

## Russia's Reaction to the Magnitsky Act and Relations With the West

Ben Aris, Moscow

### Abstract

The reaction of the US and EU to the death of Sergei Magnitsky by issuing travel bans to 60 Russian officials, and the Magnitsky Act in the US, has become an issue of contention in Russian–Western relations. The Kremlin views the Magnitsky Act as a politically-motivated attempt to interfere in Russian domestic affairs. At the same time, in spite of some mild reforms during the Medvedev Presidency, the Magnitsky case has not had a big impact on either Russian domestic governance or political debate.

The death of Russian lawyer Sergei Magnitsky on September 16, 2009 in a Moscow pre-trial detention centre was a tragedy and his human rights were almost certainly violated. Magnitsky was a Russian national and a lawyer with the American firm Firestone Duncan. He was representing the UK registered and highly successful fund Hermitage Capital, which had fallen foul of the Kremlin. His death became a lightning rod for tensions between Moscow and Washington and led to the passage of the “Justice for Sergei Magnitsky Act” into the US Congress in 2011, which has driven a wedge between Russia and US foreign relations.

### Hermitage Capital

Run by celebrity fund-manager William Browder, Hermitage Capital was set up early in 1996 and was known for its aggressive shareholder activism. Browder regularly presented embarrassing information to the press as part of its effort to shame the government into improving Russia's corporate governance—particularly in the big state-owned firms such as gas monopolist Gazprom, in which Hermitage was a big investor.

Browder's campaigning led to his visa being pulled in 2006 as a “national threat”, but was—according to Business News Europe's information—actually revoked because he embarrassed an oil company close to the Kremlin. The company's offices were raided in June 2007, as were those of Firestone Duncan, and armed police officers confiscated documents and computers. An investigation was opened and three of the fund's holding companies were seized by the state on tax evasion charges. Browder and his lawyers claim that the charges were bogus and actually a scam. The three firms seized by the authorities then successfully claimed \$230m in taxes back from the state, which Browder claims ended up in the pockets of state officials.

Browder has since launched a vigorous campaign investing considerable sums in lobbying and publicity to keep the story in the headlights of the press. The campaign has produced much convincing evidence of corruption by tax authorities and other government representatives (most of which is presented in a series of

documentaries on YouTube on the “Russian Untouchables” and “Hermitage TV” channels).

In November 2008 Magnitsky was arrested on related tax evasion charges, which Browder claims were instigated as a retaliatory measure by the same officers that were involved in the tax rebate scheme. While in prison he fell ill. It later emerged that Magnitsky had complained of worsening stomach pain for five days prior to his death. Browder and his associates have also found convincing evidence that Magnitsky was beaten while in jail and died after medical aid, to which he was entitled, was denied to him and this led directly to his death.

### Politicised

The story of Magnitsky is not uncommon in Russia. The new Ombudsman for Business, Boris Titov, was appointed by President Vladimir Putin in July and has already organised the release of seven Russian businessmen who were jailed thanks to false accusations brought by government officials attempting to extract bribes from them.<sup>1</sup> However, the difference between the Magnitsky case and the more mundane cases has been Hermitage's successful efforts to elevate the profile of the case. At the same time, the Western press has picked up the story, which has come to symbolise many of the problems with Russia's judiciary, penal system and corporate governance in general.

The publicity has not been without effect. The issues that Magnitsky's story threw up fitted with the more liberal and progressive agenda of Dmitri Medvedev, who was elected president in 2008. Surprisingly, Medvedev ordered an investigation into the Magnitsky case in November 2009, which led directly to the sacking of 20 senior prison officials connected to the case in a rare example of the Kremlin listening to public opinion and holding officials accountable for their actions. Medvedev also signed a law forbidding the jailing of individuals who are suspected of tax crimes, which was

<sup>1</sup> For more on this see Ben Aris, “Russia's corruption tsar”, BusinessNewsEurope (25 October, 2012), [http://www.bne.eu/story4121/Russias\\_corruption\\_tsar](http://www.bne.eu/story4121/Russias_corruption_tsar)

followed by new laws to lighten punishments for corporate crimes in connection with Medvedev's general campaign against corruption.

Following the official investigation, the authorities admitted Magnitsky died due to medical negligence in July 2011. The two doctors have been punished and one of the two doctors is on trial for negligence and manslaughter, all of which is extremely unusual for Russia. However, Browder and Magnitsky's family are far from happy with the extent of the investigation or the actions it has provoked.

