
ESSAY

CONSTITUTIONAL ECONOMICS AND THE BANK OF RUSSIA *

Peter Barenboim **

I. INTRODUCTION

Constitutional economics is a field of science that is well known to economists. In fact, a Nobel prize has been awarded in this area.¹ However, Russian lawyers, including experts in constitutional law, have generally only heard about it from others. To understand the topic of constitutional economics, one must struggle through the misunderstanding and legal nihilism² that has prevailed in Russia for

* Many of the sources cited herein have been translated by the author from Russian to English.

** Peter Barenboim, was born in Russia in 1948. He graduated from the Law School of Moscow State University in 1972 and earned his Ph.D. in law from the same institution in 1978. He is a member of the Moscow City Bar Association, the Council of the International Bar Association based in London, and serves as the Vice President of the Russian Bar Association and the Vice President of the International Bar Association of the Commonwealth of Independent States. Mr. Barenboim has authored several books, including *THE LEGAL BASICS OF BANKRUPTCY* (1995), *THREE THOUSAND YEARS OF THE DOCTRINE OF SEPARATION OF POWERS: SOUTER COURT* (1996), *FIRST CONSTITUTION OF THE WORLD: BIBLICAL ROOTS OF INDEPENDENT JUDICIARY* (1997), and *HOW TO AVOID TORTURE: HUMAN RIGHTS FOR ARRESTED PEOPLE* (2000). He has also written numerous articles about constitutional, business, and criminal law and also edited and contributed to *MACHIAVELLI'S MAXIM: CONCEPTS FOR RUSSIA IN THE 21ST CENTURY* (2001).

1. James M. Buchanan Jr. received the Nobel Prize in Economics in 1986 for applying contract and constitutional thinking to economic theory and the political process. See Allen R. Sanderson, *Wealth of Notions*, U. CHI. MAG., Dec. 2001 at 41; see also Nobel e-museum, James Buchanan, at <http://www.nobel.se/economics/laureates/1986/> (last modified June 16, 2000).

2. V. B. Patukhov, *The Power and Society in the Field of Elections, or Zero Sum Games*, POLIS J., 1999, available at

decades or even hundreds of years. The constitutional economics approach allows for a combined economic and constitutional analysis and avoids one-sided approaches.

The term constitutional economics can be defined as the compatibility of effective economic decisions with the existing constitutional framework and the limitations or, conversely, the favorable conditions created by that framework.³ This definition indicates an interrelation between economists and constitutional lawyers. Another meaning was given by Yevgenii Yasin, a former Minister of Economics and well-known Russian economist. During a television discussion, he noted that lawyers are usually right in disputes between lawyers and economists, but that economists usually win in such disputes because if the country has no money, nobody can enforce any legal provision.

The current debate over the status of the Central Bank of the Russian Federation⁴ is a classic example of the use of constitutional economics by lawyers and economists. This debate revolves around the autonomy of the Central Bank and whether it should come under the control of the State Duma of the Russian Federation⁵ or whether it should remain an independent body.⁶ This Essay takes the position that

<http://www.politstudies.ru/archive/1999/5/2-e.htm> (last visited Jan. 10, 2002) (“Political power in the country is self-sufficient and is able to reproduce itself without civil society’s participation. The power’s self-sufficiency [sic] results from the lack of economic and legal base of federalism, from the lack of actual division of powers, and from legal nihilism.”).

3. WEBSTER’S NEW WORLD DICTIONARY 174 (2d college ed. 1984); *see also* James A. Montanye, *Freedom of Speech: Constitutional Protection Reconsidered*, 3 INDEPENDENT REV. 327 (1999) (“The Constitutional Rules that define the framework within which nonmarket issues are decided, and which constrain the scope of collective decision-making, are the focus of constitutional economics.”); Christian Kirchner, *The Principle of Subsidiary in the Treaty on European Union: A Critique from a Perspective of Constitutional Economics*, 6 TUL. J. INT’L. & COMP. L. 291, 293 (1998) (defining constitutional economics by applying the tools of economics to constitutional problems).

4. *See generally* <http://www.cbr.ru/eng/> (last visited Jan. 11, 2002). For a history of the Central Bank and the Bank of Russia, *see* <http://www.cbr.ru/eng/today/history/gosbank.asp> (last visited Jan. 11, 2002).

5. The State Duma is the lower house of the parliament of the Russian Federation. *See* MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (10th ed. 1998). *See generally* <http://www.cityline.ru/politica/e/fs/gd.html> (last visited Dec. 14, 2001).

6. Michael S. Bernstam & Alvin Rabushka, *Will the Central Bank of Russian*

the Central Bank should remain independent in order to maintain its effectiveness. Part I discusses the history and background of banking in Russia, while Part II describes the various positions taken on the issue by various academics, politicians, and practitioners. Finally, Part III explains why the Central Bank should remain independent.

II. CONSTITUTIONAL AND HISTORICAL FOUNDATIONS OF THE RUSSIAN BANKING SYSTEM

A. Pre-1993 Constitutional Underpinnings

The idea of the Central Bank being an independent and autonomous body is a notion that existed even before the current Constitution⁷ was adopted in 1993.⁸ The previous Constitution stated outright that “[t]he Central Bank is independent from administrative and executive government bodies.”⁹

The version of Article 75 of the 1993 Constitution that was finally adopted clearly states that the Central Bank is independent from all state authorities, both executive and legislative, in the performance of its main duty.¹⁰ It states, “[t]he protection and stability of the ruble is the main function of the Central Bank of the Russian Federation which it shall exercise independently from other bodies of state power.”¹¹ However,

Remain Independent, RUSSIAN ECON., Jan. 10, 2001, available at <http://www.russiaeconomy.org/comments/011001.html> (last visited Jan. 11, 2002); see also Igor Seenenko, *Central Bank Hangs Tough in Face of Critics' Opposition*, ST. PETERSBURG TIMES, June 13, 2000, available at http://www.sptimesrussia.com/secur/576/news/b_central.htm (last visited Jan. 11, 2002) (“[T]he Duma remains split on the issue of how the Central Bank’s powers should be curbed.”).

7. KONST. RF (1993); see also Mark Baimbridge et al., *The Bank that Rules Europe? The ECB and Central Bank Independence* (Bruges Group Occasional Paper No. 37), available at <http://www.eurocritic.demon.co.uk/ecb1.htm> (“The idea that central banks should be independent from political influence has deep historical roots . . .”).

8. The current constitution was adopted December 12, 1993. See David Filipov, *Russia Falls Deeper into Legal Quagmire*, MOSCOW TIMES, Apr. 9, 1994.

9. KONST. RF (1977).

10. *Id.* § 1, ch. 3, art. 75, pt. 2 (1993).

11. *Id.*

constitutionalists are continuously challenged in their interpretation of Article 75 in the absence of exact definitions of the terms “independence,” “protection of the stability of the Ruble,” and “stability of the ruble,” among others.¹²

The phenomenon of inattention to legislative terms has arisen in various areas due to unforeseen gaps, inexact language and casual phrasing.¹³ However, the Constitutional Conference discussions of Article 75 demonstrate that the provision on the independence of the Central Bank attracted much attention.¹⁴ The issue was repeatedly discussed,¹⁵ as demonstrated below, and as a result, Article 75 is reputed to be one of the sections in the Constitution that accurately reflects the intent of the authors.

For example, during the 1993 Constitutional Conference, S.V. Voblenko expressed concerns about Russia’s future without an independent bank, asking:

To whom does the bank answer? Whose decisions will it follow? Under the Constitution, to whom does it answer? If the Central Bank is to answer to the Supreme Council under the new Constitution and it will be entitled to determine monetary policy in Russia, then we will not only fail to save Russia from collapse, but we will also drive the country to exhaustion.¹⁶

B.A. Rakhimovich recognized that the Central Bank was “created as an independent state agency and only in this independence lies its value, otherwise it would be unable to perform its duties”¹⁷ He also emphasized that the Central Bank should not be subordinate to the President or the State Duma so as to ensure the performance of its public

12. *Id.*; see also Peter Barenboim, *Central Banking in Europe and in Russia*, INDICATOR, Oct. 2001, at 18 available at http://www.micex.com/downloads/pubs/ind_1001/1001_18_23.pdf (last visited Jan. 12, 2002).

13. Rett R. Ludwikowski, “Mixed” Constitutions - Produce of an Eastern-Central European Constitutional Melting Pot, 16 B.U. INT’L L.J. 1, 66 (1998) (“[T]he drafters of the new [post-Soviet] constitutions [] frequently made their products indeterminate, vague, and complicated for readers untrained in constitutional interpretation.”).

