



## On Zorkin's Court and Russian Foreign Policy

SCOTT REID

Monash University Melbourne, Victoria, Australia.

### Abstract

As Chairman of the Constitutional Court of Russia, Valery Zorkin has sought to legitimise State authoritarianism. He has done this through his juris prudence and stewardship of the Court. Nowhere is this more visible than with the Courts approach to the executive's foreign policy. This analysis will explore Zorkin's views and impact upon the Constitutional Court, its relationship with the Presidency, and the extent to which Zorkin's Court legitimises and reinforces Russia's foreign policy.



### Article History

Received: 04 November 2022

Accepted: 17 January 2023

### Keywords

Constitutional Court;  
Foreign Policy; Law; Russian.

### Introduction

Since 1993, Valery Dmitrievich Zorkin has been a figure head of the Russian judiciary. His service as Chairman to the Russian Constitutional Court has been lauded for its stability, constitutional development,<sup>1</sup> and moderation (Antonov, 2021). Zorkin is widely seen to be an honest judge, speaking frankly of corruption within the Russian legal system, admitting that 'bribery in the courts has become one of the biggest market places for corruption in Russia'(Gustafsson, 2013, p. 101). As Chairman, he has advocated for widespread social, economic and legal reform (Zorkin, Twelve Theses on Legal Reform in Russia, 2007, pp. 18-21).

In turn, the perception of Zorkin as a "rank-and-file" Russian citizen has granted him immense

popularity, with civil groups going so far as to ask him to run for president. (Globachev, 2018, p. 17). Even opposition parties once proclaimed him as Russia's hope, labelling him 'no less, no more than a poet, a thinker and a statesman' (Globachev, 2018, p. 17), and Boris Yeltsin described him as 'not left, not right. Objective. a quiet decent intellectual'(Bekbulatov, 2018) (many believe that it was Zorkin that Yeltsin owed his Presidential election to (Globachev, 2018, p. 15)). Zorkin is confident in his successive relationships with the executive and legislative branches, publically proclaiming that he 'will not allow the president of the parliament to stumble into an abyss'(Globachev, 2018, p. 16).

Zorkin's views and jurisprudence however have changed radically over the years. Initially throughout

**CONTACT** Scott Reid ✉ scottreid089@gmail.com 📍 Monash University Melbourne, Victoria, Australia.



© 2022 The Author(s). Published by Enviro Research Publishers.

This is an Open Access article licensed under a Creative Commons license: Attribution 4.0 International (CC-BY).

Doi: 10.12944/CRJSSH.5.2.05

the 1990's, Zorkin espoused the importance of Russian international engagement (Zorkin, Twelve Theses on Legal Reform in Russia, 2007, p. 23), which was in turn reflected in the Constitutional Courts use of the norms of Vienna Convention and International Covenant on Civil and Political Rights. He was also a large proponent of integration with European community standards, stating that 'the concept of a uniform legal space for Russia and EC countries can become a foundation for the development of our future legislation'(Zorkin, Twelve Theses on Legal Reform in Russia, 2007, p. 32).

Furthermore, Zorkin found value in drawing upon Anglo-Saxon and US legal systems, (Zorkin, Twelve Theses on Legal Reform in Russia, 2007, p. 32) envisaging the Constitutional Court as a balancing instrument between the executive and parliament (Sharlet, 1993). Warning of the sweeping nature of the Constitution, and its ability for unconstrained interpretation,(Strashun, 2002), Zorkin openly aspired to constrain executive power. He publicly warned that the first man to advocate a broad interpretation of the law was Hitler (Zorkin, 2015). For these warnings, he was suspended of judicial powers for a month (Bekbulatov, 2018).

Ironically, Zorkin would evolve to become a staunch proponent of 'judicial pragmatism', the practice of interpreting the constitution according to its spirit, and almost always in accordance with the whims of the Russian executive (Bekbulatov, 2018) (even to the detriment of the Russian federalist structure) (Fogelklou, 2007, p. 30). Unfortunately, Zorkin has not contested Russia's trend towards authoritarianism(Solomon, 2018), he has advanced it. He has proclaimed a compatibility between authoritarianism and what he nebulously refers to as the 'realities of Russian life'(Zorkin, The Law of Force and the Force of Law, 2015, p. 239). His internationalist outlook has also gradually receded over his judicial tenure, having a direct effect on the Russian rule of law.

