

## How Anti-Corruption Laws Work in Russia

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### Abstract

This article examines the corrupt practices that companies use to rent forest plots. The analysis traces the development of the forestry law on auctions, which should have guaranteed honest competition for all participants and blocked informal relations between bureaucrats and businessmen. Unfortunately, in practice, the law's implementation leads to new corrupt practices aimed at circumventing the recently imposed legal barriers.

### The Interaction between Anti-Corruption Laws and Corrupt Practices

President Dmitry Medvedev admitted the failure of his anti-corruption policy and the absence of any successes in this area in his January 26 interview with the newspaper *Vedomosti*. The only serious achievement he mentioned was the adoption of anti-corruption legislation in Russia. But even this accomplishment raises severe doubts if you take into account the fact that the implementation of many Russian laws in practice leads to the opposite of the intended effect.

Even though all bills considered in the Duma, regardless of their overall content, are evaluated for their anti-corruption potential, the level of corruption in society has not decreased. In fact, in many cases, anti-corruption efforts do not have the intended effect. For example, in trying to exert maximal control over business and minimize the ability of bureaucrats to intervene, the state has created extremely complicated bureaucratic procedures that waste large amounts of time. These new regulations have stimulated companies to try to reduce the bureaucratic red tape they face through informal agreements with bureaucrats, thereby creating new corrupt practices. Reducing corrupt practices in one area has simply encouraged their growth in another. This experience demonstrates that in any anti-corruption law there can be unforeseen consequences when the legislation is put into practice.

This article examines the problem of corruption through the example of the development of the law defining the procedure for distributing forestry resources in Russia and the unforeseen effects of its implementation. The analysis is based on materials gathered in 2006 and 2010 in the Republic of Komi and Leningrad Oblast. These materials included semi-structured interviews with representatives of big and small business, state agencies at various levels, and NGO experts; excerpts from auction protocols; and publications in the media.

### Forestry Competitions and Auctions in Russia, 1997–2010

Over the course of the last two decades, the Russian authorities have sought to set up effective, market-ori-

ented legislation in the sphere of natural resource use with the goal of providing fair and transparent conditions in giving companies access to the resources. The Forestry Code of 1997 proclaimed that the main mechanism for providing forest-land leases would be tenders or competitions. These forestry tenders were organized by commissions whose membership included representatives of the oblast and raion administrations, the forestry industry, and state environmental protection agencies. In determining the winners of the competitions, the commissions were guided by a variety of sometimes fuzzy criteria, including: the size of the payment for the lease, the firm's capacity for cutting down and processing timber, the work experience of an enterprise in a given territory, the conduct of forestry sustainability work, the creation of new jobs, and contributions to solving social problems in a given locality. The commission could also establish additional criteria at its discretion. Additionally, there were closed competitions where participation was only possible upon receiving an invitation from the members of the commission.

In addition to forestry tenders, it was possible to buy standing timber on the basis of forest auctions. In contrast to the forestry tenders that involve a number of eligibility criteria for participants, here the only requirement for victory was the price.

The procedure for conducting forestry competitions included possibilities for manipulation at various stages. In a number of cases, bureaucrats and businessmen took advantage of these opportunities, leading to collusion between seller and buyer. First, the announcement of the competition could be printed in such a way that only "desirable" insiders found out about it. As a rule, the announcements were published in obscure publications with small readerships. Therefore, in order to learn about an upcoming tender or auction, it was necessary to have direct contacts with the raion administration. Second, the business representatives did not have detailed information about the forest tracts that were to be put up for auction or tender. Accordingly, the bidder could end up with forest land that was not suitable for industrial development. Therefore the participants in the auction sought to find out in advance detailed information about the

tracts to be put up for competitions through their informal connections. Third, the tenders required picking winners according to numerous criteria that often were difficult to rank and evaluate objectively. Therefore leasing a desired tract of forest land often required conducting preliminary informal negotiations with the raion administration. Usually, the basic demand by members of the auction commissions, beyond lease payments, was for social aid to a given raion and the creation of new jobs. Therefore during the informal negotiations, the potential forestry operator discussed the amount of social aid they could provide if they were declared the winner of the tender. According to the manager of one forestry enterprise, "the administration itself set the conditions for us, saying that we should do this and this." There were few audits of how the money received from the companies was actually spent. Additionally, in a few cases, the businessmen sought to agree among themselves before an auction or tender. The result was that the conduct of forestry tenders and auctions only appeared to meet the legal requirements from the outside, while the essence of the competition was deformed. The law, which was designed to create competition and foster the most effective way of using Russia's forestry resources, has enabled collusion between the members of the commission and businesspeople.