14. See *infra* statement from the 1993 Constitutional Conference pp. 163-64.

15. See Barenboim, *supra* note 12, at 18.

16. Constitution Conference Short Hand Materials, vol. 3, at 228.

17. *Id.* vol. 20, at 261.

duties.¹⁸

Another participant noted that the “sole objective” of a Central Bank “is the strengthening of the monetary unit of such country” by issuing currency.¹⁹ The “Central Bank must be independent, but its purpose should be the strengthening of the monetary unit of the country. In this country, the Central Bank sometimes assumes the duty to render assistance to enterprises and to increase their working capital. This is not the Bank’s business.”²⁰

S. S. Alekseev explained that the provisions of Article 75 of the Constitution of the Russian Federation were:

formulated with the sole purpose of securing the freedom of the market and restricting willfulness and arbitrariness of the authorities . . . because if the authorities are not kept within certain bounds and limits, such bounds will disappear, thereby threatening the goals sought by instituting an independent Central Bank. The Central Bank is an independent entity. The Central Bank is not within any system of the state power; it is not within either the executive or legislative branches and it is generally an independent entity in the market economy and to bind such entity with any rules would be, in my view, inappropriate.²¹

O. D. Davydov observed that “the most important issue of stabilization of the economy is monetary emission. The struggle between the Central Bank and the Government involves this issue.”²² He explained that this is a long-term issue and that Article 75 concerns the welfare of all Russian people and enterprises. According to B. S. Ebzeev,²³ independence is essential to a functioning Central Bank, “otherwise the deputies [of the State Duma] will constantly put pressure upon it.”²⁴ Chairman S. A. Filatov agreed with Ebzeev and proposed

18. *Id.* vol. 4, at 431.

19. *Id.* at 432 (statement of V. F. Shumeiko). For an interview with Mr. Shumeiko regarding Russia’s economic plan, see <http://www.cipe.org/ert/e06/5shumei.php3> (last visited Jan. 11, 2002).

20. Constitution Conference Short Hand Materials, vol. 4, at 172 (statement of V. F. Shumeiko).

21. *Id.* at 431-34.

22. *Id.* vol. 5, at 70-71.

23. B.S. Ebzeev currently serves as a Justice of the Constitutional Court of the Russian Federation.

24. Constitutional Conference Short Hand Material, vol. 18, at 172.

that the independence of the Central Bank could be ensured by having its chairman “appointed by the President and approved by the State Duma.”²⁵ This would prevent the State Duma from arbitrarily dismissing the chairman without the President’s acquiescence, thereby guaranteeing a certain amount of independence.²⁶ Similarly, Chairman Y. F. Yarov²⁷ boldly stated that the Central Bank “answers to no one.”²⁸

Chairman A. A. Sobchak²⁹ noted that introducing “vague wording into the Constitution is a very dangerous thing, and in this case it would be better to expressly stipulate the status of such specific organizations as the State Bank, their specific status and lack of subordination [to the government, president and parliament].”³⁰

These comments extracted from the materials of the Constitutional Conference clearly demonstrate that the authors of the 1993 Constitution of the Russian Federation not only purposely excluded the Central Bank from the system of separation of powers, but also emphasized its independence from other state structures, including the State Duma.³¹

B. Subordination: Conflicts between the Russian Federal Law on the Bank of Russia and the Constitution

As the previous discussion demonstrates, Article 75 of the Constitution of the Russian Federation, as it was ultimately adopted, is devoted to the issue of the autonomy of the Central Bank. Article 75 sets forth its tasks and main duties and clearly states that the primary duty of the Central Bank is to protect the stability of the ruble.³² In

25. *Id.*

26. *Id.* at 170-73.

27. For biographical information, see <http://www.nupi.no/cgi-win/Russland/personer.exe?87> (last visited Jan. 11, 2002).

28. Constitutional Conference Short Hand Material, vol. 3, at 228-29.

29. For biographical information, see <http://www.wsws.org/articles/2000/mar2000/sobc-m10.shtml> (last visited Jan. 11, 2002).

30. Constitutional Conference Short Hand Material, vol. 20, at 261-64.

31. Barenboim, *supra* note 12, at 18 (“The materials of the Constitutional Conference evidence that the authors of the Constitution of the Russian Federation emphasized [the Central Bank’s] independence from other state structures, including the State Duma.”).

32. KONST. RF § 1, ch. 3, art. 75 (1993); *see also* Gary Peach, *Central Bank Should Be Target of Quick Action*, ST. PETERSBURG TIMES, Apr. 11, 2000, available at

order to fulfill this duty, Article 75 explicitly states that the Central Bank is independent from other state authorities.³³

However, to the contrary, Article 5 of the Russian Federal Law on the Bank of Russia establishes the principle of the subordination of the Central Bank to the State Duma.³⁴ Article 5 explicitly states that the “Bank of Russia shall be accountable [“podotcheten”] to the State Duma”³⁵ As such, Article 5 has been interpreted as subordinating

http://www.sptimesrussia.com/secur/558/news/b_central.htm (last visited Jan. 11, 2002) (“Gerashchenko [Chairman of the Central Bank] has deftly used a combination of administrative measures and jawboning to protect the ruble . . .”).

33. KONST. RF § 1, ch. 3, art. 75.

34. *Id.* pt. 1.

35. Federal Law on the Central Bank of the Russian Federation (Bank of Russia) No. 394-1, art. 5 (Dec. 2, 1990), *available at*

<http://www.gbld.org/downloads/Russia/CBL.pdf> (last visited Jan. 19, 2002). Specifically, Article 5 states:

The Bank of Russia shall be accountable to the State Duma of the Federal Assembly of the Russian Federation. The accountability of the Bank of Russia to the State Duma shall mean:

the appointment to and relief of the post of the Chairman of the Bank of Russia by the State Duma on the presentation by the President of the Russian Federation;

the appointment to and relief of the post by the State Duma of the members of the Board of Directors of the Bank of Russia (hereinafter referred to as the Board of Directors);

the submission by the Bank of Russia to the State Duma for consideration of the annual report, and also of the auditing opinion;

the appointment by the State Duma of an auditing firm for conducting an auditing check of the Bank of Russia;

the conduct of parliamentary hearings on the activity of the Bank of Russia with the participation of its representatives;

the reports of the Chairman of the Bank of Russia to the State Duma on the activity of the Bank of Russia (two times a year: when submitting the annual report and the basic lines of the single State monetary-credit policy).

The Bank of Russia, within the limits of the powers granted to it by the Constitution of the Russian Federation and by the federal laws, shall be independent in its activity. The federal bodies of State power, the bodies of State power or the entities of the Russian Federation and the bodies of local self-government shall have no right to interfere in the activity of the Bank of Russia in the realization of its legislatively fixed functions and powers, or to take decisions contrary to the present Federal Law.

The Bank of Russia shall submit to the State Duma and to the President of the Russian Federation information in the procedure established by the federal laws.

In case of interference in its activity, the Bank of Russia shall inform thereof the State Duma and the President of the Russian Federation.

The Bank of Russia shall have the right of application to courts with actions for invalidating the legal acts of the federal bodies of State power, the bodies of State

the Bank of Russia to other state bodies. This interpretation of Article 5 is rooted in the past and requires all governmental bodies to be subordinate to the Parliament.³⁶ In this case, the Bank is for some reason subordinate to only one chamber of the Parliament.³⁷ This approach contravenes the spirit and the letter of the current Constitution.

The provisions dealing with subordination of the Bank of Russia are inconsistent with Article 75 of the Constitution of the Russian Federation Part 1, which establishes that “monetary emission is to be effected exclusively by the Central Bank of the Russian Federation.”³⁸ The monopoly of the Bank of Russia in monetary emission is incompatible with any intervention in such activity, which will be inevitable if the Central Bank is subordinate to the State Duma.

Moreover, Part 2 of Article 75 of the Constitution³⁹ further establishes the principle of independence of the Central Bank in the performance of its fundamental duty — the protection of the ruble and assurance of its stability.⁴⁰ It is clear that there is a conflict between the principle of independence in Article 75 and the doctrine of subordination implied in Article 5.

The doctrine of the combination of “independence”⁴¹ and “subordination,”⁴² as declared, in Article 5 of the Law on the Bank of Russia creates the possibility of an interpretation of the Constitution that would subordinate the Central Bank to the State Duma.

The text of the Constitution, the comments thereon, and the practice of the Constitutional Court of the Russian Federation provide an unambiguous interpretation of the conflict between Article 75 and Article 5, as it applies to the independence of the courts. Both assert the incompatibility of the independence of courts with their accountability, subordination or dependence to any other authorities.

power of the entities of the Russian Federation and the bodies of local self-government.

Id.

36. Barenboim, *supra* note 12, at 19.

37. The Upper Chamber of Parliament is the Council of Federation. *See generally*, http://www.council.gov.ru/index_e.htm (last visited Jan. 11, 2002).

38. KONST. RF. § 1, ch. 3, art. 75, pt. 1.

39. For relevant text of Article 75, Part 2, see *supra* Part I.A.

40. KONST. RF. § 1, ch.3, art. 75, pt. 2.

41. *Id.* at pt. 5.

42. *Id.*

The Central Bank is the only constitutional body, other than the courts, to which the term “independence” applied within the Constitution.⁴³ Therefore, use of the subordinate doctrine and its interpretation of the terms “independence” and “podotchetnost”⁴⁴ with respect to the courts will create a nightmare for Russian constitutional development.

