

## Sir Tony Brenton KCMG

# What the Magnitsky case means for Russia and the West

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**W**e all used to be optimistic about Russia. I first served there as a British diplomat from 1994 to 1998. The country had huge problems. The economy had collapsed. A small number of top businessmen (the “oligarchs”) had made themselves very rich while the vast majority of the population had seen their savings, and in many cases their jobs, disappear. There had been something close to a complete failure of law and order as criminal gangs vied for control of key assets. And the territorial integrity of Russia as a whole seemed to be under threat as she fought what looked like a losing war to prevent the secession of Chechnya. The politics had accordingly turned poisonous. President Yeltsin had closed down the Russian Parliament by force in 1993, and retained power through a deeply flawed election in 1996. Nevertheless, there was a widespread feeling both among outside observers (including me) and Russians themselves that these were no more than the inevitable, if not huge, teething problems of a failed superpower which had just experienced its biggest political and economic convulsion since the Bolshevik Revolution of 1917. Just as the other formerly Communist countries of Central and Eastern Europe had in the early 1990s placed themselves on the road to democracy, rule of law and a functioning market economy, so Russia, also proudly European in its history and self-perception, would follow the same road a few years later.

I left Russia just as the rouble collapsed (for the second time) in 1998, and returned as British Ambassador in 2004. On the surface things had improved immeasurably in the intervening six years. Thanks to a soaring oil price the economy was growing at more than seven percent per annum. Ordinary Russians were prospering, and beginning to enjoy the sorts of goods and opportunities, such as travel, which had never been open to them under Communism. A much more vigorous president, President Vladimir Putin, had taken over from Boris Yeltsin in 2000, re-imposed domestic order, brought the oligarchs to heel, introduced a spate of crucial economic reforms, and won the war in Chechnya. Unsurprisingly, his popularity with ordinary Russians was sky high, and he had just been re-elected president for the second time with a vast majority.

But Russia paid a price for her new prosperity. President Putin had to deploy some pretty authoritarian methods to re-establish order and national self-respect. National television had been brought under state control, Parliament reduced to a rubber stamp, the oligarchs told to stay out of politics (and a couple of them summarily exiled), Russia's outlying provinces dragged back into line, and the Chechen war settled in a strikingly brutal way. The whole process was epitomised in the destruction in 2005 of Mikhail Khodorkovsky, Russia's richest man. He made the mistake of setting himself up in political opposition to the regime. After failing to take hints that he too should go into exile, he went through a manifestly manipulated trial on tax evasion charges and was condemned to a long period in prison, where he remains to this day. His oil company, which used to be the largest in Russia, was broken up and, with significant personal profit to some of those involved, re-nationalised by the state.

While these strong arm methods undoubtedly enjoyed huge support among the Russian people (in a poll at the time 70 percent explicitly preferred "order" to "democracy"), they had a pernicious effect on the quality of Russian governance – in two linked ways. Firstly, they in effect placed the government and security apparatus outside the law. The Khodorkovsky precedent showed that, where necessary, the courts would do the state's bidding. The Russian people, as so often in their history, were at the mercy of a predatory governing class. And, secondly, many members of that predatory ruling class were determined to take full advantage of their opportunities.

Corruption rocketed. Russia is now right at the top of the international corruption league, alongside Uganda, Kazakhstan and Nigeria. Up to 30 percent of public procurement budgets are estimated to end up in the wrong pockets. There are regular allegations of malfeasance, and occasional overseas indictments against the most senior members of the Russian hierarchy. And, at the other end of the scale, no-one takes a driving test any more – they just bribe the examiner. There are of course many honest and hard-working officials in Russia, but as I dealt with them as UK Ambassador it was very apparent that there were issues and organisations, even apparently within their day-to-day competence, where they simply could not intervene.

And corruption is not just about money. The beneficiaries of Russia's fast growing network of state-linked criminality have been very ready to use violence to protect their gains. A case which drew nationwide attention was the horrifying slaughter three years ago in the town of Kushchevskaya of a family of 12, including four children, by a local criminal gang operating in cahoots with the authorities. As explicitly acknowledged at the time by Dmitry Medvedev, who was president at the time, there could not have been a more graphic demonstration of how in many contexts it is now the supposed guardians of law and order who most grievously violate it.

