Russia. In May 2008, she gave evidence before a Russian Court in relation to a defamation case. In the transcript of those proceedings, she said:- "At the beginning of my work in the summer of 2005, I received a case from the Presiding Judge of the Second Judicial Bench with the message that other Judges did not want to examine it because they feared being pressured, and so the only person that could examine the case was myself. The case was connected with the Tolyatti Azot Corporation. I undertook the supervision of this case ..... I then issued a ruling to request the case file and immediately afterwards a call came from Boyev, then he came for a meeting. I thought this was connected with Human Resources and did not expect the conversation to turn out the way it did. It was a long conversation and he spoke in length about state interests, adding that I was probably failing to understand them correctly, and when we began to speak of this particular case, I reminded him that I was

the Judge in this case and that he had no right to give me instructions. He was asking me to annul my determinations in this case. We did not discuss the details of the case, on the contrary, he said "Eleanor Valyavina, you still have to be reappointed!" Deputy Presiding Judges are appointed for six years and have a right to work for two six-year terms in a row ..... Boyev is present as the representative of the Presidential Administration and can gather material and voice his opinion including a negative opinion. The speed with which Judges are appointed depends on objections from people like him and Judges are afraid that they will not get what they should or what they have earned, if they take such principled positions." This unchallenged evidence clearly implicates officials from the Presidential Administration in an attempt to influence a Judges decision in respect of the TOAZ Corporation.”

22 I also acted as an expert witness in *Cherney v. Deripaska* [2008] EWHC 1530 (Comm)<sup>3</sup> on the issue of *forum non conveniens*, whether Mr Cherney would have the prospect of a fair trial against Mr Deripaska in Russia, or whether he should have a trial in England. At para 202 Christopher Clarke J said at para 202:

“Mr Cherney instructed Professor Bowring, the Professor of Law at Birkbeck College. He is a fluent Russian speaker with a particular interest in the independence of the Russian judiciary. It is apparent from his *curriculum vitae* that he is well qualified to give such a report, having extensive experience of the workings of the Russian legal system, having advised UK Government departments and European and other bodies on the Russian legal system and on access to justice in Russia, and having carried out training for senior Russian judges and administrators and worked with senior figures in the system. He has given expert evidence in a number of extradition cases. I am satisfied that he has an open minded attitude to the system, of which, as it happens he appears to have been both the victim and the beneficiary.”

23 In his judgment Christopher Clarke J concluded:

“264. Taking all those considerations into account, I am persuaded that the risks inherent in a trial in Russia (assassination, arrest on trumped up charges

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<sup>3</sup> <http://www.bailii.org/ew/cases/EWHC/Comm/2008/1530.html>

and lack of a fair trial) are sufficient to make England the forum in which the case can most suitably be tried in the interests of both parties and the ends of justice and, accordingly, the proper place for the determination of this claim.

265 I shall, therefore, give permission for the claim form to be served outside the jurisdiction.”

24 The judgment of Christopher Clarke J was upheld in the Court of Appeal.

25 In May 2010 I gave evidence in London before Judge Workman in the case of *Russian Federation v Yuri Shefler*. On 8<sup>th</sup> June 2010 he discharged the defendant, finding that the prosecution and extradition request were politically motivated, that the defendant would be prejudiced on his return on account of his imputed political opinions, and that his rights under the European Convention on Human Rights would be violated. My evidence to that effect was therefore accepted. Judge Workman said this at para 34 of his judgment:

“Both Professor Bowring and Professor Sakwa gave evidence to me about the independence of the Judiciary in Moscow. Both Professors have given evidence to me in the past and contrary to the assertions of the Russian Federation in their response to the defence evidence, they both have an extensive knowledge and expertise and both have been extremely careful to see that their view is balanced and objective. It is clear that their misgivings about the independence of the Judiciary are specific and well documented.”

26 Judge Workman said the following as to political motivation:

“31. I note that the Russian Federation has (with one exception) been unsuccessful in recovering in civil proceedings the international trademarks vested in the defendant's company. I conclude that the Government now has only limited opportunities to take control of these trademarks and it would appear that one effective way to succeed with their political aims would be to secure the defendant's return to Russia and incarceration.

32. I have therefore concluded that there are substantial grounds for thinking that this extradition request is made for the purpose of prosecuting or punishing the defendant on account of his political opinions.”