C. Relevant Terminology

Russian constitutional law has distinct meanings for the terms independence and autonomy. When interpreting the Constitution and when considering the legal status of central banks, accurate legal terminology must be used.⁴⁵ The following are several definitions to consider when discussing Russian constitutional interpretation in the Central Bank debate context.

The term “fundamental duty” is used only in Article 75 of the Constitution regarding the breadth and scope of the tasks of protecting and ensuring stability of the ruble.⁴⁶ The term should be construed in the same sense as the “fundamentals of legislation,” “fundamental law,”⁴⁷ and “foundation,”⁴⁸ which are all construed as referring to basic or essential functions. The fundamental duty includes not only monetary emission and determination of the credit and monetary policy, but also the maintenance of the stability of the banking system, formation of the gold and currency reserves, and judicially appealing the acts of other authorities.⁴⁹ Determining a power for the Bank of Russia that does not entail “fundamental duty” is extremely difficult, if not impossible.

The Russian word podotchetnost, usually translated as

43. Compare KONST. RF § 1, ch. 3, art. 75, pt. 2 (discussing the independence of the Central Bank) with KONST. RF § 1, ch. 7, art. 120 (discussing the independence of the Russian courts).

44. See KONST. RF. § 1, ch. 3, art. 75, pt. 2.

45. Cf. Ludwikowski, *supra* note 13, at 66.

46. KONST. RF § 1, ch. 3, art. 75.

47. BLACK'S LAW DICTIONARY 272 (Pocket ed. 1996) (“The basic, organic law that establishes the governing principles of a nation or state”).

48. *Id.* at 266 (“The basis on which something is supported.”).

49. See generally http://www.cbr.ru/eng/today/status_functions/ (last visited Jan. 16, 2002).

accountability, actually implies some kind of subordination in Russia.⁵⁰ It has been explained by Dr. Willem F. Duisenberg, President of the European Central Bank in the following manner:

A central bank independent of short-term political concerns is best placed to pursue a medium-term-oriented monetary policy aimed at the maintenance of price stability which, in turn, will best serve overall economic prospects and the interests of the public At the same time, as central bankers, we should and do recognize that the achievement of institutional independence implies the assumption of greater responsibilities. An independent central bank must acknowledge that it is ultimately responsible for the matters delegated to it by parliament or government, as identified in its legal statutes In the Oxford English Dictionary, a “responsible” institution is defined as one that is “liable to be blamed for loss or failure.” Accountability is the mechanism by which independent central banks expose themselves to public scrutiny and thereby accept their liability for any shortcomings in the design and implementation of monetary policy. Against this background, accountability can be seen as natural counterpart of central bank independence.⁵¹

This interpretation is also applicable to Russian constitutional law. Construing constitutional economics under this interpretation accepts the accountability of central banks to parliamentary bodies. Another definition of independence is “freedom from the influence, control, or determination of another or others.”⁵² In English, “accountable” is defined as “responsible” and “explanatory.”⁵³ The English word “accountability” has a different meaning than the commonly accepted Russian term “podotchetnost.”⁵⁴ Each has a different connotation in Russian and English. This could create misunderstandings between Russian and Western experts.

Tonny Lybek of the International Monetary Fund (“IMF”)⁵⁵ has noted that some prefer the term autonomy to the frequently used term

50. Barenboim, *supra* note 12, at 22.

51. Barenboim, *supra* note 12, at 22.

52. WEBSTER’S NEW WORLD DICTIONARY 686 (3rd college ed. 1994).

53. MERRIAM-WEBSTER COLLEGIATE DICTIONARY 8 (10th ed. 1998)

54. Barenboim, *supra* note 12, at 22; *see also* text accompanying note 50.

55. *See generally* <http://www.imf.org/external/about.htm> (last visited Jan. 10, 2002).

independence, as autonomy simply entails operational freedom, while independence indicates a lack of institutional constraints.⁵⁶

III. THE DEBATE OVER WHETHER OR NOT TO AMEND ARTICLE 75

The Central Bank is one of the most important organs of financial and economic policy of the state and is also an essential constitutional body. In the past, the issues concerning the Central Bank's role and its relations with other government authorities in the determination of economic and financial policy priorities were only theoretical in nature. Recently, the issue of Central Bank independence has become the subject of increased legislative discussions; amendments to the Law on the Central Bank are being proposed by parliamentarians, who are seeking to rewrite the language of the Constitution.⁵⁷ The proposed changes to the Central Bank status have also been discussed by the Constitutional Court. In December 2000, the Constitutional Court made a significant decision affecting the constitutional status of the Central Bank, declaring that "the Bank of Russia has a special constitutional legal status."⁵⁸

There is no question that the main task of the Central Bank is to

56. See TONNY LYBEK, CENTRAL BANK AUTONOMY, AND INFLATION AND OUTPUT PERFORMANCE IN THE BALTIC STATES, RUSSIA, AND OTHER COUNTRIES OF THE FORMER SOVIET UNION, 1995-97, WP/99/4 (IMF Working Paper, Jan. 1999), available at <http://www.imf.org/external/pubs/ft/wp/1999/wp9904.pdf> (last visited Jan. 15, 2002).

57. For instance, Parliamentarians introduced amendments that consider the Bank of Russia a regular state body with full independence from the government. They also introduced an amendment to take a sufficient number of functions from the Board of the Bank of Russia. See *Central Bank Status Remains Under Question*, INTERFAX RUSSIAN NEWS, Oct. 18, 2000.

[The] Head of the Duma Banking committee, Alexander Shockin, and the head of the Duma economic policy committee, Sergei Glasyev, propose[] that the status of the Central Bank should be determined as that of a federal state power body. There [are] also proposals to leave the status of the Central Bank as laid out in the current version of the law on the Central Bank, and also to make the bank a state institution.

Id.

58. Decree of the Constitutional Court of the Russian Federation (Dec. 14, 2000); see also Barenboim, *supra* note 12, at 18 (noting that the Court found the main purpose of the Central Bank was to protect the exchange rate of the ruble and that the Bank should devote itself to economic development and the creation of economic incentives for growth).

protect the exchange rate of the ruble.⁵⁹ The exchange rate depends not only on intervention in the currency market, money emissions,⁶⁰ and interest rates,⁶¹ but also on the economic environment.⁶² Therefore, the Central Bank should devote itself to achieving and maintaining the strength of the economy and providing incentives for economic growth. Unfortunately, given the scope of the Central Bank's role, some people are trying to influence its monetary and credit policy for their own purposes.

A. International Definitions of Independence and Accountability

Modern economic literature tends to discuss the independence of monetary and credit policy of the Central Bank in terms of objectives the Bank can independently establish and instruments the Bank can choose for its regulation.⁶³ Many articles in prestigious theoretical Western journals address the issue of the independence of central banks.⁶⁴

The most useful explanation of the independence and accountability

59. KONST. RF § 1, ch. 3, art. 75, pt. 2 (1993); *see also supra* text accompany note 10-11.

60. *Russia: 'Eating the Bitter Bread of Banishment,'* W. MERCHANT BANK INVESTMENT REV., Feb. 23, 1999, at 46 ("A wave of monetary emission will spur inflation and put strong downward pressure on the exchange rate.").

61. Molly Schuetz, *ECB's Quaden Says Markets 'More Realistic' on Euro*, BLOOMBERG NEWS, Dec. 19, 2000 (quoting ECB President Guy Quaden as saying that "a recovery in the exchange rate has come to pass, and its amplification will depend principally on the convergence of interest rates . . .").

62. *Economic Policies; Norway*, OECD ECON. SURVEYS NOR., Mar. 1997, at 3 ("Exchange rate stability is deemed to . . . create a stable economic environment . . .").

63. *See* Alberto Alsina & Lawrence H. Summers, *Central Bank Independence and Macroeconomic Performance: Some Comparative Evidence*, 25 J. MONEY, CREDIT & BANKING 151 (1993), available at http://www.j-bradford-delong.net/Teaching_Folder/Econ_202b_F2000/papers/Alesina,_CBI.pdf (last visited Jan. 20, 2002); *see also* *The Central Bank Cannot be Divided Between the State Duma, the President, and the Government*, KOMMERSANT (Nov. 3, 2001).

64. *See, e.g.,* Rosa Maria Lastra, *The Division of Responsibilities Between the European Central Bank and the National Central Banks Within the European System of Central Banks*, 6 COLUM. J. EUR. L. 167 (2000); Geoffrey P. Miller, *An Interest-Group Theory of Central Bank Independence*, 27 J. LEGAL STUD. 433 (1998); Christos Hadjiemmanuil, *European Monetary Union, the European System of Central Banks, and Banking Supervision: A Neglected Aspect of the Maastricht Treaty*, 5 TUL. J. INT'L & COMP. L. 105 (1997).

of central banks has come from practitioners. At the Bicentennial Symposium of the Banque de France's 200th anniversary in May 2000, speakers and participants stressed that the institutional independence of central banks is based not only on economic theory and empirical studies, but is also the product of pragmatic historical evolution.⁶⁵ This independence has been established both with respect to political authorities, such as the government and Parliament,⁶⁶ and private interests.⁶⁷ It implies a regular dialogue between the Central Bank and political authorities to reduce any potential conflicts between monetary and fiscal policies. Practically speaking, independence requires a collegial decision-making process and establishes methods of external institutional communication.⁶⁸

The participants of Symposium noted that the concepts of "independence" and "accountability" were developing over the past thirty years.⁶⁹ However, these terms are commonly used today. Accountability is the necessary counterpart to the independence of central banks granted by public authorities. It entails a duty of communication,⁷⁰ transparency,⁷¹ and respect for the assigned mandate.

