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Sergei Magnitsky as a threat to Putin's stability

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The Putin regime is bemused – why has the West become so stirred up over the death of Sergei Magnitsky? Why such an international outburst over a lawyer that nobody had ever heard of?

At first, the regime kept its mouth shut, hoping the ruckus would die down. However, Sergei Magnitsky's former colleagues at Hermitage Capital had no intention of forgetting their promise to secure justice for their colleague. Public outrage increased, and all sorts of new details were revealed. Gradually, a clear picture has emerged from isolated fragments of information which should horrify everyone - except for Russian politicians steeped in cynicism and Russian citizens jaded by their own inability to make a difference. The Magnitsky affair made it clear that everyday criminal activity was no exception to the rules, but a standard tool of Russian politics.

Garden-variety criminal activity is the essence of law enforcement; the courts and the political institutions that protect them. Vested interests control bureaucrats and functionaries even at the highest levels, and murder is considered a normal method for resolving both political and personal problems.

As the criminal activities of the Russian government became apparent to the world, the Kremlin's bewilderment turned to annoyance. Like a man who blames everybody else for his faults, the Russian government began a witch hunt looking for guilty parties all around them.

But the ones that are most guilty are, of course, the Western critics and meddlers who are trying to keep Russia on its knees.

The government was ready to sacrifice a few pawns, but no more. Imprisoning the Internal Affairs officers and tax officials that Magnitsky exposed, who gleefully stole millions from the treasury, would force the political establishment to undermine itself. Money has been stolen, directed towards the relevant pockets and probably already spent. How can you get it back and punish the workers in this corrupt system? Who can do it? The Prime Minister, the President? These streams of corruption, flowing from all over Russia, join together in rivers flowing to the top. What minister or president has the will or the courage to say “no” to corruption? This is what Sergei Magnitsky sought to do – an independent thinker, a trained jurist and an honest professional. The heads of Russian regime aren’t capable of such demonstrating such integrity.

Nevertheless, in an imitation of legality, they would not refuse to investigate Magnitsky’s murder: it was turned over to the same people who engaged in the criminal conspiracy Magnitsky uncovered. The investigators whom Magnitsky accused of hundreds of millions of dollars in embezzlement were then assigned to investigate accusations of tax evasion by Magnitsky. But these charges were fabricated, and Magnitsky refused to keep silent, they killed him as an undesirable witness.

One could blame Magnitsky’s death on the doctors. They have their share of guilt in this too. What is the role of a prison doctor? In nine cases out of ten, he does what he is ordered to do by the assistant chief of the detention facility on duty. In the same facility where Sergei Magnitsky died (Matrosskaya Tishina), I was refused dental care because I conducted myself “improperly” with the investigator. I don’t think that the conditions have improved much since that time. The whole life of the detainee – from his cell (possibly a common cell with 40 men; maybe in a special holding cell for six; maybe in a “pressure chamber”, where he is abused by the other inmates on instructions from the administration) to his daily exercise, his food and his access to medical treatment – is in the hands of the investigator. Whoever cooperates gets various prison privileges; whoever refuses may die. Sergei Magnitsky refused to recognise these criminals as law enforcement officers.

It is understandable how Magnitsky’s stubbornness annoyed his thieving investigators. Today, the stubbornness of the people denouncing his killers is annoying the highest levels of the regime. Maybe the regime would like to

arrest the people in the Ministry of Internal Affairs who ordered his death, but they are more afraid of revealing their level of corruption. To the extent that social pressure has increased on the government over the Magnitsky case, the Kremlin has had to keep surrendering new participants in the crime - sometimes secretly, sometimes on completely different grounds. The Kremlin was trying to send a signal to the West: we're dealing with it, but in our own way, in accordance with our national traditions.

The angry reaction of the West to the murder of Magnitsky wholly surprised Moscow at first. Then a suitable explanation was found: clearly this was part of a plot by Russia's enemies, both foreign and domestic, to undermine the State. After passing the Magnitsky Act, the US was punished by a ban on US citizens adoption of Russian orphans.

But there is nothing surprising in the reaction of the West to the death of Sergei Magnitsky. It was not part of a plot to keep Russia on her knees, it is the normal reaction of a moral society to the murder of an innocent man by the government. The reaction of a normal society is particularly strong when it is journalists or lawyers fulfilling their professional obligations who die at the hands of the government or due to its silent acquiescence, rather than politicians struggling for power or businessmen accumulating wealth. But in the opinion of the Russian regime, these are second-class citizens who are harmful to the state, worthless, and only cause problems - whether in life or after their death.