- 27 Following a successful application in the Russian courts for judicial review of the decision to exclude me, the circumstances of which are set out above, I have returned to Russia on many occasions.
- 28 In February 2007 I acted, with the late Lord Slynn of Hadley and others, as one of the judges in the Russian round of the Philip C. Jessup international law moot court competition (the Jessup Competition). I returned in September 2007 to chair the International Steering Group of EHRAC in Moscow, and to train advocates from Chechnya and other regions of Russia in Pyatigorsk. In November 2007, as noted above, I travelled to Astrakhan on the Caspian Sea at the invitation of the Judicial Department of the Supreme Court of the Russian Federation in order to train judges of the district and appeal (Oblast) courts.
- 29 In February 2008 I returned once more to judge the Jessup Competition. I was a key speaker at a conference at the Moscow State Institute of International Relations (MGIMO) in March 2008. In June 2008, at the invitation of the Federal Service for Execution of Sentences (FSIN) of the Russian Federation, I took part as lead expert for Directorate General of Human Rights and Legal Affairs of the Council of Europe, at the Conference in Pskov, Russia: “The penitentiary system of the Russian Federation in the light of European standards”. In September 2008 I chaired the International Steering Group of the European Human Rights Advocacy Centre (EHRAC) in Moscow and carried out training of the project’s Russian lawyers from Chechnya and other regions.
- 30 I was invited in March 2009 by the Ministry of Foreign Affairs of the Russian Federation to accompany the High Commissioner on National Minorities of the Organisation for Security and Cooperation in Europe (OSCE) as his expert to investigate the situation of the Ukrainian minority in Russia (we returned to Ukraine with respect to the Russian minority in April 2009). We visited Moscow, Ufa (the capital of Bashkortostan) where we met the President of Bashkortostan, and Voronezh Oblast, on the border with Ukraine.



- 31 I returned to Russia twice in September 2009. I was a key speaker at a seminar marking the start of a joint Council of Europe and European Union project on minority rights in Russia, on the invitation of the Ministry of Regional Development. Later that month, I chaired once again the International Steering Group of EHRAC, and took part in training activities. I returned again for the minority rights project in November 2009 and February 2010. Also in February 2010 I acted once more as a judge of the Jessup Competition. I returned to Russia to take part in a seminar at the Moscow State Institute of International Relations (connected to the Russian Ministry of Foreign Affairs) in May 2010.
- 32 In 2010 I travelled to St Petersburg to speak at a conference “Higher Education and Civil Society: A New Social Mission of the University” organised by Smolny College. It is now a Faculty of St Petersburg State University, the most prestigious university in Russia. In November 2010 I returned first to take part once again in a Working Group meeting of the joint Council of Europe, European Union and the Russian Federation programme “Minorities in Russia: Developing Languages, Culture, Media and Civil Society”, and I gave a paper at the annual conference of the Russian Association of Political Science (RAPN) in Moscow.
- 33 I returned in January 2011, and January 2012 again as a judge in the Jessup Competition, and in March 2011 and March 2012 I taught a course in the human rights law of the European Union at the Moscow State Institute for International Relations (MGIMO), one of the three leading universities of Russia, connected to the Ministry of Foreign Affairs of the Russian Federation.
- 34 In 2012 I taught at the universities at Novgorod Velikiy and Kaliningrad, and in 2013 returned for the 10<sup>th</sup> anniversary of my EHRAC litigation project<sup>4</sup>. I also travelled to Moscow with Sir Henry Brooke (formerly Lord Justice Brooke) for meetings connected with projects of the Slynn Foundation.
- 35 In January 2014 I was again in Moscow judging the Jessup Competition. My fellow judges included leading Russian lawyers and also Russian Court Registry lawyers at the European Court of Human Rights. I returned to Russia at the end of February 2014 as an expert in a project on constitutional litigation at the Constitutional Court

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<sup>4</sup> <http://www.ehrac.org.uk/>

of the Russian Federation, and in May 2014, to teach once again at the Mari State University in Yoshkar-Ola. I also met, in Kazan (the capital of Tatarstan) the founder of the leading Russian NGO “Agora”, Pavel Chikov, and his wife, the advocate Irina Khrunova, who represents one of the “Pussy Riot” defendants. “Agora” has now been placed against its will on the “Foreign Agents” list.