The case of Sergei Magnitsky has become both central and emblematic. Only the briefest summary is needed here. Magnitsky was a young Russian lawyer who, on behalf of a British company, Hermitage Capital, uncovered a US\$230 million fraud organised from within the Russian Interior Ministry against the Russian exchequer. Hermitage, against whom the fraud had originally been directed, launched criminal cases against the Interior Ministry officials responsible for the crime. Magnitsky, in danger from those officials, placed his trust in the Russian judicial system and refused to leave Russia. He was arrested, appallingly maltreated in jail, pressurised to give false testimony against Hermitage, and, having been held without charge for almost a year, mysteriously died just days before he should have been released. The case is central because, as a result of the painstaking investigation launched by Hermitage, it is now undoubtedly the best documented case anywhere of Russian official criminality. The evidence against a list of named individuals (most of them Interior Ministry and judicial officials, some of whom are very senior) is so strong that the Swiss authorities have frozen a number of their

bank accounts and the US Congress, despite the initial opposition of the Obama Administration, has passed the Magnitsky Act which imposes travel bans and asset freezes on some of those implicated.

The case is emblematic because it gives the clearest possible display of how widespread the rot now is in the Russian system. It is worth underlining that the fraud was committed against the Russian state itself. In normal jurisdictions, even if there was nationalistic resentment that most of the evidence was put together overseas, there would be at least a thorough domestic investigation. Indeed Dmitry Medvedev did put the issue to an official commission, which concluded that there were serious cases to answer. Incredibly, however, the actual police inquiry was put into the hands of one of the original accused fraudsters. Unsurprisingly, no-one has been convicted. Some of those concerned have in fact been promoted and honoured. Unprecedented posthumous criminal charges have been launched against Magnitsky himself. And the Magnitsky Act has provoked a retaliatory set of Russian bans – including on the adoption of Russian orphans by American parents. This coming together of key elements of the Russian state to protect proven criminals and probable murderers speaks volumes about how deeply entrenched corruption now is in some parts of the Russian system, and how high up the willingness to protect it goes.

The spread of corruption and official impunity has not gone unnoticed or un-resented by the wider Russian public. A large part of the original popular approval for President Putin's style of government lay precisely in the fact that he was seen as coming down hard on the oligarchs and criminals who had dominated in pre-Putinian Russia. As his regime itself has become tainted by corruption, significant sectors of the population have turned against it. A core motivator of the wave of major demonstrations against the regime which broke out in December 2011 was anger at official corruption. Perhaps the most effective current leader of the opposition is Alexei Navalny who made his reputation with internet exposes of official malfeasance, and who gave the ruling party its now universally used nickname – the “Party of Thieves and Swindlers”.

Mr Putin nevertheless comfortably won the presidential election of March 2012. A diminishing, but still real plurality of Russians continues to see his

style of order as preferable to anything that might replace it. And, with that majority at its back, the regime has taken steps to ensure there will be no repetition of the 2011-2012 demonstrations. Controls on the internet have been tightened, penalties for “disorder” increased, NGOs reined in, and leaders of the opposition (including Navalny) prosecuted on what look like very thin grounds. The case against Navalny was actually abandoned before being revived after the demonstrations. But the regime is aware that popular anger about corruption is now so deep that at least some response is required. A number of measures, such as a ban on holding foreign assets, have been announced, with embarrassing consequences for one or two senior officials, and some senior figures – notably an ex-minister of defence – are to be prosecuted. It would be nice to believe that all of this marks a serious intention to clean the Augean stables. But given the deep-seated nature of the problem, and the failure of a similar round of measures under Medvedev to make any real impact, it is difficult to see these latest steps as any more than cosmetic. After all, it is hard for the wolves to abolish their habit of eating meat.

How should the West react then? At a personal level it is impossible not to be both angered by the Magnitsky case and saddened by what it says about today’s Russia. But governments cannot be driven by emotion. The “realist” school of foreign policy, with which I have a lot of sympathy, argues that the internal affairs of a country are no-one’s affair but its own. You do not damage your relations with a foreign state, particularly one as important as Russia, by counterproductively criticising its internal governance, whatever its quality. And the Russians’ prickly reaction to the Magnitsky Act shows how irritated they can be when, as they see it, outside powers interfere in their internal affairs.

