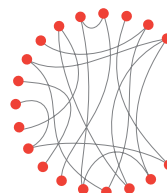


Tackling Russian elite's corruption: mission impossible?

REPORT BY THE EXPERT GROUP ON TRANSBORDER CORRUPTION
IN COOPERATION WITH THE NETHERLANDS HELSINKI COMMITTEE



TRANSBORDER
CORRUPTION
ARCHIVE



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The Expert Group on Fighting Transborder Corruption was created in 2014 by the EU-Russia Civil Society Forum. The Forum is dedicated to stimulating contacts and cooperation between active citizens in Russia and the EU and wanted to take a closer look at one more connection between Russia and the European Union: corruption. With this purpose, the Group was set up, and started with a number of case studies on indications of how companies and individuals from Russia and EU member states were involved in forms of corruption. The Netherlands Helsinki Committee has since the beginning been cooperating with the Group.

Transborder corruption is a massive phenomenon. The amount of money laundered globally in one year is estimated at 2-5% of the global GDP, or \$800 billion – \$2 trillion in current US dollars.¹ Russia is one of the biggest sources of this murky money. Over the years, the number of investigations by journalist collectives and civil society into this phenomenon has increased and become an avalanche. Think of the Panama papers, the Russian Laundromat, or the Troika Laundromat. A great number of original documents pertaining to (possible) corruption and money laundering involving Russia and the EU and other western countries have been made accessible by the Group in the online TBC Archive².

The Group gradually has started to pay more attention to the question of why in so few cases, prosecution or other legal steps have been initiated in the EU and other western countries against those engaging in or enabling corruption, or those moving around or investing the resulting sums of money. This report is a result of the effort to look into that question. It has been drawn up by Anastasia Kirilenko, investigative journalist, and Harry Hummel, Senior Policy Advisor at the Netherlands Helsinki Committee.

The bad news is that the current level of prosecution is very problematic. In more dramatic words, the EU is not well-protected against corrupt undermining of its financial and economic sector.

1 <https://www.unodc.org/unodc/en/money-laundering/overview.html>

2 <https://tbcarchives.org>

The good news is that legal options to redress this situation are available that are greatly underutilized. As phrased by the Head of Department of Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, “the model of reversal of the burden of proof for confiscation of illegal assets for non-conviction-based confiscation of assets” provides “the possibility to bring in really sharp tools to take away from organised criminals and beneficiaries of high-level corruption what they are really in it for – namely the money. So we hope that this will lead to giving prosecutors the tools that they need to do their jobs; otherwise they will just give up.”³

Members of the European Parliament, of the European Commission, of European law enforcement, judicial and financial control cooperation bodies, of Government Departments and Prosecution Services of Member States, and of Member States’ parliaments, we hope that this report will stimulate you to take up this challenge!

3 https://www.europarl.europa.eu/cmsdata/161080/CRE_TAX3_20190129.pdf, page 31

The concept of 'transborder corruption' covers all situations in which actors from more than one country are involved in abuse for personal enrichment. This includes bribery, embezzlement or the demanding and providing of favours in exchange for contracts or cooperation. Also covered is the enabling of corruption by facilitating legal or financial operations that cover up the flow of funds obtained through corruption. In the case of Russia, typical examples would be the foreign investment of public money that has been embezzled in Russia. Or, for example, a Western company that is suspected of paying bribes to Russian officials in order to get public contracts⁴.

Extensive journalistic investigations have taken place into such arrangements. Russia-related grand corruption scandals regularly shake the world. Take, for example, the Panama Papers in which a cellist, friend of President Vladimir Putin, highly suspiciously was at the centre of a two billion dollars' worth off shore web⁵. Take the arrest of Russian senator Suleyman Kerimov on the French Riviera amid suspicion of money laundering and tax evasion⁶. Take Sergey Magnitsky's case or the Spanish criminal investigation "Troika". All of them reportedly involve Russian officials, directly or indirectly. The question arises: why don't we have large numbers of prosecutions for corruption or corruption-related offenses? Or why, if a rare trial starts, as in the Spanish case described in chapter 4, is acquittal⁷ the result?