*'From 2010 to 2015, the European Court of Human Rights condemned Russia 72 times for the non-enforcement of national courts' judgments, a record-high number equalling almost 20 percent of all such violations found in the 47 member states of the Council of Europe'(Kommersant, 2016).*

The domestic increase in Russian citizens before the courts was celebrated by (then President) Dmitry Medvedev and members of the Constitutional Court – as evidence of increased trust in the rule of law (Anna Pushkarskaya, 2009).

In recent years, Zorkin's stance has hardened, not shying from advocating for the freezing of relations between Russian and the West. He has diagnosed this 'dramatic collapse of trust' to 'the absence of a common understanding of justice'(Zorkin, Justice: The Imperative of a Law-Based Civilization, 2019, p. 73). This essay will explore Zorkin's views and impact upon the Constitutional Court, its relationship with the Presidency, and the extent to which Zorkin's Court legitimises and reinforces Russia's foreign policy.

### **Zorkin's Living Constitutionalism**

In attempting to define Zorkin's jurisprudence, his legal philosophy can be categorised as 'judicially pragmatic'. His approach to constitutional interpretation is as stated: 'the Constitutional Court cannot be guided by the pure letter of the Constitution and must find its spirit'(Bekbulatov, 2018). In finding this spirit, Zorkin's living constitutionalism imports *collective morality* as a principle which can legally overturn statutory law (Antonov, 2021, p. 170); 'a superior instance that stands above the sovereign and decides which of his enactments can be approved or invalidated(Antonov, 2021, p. 186). According to Zorkin, these left over moral fossils 'lay peacefully slumbering deep in the bowels of the Soviet system'(Zorkin, Twelve Theses on Legal Reform in Russia, 2007). It is for the Court and its chairman to decide which 'collective moral intuitions' or 'moral expectations' exist, and whether they hamper the validity of legislation (Antonov, 2021, p. 168).

Writing on this task, Zorkin describes a multi-ethnic kinship between the Russian people, entitled to a 'common destiny in their own land'(Kremyanskaya, 2019). This constitutional entitlement is stated in the preamble of the constitution, and can be defined and interpreted by the Constitutional Court as it sees fit. Thus, Zorkin has positioned himself as an arbiter with unfettered discretion to interpret Russian constitutional destiny. Circumventing Clause 2 of Article 13 which states 'no ideology

can be established as state or obligatory ideology', Zorkin has strategically promoted adherence to his own interpretive monopoly:

*'This constitutional-legal ban applies to all party ideologies, but not to constitutionalism. On the contrary, asserting constitutionalism as a state, supra-party ideology and integrating national idea is particularly relevant to modern Russia in the absence of universally meaningful value and ideological benchmarks. Our task is to invest the national ideology of constitutionalism with a legal meaning, which meets the expectations of the nation, its ideas of justice and the needs for law-governed development of Russia'*(Zorkin, Justice: The Imperative of a Law-Based Civilization, 2019, p. 77).

Zorkin's "constitutionalism" allows his conception of Russian identity to aid in constitutional interpretation, rather than precedent or the letter of the law.

Where can Russian identity be legally discerned and analysed? Zorkin believes that the character of Russian identity manifests itself in Russian and Soviet collectivism and serfdom, which should be modified and deployed in Russian contemporary society to support the established order(Aptekar, 2014). 'Serfdom was the main bond holding the unity of the nation', and without it, 'the dissatisfaction of the lower classes was unleashed on the monarchy directly, without shock absorbers' (Aptekar, 2014). He has said:

*'serfdom was that spiritual buckle that maintained the unity of the nation...Loosening the "collectivist buckle of communitarian morality" by liberal reformers under the guidance of Alexander II was an error. This error resulted in interrupting "historical continuity" and in removing archaic buckles without replacing them with anything new; this error was unbearable for the "unformed" (undeveloped) social consciousness'*(Antonov, 2021, p. 178).

For Zorkin, stability is far more important than equality (Zorkin, Twelve Theses on Legal Reform in Russia, 2007, p. 22).

### **Zorkin's Authoritarianism**

Recently in an article titled *'The Return of the State'*, Zorkin wrote that 'Russia is destined to be a strong state'(Zorkin, Return of the State, 2021).