The problem with this “hands off” approach is that corruption in Russia is not a purely Russian problem. In a globalised world, criminality inside Russia merges into, and reinforces, criminality outside Russia. A lot of stolen Russian money finds its way overseas. Russia exports US\$50-60 billion of capital per year – much of it legitimate, but some, potentially as much as 30 percent, certainly is not. At least one former Russian minister has been investigated for money laundering in the Caribbean. The German Finance Minister publicly raised questions about Russian money laundering to Cyprus in the context of the recent EU bailout. And there is strong evidence that at least US\$30

million of the money stolen in the Magnitsky affair was laundered through Cypriot banks. These illegitimate financial flows help sustain a whole global infrastructure of opaque money transfers, shell companies and invisible asset holders, which are of immense use to, for instance, the world's drugs and arms dealers. And, as made visible during the Wikileaks saga, the movement of illicit Russian funds is closely linked to the widening international activity of Russian organised crime.

So the West's interest in stemming Russian corruption is, even from a "realist" point of view, at least as justified as, say, Russia's (very legitimate) interest in stemming the Islamic extremism in Central Asia which is the source of much of her terrorism. This is not external interference in someone else's internal jurisdiction, but prudential protection of one's own national interests adversely affected by the failures of that jurisdiction. As regards financial flows, both Russia and the West acknowledge this link. It has been in close cooperation with the West that Russia has over the past decade substantially strengthened her financial controls. And, at least at the time, this was no mere paper exercise. The growing bite of the regime was made very clear when Andrei Kozlov, the brave deputy head of the Russian Central Bank who was leading the anti-money laundering campaign (and whom I knew personally), was murdered in 2006.

The Magnitsky case shows there is still much to be done. It is in the interests of both Russia and the West that Russia's current epidemic of official corruption is dealt with. For the West, as noted above, this is a matter of limiting flows into the international financial system of dirty money and criminal involvement, which sustain a comfortably anonymous environment for all sorts of other activity which prefers the shadows. For Russia, corruption has become perhaps the key constraint on prospects for growth and future prosperity. In the course of dealing with potential investors, they have regularly raised the corruption issue with me as their single greatest source of doubt about putting money into Russia. And the numbers suggest that it is the corruption factor which explains why Russian assets are up to a third cheaper than comparable assets in other places.

The Magnitsky case is a fully documented and conclusive demonstration that there are certain types of corruption with which the Russian system,

at its current level of development, simply cannot deal. The US Magnitsky Act addresses the consequent problem for the West in exactly the right way. The target is not Russia, but named Russian individuals who, on the basis of strong evidence, are a corrosive factor not only in Russia but potentially overseas as well. This is also a principle which could extend well beyond the Magnitsky case, indeed well beyond Russia to other countries which pose similar challenges. The very existence of the Act will be a sharp warning to corruptible officials in the future about the uncertainties of moving their potential gains to supposedly safe external jurisdictions. And while the Russian official reaction to this legislation has been angry, I know that many normal Russians welcome it as at least some action against a criminal class who, in their own country, seem entirely immune.

The EU should follow suit with its own Magnitsky Act. The Union's economic links with Russia are much closer than those that are enjoyed by the US, and its exposure to the effect of illicit Russian money and crime, as made clear in the case of Cyprus, are that much greater. Indeed, inaction on this matter is an embarrassment to Europe. It was for a European, not an American company, that Magnitsky carried out the investigation that led to his brutal death.

At the start of this article I noted that 20 years ago we were all optimistic about Russia's future. Subsequent events have delayed but, at least in my case, not extinguished that optimism. But for Russia to find her natural place as a fully democratic member of the European family of nations where the rule of law prevails and human rights are protected, she needs occasional outside help. The most visible help that Europe can give in dealing with the current upsurge of official impunity and corruption would be a European Magnitsky Act. Such an act would also be an appropriate memorial to the very brave Sergei Magnitsky himself.