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Not only human victims, like Sergei Magnitsky, but civilised values of democracy

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Sergei Magnitsky was undoubtedly a lawyer of some repute to his clients and colleagues. However, had it not been for the rather careless perpetration of a massive fraud directed against the company for which he was working, he would probably never have achieved recognition in Russia, let alone internationally. Only in death has the world come to know about Sergei Leonidovich, the assiduous and diligent solicitor, the dedicated and determined investigator, the courageous and ultimately doomed prisoner.

What shines through is also his integrity: it would have been so easy for him to have extricated himself safely at the outset from the web of deceit he uncovered. The fact that he chose to continue and to seek elementary justice for his employers – and against those who conspired to defraud the Russian treasury of US$230 million – tells us a great deal about his character and commitment. He ploughed on regardless, but fully aware of the risks. He held to that old Watergate maxim - "follow the money" – even when he knew that such a massive fraud could only have been sanctioned with the knowledge of very senior officials in the administration.

In many ways, Magnitsky's death has come to encapsulate the failure of the rule of law that characterises Russia today. He himself has become a

symbol of peaceful resistance to the complicity or acquiescence that so many others have chosen to pave their path to favour and riches. In this regard he sits alongside figures like Jerzy Popiełuszko, an anti-communist priest murdered by state agents in 1984 and Veronica Guerin, a journalist murdered by the Irish gangland figures she fearlessly sought to expose.

How, then, should the European Union react to Magnitsky's death? Does the EU need a Magnitsky Law? These are undoubtedly important questions, but they cannot be seen in isolation. They must instead be viewed through the prism of the EU's strategic partnership with Russia.

I consider Russia to be a country with a great history, wonderful culture and enormous potential. Russia is a global power politically – as a permanent member of the UN Security Council and the G8 – and economically, as one of the BRIC powers with a resource-rich export-driven economy which is worth well over US$1 trillion annually. Russia, in short, cannot be ignored; and nor should it be, because it has a vital political and economic contribution to make to global affairs.

My view is that by engaging constructively but critically with Russia, we in the West can best make our priorities understood and help shape Russia's policy formulation. Constructive engagement can also help to rebalance the dimensions of this relationship, which over the years has become skewed in Russia's favour.

In its foreign policy Russia sadly remains something of a quixotic, and sometimes uncooperative, partner with Western powers within key global institutions. We see this, for example, with Syria at the United Nations, where Russia is determined to see a drawn-out conflict resulting in massive civilian casualties rather than support actions to begin a democratic transition and the departure of the Assad dictatorship. We also see Russia's characteristic truculence over Iran, where European and American sanctions would have a much greater impact if only Russia was fully on board on the sanctions policy.

We are beginning to see this behaviour, too, in the context of Russia's lukewarm commitments to the World Trade Organization, which it joined last year. From my own perspective as a Member of the EURONEST

Parliamentary Assembly, which groups together parliamentarians from six former Soviet republics outside the EU, I am disappointed by Russia's stalling for time and lack of cooperation towards a resolution of the Transnistria frozen conflict in Moldova, and its stubbornness and obstructive approach to resolving the tensions over Abkhazia and South Ossetia in Georgia. Russia is also exerting pressure on Ukraine to join the Eurasian economic community alongside Belarus, Russia and Kazakhstan and to abandon its Euro-Atlantic aspirations.

Undoubtedly, Russia's approach to international affairs is shaped somewhat by its recent history as one of the two superpowers in a bipolar global security framework. But the reshaping and blurring of that framework since the end of the Cold War has diminished Moscow's voice on the international stage. So while Russia can, to an extent, claim Communist-era friendships through concepts like the Non Aligned Movement, which continue to shape its perspective on countries like Syria and Iran, the Kremlin's increasingly assertive approach to international relations is shaped in part by Russia's declining influence globally.

In other words, Russia's reputation in the West for being uncooperative on the international stage is essentially a reflection of the government's determination to maintain what influence it has left given its demographic challenges as its population shrinks and its fears of encirclement by perceived hostile parties such as NATO and an ever more confident China.

I think Russia's future direction is the subject of feverish and wide-ranging debate among the Kremlin elite surrounding Putin. The so-called vertical of power is founded on Russia's fossil fuel-based economy and the assumption that there will always be strong demand within Russia's principal export markets for its oil and gas products. But we have already seen how vulnerable Russia can be to globally depressed oil and gas prices.

Also, the twin threats of a common EU external energy security policy – based mainly on detachment from dependence on Russia and its so called "gas weapon" – plus the glut of so-called unconventional, or shale, gas now being extracted in the United States and possibly also shortly in other parts of the world including Europe, is now making Russian policymakers reflect

seriously on the lack of diversity of a natural resources-based economy and its strategic direction.