65. See Dr. Willem F. Duisenberg, From the EMI to the ECB, Speech Delivered at the Banque de France's Bicentennial Symposium (May 2000), available at <http://www.ecb.int/key/00/sp000530.htm> (last visited Jan. 11, 2002) ("The experience of the 1970s and 1980s demonstrated the advantage of central bank independence in the pursuit of price stability.").

66. KONST. RF § 1, ch. 3, art. 75, pt. 2 (1993).

67. See Ron Synovitz, *World Bank Reports on Corruption, Name Worst Offenders*, RADIO FREE EUROPE, RADIO LIBERTY, Sept. 27, 2000, available at <http://www.rferl.org/nca/features/2000/09/27092000185851.asp> (last visited Jan. 16, 2002) ("The World Bank says private vested interests are hijacking economic reforms in much of eastern Europe and the former Soviet Union.").

68. Jeane-Claude Trichet, Opening Speech of the Commemorative Bicentennial Symposium of the Banque de France, (May 30, 2000), available at <http://www.banque-france.fr/gb/telechar/05302000.pdf> (last visited Jan. 10, 2002) ("[Central Bank] independence does not mean a lack of dialogue.").

69. *Id.*

70. See Gordon Thiessen, Accountability and Transparency in Canada's Monetary Policy, Remarks to the Metropolitan Halifax Chamber of Commerce, Jan. 27, 2000, available at <http://www.federalreserve.gov/boarddocs/speeches/2001/20010419/default.htm> (last visited Jan. 16, 2002) ("[A]ccountability in monetary policy require[s] effective communication.").

71. See Roger W. Ferguson, Jr., Transparency in Central Banking: Rationale and

Independence implies the establishment of a dialogue between the Central Bank and the political institutions. However, according to participants of the Symposium, central banks are directly accountable only to the general public.⁷² It is their duty to communicate, through press conferences, by publishing comprehensive analyses in periodic bulletins, through regular parliamentary hearings or media interviews.⁷³ The President of the Banque de France, Jean-Claude Trichet, summed this up by saying “[t]he independent Banque de France is accountable to French public opinion, the European Central Bank to the 293 million Europeans, and the Federal Reserve Bank to the 265 million Americans.”⁷⁴

As demonstrated below, this new trend in 21st century central banking is still completely misunderstood in Russia by the current Legal Department of the President, Government, and State Duma.

B. The Correlation between the Independence of a Central Bank and Inflation

The theory that independence of central banks is a necessary condition for facilitating a decline in inflation rates is commonly accepted.⁷⁵ Some are of the opinion that a policy combating inflation

Recent Developments, Remarks Before the National Economists Club and Society, Apr. 19, 2001, *available at* <http://www.federalreserve.gov/boarddocs/speeches/2001/20010419/default.htm> (last visited Jan. 16, 2002) (“Transparency facilitates a broad understanding of what the central bank is doing and thereby gives the public the tools to hold the independent central bank accountable.”).

72. See Trichet, *supra* note 68.

73. See Barenboim, *supra* note 12, at 22.

74. Trichet, *supra* note 68.

75. See Stanley Fischer, *Central Banking: The Challenges Ahead: Maintaining Price Stability*, *available at*

www.worldbank.org/fandd/english/1296/articles/0101296.htm (last visited Jan. 16, 2002); see also Mark M. Spiegel, *British Central Bank Independence and Inflation Expectation*, FRBSF ECON. LETTER (Federal Reserve Board San Francisco, San Francisco), Nov. 28, 1997, *available at*

<http://www.frbsf.org/econrsrch/wklyltr/el97-36.html> (last visited Jan. 11, 2002) (“A substantial body of economic literature predicts that the more independent a country’s central bank is, the lower the inflation rate is in that economy.”); William J. McDonough, Remarks at the Society of Investment Analysts (Feb. 11, 1997), *available at*

increases unemployment⁷⁶ and slows down economic growth.⁷⁷ One study has shown that there is no adverse effect on employment and industrial development from the independence of central banks.⁷⁸ However, there is no such negative correlation. When a central bank

<http://www.ny.frb.org/pihome/news/speeches/wm970211.html> (last visited Jan. 11, 2002) (“Empirical research in recent years has shown that both the average rate of inflation and its variability tend to decline in tandem with increased independence for central banks.”); Carl Walsh, *Is There a Cost to Having an Independent Central Bank?*, FRBSF WEEKLY LETTER, Number 94-05 (Feb. 4, 1994), available at <http://www.bus.lsu.edu/economics/faculty/dmcmillin/personal/4560/indepcebank.html> (last visited Jan. 10, 2002); Alsina & Summers, *supra* note 63. *But see* Baimbridge, *supra* note 7. “The establishment of an independent central bank with strong anti-inflationary preferences is seen as a way for the state to bind its hands against the electoral temptation of inducing unanticipated increases in the price level.” *See* Baimbridge, *supra* note 7 (questioning whether an independent central bank truly results in lower inflation).

76. *See* Laurence H. Meyer, *Inflation Targets and Inflation Targeting*, Remarks at the University of California at San Diego Economics Roundtable (July 17, 2001), available at

<http://www.federalreserve.gov/boarddocs/speeches/2001/20010717/default.htm> (last visited Jan. 16, 2001) (“At times, an increase in the unemployment rate may be required to sustain stable, low inflation.”). *But see* Nouriel Roubini, *The NAIRU Debate: Can the US Economy Grow Above 2.5% and Unemployment Fall Below 5% Without Causing an Increase in Inflation*, (1998), available at <http://equity.stern.nyu.edu/~nroubini/NAIRU.HTM> (last visited Jan. 16, 2002) (“[T]here is no evidence that the inflation rate is accelerating [sic] these days [with unemployment decreasing.]”); *see also* GEORGE A. AKERLOF, ET AL., *LOW INFLATION OR NO INFLATION? SHOULD THE FEDERAL RESERVE PURSUE COMPLETE PRICE STABILITY?*, (The Brookings Institution, Policy Brief No. 4, Aug. 1996), available at <http://www.brook.edu/comm/PolicyBriefs/pb004/pb4.htm> (last visited Jan. 16, 2002) (“The costs of maintaining zero inflation would be a permanent reduction in gross domestic product of 1 to 3 percent and a permanent drop in employment by the same amount.”).

77. *See* Michael O’Higgins *Says Bonds Can Beat the Dow: Bloomberg Forum*, BLOOMBERG NEWS, Jan. 19, 1999 (stating that money manager Michael O’Higgins believes that “low inflation may signal slow economic growth.”). *But see* Thomas M. Hoenig, *Low Inflation and the Economic Outlook Comments before the National Association of Business Economists* (Jan. 22, 1998), available at <http://www.kc.frb.org/spch&bio/outlook.htm> (last visited Jan. 16, 2002) (noting that low inflation increases economic growth).

78. Guy Debelle & Stanley Fisher, *How Independent Should a Central Bank Be?*, in *GOALS, GUIDELINES AND CONSTRAINTS FACING MONETARY POLICY* (1994).

carries out a clear deflationary policy, significant rigidities appear.⁷⁹ According to Russian economist Dr. Revold Mikhailovich Entov,⁸⁰ the costs of such anti-inflationary policy are slightly higher for independent banks, but economists still have been unable to offer a satisfactory explanation.

In a report for the Monetary and Exchange Affairs Department of the IMF in February 1999, Tony Lybek discusses the correlation between autonomy and accountability and inflation rates in Russia and other former Soviet states.⁸¹ He concluded that “the implementation of monetary policy to an autonomous and accountable central bank with a clearly defined primary objective” can significantly improve the “credibility of monetary policy.”⁸²

C. Central Bank Reserves

The maintenance of reserves of any central bank is a primary political and economic priority of all nations.⁸³ In Russia, there is a strong liberal opposition to the policies of the Chairman of the Bank of Russia, Victor Gerashchenko, who has made the increase of Central Bank reserves a cornerstone of his financial policy.⁸⁴ The country must

79. Cf. JORG BIBOW, MAKING EMU WORK: SOME LESSONS FROM THE 1990'S (Levy Economics Institute of Bard College, Working Paper No. 326, Mar. 2000), available at <http://www.levy.org/docs/wrkpap/papers/326.html> (last visited Jan. 16, 2002) (“Allegedly, a lack of labour market ‘flexibility’ and wide-spread ‘structural rigidities’ represent the root cause of European unemployment, at least if Europe’s central bankers were to be believed.”).