- 36 In October 2014 I took part as a project expert in a round table meeting in Moscow at the Institute of Law and Public Policy for the project on litigation at the Constitutional Court, with Tamara Morshchakov, the former Deputy Chairman of the Constitutional Court and now an outspoken critic of the regime’s legal and judicial policy, and Anatoly Kovler, until recently the Russian judge at the European Court of Human Rights.
- 37 In November 2014 I was invited by the former Minister of Finance, Mr Kudrin, to take part in the II All-Russia Civil Forum, with 700 NGO representatives from all over Russia. I returned in December 2014 to teach for the fourth time in Yoshkar-Ola, and to meet in Kazan two clients in an ongoing case (of confession obtained by torture) at the European Court of Human Rights. I once again acted as a judge in the Jessup Competition in Moscow in January 2015.
- 38 In April 2015 I lectured at the conference "Problems of the reform of the penitentiary system of Russia", organised in Yekaterinburg by Sutyazhnik, the Yekaterinburg human rights NGO founded 20 years ago. I worked with them since 1997. Participants in the conference were members of ONK, Public Independent NGO Prison Monitoring Commissions, from all over Russia.
- 39 In June 2015 I visited once again Yoshkar-Ola, in the Republic of Marii El, Russia, to work with the Law Faculty at the State University. I also had two meetings with the local human rights NGO “Chelovek i Zakon” (Person and Law), which has been placed on Register of Foreign Agents under President Putin’s Law on Foreign Agents, and is taking a case to the European Court of Human Rights. I also visited Kazan, the capital of the Republic of Tatarstan, and met once again with Pavel Chikov the founder and head of the “Agora” and his wife Irina Khrunova, an advocate who is taking many cases to Strasbourg.

- 40 In July 2015 I participated in a Workshop at the Institute for Law and Public Policy (ILPP) in Moscow on effective litigation at the Constitutional Court of the Russian Federation.
- 41 In November 2015 I was invited to participate in the III All-Russian Civic Forum in Moscow by the former Minister of Finance, Mr Kudrin, whose acquaintance I made there. The Forum was attended by 1,200 delegates from all over Russia, including many leading judges and lawyers who are well known to me.
- 42 In February 2016 I once again acted as a judge in the Jessup Competition, and delivered lectures in events at Moscow State University and the National Research University – Higher School of Economics.
- 43 I returned to Moscow at the end of June 2016 to take part in events at ILPP. During that visit I met colleagues in order to discuss the applicability of transitional justice in Russia – I am a founder and on the Advisory Board of the Transitional Justice Institute at Ulster University in Belfast – and unknown to us we were filmed in the café where we met by the FSB, and this was then used as part of a scandalous programme on NTV, known to be the “voice of the FSB”, smearing the opposition for the forthcoming parliamentary elections. My presence was supposed to indicate that the Russian opposition is sponsored by the United Kingdom’s intelligence services. A photograph of me was used to publicise the programme. <sup>5</sup>
- 44 Notwithstanding this unwanted fame, I was again granted visas to visit Russia, in November 2016 to participate once again at the invitation of Mr Kudrin, the former Minister of Finance, in the All-Russian Civic Forum, and then to judge, for the 15<sup>th</sup> time, the Jessup Competition in Moscow, in February 2017. The Russian team I judged went on to win the world International finals – 90 countries – in Washington DC. The team members are now carrying out very important law reform work in Russia.
- 45 I returned in August 2017 to Russia to carry out human rights training and to lecture in Yekaterinburg, and met in Moscow with the leading human rights defender and prison reformed Lev Ponomaryov. I returned to Russia to present a paper in St Petersburg in October 2017, and to Yekaterinburg to teach at the end of October.

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<sup>5</sup> <http://www.ntv.ru/video/1308544/>

- 46 In 2018 I have once again acted as a judge in the Jessup Competition in Moscow, and have taken part in academic conferences in Moscow and St Petersburg. I returned to participate in conferences in Moscow and St Petersburg in May 2018. I will speak in a conference at Ivanovo State University in September 2018, so long, of course, as I am granted entry to Russia given the increasingly bad relations between Russia and the UK.
- 47 I visited Russia several times in 2019, for the Jessup competition, at which I had the honour to preside as President of the court in the Russian National Final, and also for academic conferences. My most recent visit was again for the Jessup competition in January-February 2020.
- 48 In all these visits I renew my acquaintance with legal practitioners, judges, and human rights activists.