### **Magnitsky List**

What started out as a corporate dispute that went tragically wrong with Magnitsky's death has been elevated to a full-blown international row after the case was taken up first by the European Union and then the US government.

In 2010 MEPs called for a visa ban for 60 Russian officials connected to the case, partly as a result of Hermitage's lobbying. Then in October 2010 US Senator, John McCain, co-sponsored the "Justice for Sergei Magnitsky" bill that became the vehicle for the so-called Magnitsky List that lists the same 60 Russian officials connected to the case and bans them from entry to the US. The government of Canada has passed similar resolutions. The US Senate unanimously passed the Magnitsky Act on June 26 this year, a bill which prohibits foreign human rights violators from entering the US and giving the government the right to freeze their American bank accounts.

The reaction of Russia's foreign ministry has been one of outrage, stating that the resolutions are "an attempt to pressure the investigators and interfere in the internal affairs of another state". Russia has accused the US congress of double standards. The argument is that countries like the US are critical of the weakness of the rule of law in Russia, but that, at the same time, these countries are passing legislation that pre-judge cases and so interfere with the rule of law in Russia.

"We regard such actions as yet another attempt to politicize the issue and put pressure on Russia's justice system," the Russian foreign ministry press service said in a statement in October this year after the European Parliament issued a similar Magnitsky list of a travel ban for selective Russian officials.

During an interview earlier this year, Putin responded to the decisions by the US and EU to impose travel ban lists by stating that "there are people who need an enemy, they are looking for an opponent to fight against", and asking "do you know how many people die while in prison in those countries, which have condemned Russia?". If Washington were to abide by their own princi-

ples, argues the Kremlin, then it should leave the case to the Russian judicial system and accept the results of the investigations and ruling connected to the case.

Moreover, the Kremlin sees the Magnitsky list as selectively penalising Russia. The bill was floated as a precedent setting piece of legislation in the same vein as the 1977 Foreign Corrupt Practices Act. In theory the US now has legislation that can be used to punish officials from any country in the world that are implicated (but not necessary convicted) in corruption or murder cases. This list is very long indeed, yet the Kremlin points out the Magnitsky list relates only to Russia and only to the Magnitsky case.

"We call on the European parliament to pay due attention to human rights issues in the EU members, including, for example, blatant violations of Russian-language minority rights in the Baltic states and the glorification of Nazi collaborators in those countries, instead of interfering into domestic affairs of other states," the Russian foreign ministry said in a statement in September to drive home this point. The Russian foreign ministry has been very outspoken on this case and sees it as no more than "Russia-bashing" that has become par for the course in the deteriorating relations between Washington and Moscow.

In September this overt interference in Russian internal affairs, as the Kremlin sees it, led directly to a change in the laws covering non-government organisations (NGOs), whereby any NGO in Russia that is in receipt of foreign funds is required to register as a "foreign" entity. As a result of these laws the United States Agency for International Development (USAID) has closed down its operations and left Russia after nearly 20 years of work. The Foreign Ministry explicitly accused the organisation of having a political agenda and, as a result of the Magnitsky case, has become less tolerant of any organisation that is thought to be representing the political interests of any foreign power operating in Russia.

### **Non-event in Russia**

The Kremlin's anger is compounded by its failure to appreciate the significance of the Magnitsky case, which is not an issue in the domestic context. This only adds to the anger and belief that the Magnitsky case is a political vehicle engineered by Washington for its own ends, and the result of the vigorous efforts of Browder to extract his pound of flesh in reprisal for his expulsion from Russia.

According to polls the majority of Russians have never even heard of Magnitsky, or if they had heard of him, the case failed to stir them and was quickly forgotten. This June 44% of respondents in a poll said they

knew nothing about the Magnitsky case, up from a year ago in August 2011 when 31% of those polled had never heard the name. Of those that know the case, they blame senior government officials (12%) or the investigators (11%) for his death, with others blame conditions in pre-trial detention centres (8%) or the incompetence of the prison's doctors (8%). The least likely cause according to respondents was it was an accident (6%) (see Figure 1 on p. 5).