The short answer to these questions is that, in order to tackle transborder corruption, Western prosecutors usually depend on cooperation from the state where the predicate offence has occurred.

Legal means in Western countries to counter corruption and related money laundering seem to be not very effective. In principle the example of bribery given above is an offence not just in the country where the bribery took place but also in the country of incorporation of the company, in the West. But European legal instruments seem to be little used. For example, the latest Transparency International report about the implementation of the OECD Anti-Bribery Convention, an international agreement covering one form of corruption, categorizes only the US, the UK, Switzerland and Israel as active enforcers of the Convention. A further nine countries, six of which are EU member states (Germany, France, Italy, Spain, Sweden and Portugal) are 'moderately active', eight more EU member states, including the Netherlands,

are 'limited' enforcers, and another nine, including Belgium and Luxemburg, exhibit 'little to none' enforcement. Four EU member states, Croatia, Cyprus, Malta and Romania, have not ratified the Convention at all.⁸

The US, which has the Foreign Corrupt Practices Act (FCPA) as its main instrument, seems to be relatively effective. The FCPA has led to prosecution for example of the Dutch operator of Russian origin Vimpelcom⁹, or Hewlett Packard for alleged bribes in Russia¹⁰. But, as said above, bribery of foreign officials is only one form of corruption. In the United States, the so-called RICO (Racketeer Influenced and Corrupt Organizations Act) law should be able to tackle other forms. A Russian entrepreneur for example who alleges he has been extorted or drained by government officials, can lodge a RICO complaint if some of the transactions relating to these acts took place in the US. So far, RICO complaints have been rejected when they were submitted in the US against Russian oligarchs and officials by their alleged victims. This happened to Mikhail Zhivilo and Djalol Khaidarov in 2005 (the plaintiffs complained against actions of Izmaylovo crime gang)¹¹ and in the case of Max Freidzon in 2015¹². In both cases the plaintiffs insisted that a part of the disputed transactions took place in the US but failed to convince US prosecution bodies to take action.

In rule of law abiding countries the burden of evidence is high for the predicate offence – the criminal origin of the disputed sums of money should be proven. As the Swiss retired prosecutor Bernard Bertossa put it, addressing the TBC Group in 2017, "*Issuing a court sentence without evidence sent by the country in whose territory the predicate offence was committed would mean breaching the principle of the rule of law*"¹³. However, it creates a paradox when a country with strong rule of law standards has to rely on countries where the rule of law is not established, as we will show in this report.

4 See an example: <https://tbcarchives.org/vinci-plainte-version-finale> French NGO, Sherpa, managed to submit evidence of the "bribing of foreign officials" to French prosecutors, stating that "With high probability, with the help of intricate schemes, Vladimir Putin himself received a reward for the services provided by Arkady Rotenberg to the Vinci group."

5 <https://www.ft.com/content/31d99184-fa66-11e5-8f41-df5bda8beb40>

6 <https://www.occrp.org/en/investigations/7675-how-to-hide-a-russian-fortune-on-the-french-riviera>

7 <https://www.bbc.com/news/world-europe-45907655>

8 Exporting Corruption 2020, <https://www.transparency.org/en/publications/exporting-corruption-2020>

9 <https://en.wikipedia.org/wiki/VEON>; <https://www.global-benefits-vision.com/dutch-company-to-pay-usd-795-million-to-resolve-bribery-probes>

10 <https://www.justice.gov/usao-ndca/pr/hewlett-packard-russia-pleads-guilty-and-sentenced-bribery-russian-government-officials>

11 <https://tbcarchives.org/rico-complaint-deripaska>

12 <https://tbcarchives.org/max-freidzons-rejected-complaint-against-russian-officials-and-tambov-gang-rico-law>

13 <https://legal-dialogue.org/the-sofia-declaration-transborder-corruption-investigations-and-collaboration-with-european-prosecutors>

Russian corruption, which leads to siphoned off public funds ending up invested in Spanish, French, British etc. real estate, becomes a ghost crime: we hear about it but we do not see much effective official legal prosecution. Some prosecutors seem to be reluctant to take those cases from the very beginning, others dare but often face fiasco in court. Defendants – suspects of corruption – hire not one but a number of the best lawyers and expensive public relations advisors which should “correct his media record”¹⁴ and threaten journalists with prosecution for defamation. It further complicates public coverage of those crimes.