80. Dr. Revold Mikhailovich Entov is a Professor of Economics at the Moscow State University and is a full member of the Russian Academy of Science. He specializes in macroeconomic theory and has contributed to the drafting of bills and other legislative material for the Russian government. For biographical data, see www.iet.ru/person/entov-en.html (last visited Jan. 10, 2002).

81. See Lybek, *supra* note 56.

82. *Id.* at 17.

83. See M. R. Chatu Sonakul, National Central Bank and World Peace, Speech at the 27th International Conference on World Peace (Dec. 1, 2000), available at <http://www.bis.org/review/r001205c.pdf> (last visited Jan. 16, 2000).

84. *Central Bank Chair Gerashchenko Says Optimal Level of Gold and Currency Reserves is \$45-\$48 Billion*, RUSSIAN BUS. MONITOR, June 18, 2001 (“Central Bank Chair Victor Gerashchenko [of] the Central Bank plans to increase gold and currency reserves.”).

pay back almost twenty billion dollars of foreign debt in 2003.⁸⁵ This incredible amount of debt underscores the importance of maintaining ample reserves for the stability of the national economy. As Russian oligarchs⁸⁶ are not held responsible for the financial stability of Russia, some political observers, including Michael Delyagin, Director of Research of the Institute of Problems of Globalization, believe that the Russian oligarchs would support a second national default in 2003.⁸⁷ The political observers argue that because nobody was held accountable after the default of August 1998,⁸⁸ the oligarchs would be gratified by a new default, thereby weakening the position of the new Russian President. As Gerashchenko's policy is designed to avoid a 2003 default, the oligarchs have implemented this campaign to reduce the independence of the Bank of Russia, and thereby undermine his policy. A *Financial Times* article, entitled "Putin May Force Russia's Central Bank Chief to Quit," stated:

Victor Gerashchenko, the veteran chairman of Russia's central bank, might be forced to quit within the next six months as President Vladimir Putin strengthens his grip on the financial levers of power, according to a senior Russian official.

...

In an interview with the [*Financial Times*] last December, Mr. Gerashchenko said he was the most independent central banker in the world because he had already passed his retirement age and was not afraid of being sacked.

Contrary to most expectations, Mr. Gerashchenko maintained a tight grip on monetary policy in the wake of the rouble's devaluation in

85. Kathleen Knox, *Russia: Economy Rebounds From 1998 Slide*, RADIO FREE EUROPE RADIO LIBERTY, Aug. 20, 2001, available at <http://www.rferl.org/nca/features/2001/08/20082001122737.asp> (last visited Jan. 20, 2002) ("[P]roblems ahead include the so-called '2003 problem,' when Russia will have to pay back around \$18 billion of foreign debt.").

86. See Leon Aron, *Waiting for December*, RUSSIAN OUTLOOK, 1999, available at <http://www.aei.org/ro/ro10351.htm> (last visited Jan. 17, 2002) (noting that the oligarchs include "corrupt government officials and top entrepreneurs.").

87. Michael Delyagin, *New Oligarchs Prepare a New Default*, IZVESTIA, Mar. 7, 2001.

88. See *How Russia's Crisis Makes State Banking More Competitive*, INTERFAX, Jan. 13, 1999.

August 1998.⁸⁹

Another Financial Times article, published a short time later and entitled, “Russian Central Bank in Role Cut,” explained that:

The Central Bank of Russia will guard its independence on monetary policy but may lose its autonomy over commercial bank regulation, the country’s finance minister said at the weekend.

In an interview, Alexei Kudrin, who is also a deputy prime minister and ally of President Vladimir Putin, dismissed recent speculation that the governor of the Central bank would be made directly subordinate to the government, in a move which might threaten the stability of the rouble.

. . . Mr. Kudrin’s comments came after widespread debate in recent days over a draft parliamentary law on the central bank, which has sparked strong opposition from individuals including Viktor Gerashchenko, its governor. Parliament has long sought greater control over the central bank, while Mr. Gerashchenko, subject to frequent rumours about his dismissal, has clashed over his management of the rouble with Mikhail Kasyanov, the Prime Minister.⁹⁰

At the same time and despite Mr. Kudrin’s statements, the President of Russia introduced new amendments to alter the legal status of the Bank of Russia.⁹¹ These amendments seek to convert the National Banking Council, which is now a consulting body to the Bank of Russia,⁹² to the highest governing body of the Central Bank.⁹³ With the

89. Andrew Jack et al., *World News – Europe: Putin May Force Russia’s Central Bank Chief to Quit*, FIN. TIMES (London), May 23, 2000, at 8.

90. Andrew Jack, *Russian Central Bank in Role Cut*, FIN. TIMES, Oct. 22, 2000, at 3.

91. See *The Government’s Golden Grab: Stripping Central Bank’s Independence Won’t Cure its Debt Woes*, RUSSIA J., Mar. 17, 2001, available at <http://www2.russiajournal.com/weekly/article.shtml?ad=4407> (last visited Jan. 19, 2002).

92. Federal Law on the Central Bank of the Russian Federation (Bank of Russia) No. 394-1, art. 21 (Dec. 2, 1990), available at <http://www.gbld.org/downloads/Russia/CBL.pdf> (last visited Jan. 19, 2002). Article 21 states that the National Banking Council:

shall consider the concept of improving the banking system of the Russian Federation; shall consider the drafts of the basic direction of the single State monetary-credit policy, the policy of the currency regulation and the currency control, shall give opinions thereon and shall analyze the results of their fulfilment [sic];

advent of these amendments, many major functions of the Board of the Bank of Russia would be shifted to the new twelve-seat National Banking Council.⁹⁴ The seats in the National Banking Council would be designated as follows: the State Duma will have five seats in the new National Banking Council, the President of Russia will control three seats, and the Government will have three seats.⁹⁵ Apparently, these amendments were preliminarily approved by lawyers of the Office of the Administration of the President and could be considered by the Parliament by the end of the 2001-2002 session, which concludes during the Summer of 2002.

Mikhail Zadornov, Chairman of the State Duma Subcommittee for Monetary Policy, Currency Regulation and Central Bank Activities and

shall conduct the expert examination of the draft legislative and any other normative acts in the field of banking;
shall consider the most important matters of regulating the activity of the credit organizations;
shall participate in the elaboration of the basic principles of organizing the system of settlements in the Russian Federation.

Id.; cf. Yelena Kolkoltseva, *Yelsin Approves Banking Law*, MOSCOW NEWS, May 5, 1995 (“The National Banking Council, which includes representatives from the Federation Assembly, presidential administration and government, has mere ceremonial functions.”).

93. See *Duma Does Not Want to Deprive Central Bank of Independence*, RUSSIAN BUS. MONITOR (Nov. 14, 2001) (citing VREMYA NOVOSTEY, Nov. 13, 2001, KOMMERSANT, Nov. 13, 2001, POLIT.RU, Nov. 13, 2001).

94. See *Amendments to Law on CBR Should Go Back to First Reading*, BUS. REP., Nov. 28, 2001.

It is planned that NBC will receive lots of powers, such as the right to approve annual statements of the Central Bank and estimates of its expenditures; to approve the conceptual plan of national banking system development and annual projects of monetary and crediting policy; to solve problems related to participation of the Central Bank in the capital of crediting organizations; to appoint the main auditor of the Central Bank and to study its report; to discuss quarterly reports of the Board of Directors about the operations of the Central Bank; to choose an auditor for the annual statement; to approve the accounting rules for the banking system and for the Central Bank itself.

Duma Does Not Want to Deprive Central Bank of Independence, *supra* note 93.

95. See Victor J. Yasmann, *Russia Voices Reservation About Kyoto Protocol; New Focus on Kaliningrad*, RUSSIA REFORM MONITOR, July 27, 2001, available at <http://www.afpc.org/rrm/rrm858.htm> (last visited Jan. 19, 2002) (“[T]he CB will remain nominally independent from the state, but will be subordinated to the newly-creating [sic] National Banking Council, composed of ranking deputies of the Duma and members of the presidential administration and the government.”).

Former Minister of Finance,⁹⁶ is one of the active members of Parliament who opposes new amendments to the Law on the Central Bank introduced in July 2001. He made the following comments to the Moscow News:

The presidential amendments to the Law on the Central Bank of Russia place the Bank under the government's control. This is an alarming sign.

The law of 1995 afforded the Central Bank complete independence, including in the monetary and credit sphere. And the Russian Constitution states that the [Central Bank] is linked to the executive and legislative branches only to the extent that the Bank acts jointly with the government in the conduct of monetary policy, while the State Duma may only examine the Bank's annual reports and appoint an auditor to prepare a resolution on the reports. An independent Central Bank is definitely to Russia's advantage. Given the unstable budgetary and financial system, the government and parliament are in the habit of solving their numerous financial problems in ways that run counter to the country's real capability. Hence the chronic budget deficit of the 1990s. A dependent Central Bank would be obliged to comply with the irrational policies of the powers that be, while an independent one can put a brake on public spending and help curb inflation.