Rule by law is an essential component to Zorkin's envisaged Russian destiny. In turn, he categorises his approach to the Russian rule of law as one of 'authoritarian modernisation', which he believes is an 'effective methodology for the management of the future' (Pushkarskaya, 2013, p. 2). This requires a strengthening of the regulatory functions of the state by the Russian "Generals of jurisprudence", who will set the country 'on the road of law' (Pushkarskaya, 2013, p. 2).

The correct road for the Russian rule of law(as Zorkin envisages)is heavily influenced by the works of Boris Chicherin, whom he characterises as the "ideal Russian liberal".The combination of 'liberal measures and powerful authority'serves as a supreme political wisdom for Russia (Antonov, 2021, p. 172). Just as Chicherin was a strong supporter of autocratic rule, Zorkin strongly supports autocratic rule, labelling it 'a good travel friend' for independent Russian courts for the time being(Antonov, 2021, p. 157). This also extends to his views on the executive, with Zorkin querying the necessity of Russia having a two-party political system(Zorkin, 2015, p. 240)(directly at odds with the constitution, per Article 13(3)'s guarantee of political diversity and a multi-party system).

Also like Chicherin, Zorkin has looked favourably upon a constitutional monarchy – and once frequented Russian monarchist meetings (UPI, 1994). The absolutism of monarchy undoubtedly appeals to Zorkin's proclivity for social stability above all else, and long-term policy making. Zorkin equates the Russian President as a monarch and has expressed approval for further strengthening this position(Sharlet R. , 2001, p. 197). Speaking on proposed constitutional changes to redistribute powers between President and Parliament, Zorkin decried this as anathema to the health of the Russian state, and nothing other than 'legal idealism' (Zorkin, 2015, p. 239).

Unsurprisingly, Zorkin's authoritarian jurisprudence is imbued with paternalism and to a degree, elitism. He believes that the state is entrusted with the task of morally educating the citizenry, and endorsing authoritarianism until this education bears fruit (Antonov, 2021, p. 185). On Russian society's attitudes towards a rule of law, he has said:

*'But in Russia, which has never been blessed with a law-abiding population, we have received something of a crazy patchwork quilt, consisting of mutually conflicting deontological legal patches and normative holes. It has a little bit of everything — from unconditionally precious human life to tit for tat, from do not commit adultery, do not kill, do not steal... to you'll have to die first, from love thy neighbour to militant egoism and ultimate anomie'* (Zorkin, Twelve Theses on Legal Reform in Russia, 2007, p. 23).

It is the role of the Russian state to engineer a culture and identity of legal servility, and to cure society from a 'deterioration of mores' (Antonov, 2021, p. 181). Much like 'Homo soveticus' and 'Homo post-soveticus', this new Russian Man relies upon the authority of the state articulated through its legal system. Zorkin channels this in his writings, stating 'it is better to have any steady social norm, however bad it might be, rather than none at all' (Zorkin, Twelve Theses on Legal Reform in Russia, 2007, p. 22).

In his efforts to legitimise Russian state authoritarianism, Zorkin cites the 'Singapore miracle' (Zorkin, 2015, p. 225) as evidence of the success of this formula. He looks favourably upon Lee Kuan Yew's statesmanship and economic success. Singapore's banning of political protest and rallies, and media censorship is not something that detracts from the country's legitimacy and success – in Zorkin's eyes.

He has also invoked the case study of Libya as evidence of a succeeding "authoritarian modernisation" (Zorkin, 2015, p. 226). He highlights that Libya had the highest living standard in Arabic Africa, a 'developed system of social security... modern system of secondary and higher education... growing industry' etc. As will be explored later, this idealisation of certain regimes fits his wider narrative about Russia's rule of law amidst other legal systems.

### **Zorkin's 'Age of Changes', and his Approach to Human Rights and Dissent**

Another core component to how Zorkin legitimises state authoritarianism is through his creation of a *necessity* for a strong centralised executive. How

does he foster this *necessity*? Through reference to what he coins as current 'age of changes'. This refers to a broader contemporary bifurcation point, 'when the dangers of conflicts and collisions – both within states and in the field of international relations – is increasing rapidly, and must be restricted by the force of law' (Zorkin, 2015, p. 218). He has further defined it as 'when the system of legal regulation in the part of the written law becomes weaker' (Zorkin, 2015, p. 219).