Russia is on the 94th position (out of 128 countries) on the rule of law index, according to the World Justice Project¹⁵, and the 129th least corrupt nation out of 180 countries, according to the 2020 Corruption Perceptions Index of Transparency International¹⁶. Russian and other Post-Soviet law enforcement agencies are not always eager to help their Western colleagues, and a Western policy addressing this delicate issue is still to be defined. In the policy brief “Crimintern” of the European Council on Foreign Relation (2017), Professor Mark Galeotti, expert on Russian organized crime, notes: “*Law enforcement cooperation has been an inevitable casualty of the worsening relationship between Russia and the West, and the potential for the use of Russian-based organized crime (RBOC) as an intelligence tool makes such activity far more difficult. Nonetheless, there are those within the Russian police and judiciary who want to do their jobs, and there are also RBOC groups with limited political cover inside Russia. Efforts to maintain and expand cooperation with Russian counterparts must continue*”¹⁷. Persons or networks involved in high level corruption are however very unlikely to have “limited political cover”.

To do our own research, the TBC Group has been gathering and analysing available legal documentation on a dedicated website, called “Transborder Corruption Archive” (TBC Archive, or TBCA). It includes court sentences, several prosecutors and police’s relevant reports (or memoirs if they are retired), RICO law’s complaints etc., relevant to transborder corruption¹⁸.

In Chapters 1 to 6 of this publication, we will use documents from the TBC Archive and other available information to illustrate the failure of such legal cooperation. The fact that some criminal groups or some of their representatives are finally prosecuted in Russia, while others are not, is of little joy. In some cases there is proof that disgraced officials in Russia were in fact defeated by their competitors of the underworld, who turned out to have better political cover. Selective justice against some mobsters also does not necessarily mean that Russia helps to enforce cases opened against their Western tentacles, as our report will show with some examples.

With a few exceptions, Russia’s lack of cooperation with Western prosecutors in money laundering cases has heavily impacted the outcome of judicial procedures. Moreover, there

14 <https://www.kyivpost.com/article/content/ukraine-politics/firtash-hires-us-lobbyist-to-clean-his-public-record-361016.html?cn-reloaded=1>

15 Rule of Law Index 2020, <https://worldjusticeproject.org/rule-of-law-index/country/Russian%20Federation>

16 <https://www.transparency.org/country/RUS>

17 https://www.ecfr.eu/publications/summary/crimintern_how_the_kremlin_uses_russias_criminal_networks_in_europe

18 More about the project: <https://tbcarchives.org/about-us>

are serious claims that the Russian state effectively blocks attempts to sue not only Russian civil servants with their luxury real estate, but also Russians from the underworld, without any legal activity known, who are investigated in the West as mobsters or mobsters’ cronies¹⁹.

Needless to say, the lack of transborder corruption verdicts in democratic countries contributes to uncertainty about the quality of the numerous investigative journalistic publications, to speculation in the media and loss of interest of the mainstream media in the topic, as procedures drag on for many years. News outlets are afraid of being sued if they accuse powerful personalities of corruption without a supporting sentence²⁰.

Redoubling is needed of investigative journalism efforts. Channelling of money through opaque structures in tax havens may be an indication of dubious origin of funds, it is not conclusive proof. More details on the sources of income of the alleged corrupt actors are needed. We hope that our TBC Archive may be useful. Journalists can find out themselves: sometimes there are recurrent abandoned proceedings, not one but many complaints, information notes etc. available on the website in respect of the same persons in different countries and in different languages. These may be helpful for investigative reporting, and serve as base for further digging and hopefully ultimately as support in court cases.