The pressing demographic situation in Russia raises alarming questions about Russia's future security: how can Russia maintain its armed forces in a country whose reproductively active population largely shuns Putin's exhortation for families to have at least three children and are reluctant to adopt the alternative of increased immigration? My expectation is also that Putin's public spending promises are likely to come under pressure in the future if global gas prices remain on the low side and Russia continues to suffer a haemorrhage of capital, despite Putin's belated efforts to prevent public officials from holding assets and making deposits outside the country, though the Cypriot banking crisis will have resulted in considerable losses for some.

All these potential threats to Russian economic stability could cause a renewed upsurge in public disenchantment with the regime if salaries and pensions cannot be paid on time.

Whatever the nature of Russia's problems, and however vigorous the debate about resolving them, until now the vertical of power has prioritised stability and predictability over genuinely democratic decision-making. Putin's belief appears to be that only he has the vision and leadership capacity to take Russia forward, and that Russia's messy experiment with pluralist democracy in the years after the collapse of the Soviet Union weakened the country internally and as a global player.

Unfortunately, in this scenario, there are also victims: not only human victims, like Sergei Magnitsky, but civilised values of democracy, human rights and the rule of law being sacrificed in the name of some nebulous greater good. As a member state of the Council of Europe, Russia at least nominally embraces these cornerstones of European values. In reality Russia has some very serious questions to answer about the strength of its commitment to these principles.

The parliamentary elections in Russia in late 2011 were widely criticised for the rather blatant efforts made to ensure a massive victory for Putin's United Russia party. This was a mistake for two reasons: the first is that, at

least in my estimation, Putin was then and still remains relatively popular in his key demographic constituencies, particularly the older rural populations, and can probably win even genuinely open and competitive elections on the strength of his record and arguments and his appeal to the "babushka" as a Tsar-like "strongman" figure.

The second reason why this alleged election manipulation was counter-productive was that it confirmed many Westerners' suspicions about United Russia and Putin. It showed lack of electoral transparency as the logical conclusion to a decade-long programme of consolidation of power, which has been accompanied by an acquiescent media and a political landscape devoid of any serious opposition or democratic scrutiny of the ruling party.

Despite Russia's professed attachment to European values, the evidence therefore suggests that the rule of law is applied inconsistently and often shaped by political criteria; and the enforcement of human rights is, at best, patchy or selective.

There is a fair amount of corroborating evidence in this respect. Firstly, one only needs to consult the registry of the European Court of Human Rights to see that Russia is a respondent in thousands of outstanding cases at the court. This suggests a systemic problem that Russia is unable, or perhaps unwilling, to address in its entirety.

Let us look too at a couple of iconic cases. The first such case is that of Mikhail Khodorkovsky, the former chief executive of the Yukos oil company whose political aspirations are widely believed to have prompted the Putin government to launch a relentless legal prosecution against him and his company.

This selective assault had the twin benefits, from the Kremlin's perspective, of neutralising a popular and charismatic oligarch – albeit someone clearly caught up in the murky world of Russia's post-Soviet chaos in the 1990s – thus sending an uncompromising message to other oligarchs about staying out of politics, and effectively expropriating billions of dollars' worth of Yukos assets for the benefit of the state and, allegedly, other senior members of the elite including pro-Putin oligarchs.

The other iconic case is, of course, the Magnitsky case. We all know the distressing details of this case, and the abuse of human rights that he suffered in prison, though recently the Russian authorities declared his death in prison not to have been sinister. Like many people, I am shocked at the Russian government's insistence on now prosecuting Magnitsky posthumously, against all accepted international norms and legal standards. This vindictive action has compounded the agony of Magnitsky's family and has strengthened the resolve of many in the European Parliament, led by Kristiina Ojuland MEP of Estonia, to push for financial and travel sanctions against those responsible for his death, in the same way that the US Congress has done.

In February 2013, at a hearing on Russia in the European Parliament, I asked a senior Russian diplomat, Ambassador Konstantin Dolgov – the Russian Foreign Ministry's special representative for democracy, human rights and the rule of law – about the government's justification for the posthumous prosecution. He said, to the astonishment of all in the room, that the case was proceeding because Magnitsky's family had failed to cooperate with the investigating authorities, and that a posthumous prosecution was the only way for Magnitsky, "to restore his good name".

In the absence of any genuine attempt by Russian prosecutors to investigate either the fraud in which Magnitsky inadvertently became tangled, or the conspiracy that led to his death, the European Parliament is seeking to impose sanctions on the individuals involved. The non-binding recommendation approved by the Parliament in October 2012, drafted by Kristiina Ojuland – herself of part-Russian heritage – called on the member states of the EU to consider imposing visa restrictions on, and freezing the EU assets of, individuals identified as implicated in the Magnitsky case.

