



# THE SUNDAY TIMES

14 November 2010

## **Dying in agony: his reward for solving a \$230m fraud**

Hero lawyer's hellish reward; Sergei Magnitsky linked Russian officials to a \$230m fraud and died in a Moscow prison. His friend tells Margarett Driscoll the fight for justice is about to go global



When Sergei Magnitsky was 10 years old he read a book by Dante and told his aunt Tatyana it was "very interesting on all corners of heaven and hell". The bookish, earnest little boy grew up to discover his own corner of hell, Moscow's notorious Butyrka prison. He died in custody a year ago this week, and his case has become an international cause célèbre.

Magnitsky, a respected lawyer working for a UK-based investment firm, stood up against the Russian state after uncovering a huge tax fraud perpetrated by a group of senior police officers and government officials. His reward was to be arrested on trumped-up charges of tax

evasion, held in horrifying conditions, and denied medical care and contact with friends and family.

The last time his mother, Natalia, and aunt saw him was at a court hearing, where he heard that his period of pre-trial imprisonment was to be extended. "Normally Sergei would smile and say something," says Tatyana. "At this hearing we could no longer smile and when he left he waved to us with a gesture of despair."

With all requests to visit 37-year-old Magnitsky in prison refused, these court hearings were the only opportunity the two women had to set eyes on him. Four days later, Magnitsky was dead.

Last week, he was given a posthumous Transparency International award for integrity. The chairman of the awards committee, which honours those who fight corruption, said Magnitsky had "believed in the rule of law and died for his belief".

At the same time, several of the officials implicated in the crime that Magnitsky uncovered — embezzling \$230m (¥168m) from the Russian state — and in hounding him to his death received distinguished awards for service to their country.

Magnitsky's friends and supporters have given up hope of justice in Russia, where attempts to investigate his death have been frustrated by cover-ups. Instead, they are trying to ensure those responsible are contained in Russia and are unable to travel or invest their ill-gotten gains abroad.

This week at Westminster, the European parliament, the US Congress and the parliaments in Canada, Germany, Estonia and Poland, a film about Magnitsky's life and death will be shown to politicians to try to persuade them to introduce a visa ban on a list of named individuals involved in his case. "We would also like their assets frozen," says Bill Browder, chief executive of Hermitage Capital Management, Magnitsky's former employer. "The idea is to inflict as much suffering as we can."

Magnitsky's story gives a frightening insight into the reality of modern Russia. It begins in the early 1990s, as Russia was moving from communism to capitalism and the Klondike-like rush to grab a piece of the action as the state's assets were given away to the private sector. A chosen few, such as Roman Abramovich, became billionaires practically overnight.

Browder, a financier from Chicago with a Russian grandmother, saw an opportunity in the emerging market and set up shop in Moscow: over the next 10 years, at the helm of Hermitage Capital, he was to become the biggest foreign investor in the country, with \$4.5 billion tied up in Russian industries. But doing business there was never straightforward. "A couple of years in I realised they'd forgotten to create any rules. There were no property rights, nothing to stop people being ripped off. So I decided to fight corruption," he says.

Browder's clients made a lot of money, some up to 30 times their original stake. But his forensic team of accountants and lawyers repeatedly picked up anomalies in the companies in which they invested.

Browder believes he was able to get away with making repeated allegations of corruption against leading businessmen at the time because it suited Vladimir Putin, then Russia's president, who, seeing oligarchs as rivals, wanted to curb their power. But at the end of 2003, Putin himself took action by arresting Mikhail Khodorkovsky, the country's richest man. With the rich on side — the sight of Russia's wealthiest man appearing in court in a cage had a salutary effect on anyone who felt like challenging the president — Browder was a nuisance.

In November 2005, flying back after a weekend in London, he arrived in Moscow to be told that his visa had been annulled. He was flown out the next day and has not seen his home of 10 years since then.

"People said, 'Bill, it's been great but we'd like our money back, please'," he recalls. So he moved most of his staff to London, withdrew his investments in Russia, and left three firms ticking along there with no assets, hoping he could revive them if the atmosphere in Moscow changed.

In June 2007, Hermitage's office in Moscow was suddenly raided by the police, as was Firestone Duncan, the law firm it retained. Police seized the stamps, seals and certificates of the three companies Hermitage had kept going. In October 2007, Browder's secretary got a call from a bailiff attached to a court telling her that one of the firms had a judgment against it for an unpaid debt. This was the first Browder had heard of any court hearing.