Furthermore, amid such circumstances, in order to better ensure the rule of law in Europe and the US, the option of introducing and expanding new approaches, where the burden of evidence is lower than in criminal cases, should be considered. These possible new approaches will be explored in Chapter 7. They may include visa sanctions and asset freezes, as in the new Global Human Rights Sanctions Regime of the European Union announced in December 2020²¹. Corruption as a ground for imposing sanctions was excluded from this policy instrument. Anti-corruption campaigners deplored this exclusion²², but yet other instruments may be available for them by pursuing non-conviction based confiscation measures, similar to the Unexplained Wealth Order (UWO), an instrument introduced in the UK several years ago. Initial application of the UWO shows it is not without problems as well, but these and similar instruments are still very much in an embryonic stage.

But let’s look at the examples of attempts at prosecution through the criminal justice system first. Chapter 1 will discuss criminal justice steps taken to tackle the laundering of money resulting from what the most highly publicized Russian corruption affair of the latest decades: the Magnitsky case. Chapter 2 shows how it seems to be possible for well-connected Eastern European oligarchs to evade standing trial in the West. Then chapters 3 to 6 explore what appear to be limits to criminal prosecution of Russian corruption and related money laundering. In view of the growth of kleptocratic governance around the world and its potential for undermining democracy, it is key to discuss how these limits can be removed. Looking at new approaches, as discussed in chapter 7, can play an important role in this discussion.

19 From recent examples, see the story on Russian ombudsman complaining to her Spanish colleagues, below.

20 The refusal in 2014 of Cambridge University Press to publish the book ‘Putin’s Kleptocracy: Who Owns Russia?’ shows the type of issues arising, see https://en.wikipedia.org/wiki/Putin%27s_Kleptocracy

21 https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2419

22 <https://www.globalwitness.org/en/press-releases/new-eu-sanctions-regime-important-achievement-leaves-door-open-dirty-money>

1. Magnitsky case prosecutions in the West: any sentence?

The most infamous corruption and money laundering scheme involving Russia and a range of countries in the West, inside and outside the EU, is the one revealed in 2008 by Russian lawyer Sergei Magnitsky, which led to his arrest and ultimately his death in 2009 in a Moscow prison. Magnitsky was posthumously awarded with Transparency International's integrity award: *"Sergei Magnitsky's commitment to integrity ultimately cost him his life. A Moscow-based lawyer, Magnitsky was representing US investment firm Hermitage when he bravely agreed to testify against senior Russian officials, accusing them of using Hermitage-owned assets to fraudulently reclaim \$230 million in taxes. In November 2008, Magnitsky was imprisoned on charges of conspiracy. Magnitsky persistently refused to withdraw his statement. He died almost a year after being jailed"*²³.

Bill Browder, the former employer of Sergei Magnitsky, after his death started a tenacious campaign to obtain truth and justice. The campaign included trying to trace portions of the embezzled funds that were moved out of the country. Reportedly, in the West 16 judicial probes have been initiated related to this money laundering scheme.²⁴ Irrefutable court conclusions in at least some of these 16 probes would contribute greatly to limiting the ongoing smear campaign in Russian state media and the speculations that, despite numerous best journalistic investigative teams' investigations²⁵, Magnitsky was corrupt himself. For example, the German magazine Spiegel recently proposed to look at this "theory"²⁶. A movie was released²⁷, and self-proclaimed "independent investigative journalism" is widely available on social media²⁸. In other words, the case create endless polemics. And critics may always say "well, the European justice did not conclude anything yet, it is suspicious".

More generally, successful outcomes in court would make clear that rule of law based criminal justice systems are capable of addressing the major challenge that foreign kleptocratic systems pose for equity and justice in economy and society.²⁹ Let's look in more detail at some of the European judicial proceedings.