The executive branch will be the essential antidote to coping with this 'age of changes' (Zorkin, Twelve Theses on Legal Reform in Russia, 2007, p. 31). Interestingly however, Zorkin gives no definition of when this age of changes began, nor when it will finish. Despite this, its ambiguous existence has formed the basis for his advocacy of a strong executive, arguing that 'it was the most optimal one for the troubled times, while a parliamentary form of government was, in his words, more suitable for moderate storm loads' (Globachev, 2018, p. 15). Zorkin's 'age of changes' has been ongoing for decades, and shows no sign of subsiding.

In turn this manufactured crisis has created opportunities for the Russian state to criticise globalisation, (Zorkin, 2015, p. 218) and further advocate for public support in authority and the state (Zorkin, 2015, p. 218). It has also allowed the Court to enact restrictions on creating new political parties due to the 'present conditions' and 'temporary character' of the country (Fogelklou, 2007, p. 45) (the age of changes concept at play).

The biggest challenge to Zorkin's 'authoritarian modernisation', and state legitimacy is the concept of human rights. He has stated, 'in my view, one of the most dangerous legal trends in the present 'age of changes' is the fact that human rights are more and more insistently opposed to the rights of society' (Zorkin, 2015, p. 221).

Zorkin's antipathy for liberalism and individualism is well documented (Antonov, 2021, p. 50). Under the guise of the 'age of changes' concept, Zorkin insists that 'humanity' can be defined by its "real participation in a full societal life," so that "we live our lives not for ourselves," but for 'society and for fostering its unity' (Antonov, 2021, p. 175).

He has condemned liberalism as ‘the philosophy of absolute perversion, in the spirit of Marquis de Sade’ (Antonov, 2021, p. 179).

Thus, as Mikhail Antonov correctly points out, Zorkin promulgates that ‘the duty of Russian lawyers is to reject the pernicious ‘liberally individualistic interpretation of human rights’, and to fight against the propaganda of tolerance and of all-permissiveness which advocates deviations from social normativity.’ (Antonov, 2021, p. 179). Zorkin believes the executive of the Russian State should dictate these social norms. It should be noted, that this viewpoint is endemic to the wider Russian judiciary. According to one source, 58% of Russian judges believe that human rights can only be granted by the state, and don’t recognise inherent rights prior to state conferral (Antonov, 2021, p. 150).

Zorkin also fosters state legitimacy through his attitude towards dissent against the Russian Constitutional Court, and the wider Russian state apparatus. Similarly to the temporal and almost kinetic age of changes concept, Zorkin claims that ‘a war has been launched against the Constitutional Court – at the very least, an information war, but possibly an administrative and political war as well’ (Anna Pushkarskaya, 2009, p. 1). This war is very similar to “the war” launched against the Internal Affairs Ministry, referring specifically to the criticism of Major Dymovsky (Anna Pushkarskaya, 2009, p. 1). However, per the Courts chairman, ‘in the campaign against the Constitutional Court they’re not using majors, they’re using four-star generals, so to speak’—referencing the controversy surrounding Judges Kononov and Yaroslavtsev (Anna Pushkarskaya, 2009).

In an interview with ‘El Pais’, (Radio Free Europe/Radio Liberty, 2009) Judge Vladimir Yaroslavtsev stated that Russian justice was ‘in ruins...security services can do whatever they like and the courts are limited to ratifying their decisions’ (Radio Free Europe/Radio Liberty, 2009). He resigned months later followed by Judge Anatoly Kononov who described Yaroslavtsev’s comments as a ‘brave evaluation, much of which I support’ (Radio Free Europe/Radio Liberty, 2009).

Zorkin claimed the ‘true reason behind the outcries about the broken legal system’ that have been

raised by Judges Yaroslavtsev and Kononov is their ‘desire to finish off that legal system completely, so that the Constitutional Court would be unable to protect the Russian state at a critical moment’ (Anna Pushkarskaya, 2009). Commenting on the Courts decisions with respect to the fifth columnist Judges Kononov and Yaroslavtsev (made in a secret and closed session), Mr. Zorkin said rather bluntly:

*‘The judges of the Constitutional Court are a small group of highly respected people. Lackeys cannot join that circle. And if they manage to make their way in by accident, the tight community of Constitutional Court judges responds by spontaneously purging itself of the foreign element, which is what happened in this case...It’s not just that what our colleagues did was outrageous from an ethical standpoint. How can a team work unless it gets rid of those who wage an information war against it from within?’* (Anna Pushkarskaya, 2009).