We need a new law on the Central Bank to resolve numerous [] questions. But it is not easy to adopt such a law, for we have two extreme and opposed viewpoints on the necessity to alter the banking system and the Central Bank's role. One is the [Central Banks]'s own opinion - everything is just fine, and so there is no need to alter anything. The other view is that the [Central Bank] should become a government institution, virtually another ministry.

After two years of debate, this past summer the Duma managed to pass a compromise version of the relevant bill on its first reading. But before it could go through the second reading, there appeared the presidential amendments, which reflect the state's extreme viewpoint. They boil down to this: The Central Bank is a government body and an instrument of the state at the same time; all

96. For biographical information, see <http://www.eng.yabloko.ru/People/Zador/zador.html> (last visited Jan. 19, 2002).

the property in the bank's charge is federal property allotted to it for day-to-day management; until the Central Bank disposes of its stakes in Russian overseas banks and several banks inside the country, something current law requires it to do, the government may at any moment take under its own management the shares in these banks kept with the [Central Bank].

Here we can detect the government's desire not only to avoid constant friction with the CB, but also to incorporate the Bank into the general system for making authoritative decisions. My conviction is that such a move would deal a serious blow to both economic and political stability of Russia

A Central Bank in a ministerial role would be incapable of conducting an independent policy that can act as a kind of counterweight. It is easy to predict the consequences of such a scenario: Again galloping inflation, sky-high prices, a weak ruble, and growing poverty countrywide.

...

There is nothing new in all that - many countries have experienced such rebounds after major efforts to reform the state. These are all the more inevitable in Russia because reform has benefited at most 15 percent of the population, while the rest have grown poorer. About 40 percent of those who voted for Vladimir Putin believed that they had been deprived of their rightful share, and that the recarving of the pie would bring them a bigger share than they had got over the last ten years. The president is well aware of that sentiment. He also knows that if the pie is to be reshared, it is not enough merely to centralize power. The thing to be carved up anew must also be centralized. This is the big idea behind the desire to change the status of the Central Bank.

... Because Russia lacks effective checks and balances in both the economy and politics, we would risk losing the few things that lend stability to the country: mass media independent of the government, an influential parliament, and an independent Central Bank.⁹⁷

Fortunately, the aforementioned amendments still have not passed the Russian Parliament.

97. Mikhail Zadarnov, *Central Bank Must Keep Its Independence*, MOSCOW NEWS, Oct. 18, 2000.

D. Contending with the Political Climate

Throughout Russia, there is much political speculation regarding the effects of the expiration of Mr. Gerashchenko's term in September 2002.⁹⁸ At least half a dozen economists from both the executive and legislative branches are prepared to take his place.⁹⁹ Comments in various newspapers suggest that if the independence of the Bank of Russia is reduced, Victor Gerashchenko may step down before the expiration of his term.¹⁰⁰ Ironically, some of the individuals pushing for his early departure through legislative restriction of the Central Bank's status may be limiting their own future authority.

Accordingly, it is not surprising that legislators are attempting to take over the Central Bank. The Russian power elite is divided on the subject of payment of all foreign and domestic debts in 2003.¹⁰¹ Gerashchenko's goal of collecting \$42-45 billion in Central Bank reserves by the end of his term¹⁰² makes him unpopular with those political elements that oppose full debt repayment.

Others in government, namely the Legal Department of the Office of the President's Administration, also oppose the proposed amendments. The Deputy Chairman of the Bank of Russia George Luntovskii and the General Counsel of the Bank of Russia Sergei Golubev have recognized that the recent position of presidential lawyers

98. Paul Starobin & Catherine Belton, *The Kremlin is Launching a Major Attack on Corruption*, BUS. WK., Jan. 14, 2002, at 46.

99. See *A Newly Confident Putin*, IPR STRATEGIC BUS. INFO. DATABASE, Oct. 11, 2001 (indicating Promstroibank head Vladimir Kogan as a replacement for Mr. Gerashchenko); Viktoria Abramenko et al., *Did You Order a No-Confidence Motion?*, RUSSIAN PRESS DIG., Feb. 21, 2001 (listing Vice President of the Troika-Dialog Oleg Vyugin, executive director at the World Bank Andrei Bugrov, Tatyana Parmonova, and Andrei Kostin as possible successors to Mr. Gerashchenko); *Putin Wants Structural Government*, RUSSIA J., Feb. 2, 2001, available at <http://www2.russijournal.com/news/index.shtml?nd=4615> (last visited Jan. 19, 2002) (suggesting Prime Minister Mikhail Kasyanov as a replacement for Mr. Gerashchenko).

100. See, e.g., *Victor Gerashchenko Has Survived the Great Atomic Route*, RUSSIAN PRESS DIG., Oct. 16, 2000; *'Russia's Greenspan' Said to be in Trouble*, IPR STRATEGIC BUS. INFO. DATABASE, Oct. 16, 2000; Liudmila Romanova, *Gerashchenko's Days are Numbered*, DEF. & SECURITY, Oct. 15, 2000 (P. Pikhnovsky trans.).

101. See *supra* notes 84-87 and accompanying text. Interestingly, the same division regarding the same issue currently exists in Argentina as well.

102. See *Average Annual Dollar Exchange Rate to Lose 10-12% in Value in 2002*, ROSBUSINESSCONSULTING DATABASE, Dec. 11, 2001.

leads to strengthening the State Duma without increasing the influence of the President on the policy of the Central Bank.¹⁰³

IV. THE CENTRAL BANK SHOULD REMAIN INDEPENDENT

The Bank of Russia will only be able to protect the stability of the ruble when it is not threatened by the attempts of the State Duma to bring the Central Bank under the Duma's control.¹⁰⁴ By seeking to subordinate the Bank to itself, the Duma endangers the independence that is vital to the Bank's effective performance of its fundamental duty.¹⁰⁵

The Central Bank has never been independent in a constitutional sense. If the Central Bank had been absolutely independent, the default of 1998¹⁰⁶ would never have occurred. The default resulted from the practice in Russia of implementing economic policy through politics¹⁰⁷ rather than through the Constitution, demonstrating the clear gap between the written laws and the decision-making process.

Further, it is important to distinguish between routine problems of proper coordination between the Central Bank and the Parliament, and the issue of the legal status of the Bank of Russia. The establishment of effective working relationships can be accomplished without changing

103. ESSAYS ON CONSTITUTIONAL ECONOMICS: STATUS OF THE BANK OF RUSSIA 38 (2001); CIVIL LEGAL STATUS OF THE BANK OF RUSSIA, (Peter Barenboim & Vladimir Lafitsky eds. 2001).

104. See Jack, *supra* note 90.

105. KONST. RF § 1, ch. 3, art. 75, pt. 2 (1993).

106. In 1998 "Russia had defaulted on domestic debt, devalued the ruble, and frozen payments on some Soviet-era commercial debt." Catherine Belton, *Western Banks to Russia: All is Forgiven*, BUSINESSWEEK ONLINE (Oct. 9, 2000), available at http://www.businessweek.com/2000/00_41/b3702255.htm (last visited Jan. 15, 2002).

107. Cf. *Prepared Testimony of Ariel Cohen, PH.D. Senior Policy Analyst for Russian and Eurasian Studies in the Kathryn and Shelby Cullom Davis International Studies Center at the Heritage Foundation Before the House Banking and Financial Services Committee Subject – the New IMF Credits to Russia and Russian Economic Crisis*, FED. NEWS SERVICE, June 10, 1999. "Most deputies in the State Duma have been more concerned with their political survival in the upcoming December elections than with passing legislation to improve the economy or repay the foreign debt Moscow's corruption and half-hearted economic policies, aimed at preserving the vestiges of the Soviet military-industrial complex, have destroyed the economy and bankrupted the country." *Id.*

laws, much less the Constitution. The Bank of Russia is not included under the legislative branch of power,¹⁰⁸ which is the only circumstance in which subordination to one of the chambers of the Federal Assembly would be possible. Instead, Article 75 is a part of Chapter 3 of the Constitution, entitled “Federative Structure.”¹⁰⁹ The duties and tasks of the Central Bank set forth that the fundamental law of Russia give no legal grounds for the Bank’s inclusion in the legislative branch.¹¹⁰ The Constitution does not include the concept of subordination of any agencies or departments to the State Duma and the term “podotchetnost” is not used in the Constitution at all.

Nonetheless, if the concept of subordination of the Central Bank to the State Duma was sustained, it could have broad ramifications. In the end, Article 5 could result in the recognition of a doctrinal interpretation of the Constitution that would allow for the subordination of all constitutional bodies of the state power to the Federal Assembly.¹¹¹ Such subordination would encompass the president, the government, the courts, the prosecutor’s office, the human rights commissioner and authorities of the regions of the Russian Federation.

A. Learning Lessons from Abroad

Countries with developed economies generally have independent central banks.¹¹² However, the extent of this independence varies

108. KONST. RF § 1, ch. 5.

109. *Id.* § 1, ch. 3, art. 75.

110. *Id.* pts. 2-3.

111. *See supra* Part. I.B.