In 2004–5 the Ministry of Natural Resources made changes in the rules for conducting auctions and competitions, setting the goal of detailing their conduct and eliminating any opportunities for abuse. Thus, the closed competitions were cancelled and announcements about the other competitions were supposed to be published in well-known regional publications. However, the amendments only led to a transformation in the way that the competitions were conducted, without changing their essence. Interviews with businesspeople working in this field show that they continued to actively use informal agreements with the administration to receive forest tracts.

In 2006, during the effort to rewrite the Forestry Code, the procedure by which companies received leases was one of the most widely discussed issues. The key mechanism for leasing land became auctions which would be open to anyone who was interested in participating. The single criterion which would determine the victor was to be price. The auctions now had to be organized by the Oblast Committee for Natural Resources. The new law had several main goals: 1. Impose more effective control over the sale of forest land, 2. Make it maximally profitable for the state, 3. Eliminate informal agreements between bureaucrats and businessmen by conducting open auctions. The Federal Anti-Monopoly Service (FAS) assumed that the conduct of open auctions would be an effective instrument in fighting corruption.

The new Forestry Code came into effect on January 1, 2007. However, the law is not always implemented in a way that achieves the announced goals. First, some of the information asymmetry remains. Despite the fact that the announcements about the upcoming auctions are published in one well-known periodical, the data provided to the potential contributors are insufficient to evaluate the economic value of the lots being offered. Therefore the potential buyer, as before, must use informal connections and contacts to gain more specific information about the forestry plots up for auction.

Second, the new law stimulated new forms of corrupt practices. On one hand, it eliminated the opaque qualifying criteria and transferred the power to pick the winners from the raion level to the oblast/republican level and thereby removed the ability for raion administrations and businessmen to make a deal. On the other hand, since it was more difficult to reach an informal agreement with the members of the oblast auction commissions, there are now a greater number of informal agreements between the participants in the auctions themselves. These agreements are facilitated by the fact that the number of players seeking a particular plot is usually limited and they are all well known to each other. Therefore the potential competitors preliminarily discuss among themselves the possibilities for dividing up the forest and then prepare official applications for specific lots. In several cases, auction victors who secured a lot at a minimal price sublease the land to other participants involved in the collusion at a mutually advantageous price. According to a manager of a forest products company, "Auctions are collusion. We participated in the auction. We knew in advance the prices and how the plots would be divided."

An analysis of the forestry auctions for Leningrad Oblast shows that there is no competition in the majority of them. Thus, between January and November 2010, there were eight auctions for exploiting forest plots. For 74.6 percent of the plots, the buyer won the right to use the land for the initial asking price. In 2009, there were four auctions and 92 percent of the plots were sold for the initial asking price.

Inspections conducted in 2007–8 by the Audit Chamber and the FAS revealed numerous violations committed during auctions across Russia. These violations involved the procedures for conducting the auctions, including the presence of collusion between buyers and sellers, setting the initial asking price too low, and other efforts to go around the law. An additional cause for concern about the anti-corruption features of the law was the complaints surrounding the auctions for leasing forestry land outside of Moscow for recreational purposes. The initiator of the auction was Rosleskhoz

and its organizer was Mosleskhoz. Numerous flagrant violations were committed during the process of auctioning the plots. Applications to participate in the auction were only accepted during a period of four hours. Not only was there only a narrow window to submit a bid but the rules for gaining a permit to enter the building where the applications were being accepted was so complicated that many potential bidders could not submit their applications. As a result, 990 hectares of land were leased at nominal prices. Plots were leased for 49 years at a price of 25–500 dollars, when their market value was closer to \$10,000 to \$15,000. Among the buyers were high-level bureaucrats and big businessmen.

Auctions conducted like this achieve the opposite of what they are supposed to do: they reduce the price of forest land and reduce the income to the state. Additionally, market competition between auction participants has been replaced by an informal mechanism of cooperation. The new law did not eliminate corrupt practices in the forestry sector, rather it transformed them. If earlier there was collusion primarily between sellers and buyers, now it is more intensively used among the buyers themselves. At the same time, representatives of state agencies in some cases continue to use administrative levers to acquire the forestry plots they are interested in owning.

### Why Has the Battle Against Corruption Been Lost?

Researchers studying Russian corruption typically point to opaque legislation as one of the main reasons for the high level of graft in society. Among the problems are the incompleteness and inconsistency of the laws, the high level of discretionary powers given to bureaucrats, and the possibility of conflict in judicial proceedings. But such an explanation is not complete. As this research demonstrates, the presence of “correct” legislation does not guarantee its effective enforcement. The legislators gradually introduced additional changes into the law on forestry competitions and auctions with the goal of eliminating corrupt practices. But the anti-corruption laws do not always eliminate the corrupt practices; they simply change their form. This shifts attention from the laws themselves to the agents participating in their implementation and the special features of the environment which allows the law to be used in a variety of different ways. Therefore, in analyzing the reasons for corruption in various spheres, it is necessary not only to look at the regulations governing that sphere, but to examine the situation from the point of view of the participants themselves.