These results indicate a general indifference to the case in Russia, which is matched by a similar indifference to the jailing of the members of the punk rock band "Pussy Riot", who performed an anti-establishment protest song in Moscow's main cathedral on February 21, 2012. While the band members were sentenced to two years in jail and became a cause célèbre with the international press—drawing statements of solidarity for the likes of Madonna and Paul McCartney—Russians were largely nonplussed by the band's antics. When group Faith No More played a concert in Moscow earlier this year they brought the remaining members of Pussy Riot on stage to perform, but they were booed off by the young and presumably more liberally minded crowd.

What is missing from most of the international coverage of the story is the domestic context. In Pussy Riot's case some 80% of Russians describe themselves as Orthodox according to a survey by the state-run pollster VTsIOM in September, and were genuinely shocked by the desecration of the Christ the Savior cathedral, Russia's most important cathedral (see Figure 2 on p. 6).

Likewise, while the advent of a Russian protest movement has been front-page news in the international press since the first demonstrations in December 2011, domestically the movement has lost momentum and failed to resonate with the general population in any city other than Moscow. While there is a hard core of support for the movement in the capital, and the movement has forced the government to react to the popular demands and take popular opinion into account more than they had previously, the overall interest in agitating for change is on a par with the interest in the Magnitsky case: in a recent poll only 2% of respondents said they would "definitely" join a demonstration if one is organized and another 11% said they would "probably" join one (see Figure 3 on p. 6).

More generally another poll found that Russian voters value freedom of speech over the right to assemble and are nervous about losing their hard won prosperity should there be a violent or uncontrolled change of regime, such as is happening in North Africa. Add to this traditional Russian fatalism, the impact of the economic crisis on mortality rates and the long tradition of unaccountability of the state to the people, and the

Magnitsky case has much less resonance within Russia, than it does in the West where personal liberty and well-being are the paramount principles of society.

### Impact on Foreign Relations

The Magnitsky affair is part of a general deterioration in relations between Russia and the US that is a function of a basic misunderstanding between Washington and Moscow, due to a clash in their respective value systems.

Putin was the first leader to reach out to then-president George W. Bush after the 9/11 attacks and was genuinely interested in becoming a partner of the US. However, he was rebuffed at every turn and relations got steadily worse. Putin called the West to account for this perceived rejection with an important speech in 2007 at the Munich Conference on Security Policy, in which he highlighted the broken promises made by NATO following the fall of the Soviet Union that no troops would be positioned on Russia's border. But with the accession of the Baltic states to NATO this is exactly what has happened. Putin threw down the gauntlet in Munich saying Russia would not stand idly by forever.<sup>2</sup>

"I think it is obvious that NATO expansion does not have any relation with the modernization of the Alliance itself or with ensuring security in Europe. On the contrary, it represents a serious provocation that reduces the level of mutual trust. And we have the right to ask: against whom is this expansion intended? And what happened to the assurances our western partners made after the dissolution of the Warsaw Pact? Where are those declarations today? No one even remembers them," Putin said in the Munich speech.

Medvedev followed up with a speech in the UK following his election as president in 2008 in which he said that Europe was Russia's "natural ally" and called for a new European security architecture—a call that has gone largely ignored. He called for Europe to reach out and reiterated the fact that Russia would not wait forever. Putin closed the circle in his keynote speech at the St Petersburg economic forum this July, outlining that time had run out. He called on the US to step aside and give the role of global coordination of all countries interests to the G20.

The ire the Kremlin feels towards the US is also partly due to the fact that the Kremlin considers that in the last decade real progress has been made towards the goals that the US sets for Russia. "We have seen a civil society start to emerge in Russia and this is due to

2 A full transcript of the speech, courtesy of Munich Conference on Security Policy, can be found in "Putin's Prepared Remarks at 43rd Munich Conference on Security Policy", Washington Post, 12 February 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/12/AR2007021200555.html>

a decade of growth. This is healthy and we understand that a mature economy can't become a developed country without a civil society. The state must move towards this so that we have not only a legitimate government, but also one the people trust. Minorities' interests must be respected and accommodated where it is possible," said Putin in St Petersburg.

Most in the West would scoff at these words and point to Magnitsky as proof they are no more than hot air. However, Putin has always said he will go slowly and wants to remain in charge of the process. Putin says that any change—including the changes demanded by the

protest movement—must be done “within the framework of the law”, thereby ensuring the Kremlin holds all the cards. There has been change, however, the pace of this change is slow and so discounted by the Kremlin's detractors, but the point is that the two sides are arguing from two different perspectives.