History shows that what brings about the downfall of authoritarian regimes is often not the activities of the opposition or global international changes, but the tragedies of individual people who neither hold power nor enjoy fame. The communist regime in Poland was radically shaken after the murder of the priest Jerzy Popieluszko by members of the state security service. The spark that ignited the "Orange Revolution" in Ukraine was the murder of the journalist Georgiy Gongadze by members of the Ministry of Internal Affairs. The recent revolution in Tunisia was provoked by the self-immolation of a street vendor driven to desperation by corruption and police brutality.

An authoritarian regime sometimes stumbles when it becomes overly confident in its control of the country. Now the Russian regime has been confronted with the Magnitsky issue, and no one knows what will come from all of this. The Kremlin is instinctively and correctly evaluating the threat associated with the Sergei Magnitsky case. They don't fully understand the reasons for what is

happening, explaining it to themselves with various conspiracy theories, but they are taking a number of measures to minimise the threat to themselves.

One of these measures is to try Magnitsky posthumously and Hermitage CEO Bill Browder in absentia. The defendants' bench is empty. There are no relatives of the defendants in the courtroom, nor lawyers. Instead, the court has appointed two lawyers for the defendants, who are labouring under an ambiguous status, without any contact with the defendants Browder and the relatives of Magnitsky.

There are no legal precedents for this case. A guilty judgment will never be enforced. The trial is not only devoid of all sense, but is amoral - judging a dead man and putting his family through even more agony. Nevertheless, the government has decided on this shameful course, and their motivations are clear. The international scandal provoked by the death of Magnitsky and the ensuing passage of the American Magnitsky Act has convinced the Kremlin that they must prove their own innocence by denouncing the deceased, as well as the man who has led the campaign to secure justice for Magnitsky.

The concept that the obvious guilt of the government in the death of Magnitsky is counterbalanced by the alleged guilt of the deceased for tax fraud exists only in the minds of Russian bureaucrats. To them, steeped in Soviet traditions of socialist pseudo-legality, if Magnitsky is declared guilty, his murder in prison will be somehow justified. As a result, all their efforts are directed towards conducting a farcical trial in the absence of the accused and even rendering a judgement on the arrest in absentia of one of them.

Such fussing, fidgeting and amateurish attempts on the part of the regime to justify itself and "close the matter" may prove to be inadequate to the situation. The actual consequences of the adoption of Magnitsky Laws may not seem significant at first glance. However, just as criminal law recognises total and partial prevention, in politics there are direct consequences affecting a specific group, and there are general consequences affecting public opinion and other factors internationally. It is precisely this uncertainty that is now worrying the Kremlin.

One of the most important elements of the American Magnitsky Act is the fact that it affects not only the functionaries who contributed to the death of Sergei Magnitsky in a Russian prison, but any other Russian citizen who has abused human rights. Because of this, the Act has acquired the characteristics of a regulatory instrument – a law to be applied in all similar circumstances. This

frightens the Kremlin, as it means that the list may be expanded to include an indefinite number of people.

The Magnitsky Act contains one more intimidating feature: it indirectly infringes on national jurisdiction. In practical terms, it operates according to the provisions established in international law that human rights violations are not internal affairs of the violating state. The USSR struggled with this principle, insulating themselves from Western reproaches about human rights violations under the aegis of sovereignty. Other totalitarian regimes struggle with this today, defending their right to commit crimes against their own people under the banner of sovereignty.

The Kremlin wishes to enjoy the privileges of membership in international institutions without being subject to international jurisdiction. The numerous judgements rendered against the Russian state by the European Court for Human Rights in Strasbourg has been very educational for the Kremlin, which does not wish to end up in a situation where international influence can limit their ability to act arbitrarily within the country.

The European parliaments currently considering adopting Magnitsky legislation should understand exactly what it is that President Putin and his government fear: openness, legality and judicial decisions that compromise vested interests which control the state. Openness and respect for the law, including international law, is in the interests of the Russian people, as a part of Europe. Political opposition to the regime in Russia is inevitable and has already begun. In resolving the issue of the adoption of the Magnitsky Laws, Europe is faced with a choice: exactly which source of power in Russia do they want to support - the Putin regime, or the people?