The President aided Zorkin’s purge through amalgamating the two Constitutional Court chambers into one - increasing Zorkin’s oversight, along with ability to sanction errant Judges like Yaroslavtsev and Kononov. Formal grounds for the Court to launch dismissal proceedings were expanded to include: ‘committing an action discrediting them as a judge’, ‘keeping up with activities incompatible with the judicial office’, and ‘abstaining from participating in the Court hearings or voting for more than two times in a row’.

Another example of Zorkin’s approach to dissent was his interaction with Elena Lukyanova, a Professor of Constitutional Law who publicly questioned the Constitutional Courts acceptance of the state’s treaty with the ‘Autonomous Republic of Crimea’ (Issaeva, 2018). Lukyanova raised five concerns with the legality of Russian acceptance. Zorkin responded quickly, and publicly, remarking that Russia’s “educated class” has historically spurned the law, without accepting blame for the illegal dissolution of the Supreme Soviet (Nikolai Epple, 2015). The Constitutional Court has emulated this sharp approach to criticism in its rulings, including allowing for media restrictions on journalists based on the defence of ‘constitutional values’ (Fogelklou, 2007, p. 39).



In turn, Zorkin's stewardship of the symbiotic relationship between the Court and the executive has been rewarded. Reforms have seen the Chairman more dependent upon President, rather than fellow justices. The process for nominating the Chairman was once via secret ballot between the justices themselves. Now, however the Chairman is Presidentially appointed, with the approval of the Federation Council (Grigoriev, 2021, p. 34). The President also removed age restrictions for the Chairman of the Constitutional Court (Zorkin was born in 1943), all other judges must retire at 70 years of age. Zorkin can hold office for as long as the President sees necessary (Bekbulatov, 2018).

### **Zorkin and Foreign Policy**

Zorkin's writings deliberately mischaracterise Western liberalism's focus on the individual, to implicitly advance variants of constitutional authoritarianism. He has expressed deep discontent with the liberal doctrine of human rights, a concept which he describes as 'groundless' due to its enshrinement of individual freedoms above social solidarity, and the prioritisation of minority interests over the majority (Antonov, 2021, p. 175). This is at odds with what Zorkin coins the 'Russian legal mentality' (Zorkin, *Justice: The Imperative of a Law-Based Civilization*, 2019, p. 76).

In turn, those that depart from this system of rigid restrictions do not have the right to be categorised as *human* (Zorkin, 2015, p. 223). This raises troubling questions when partnered with his proposition that liberalism protects the selfish interests of the strongest global actors (Zorkin, *Justice: The Imperative of a Law-Based Civilization*, 2019, p. 76). Warning of the coming "post-human" future, Zorkin uses Klaus Schwab's 'COVID-19: The Great Reset' as evidence of nefarious machinations of Western elites like the World Economic Forum (Zorkin, *Return of the State*, 2021, p. 13). In proposing a solution to combat these forces, Zorkin draws upon the ideas of 19th century conservative philosopher Konstantin Leontiev, similarly calling for an authoritarian "freeze" to prevent this sub-human liberalism from penetrating Russia (Antonov, 2021, p. 181).

Zorkin deliberately stokes conservative anxieties over the perceived international attack on 'morally correct priorities', (Antonov, 2021, p. 179) in an effort to illicit support for authoritarian tendencies amongst

the Russian state. This can be seen with the 'Gay Propaganda' law, formally referred to as a Russian Federal law 'for the Purpose of Protecting Children from Information Advocating a Denial of Traditional Family Values'.