While Russia will not abandon the West, it is now actively pursuing ties with Asia—a policy that was manifest within the efforts the Kremlin put into hosting the APEC summit in Vladivostok in September, during which billions of dollars of contracts were signed over cocktails and canapés.

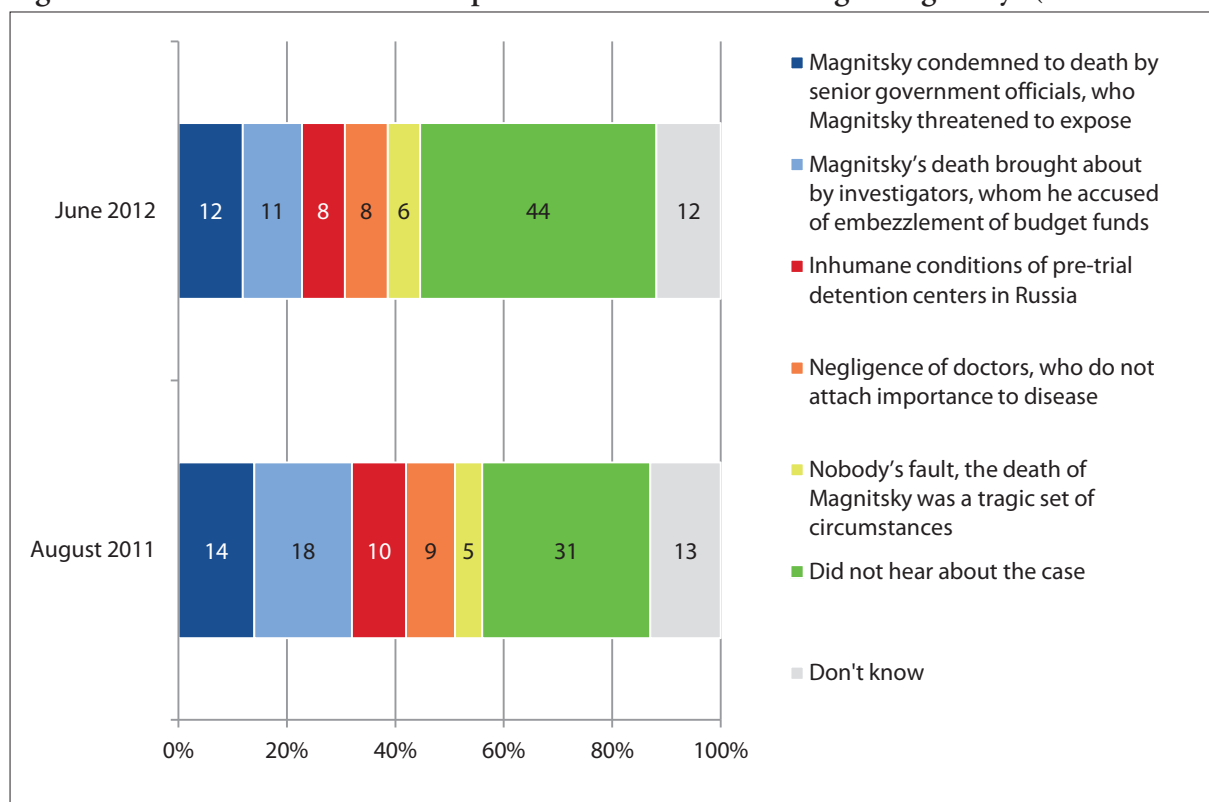
#### *About the Author*

Ben Aris is the editor/publisher of Business New Europe (<http://www.bne.eu/>), an online news resource and publication covering business, economics, finance and politics in Central, Eastern and Southeast Europe and the former Soviet Union. To subscribe to BNE's newsletters visit: <http://www.bne.eu/store/choose.php>

#### OPINION POLL

## Magnitsky, Pussy Riot and Mass Protests

Figure 1: Who Do You Think is Responsible for the Death of Sergei Magnitsky? (in % of Total)



Source: representative poll by Levada Center, August 2011 and 21–26 June 2012, <http://www.levada.ru/28-06-2012/rossiyane-o-dele-magnitskogo>