Regrettably but entirely understandably given the various bilateral considerations at stake, there appears to be no EU appetite for imposing the Magnitsky sanctions, despite the positive example of the US legislation signed into law by President Obama in late 2012. Moscow is a long way from continental United States, and much less is at stake than in Europe. However, Russia and the European Union are neighbours. The fact that Europe has become the playground for senior members of the Kremlin elite indicates precisely why Magnitsky legislation could have such a dramatic effect. Wealthy

Russians buy houses in the EU member states, spend their holidays there and send their children to Europe's most exclusive private schools. Nothing would irk them more than being excluded from the EU and having their assets seized.

It is also important to think about the Magnitsky case in the context of recent developments in the EU-Russia dialogue towards visa liberalisation. In March 2013, Germany, a key blocker in moving the discussions forward, suddenly withdrew its opposition to holders of Russian service passports (an intermediate status between ordinary and diplomatic passports) from entering the EU without a visa. The German business and industrial lobby was largely responsible for this change of heart. Therefore, we are faced with the prospect of up to 180,000 Russian civil servants being allowed unfettered entry into the EU. In the absence of any measures to punish those responsible for Magnitsky's death, the beneficiaries of the EU's generosity towards Russia could well include some of the fraudsters he sought to expose and the law enforcement officials whose mistreatment caused his untimely death.

The breakthrough in EU-Russia visa liberalisation talks, therefore, could create an opportunity to push for an EU Magnitsky Law. The European Parliament would have to give legislative consent to any deal on Russian service passport holders, and could exact as its price for approval an equivalent law sanctioning the Magnitsky conspirators. Certainly since the passage of the Lisbon treaty, which substantially increased its powers, the European Parliament has shown itself willing to take on and sometimes defeat the will of EU national governments. Having already recommended a Magnitsky Law, the Parliament could well scupper any moves towards full EU-Russia visa liberalisation until member states react positively to that recommendation.

It seems to me that targeted sanctions are in fact a very useful way of addressing egregious abuses of human rights. The EU has deployed such soft sanctions for years, against individuals complicit in alleged human rights abuses, indicted war criminals and the elites of rogue regimes such as Syria, Belarus, Iran and Zimbabwe. In the case of Russia, a Magnitsky Law would allow us to target those whom we have documented evidence or reasonable suspicion of being responsible for such abuses without punishing ordinary Russians. Also, if such a law is to follow the advice of the European

Parliament and the example of the US Congress, it would extend its provisions to other serious violations of human rights, of which there are many examples in Russia's recent history – including the deaths of Natalia Estimirova, Vasily Aleksanyan, Anna Politkovskaya, Stanislav Markelov and others.

Throughout history Russia has always respected strength and purpose, in itself and in others; and it has always sought to exploit indecisiveness and division in the West. Indeed, Russia's ability to manipulate its relationship with the EU is the determined product of a resolutely bilateral approach to Europe: what might be called a "divide and rule" strategy by ignoring the EU institutions and the supranational aspects and concentrating on cultivating the individual member state governments.

Therefore, my view is that we have to take Russia as it is, not as we would like it to be. There are substantial economic benefits for the EU of a stronger, deeper economic partnership with Russia. There are important international issues on which we need Russia's cooperation, from climate change to peace in the Middle East and preventing nuclear proliferation in countries like Iran and North Korea. Sadly Russia often still sees the world through the prism of the Soviet era concept of a zero sum game, in which anything the West does to its advantage must automatically disadvantage Russia, and anything which reflects badly on Russia is only done to enhance the appearance of the West.

But Russia's lacklustre commitment to the values we in Europe hold dear – democracy, human rights and the rule of law – remains an obstacle to developing a much closer relationship. While these values alone cannot dictate the shape of our bilateral foreign affairs relations, neither can they be ignored – especially when men like Alexander Litvinenko, a former London constituent of mine and a British citizen, are murdered on the streets of the city I am elected to represent, in his case allegedly by a man now serving in the State Duma, whom Russia refuses to extradite to face questioning and possible trial in the UK.

In the context of the Magnitsky case it is also alarming that, according to UK press reports, the authorities in Russia are being unhelpful and obstructive in the investigation by British police into the death last year of Alexander Perepilichnyy, who had helped to expose the murkier elements of the Magnitsky conspiracy.

I hope Russia will change for the better, in an orderly and peaceful fashion. The EU and Russia must go forward with their relationship but we in Europe should not try to force change on Russia, nor impose our Western model on Russia. Russia deserves our respect but it also deserves our criticism, our scepticism and our uncompromising commitment to our values – values which Russia, through its membership of the Council of Europe and the Organization for Security and Cooperation in Europe, claims to embrace.

Finally, we need to understand that in reality Russia is not, and never has been, a Western liberal democracy, and perhaps never will be. That fact, sadly, suggests that Sergei Magnitsky will probably be denied justice – at least the justice he deserves – and that there may well be more such horrific cases in the future. For that reason alone the EU needs to stand squarely behind legal measures that express our refusal to accept the subversion of the rule of law and widespread human rights abuses that have become commonplace in today's Russia.