112. *See, e.g.,* BD. OF GOVERNORS OF THE FED. RESERVE SYS., THE FEDERAL RESERVE SYSTEM PURPOSES AND FUNCTIONS 3 (1994), *available at* <http://www.federalreserve.gov/pf/pdf/frspf1.pdf> (last visited Jan. 20, 2002) (“The Federal Reserve System is considered to be an independent central bank.”); <http://www.ecb.int/index.html> (last visited Jan. 20, 2002) (“The Eurosystem is independent.”); http://www.nationalbanken.dk/nb/nb.nsf/alldocs/Ftasks_of_the_nationalbank (last visited Jan. 20, 2002) (“The Nationalbank [of Denmark] is an independent institution established by act of Parliament.”). *Cf.* Roberto Chang, *Policy Credibility and the Design of Central Bank*, ECON. REV., First Quarter 1998, at 1, *available at* http://www.frbatlanta.org/publica/eco-rev/REV_ABS/98er/q1/chang.pdf (noting a trend in many countries of “granting central banks independence vis-à-vis other branches of their government”).

significantly.¹¹³ Independent central banks typically have strong commitments either to pursue price stability,¹¹⁴ follow a specific exchange rate policy,¹¹⁵ or comply with a target explicitly stipulated by the government.¹¹⁶ Professors Alberto Alesina¹¹⁷ and Lawrence H. Summers¹¹⁸ conducted the seminal research in this area.¹¹⁹ They attempted to quantify the independence of central banks by creating an index of factors employed by various banks.¹²⁰ The index was comprised of various indicators such as: how the formation of the board of a central bank is determined, to what extent the bank is accountable to legislative authorities, and whether the legislation creating the central bank specifically addresses price stability.¹²¹ The analysis demonstrated that there is a remarkably clear statistical correlation between the independence of central banks and lower inflation rates that were prevalent in recent decades.¹²²

However an absolutely strict correlation does not exist. For instance, it is widely known that the Bank of Japan is not among the

113. See William Bernhard, *A Political Explanation of Variations in Central Bank Independence*, AM. POL. SCI. REV., June 1998, available at http://www.findarticles.com/cf_dls/m0259/n2_v92/20851299/p1/article.jhtml *et seq.* (last visited Jan. 20, 2002).

114. Cf. Chang, *supra* note 112 (“[A] trend influencing the nature of central banking is for countries to formally state that a central bank’s sole objective should be the ensure price stability.”).

115. See *Prepared Testimony of James P. Healy Managing Director Global Head of Emerging Markets Credit Suisse First Boston Before the House Committee on Banking and Financial Services*, FED. NEWS SERVICE, Mar. 23, 2000 (“Like many central banks throughout the world, the NBU administers monetary and exchange rate policy . . .”).

116. See Roger W. Ferguson, *Why Central Banks Should Talk*, Remarks at the Graduate Institute of International Studies, (Jan. 8, 2002), available at <http://www.federalreserve.gov/boarddocs/speeches/2002/20020108/default.htm> (last visited Jan. 20, 2002).

117. Professor of Economics at Harvard University. For biographical information, see <http://www.fas.harvard.edu/~ces/people/alesina.html> (last visited Jan. 10, 2002).

118. Former U.S. Secretary of Treasury and current President of Harvard University. For biographical information, see <http://www.president.harvard.edu/> (last visited Jan. 10, 2002).

119. Alesina & Summers, *supra* note 63.

120. *Id.* at 152.

121. *Id.* at 153.

122. *Id.* at 154.

most independent banks, but the inflation in Japan remains low.¹²³ The Bank of Japan is required by law to pursue stability.¹²⁴ In recent years, Japan has had a combination of a weak macro-economy¹²⁵ and strong yen,¹²⁶ in addition to the large reserves of the Bank of Japan.¹²⁷ The Deputy Governor of the Bank of Japan noted that: “In this kind of situation we have often faced difficulty in drawing a line between ‘internal stabilization’ [of a weak economy combined with a strong currency] and exchange-rate stability.”¹²⁸

There have been several accusations from representatives of Russian oil and other raw materials, that the ruble is too strong.¹²⁹ In

123. See Masaru Hayami, *The Role of Monetary Policy Under Low Inflation in Japan*, Opening Speech at the Ninth International Conference of the Institute for Monetary and Economic Studies (July 3, 2000), available at <http://www.bis.org/review/r000706b.pdf> (last visited Jan. 11, 2002) (“[During] the 1990s . . . [Japan’s] inflation declined to almost zero.”). *But cf.* <http://www.businessweek.com/1997/02/b3509220.htm> (last visited Jan. 11, 2002) (indicating a 0.6% increase in the rate of inflation in Japan between 1996 and 1997).

124. *Cf.* <http://www.boj.or.jp/en/about/mission.htm> (“The Bank of Japan’s missions are to maintain price stability and to ensure the stability of the financial system, thereby laying the foundations for sound economic development.”).

125. See *IIJ Announces Positive Operating Income for the 2nd Quarter 2001 Results – Expects Further Improvement in Operating Income for Full 2001 Year*, PR NEWswire, Nov. 13, 2001 (noting that the Japanese macro-economy is “soft”).

126. See *Japan’s Strong Yen Causing Concern*, *TAIPEI TIMES*, Sept. 28, 2001, available at <http://www.taipetimes.com/news/2001/09/28/story/0000104915> (last visited Jan. 20, 2002).

127. See Kamuo Ueda, *The Bank of Japan’s Forward Looking Approach*, Remarks at the Meeting on Economic and Financial Matters (July 6, 1999), available at <http://www.boj.or.jp/en/press/koen037.htm> (last visited Jan. 20, 2002) (“Large amounts of excess reserves currently exist in the [Japanese] banking system.”).

128. BANK DE FRANCE, *BICENTENNIAL SYMPOSIUM: INDEPENDENCE AND ACCOUNTABILITY: DEVELOPMENTS IN CENTRAL BANKING* 258 (2000), available at <http://www.banque-france.fr/gb/publi/main.htm> (last visited Jan. 20, 2002) (comments of Yutaka Yamaguchi).

129. See, e.g., *Ruble Still Strong Despite Crisis Rumors*, *RUSSIA J.*, Nov. 30, 2001, available at <http://www2.russiajournal.com/weekly/article.shtml?ad=5488> (last visited Jan. 20, 2002) (“[T]he ruble is fundamentally strong . . . [I]t may be too strong.”); DAVID WOODRUFF, *TOO MUCH OF A GOOD THING? HIGH OIL PRICES AND RUSSIAN MONETARY POLICY* (Program on New Approaches to Russian Security, Policy Memo No. 175, 2000) available at http://www.csis.org/ruseura/ponars/policymemos/pm_0175.pdf (last visited Jan. 20, 2002).

August 2001, a similar sentiment was expressed by some American business representatives regarding the dollar.¹³⁰ It is a common point of view among companies interested in increasing exports.¹³¹ Gerashchenko's efforts to maintain a strong exchange rate for the ruble¹³² have been challenged in Russia and could be described as a misunderstanding of market forces.

Nonetheless, Russia will profit greatly from the exchange-rate discipline imposed by the Bank of Russia. Market participants generally act, based on very shortsighted speculations¹³³ or emotions.¹³⁴ Investors often overshoot. Such speculation can be reinforced or heightened by pressure from the Russian Parliament and government officials. Some officials are sensitive to the sentiments of big market participants and put pressure on the Bank of Russia on behalf of those interests.¹³⁵

To pursue disciplined long-term policies of market development, the Central Bank cannot be compliant whenever large participants

130. See, e.g., *Trade Deficit Growth Still Good News*, CATO DAILY DISPATCH, Aug. 17, 2001, available at <http://www.cato.org/dispatch/08-17-01d.html> (last visited Jan. 20, 2002); Don Luskin, *General Motors Against a Strong Dollar*, CAPITALISM MAG., Aug. 10, 2001, available at http://www.capitalismmagazine.com/2001/august/dl_gm_strong_dollar.htm (last visited Jan. 20, 2002); Rich Miller & David Fairlamb, *How to Avoid a Free-Falling Dollar*, BUSINESSWEEK ONLINE, Aug. 6, 2001, available at http://www.businessweek.com/magazine/content/01_32/b3744058.htm (last visited Jan. 20, 2002).

131. See *Chilean Peso Weakness Weighs on Economy, Boosts Costs*, BLOOMBERG NEWS, July 3, 2001 ("Some companies benefit from a weak currency.").

132. See John Thornhill, *Russia Upset by Politics in IMF Decisions*, FIN. TIMES, Sept. 21, 2000, available at <http://www.cato.org/dispatch/08-17-01d.html> (last visited Jan. 20, 2002) ("Under [Gerashchenko's] direction, [the Central Bank will] continue to maintain a steady exchange rate and anti-inflationary stance.").

133. See *Moneyline* (CNN television broadcast, Sept. 16, 1994) ("[M]arket participants focus on the news of the day without taking into perspective the long standing information present to them.").

134. See *Further Downward Press Likely*, BUS. TIMES, May 8, 2001 ("Greed and fear the two most difficult 'trading emotions' which [are] evident amongst market participants.").