He got Magnitsky, one of Firestone Duncan's staff, on the case: "Sergei was the 'go to' guy in Moscow on courts, taxes, fines, anything to do with civil law."

What Magnitsky's meticulous investigation uncovered over the next few months was at heart a simple scam. In 2006, Hermitage's firms had made \$1 billion profit and paid \$230m in taxes. Stolen documents had been used to forge contracts claiming it owed \$1 billion to shell companies and those claims had been ratified in a series of court hearings of which Hermitage had no knowledge. The firm had pleaded guilty, represented by lawyers it had never hired.

Magnitsky then discovered Browder no longer owned his companies, which had been re-registered to an organisation called Pluton, based in Tatarstan. The new owner turned out to be Viktor Markelov, who had been jailed for murder in 2001, then released two years later.

By June 2008 Magnitsky had turned up another odd thing: one of the companies had opened an account with a small, obscure, provincial bank. Why, since the company had no assets? The answer crystallised when he examined funds deposited at the bank, which suddenly shot up by \$230m at the turn of the year. The fake debt had been used by the fraudsters to claim that Hermitage's declared profit of \$1 billion had been wrongly filed and that the company was therefore owed a tax rebate of \$230m.

"The biggest rebate in Russian history was granted and paid out in one day — on Christmas Eve," Browder says. "No questions asked, even though we had reported our companies stolen at the beginning of December. This was not our money, it was the Russian government's money, so the authorities should have been motivated to do something. Instead, they opened a criminal case against our lawyers."

Browder decided it was time to get everyone out. He would support them and their families if they fled to London. All but one took him up on his offer. "Sergei was a little different to the other guys," he says. "He was an idealist. He knew the law and he believed it would protect him."

Publicity about the case prompted an investigation by the State Investigative Committee, Russia's equivalent of America's FBI. "Sergei did the bravest thing any man can do in Russia: he testified against the police involved," Browder says.

Magnitsky named two senior police officers. A month later, at the end of November, three of their subordinates arrested him, in front of his wife and two children. "He was refused even a telephone call to his family from prison," Browder says. "From that day to the day he died, he never heard his children's voices again."

The lawyer was accused of conspiring with Browder to evade taxes. He was put in a cell with eight inmates and four beds, with the lights on 24 hours a day. He was told if he testified against Browder and withdrew his claims against the police he would be freed. "If he had taken them up on it, we would have understood," says Browder. "We wanted him out any way we could. But to Sergei telling a lie would be more painful than physical suffering."

Magnitsky was transferred to a cell with no heating and broken windows. He developed a respiratory tract infection. "Over the next few months he was held in a cell with no toilet, just a hole in the floor with sewage spilling everywhere," Browder says. "They took away his means of boiling water, so he had no clean water to drink."

"In a prison like Butyrka the hardest thing is moving cells and getting new cellmates, as you have to work out who's going to attack you. Sergei was moved 13 times."

In 358 days in prison, Magnitsky complained in writing about his treatment more than 450 times. He developed pancreatitis and gallstones, which caused excruciating pain. Court hearings, despite being the only time he caught a glimpse of his family, were also an ordeal. He described being held for hours in a cell so crowded that he could stand only on one leg.

He wrote: "Justice... turns into a process of grinding human flesh to mincemeat for prisons and camps, a process in which people can neither effectively defend themselves nor even realise what's happening. One can only think about when it will end, when one can get rid of this physical and emotional torture."

His last hours were pieced together by his friends and investigators in Moscow. A cellmate banged on the doors and pleaded for help for five hours as Magnitsky lay doubled in pain. He

was eventually transferred to Matrosskaya Tishina, a prison with medical facilities, but on arrival was put into a straitjacket and left in an isolation cell. One hour and 18 minutes later he died.

No one told his family. His mother discovered he was dead when she arrived with a food parcel at Butyrka the next day and was redirected to Matrosskaya Tishina.

Before his funeral, Magnitsky's body lay in an open casket. There was severe bruising to both his hands. An official autopsy mentioned a mysterious hole in his tongue. The family was refused permission to commission its own post-mortem report.

Extracts from his letters of complaint were published by a Russian newspaper and caused outrage. "His story touched so many people," says Browder.

A year on, righting the wrong done to his friend has become Browder's mission, taking over his life. "But this took over Sergei's life, forever," he says. "I owe him."