Zorkin also approaches Postmodernism in much the same light, decrying 'pitiless tolerance' from a 'post-Christian Europe' (Zorkin, 2015, p. 222). He sees Postmodernism as propaganda 'aimed at the collapse of normativity of society leading to loss of its identity' (Zorkin, 2015, p. 223). He also specifically mischaracterises Postmodernism as the dominant mode of contemporary Western thought. Drawing parallels with Napoleon's 1812 invasion, he considers certain NGOs and their Russian followers to be "Western civilized barbarians" who invade Russia with the help of 'postmodernist informational falsifications' (Antonov, 2021, p. 180). Zorkin harkens back to his Soviet roots when espousing the advantages of Russia's approach to the social contract.

*'In societies in which socio-historical trajectory has inculcated more pronounced individualism, the degree of such readiness to take upon oneself social responsibility and bear expenses is, as a rule, lower than in societies that socio-historically were formed on the basis of strong and steady collectivist ideas'* (Zorkin, 2015, p. 221).

Zorkin's unique blend of collectivism and conservatism lays a firm groundwork for Russian exceptionalism. The added mischaracterisation of the West as having collectively departed from enlightenment values (Zorkin, *Justice: The Imperative of a Law-Based Civilization*, 2019, p. 72), has incentivised Zorkin and the Court to propose a 'universal human legal world view' as an alternative to Western hegemony (Zorkin defines the Cold War as a struggle between 'different underlying concepts of justice') (Zorkin, *Justice: The Imperative of a Law-Based Civilization*, 2019, p. 75).

This adversarial paradigm is at the core of 'Primakov doctrine' – the fundamental basis to Russian foreign policy (Rumer, 2019). Zorkin and Primakov's shared vision for Russia being active in international structures is not the only thing the two men have in common. Both insist on Russia asserting its primacy in a post-soviet space, fighting against unipolarity

(Rumer, 2019). On this 'dangerous trend' of Western ideological unipolarity, Zorkin has said;

*'the renunciation of the universally relevant legal approach to the interpretation of justice as equality in freedom is fraught with the imposition on the whole world of one sided ideas of justice anchored in Western moral values and meeting the interests of the most influential actors in the system of global relations'* (Rumer, 2019).

For both Primakov and Zorkin, Russian security depends upon its status as a superpower (DeLong, 2020, p. 310). Zorkin believes this will benefit the *whole* world through 'the law of dialectics whereby the unity and struggle of opposites is the main driver of all development' (Zorkin, *Justice: The Imperative of a Law-Based Civilization*, 2019, p. 74). He goes on; 'without it, the country is threatened by another period of stagnation whose dangerous consequences we have already found out at our own cost (Zorkin, *Justice: The Imperative of a Law-Based Civilization*, 2019, p. 77). As Zorkin sees it, a competing Russia, or a Russia at war, is the optimal calibration for Russian society.

Zorkin and the Constitutional Court lend legal legitimacy to the executive's approach to foreign policy, and military interventions; 'standing on the ruin of the Soviet socialist system, and under pressure from the postmodernist practice of double standards and stifling economic sanctions. We will have to literally fight our way through to our legal future' (Zorkin, *Return of the State*, 2021, p. 13).

Speaking at the St Petersburg International Legal Forum, Zorkin said: 'I constantly go back to tragic events of October 1993, so far as I think that they in many respects, predetermined the whole subsequent history not only of Russia, but also of other post-socialist states'(Zorkin, 2015, p. 238). In much the same vein as Putin's comments on the collapse of the USSR being the greatest geopolitical disaster of the 20th century, (Associated Press, 2005), Zorkin saw the dissolution of the Soviet Union (and the 'hastily and rashly altered borders') as a 'serious threat to international security' (Zorkin, 2015, p. 235). And also like Putin, Zorkin has highlighted the active role of American advisers behind Yeltsin, (Zorkin, 2015, p. 238) a new form of state revisionism aimed at legitimising the current government.

For Zorkin and much of the Russian state apparatus, the dissolution of the Soviet bloc is a source of humiliation that must be rectified. The spectre of Western backed colour revolutions makes this territorial reclamation a matter of pressing importance. For Zorkin, this has tipped the balance between territorial integrity of the Russian bloc and the self-determination of peoples, in favour of the former.

This can be seen with Zorkin's approach to Crimea. During the annexation of Crimea, the Constitutional Court was petitioned by the President to legally recognise the Treaty, admitting Crimea to the Russian Federation. The Court decided to defer fully to the executive on this question (Nuzov, 2016, p. 368), unsurprisingly finding it was legally valid on 19 March 2014. The Court was a mere rubber stamp.