In studying corruption in Africa, Jean-Pierre Olivier de Sardan described the presence of various logics which

make it possible for society to legitimize corruption. Such legitimizing logics, as a rule, are closely bound among themselves and do not facilitate corruption *per se*. But they lead to a specific type of behavior through which corrupt actions begin to be viewed as the social norm. Drawing on this analysis of forest auctions, it is possible to identify several basic mechanisms that legitimize corrupt behavior in Russian society:

- **Survival.** The difficulties of the Perestroika period, which relegated many forestry-based villages to the verge of extinction, facilitated informal methods of mutual assistance which came to be seen by the participants as the only way to preserve output and the villages that relied on continuing production. The informal relations between business and the administration in questions of forest leases, on one hand, mitigated the transition of the forestry sector from a planned economy to market relations and helped the otherwise abandoned forest villages to survive. On the other hand, they stimulated corrupt behavior.
- **Increasing efficiency.** In some situations, circumventing formal rules makes it possible to save money and time.
- **Trust.** When the rules of the game are constantly changing, interpersonal agreements are viewed as a necessary base for the eventual formalization of interactions. The participants use them as insurance, reducing their risks.
- **Competitiveness.** In some cases, corrupt practices are not primarily focused on achieving personal benefit, but countering other corrupt players. In these situations, companies must use informal agreements with other businessmen or bureaucrats to prevent themselves from being forced out of the market. The failure of a company’s leadership to participate in the existing network of informal relations can lead to the loss of a lease and the accompanying production it provides. In these cases, informal agreements among participants are one of the main ways of advancing in the market. Refusing to use these opportunities reduces the “competitiveness” of the company.

The mechanisms of legitimation described here demonstrate that the practice of informal agreements in circumvention of formal rules is accepted as an integral part of life in Russian society and emphasize the routine, deep-rooted character of corruption. In its battle against corruption, the Russian government is similar to the actions of the medieval inquisition, which held show trials against witches, burned “bad” books, and wrote “good” ones. The Russian authorities also diligently rewrite laws and regularly use the media to inform the population about actions taken against bureaucrats who have gone too far. However, these actions do not

change the situation because the people responsible for enforcing the new laws remain the same.

It is possible that inserting civil society into the bilateral relationship between the state and business would

improve the effectiveness and transparency of the deals that are carried out. Such a possibility deserves further investigation.

#### *About the Author*

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#### *Further Reading*

- Official site of the Federal Anti-Monopoly Service: <http://www.fas.gov.ru>
- Official site of the Audit Chamber: <http://www.ach.gov.ru/en/>
- Information site on Russian forests: <http://forest.ru>

## ANALYSIS

# The Magnitsky Case and the Limits of Russian Legal Reform

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## Abstract

Sergei Magnitsky died in November 2009 after spending 11 months in pretrial detention. The reforms adopted after his death highlight the difficulty of fighting entrenched interests to make Russia's criminal justice system compatible with the government's modernization efforts. Medvedev initiated changes in Russian law, but has not succeeded in changing the behavior of law enforcement agencies. Putin's declaration that Mikhail Khodorkovsky should remain in jail just before the court announced its decision in the second trial suggests that the courts will continue to be used for political purposes.

## Two Prisoners

Two proceedings dominated Russia's legal landscape during 2010. The first one, obviously, was the second prosecution of former oil magnate Mikhail Khodorkovsky. That trial reached its predictable conclusion on December 27, 2010 with the conviction of Khodorkovsky and his co-defendant, Platon Lebedev. The other prominent case concerned Sergei Magnitsky, a successful corporate lawyer who died in November 2009 after spending 11 months in pretrial detention. But whereas the public greeted the Khodorkovsky verdict with a sense of resignation, the Magnitsky controversy continued to resonate more than a year after his death. The Magnitsky case, in fact, sheds an important light on what has been President Medvedev's signature initiative to date, namely his fight against legal nihilism and call for broader legal reform. In the wake of Magnitsky's death, Medvedev intervened to promote an investigation of the circumstances surrounding both Magnitsky's failure to

receive medical treatment and his long imprisonment without trial. Medvedev also pushed forward new legislation to limit the use of pretrial detention procedures, yet by the end of 2010, Medvedev still had not managed to remove the stain of the Magnitsky affair from the Russian legal system.

## The Detention of Sergei Magnitsky

The Magnitsky case stands at the confluence of two of the most destructive trends in Russian law: the politicization of the criminal justice system and the spread of corruption within law enforcement. William Browder ran one of the largest foreign investment houses—Hermitage Capital Management—in Russia. Browder was famous both for his rather upbeat assessment of the Russian market and his repeated demands for greater transparency within Russian companies. The latter clearly irked Russian state officials, and in November 2005, Browder was denied a visa essentially for political reasons.