23 https://www.transparency.org/getinvolved/awardwinner/sergei_magnitsky

24 See page 24, https://www.europarl.europa.eu/cmsdata/161080/CRE_TAX3_20190129.pdf

25 <https://www.occrp.org/en/panamapapers/russia-the-cellist-and-the-lawyer/>, <https://www.bbc.com/news/world-europe-22310575>

26 <https://www.spiegel.de/international/world/the-case-of-sergei-magnitsky-anti-corruption-champion-or-corrupt-anti-hero-a-1297796.html>; the article was published with the title "Questions Cloud Story Behind U.S. Sanctions", but the initial title "The case of Sergei Magnitsky : anti corruption champion or corrupt anti hero" is still visible in the url

27 <https://www.imdb.com/title/tt6028446/>

28 <https://www.thekomisarscoop.com/2020/03/introduction-to-bill-browders-story-about-sergei-magnitskywhy-it-matters>

29 See for example these briefs on the nature of the threat and making this a subject of foreign policy strategizing, (EU) https://ecfr.eu/publication/networks_of_impunity_corruption_and_european_foreign_policy/, (US) <https://www.americanprogress.org/issues/security/reports/2021/02/26/495402/turning-tide-dirty-money/>, and (European Parliament) https://www.facebook.com/watch/live/?v=2916418265255547&ref=watch_permalink

French investigative judge Renaud Van Ruymbeke was reported in 2015 to have been assigned a case of laundering of money, related to Magnitsky³⁰. Several millions of euros were said to have been frozen by the authorities. Netherlands daily NRC Handelsblad wrote in 2018 that the sum was EUR 15 million³¹.

No information on the progress of the case is available for many years. According to Bill Browder, *"[i]t took Cyprus more than two years to respond to the French investigative judge, Renaud Van Ruymbeke's, mutual legal assistance request to provide bank documents. At the same time as they were not cooperating with him, the Cyprus Government was cooperating with the Russian Government in allowing Russian prosecutors and Russian policemen to come and raid my law firm's office in Cyprus – the law firm that I used – to try to build a case against me. So they were not cooperating with European law enforcement but they were cooperating with Russian law enforcement to persecute me"*.³² Contacted on the matter, van Ruymbeke declined to comment. He retired in 2019.

The Swiss prosecution of the money laundering case that was opened in 2011 is still not concluded. In 2012 Alexander Perepilichnyy, a key witness against the Russian officials implicated in the case and the main whistleblower working with the Swiss justice on the Magnitsky case, died in London in mysterious circumstances. Upon request by one of the authors of this report, Anastasia Kirilenko, in 2017 the Swiss Prosecutor's office announced: *"The investigation was triggered by a report from the Money Laundering Reporting Office (MROS) and a complaint filed by the law firm Brown Rudnick (on behalf of Hermitage Capital Management Ltd). Proceedings against persons unknown were opened on 3 March 2011 based on allegations of money laundering (Art. 305bis Swiss Criminal Code (SCC)). In the course of the proceedings so far, the Office of the Attorney General of Switzerland (OAG) has seized an amount of Swiss francs in the double-digit range of millions. The Swiss criminal investigation has not yet been concluded.*

In 2011, the Russian authorities filed a request for mutual legal assistance from Switzerland in connection with the same matter. The Federal Office of Justice (FOJ) passed the Russian request on to the OAG for execution on 15 September 2011. This request for mutual assistance has now been executed with full legal effect. This means that the information and documentation obtained in Switzerland has been passed on to the FOJ, which has communicated the results of the mutual legal assistance measures to the Russian authorities. These criminal proceedings are complex, both in view of the alleged offence of money laundering

30 <https://meduza.io/en/news/2015/06/25/france-freezes-millions-of-euros-in-connection-with-magnitsky-case>; see also <https://www.ft.com/content/67ef78f0-af65-11e7-aab9-abaa44b1e130>

31 <https://www.nrc.nl/nieuws/2018/12/04/witwassen-voor-moskou-via-nederland-a3059447>

32 https://www.europarl.europa.eu/cmsdata/161080/CRE_TAX3_20190129.pdf page 32

in Switzerland and because of the alleged predicate offence in Russia, since the OAG is reliant on the countries concerned for mutual legal assistance when the predicate offence is committed abroad. In this case the OAG has already requested several countries, including Russia, for mutual legal assistance. The Russian authorities have accepted and executed the request. Currently the OAG is in the process of evaluating a large number of documents and other information”.