Zorkin stated, 'if people have expressed their will peacefully, in the appropriate political and legal forms, international community must be considerate to it...this logic was in the hidden meaning of the Constitutional Court's decision on Crimea' (Zorkin, 2015, p. 237). This decision however has faced considerable criticism over its arbitrary ruling (Zorkin, 2015, p. 234). Arbitrariness of state recognition is something Zorkin has complained of in the past, having previously written on the double standards of the UN and the International Court of Justice unilaterally recognising the legitimacy of self-proclaimed Kosovo independence (Zorkin, 2015, p. 235).

Unsurprisingly, Zorkin shares similar sentiments towards Ukraine as that of the executive branch. He believes that the Western backed 'Maidan 2014' coup d'etat' was an unconstitutional seizure of power, and that the mutineers should be criminally persecuted (Zorkin, 2015, p. 234). He has stated;

*'the Constitution of Russia as a democratic law-governed state does not admit the unconstitutional replacement of power...I cannot but note that state turnover as a means to solve problems is illness, pathology of political organism'*.(Zorkin, 2015)

This stands in stark contrast to his views on the first Chechen war, the very first post-soviet interaction between the judiciary and executive foreign policy. In 1995 Zorkin disagreed with the court's decision

to recognise the President's decree to bring the Russian military into Chechnya as "constitutional". Interestingly (and rather predictably) he invoked not the letter of standards set in writing but the notion of "the judge's conscience"(Zorkin, 2015, p. 17).

Why such an initial stance? This dissent coincided with a period of "exile" where he was removed from the Chairmanship of the Court but remained as a member (1993-2003). Despite Zorkin's dissent, the Chechnya decision was at its heart "teleological" (Fogelklou, 2007, p. 37). On this issue, Justice Vitruk stated that the Court does not employ 'constitutionality' (*konstitutsionnost*) and 'legality' (*zakonnost*) in its rulings, nor the framers' intentions. The constitutional requirement for restrictions on human rights be made via formal statute per Article 55(3), was ignored 'to preserve the territorial integrity of the Russian Federation' (Fogelklou, 2007, p. 38). Russian foreign policy, as decided by the executive – was simply too big to fail. It has remained as such since the First Chechen war, to the 2022 Russian invasion of Ukraine, and it will continue as long as Zorkin remains Chairman of the Constitutional Court.

### Conclusion

Zorkin believes justice is unique to each society (Zorkin, 2015, p. 219). Having been at the helm of Russian justice for two decades, Zorkin's 'living constitutionalism' has bred a unique blend of conservative authoritarianism, looking to the past for guidance. In continuing this veneer of a rule of law, the Russian judiciary should heed Zorkin's words, 'one cannot enter the river of history twice' (Zorkin, 2015, p. 223).

### Acknowledgment

The author would like to thank Monash University for the provision of essential resources in completing this article. All views, thoughts, and opinions expressed in the text belong solely to the author, and are not reflective of any employer, organization, committee or other group or individual.

### Funding

None

### Conflict of Interest

None

## References

1. Anna Pushkarskaya, I. G. (2009, December 7). It's Time for Valery Zorkin to Become Guarantor. *Current Digest of The Russian Press*, 61(49), 1-9.
2. Antonov, M. (2021). The Philosophy behind Human Rights: Valery Zorkin vs. the West . In M. Antonov, *Formalism, Decisionism and Conservatism in Russian Law* (p. 163).
3. Aptekar, P. (2014, September 29). Zorkin's Bonds. *Current Digest of the Russian Press*, p. 14.
4. Associated Press. (2005, April 26). *Putin: Soviet Collpase a 'Genuine Tragedy'*. Retrieved from NBC News: <https://www.nbcnews.com/id/wbna7632057>
5. Bekbulatov, T. (2018, December 26). *Two Trials of One Person*. Retrieved January 2023, from Meduza: <https://meduza.io/feature/2018/12/26/dva-suda-odnogo-cheloveka>
6. DeLong, M. (2020). The Concept of Russian Federation Foreign and Security Policy by Eugene Primakov. *Internal Security*, 307-318.
7. Fogelklou, A. (2007). Interpretation and Accommodation in the Russian Constitutional Court. In F. J. Feldbrugge, *Russia, Europe, and the Rule of Law* (pp. 29-46). Martinus Nijhoff Publishers .
8. Globachev, M. (2018). Justice: The Strange Case of Valery Zorkin. *The Current Digest of the Russian Press*.
9. Grigoriev, I. S. (2021). What Changes for the Constitutional Court with the New Russian Constitution? *Russian Politics*, 27-49.
10. Gustafsson, P. (2013). The Emergence of the Rule of Law in Russia . *Global Crime*, 82-109.
11. Issaeva, M. (2018, January 5). *A Nationalised Approach to International Law: The Case of Russia*. Retrieved from Völkerrechtsblog: <https://voelkerrechtsblog.org/a-nationalized-approach-to-international-law-the-case-of-russia/>
12. Kommersant. (2016, February 25). *As long as the judicial system of the Russian Federation does not become more independent, doubts about its effectiveness remain*. Retrieved from



