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# Obtaining redress for abuse of office in Russia: The Soviet legacy and the long road to administrative justice

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## ABSTRACT

This article examines the options for redressing abuse of office available to citizens in Soviet and post-Soviet Russia. I consider the courts, the procuracy, and the complaint mechanism as sites for citizens to lodge claims against abuse of office in late-Soviet and post-Soviet times. After the collapse of the Soviet system there was an attempt to overcome the Soviet legacy, to strengthen legal institutions and establish administrative justice. Analysis of Soviet and post-Soviet normative documents and statistical data allows us to argue that opportunities for Russian citizens to combat service crimes in the courts have improved substantially. However, the system for coping with abuse of office remains imperfect, and retains features of the Soviet legacy despite vague legislation about administrative justice and dual ways of coping with abuse through legal and quasi-legal mechanisms. The re-establishment of the complaint mechanism in the conditions of contemporary Russia exacerbates this imperfection. Overall, the complaint mechanism occupies a significant place in people's options for making claims against officials, especially claims against high-ranking officials.

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## 1. Introduction

During a recent teleconference (2017) with President Vladimir Putin, several families from Izhevsk called in to complain about poor living conditions. The president promised to visit them later. After that, a house in Izhevsk, the capital city of the Udmurt Republic, became the subject of close attention by local officials, the procuracy, and the investigative committee. It had been lightly renovated, and the courtyard around the house had been paved. At the end of June 2017 the President visited the house, and spoke with the acting head of Udmurtia right in front of the house.

*President Putin (P):* How many families have to be resettled? How many families need new housing?

*Mayor (M):* Eleven.

*P:* They must be resettled within this neighborhood.

*M:* We have a new apartment building in this area. It is not ready yet, but we plan to complete it in a year.

*P:* Do you have enough available apartments there?

*M:* At the moment we have one or two apartments available in the building.

*P:* So, by the end of this year all eleven families must be resettled in the new building.

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M: I'm not sure. We will do our best to make the right decision.

P: Try to do that.

M: Yes. We will do our best. We will discuss each and every situation personally.

The President gets thousands of complaints annually from citizens during his teleconferences. A special office of the President's administration registers about a million complaints annually. Some problems articulated in the complaints, like the one mentioned above, have no clear legal solution. It is a challenging task to provide eleven apartments in a new building when only one or two are available and all the others are sold out. It is unclear at present if the local official's promise has been executed or not, but it is obvious that this order of the president can hardly be executed without bending legal rules or procedures—a form of abuse of office.

The problem of abuse of office belongs to the sphere of law; specifically, administrative justice. Yet the mainstream literature on democratic regime survival has almost entirely ignored legal institutions (Reenock et al., 2013, p. 503). In the case of Russia, when studying problems of abuse of office it is not enough to consider anti-corruption measures only within the framework of the law enforcement system, because in Russia legal institutions have never been the only ones who dealt with problems in this sphere.

In spite of the long road towards administrative justice, and certain achievements in this field, the mechanism of complaints to the authorities remains an important path to obtaining redress for abuse of office in Russia. At the same time, the complaint mechanism remains even more marginal among researchers than legal institutions, which is quite a serious omission. Over the centuries this mechanism has influenced understandings of abuse of office by the state and society, the means of addressing the problem, and the role of the law and the legal system in processing claims against maleficence in office. For Russia, where the level of corruption is consistently one of the highest in the world, it is especially important to understand how abuse of office is comprehended and how these types of violations have been regulated not only today, but in previous eras. The purpose of this article is to consider the different methods for coping with abuse of office in the late-socialist and post-socialist periods, and to identify the role of the complaint mechanism among them.

The article is based on analysis of normative documents regulating the fight against abuse of office in the Soviet and post-Soviet periods; analysis of court statistics; and official data presenting the number and topic of complaints addressed to the Russian President. The first part of the article describes the Soviet definition of the notion “abuse of office.” The second part presents an analytical review of late-Soviet options for claims against abuse of office to the legal, supervisory, and administrative bodies. Then, in the third part the article addresses the contemporary period, analyzing particular features of coping with abuses in today's Russia. The closing section debates post-socialist transformation to claims against officials.

## 2. “Abuse of office” versus “corruption”: The Soviet understanding of crimes by officials

The term “abuse of office” is connected directly with the category of “corruption.” Both notions may be similarly defined as the illegal, unethical, or immoral use of power for private gain. The concepts are very similar in meaning, and the differences between them are vague. No theory gives a universal explanation of the differences between these two terms. Positioning corruption as the key offense, Western scholars are concerned with the definition, and argue about the constituent elements of corruption. The most common characteristics which are usually used to classify an offense as corruption concern the abuse of public office. This definition of corruption is commonly used by the World Bank and Transparency International, and also in Western academic debates (Andersson and Heywood, 2009, pp. 746–767). Joseph S. Nye classifies as corruption acts such as bribery, nepotism, and misappropriation (Nye, 1967, p. 419), emphasizing material interest as the core of this type of offense.

The category “abuse of office” is of secondary importance in Western debates. As seen from the previous paragraph, it is considered a primary characteristic of corruption rather than a separate phenomenon. No precise definition is available: the dictionary says only that “to abuse” means “to misuse” or “to commit wrongful acts”,<sup>1</sup> and the meanings of “misuse” and “wrongful” are as vague as that of abuse. Canadian political scientist Kenneth Gibbons suggests a number of actions which could be labeled “abuse of office”: nepotism, patronage (for instance, giving priority to political party supporters), legislative conflicts of interest, and bureaucratic conflicts of interest (Gibbons, 1989, p. 778). In comparison with corruption, in the Western debate abuse of office seems to be a more general definition, covering lesser violations which do not have an immediate connection to material profit, and may not include crimes such as bribery (Gibbons, 1989; Nye, 1967; Andersson and Heywood, 2009.).

The definition of corruption used by Transparency International is vulnerable to criticism even in the context of Western-style liberal democracies. As the British Law Commission stated, corruption constitutes “a common law offense (with) no exhaustive definition. As a result the boundaries of the offense are uncertain” (Mendilow and Peleg, 2014, p. 4). The possibility of applying this understanding of corruption to other types of societies is equally doubtful. Some governments do not have formal rules about official conduct, and in some nations it may be taken for granted that elected officials and bureaucrats will

<sup>1</sup> “Abuse of Office” *TheLaw.Com* Dictionary. Available at: <https://dictionary.thelaw.com/abuse-of-power/>.

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