135. Cf. *Corruption in Russia: Hearing Before the House Banking General Oversight and Investigations Subcommittee*, 105th Cong. (1998) (statement of Thomas J. Kneir, Deputy Director, FBI Criminal Investigative Division), available at http://www.fas.org/irp/congress/1998_hr/98091006_clt.html (last visited Jan. 20, 2002) (discussing corruption among Russian officials).

express negative sentiment. While a central bank must be attentive to the concerns of its constituents, it is not appropriate to simply formulate policy in favor of high-pressure constituents. A central bank must independently evaluate what is best for the economy and follow policies that further those determinations.¹³⁶ Clearly, a central bank has to be independent from the market.

Newspaper headings proclaiming “Falling Ruble, Rising Inflation”¹³⁷ and “Situation Surrounding Ruble Less Than Stable”¹³⁸ appeared immediately after July 6, 2000, when the public learned that a case regarding the independence of the Central Bank had been filed with the Constitutional Court of the Russian Federation. These headlines reflected the close link in the public mind between the strength of the ruble and the status of the Central Bank. In Russia, the ruble remains the main currency for people instead of the new currency.¹³⁹ In the eyes of the population, the value of the Russian ruble is based on the independence of the Central Bank.

There is a strong constitutional basis underlying the popular view that the value of the ruble is related to Central Bank independence. One of the fundamentals of the constitutional order of the Russian Federation is the unity of the economic domain.¹⁴⁰ In many respects, such unity is ensured by the unity of the country’s monetary system. The introduction and issuance of any other currency in the country is prohibited by Part 2

136. See Peter Clark et al., *An Evaluation of Alternative Monetary Policy Rules in a Model with Capacity Constraints*, 33 J. MONEY, CREDIT & BANKING 42, 44 (2001) (“Many central banks devote considerable resources to modeling and forecasting, and their public discussion of policy issues is increasingly cast in a forward-looking mode.”).

137. Nikolai Vardul, *Falling Ruble, Rising Inflation*, DEF. & SECURITY, July 10, 2001.

138. *Situation Surround Ruble Less Than Stable*, RUSSIAN BUS. MONITOR, July 10, 2001.

139. Due to rampant inflation in Russia during the 1990’s causing rubles to be used in denominations of hundreds and thousands, President Boris Yeltsin reissued the ruble at 1/1000 of its previous value and reintroduced the Russian Kopeck, the traditional coin currency of Russia, on January 1, 1998. See Daniel Williams, *New Ruble Has Russians Counting Their Kopecks*, WASH. POST, Jan. 3, 1998, at A15, available at <http://www.washingtonpost.com/wp-srv/inatl/longterm/russiagov/stories/kopecs010398.htm> (last visited Jan. 20, 2002).

140. KONST. RF § 1, ch. 1, art. 8, pt. 1.

of Article 75 of the Constitution.¹⁴¹ Under the Constitution, issuance of currency is within the responsibility of the Russian Federation and only the Central Bank is entitled to issue currency.¹⁴² Moreover, Part 2 of Article 75 of the Constitution firmly and explicitly secures the principle of independence of the Central Bank.¹⁴³ “The protection and the ensuring of the stability of the Ruble shall be the fundamental duty of the Central Bank of the Russian Federation, which it shall fulfill independently of other bodies of state authority.”¹⁴⁴ Special independent constitutional and legal status of the Bank of Russia may only be changed through revision of the Constitution.¹⁴⁵

Unfortunately, the principle of the supremacy of the Constitution is breached in a number of Articles of Federal Law No. 394-FZ on the Central Bank of the Russian Federation, enacted on December 2, 1990.¹⁴⁶ These legal provisions provide the possibility of State Duma interference in the activities of the Central Bank, including the liquidation of the Central Bank without amendment to the Constitution.¹⁴⁷ Such provisions make the Bank of Russia dependent on short-term considerations of the members of the Federal Assembly and create favorable conditions for legislative intrusion into the constitutional competence of this body.¹⁴⁸

Constitutional provisions ensuring the legal status of the Bank of Russia are of principal importance not only for the Russian Federation as a whole, but also for its citizens. The lack of certainty regarding the

141. *Id.* ch. 3, art. 75, pt. 2.

142. *Id.* pt. 1.

143. *Id.* pt. 2.

144. *Id.*

145. *Id.* § 1, ch. 3, art. 71, pt. a (“The jurisdiction of the Russian Federation shall include the adoption and amendment of the Constitution of the Russian Federation and federal laws and supervision over compliance with them”); *see also* Barenboim, *supra* note 12, at 18.

146. *See* Barenboim, *supra* note 12, at 18-19; *see also* *Report About [sic] Round Table of Nikitsky Club on March 1 of 2001*, INDICATOR, Oct. 2001, at 27, available at http://www.micex.com/downloads/pubs/ind_1001/1001_27_29.pdf (last visited at Jan. 20, 2002).

147. *See* Barenboim, *supra* note 12, at 18-19.

148. *Id.* (“[These] provisions make the Bank of Russian dependent on considerations of the moment and current inquires of the Federal Assembly and create favorable conditions for intrusion of the legislators into the constitutional competence of this body.”).

status of the Central Bank has had an adverse effect on the prospects for the stability of the ruble and on the investment climate in the Russian Federation.¹⁴⁹ This uncertainty predetermines the growth of inflation and creates conditions for crisis situations in the economies of the regions, especially those where the majority of individual savings are held in the ruble.

For example, “Tverskaya Oblast¹⁵⁰ is a region where the welfare of the citizens depends entirely on the stability of the [ruble].”¹⁵¹ Most citizens of the Oblast hold their savings and receive wages, as well as pensions and allowances in the national currency.¹⁵² A stable currency is one of the essential conditions for maintaining an adequate living and free economic development.¹⁵³ Hence, the proper legal status of the Bank of Russia as a unique constitutional body revolves around the fundamental duty to protect and maintain the stability of the ruble.¹⁵⁴ Recognizing his duty to the Bank of Russia and in fulfillment of his own duties, the Governor of Tverskaya Oblast questioned the Constitutional Court of the Russian Federation about the legislative limitations of the constitutional functions of the Central Bank.¹⁵⁵

Constitutional theory has not determined the position of the Central Bank in a system that is based on the separation of powers. Some do not believe the Central Bank should remain independent.¹⁵⁶ They believe that the Bank of Russia cannot be assigned to any branch of power defined by Article 10 of the Constitution, but that it has a unique status and is not subordinate to other state authorities.¹⁵⁷ In addition, these people support the view that the Bank of Russia is among authorities that enjoy a unique status.¹⁵⁸ Under this framework, the correct

149. *Id.* at 19.

150. Tverskaya Oblast is part of the Central Federal District of the Russian Federation and is approximately 150 kilometers north of Moscow.

151. *See* Barenboim, *supra* note 12, at 19.

152. *See id.* at 18 (noting that the main currency of the Russian Federation remains the ruble).

153. *Id.*

154. *Id.*

155. *Id.*

156. *See supra* note 57 and accompanying text.

157. Constitutional Conference Short Hand Materials, vol. 4 at 431-34; vol. 20 at 261-64.

158. M. V. Baglay, *Constitutional Law of the Russian Federation*. M., 1999, at 343-47.

approach would be to treat the Bank of Russia as a constitutional organ with a specific status characterized by a lack of subordination to other state authorities and by the exclusive and independent exercise of its powers associated with monetary emission, and protection and maintenance of the stability of the ruble. These powers are fundamental duties of the Bank of Russia.

All existing central banks can be divided into three groups: dependent, autonomic, and independent central banks.¹⁵⁹ The criteria for distinguishing among the three is in a direct constitutional legal context.

Perhaps the Russian Constitution was too conservative with the independence of the Bank of Russia, unlike its position with jury trials¹⁶⁰ and freedom of settlement.¹⁶¹ The fight for the Central Bank's independence is a recent Russian reality and a struggle for democracy with a market economy. The definitions of independence and accountability are a combination of legal and economic perfection¹⁶² and provide a good example of a constitutional economic approach.

Only the future will show what price Russia will pay for the instability of the issue of the constitutional and legal status of the Bank of Russia. However, it should be remembered that an independent Central Bank is unnecessary in only one case – where the weakness of the economy predetermines the unlimited printing of money. In this case, prices for goods will rise and the national currency rate will fall. Only an independent central bank is able to prevent excess inflation.

159. Cf. Geoffrey P. Miller, *The Decline of the Nation State and its Effect on Constitutional and International Economic Law: Contribution: The Role of a Central Bank in a Bubble Economy*, 18 CARDOZO L. REV. 1053, 1078 (1996) (“Other things being equal, an independent central bank is likely to have greater power to act against a bubble than a politically dependent one, since an independent central bank has a degree of ability to take action autonomously, or even against the will, of the political actors.”).

160. KONST. RF § 1, ch. 2, art. 20; ch. 7, art. 123 (1993).

161. *Id.* at ch. 4, art. 85.

162. *See supra* Part I.B-C.