- Council of Europe : <https://www.coe.int/en/web/commissioner/-/as-long-as-the-judicial-system-of-the-russian-federation-does-not-become-more-independent-doubts-about-its-effectiveness-remain>
13. Kremyanskaya, E. (2019, July 10). *Symposium: Recent and Potential Future Constitutional Developments in Russia*. Retrieved from IACL-AIDC Blog: <https://blog-iacl-aidc.org/2019-posts/2019/7/9/recent-and-potential-future-constitutional-developments-in-russia-l9led>
  14. Nikolai Epple, B. G. (2015, March 25). At Loggerheads. *Rossiiskaya Gazeta*.
  15. Nuzov, I. (2016). National Ratification of an Internationally Wrongful Act: The Decision Validating Russia's Incorporation of Crimea: Constitutional Court of the Russian Federation Decision of 19 March 2014, No 6-P. *European Constitutional Law Review* , 353-376.
  16. Pushkarskaya, A. (2013). Valery Zorkin Counts on Generals . *St Petersburg International Legal Forum*. St Petersburg: Kommersant.
  17. Radio Free Europe/Radio Liberty. (2009, December 2). *Top Russian Judges Quit Posts After Critical Comments*. Retrieved from Radio Free Europe: [https://www.rferl.org/a/Top\\_Russian\\_Judges\\_Quit\\_Posts\\_After\\_Critical\\_Comments/1893495.html](https://www.rferl.org/a/Top_Russian_Judges_Quit_Posts_After_Critical_Comments/1893495.html)
  18. Rumer, E. (2019, June 5). *The Primakov (Not Gerasimov) Doctrine in Action*. Retrieved from Carnegie Endowment for International Peace : <https://carnegieendowment.org/2019/06/05/primakov-not-gerasimov-doctrine-in-action-pub-79254>
  19. Sharlet, R. (1993). The Russian Constitutional Court: The First Term. *Post Soviet Affairs*, 1-39.
  20. Sharlet, R. (2001). Putin and the Politics of Law in Russia. *Post-Soviet Affairs*, 195-234.
  21. Solomon, A. T. (2018). Authoritarian Constitutionalism in Putin's Russia: A Pragmatic Constitutional Court in a Dual State. *Communist and Post-Communist Studies*.
  22. Strashun, B. (2002). Constitution as the Main Source of Law. In *Interpretation and Direct Application of the Constitution* (pp. 184-191). Vilnius.
  23. UPI. (1994, October 7). *Russian Monarchists Meet*. Retrieved from UPI: <https://www.upi.com/Archives/1994/10/07/Russian-monarchists-meet/5407781502400/>
  24. Zorkin, V. (2007). Twelve Theses on Legal Reform in Russia. In F. N. Nielsen, *The World Rule of Law Movement and Russian Legal Reform* (pp. 17-34). Moscow: JUSTITSINFORM.
  25. Zorkin, V. (2015). The Law of Force and the Force of Law. *Lecture for the Participants of the 5th St Petersburg International Legal Forum*. 2, p. 237. St Petersburg: Kutafin University Law Review.
  26. Zorkin, V. (2019, March 31). Justice: The Imperative of a Law-Based Civilization. *Social Sciences*, 50(1), 68-78.
  27. Zorkin, V. (2021, May 17). Return of the State. *Rossiiskaya gazeta*, pp. 11-13.