So, the Swiss Prosecutor’s office relies on “*the countries concerned for mutual legal assistance when the predicate offence is committed abroad*”. Yet it is not clear why the “large amount of documents” did not allow to conclude the case so far.

It is only a guess, but unfortunately a “large amount” does not necessarily mean useful documentation. The prosecutor of Perugia, Italy, former Prosecutor of The Direzione Investigativa Antimafia (‘Anti-Mafia Investigation Directorate’) Luigi de Ficcy, having experience with prosecuting Russian organized crime including Russiagate (also known as Kremingate, when Russian mobsters were suspected of having laundered 10 billion through Bank of New York in 1998 – 1999³³ and as a result some of them were also prosecuted in Italy in the operation “Spider Web”³⁴), put it in the following way in his 2009 report about transnational money laundering: “*Investigations regarding money laundering committed by Russian criminal groups run into the difficulty of proving the criminal origin of the capitals used, being the predicate offenses committed in the countries of the former Soviet Union whose judicial authorities are not particularly cooperative. Even if the jurisprudence of the Cassation Court does not require the predicate offenses to be specifically identified and ascertained, it requires that they be at least abstractly configurable. In this respect, international judicial collaboration is necessary to obtain information from the countries from which capital came. Unfortunately, the experience of mutual legal assistance with these countries is difficult because of long waiting time for replies and responses are often evasive and of little use*’³⁵. At the 2017 round table organized by the TBC Group, De Ficchy confirmed his previous conclusions: “*It is still difficult to obtain responses from East European countries, especially from Russia and Kazakhstan. We have to request information on persons connected with the authorities, or on oligarchs dealing on international scale, and it is hard to get any response*”³⁶.

33 <https://www.independent.co.uk/news/world/russian-mafia-laundered-10bn-at-bank-of-new-york-p-1113796.html>

34 <https://tbcarchives.org/spider-web/?highlight=Spider%20Web>

35 http://www.distretto.torino.giustizia.it/documentazione/D_1958.pdf (p. 11).

36 <https://legal-dialogue.org/the-sofia-declaration-transborder-corruption-investigations-and-collaboration-with-european-prosecutors>

Back to the Swiss Magnitsky case, first it was headed by the Swiss federal prosecutor Maria Antonella Bino³⁷. She quit her position of prosecutor and started a job at BNP Paribas, a private bank³⁸. By the way, Mrs Bino had taken over from her Paul Perradin, another prosecutor³⁹ who had switched to BNP Paribas⁴⁰ and retired from there. Now the case has been given to Patrick Lamon. Patrick Lamon and his hierarchy were recently compromised by reporting about a 2014 trip to Baikal Lake in Siberia. Many other trips with a holiday component followed, according to reporting by Novaya Gazeta. “*The Swiss were flying to hunt for bears and “Russian pigs”. In return they tried to block the investigation of the Magnitsky murder*”.⁴¹

In November 2020, Swiss justice notified Bill Browder about their intention to abandon the Magnitsky case in 2021 and to unfreeze the frozen assets, ten years after the investigation number SV.11.0049 started. Reportedly, USD 4 million would be confiscated out of a total of 24 million⁴². The decision to end the investigation is subject to judicial appeal.

In response to parliamentary questions⁴³ the prosecution service asserted that “*In money laundering cases, in particular, it must be sufficiently established that there is a connection between the funds that are suspected of being laundered in Switzerland and a predicate offense, this is a crime usually committed abroad. In order to clarify a predicate offense committed abroad, the Federal Prosecution Service depends on the legal assistance of the state concerned. An accused person cannot be convicted of money laundering unless there is sufficient evidence of a connection with a predicate offense.*

If the suspicion is substantiated, the Prosecution Service orders or applies for a conviction of the accused; it further orders or requests the confiscation of funds derived directly from a crime or their “restitution” by way of a compensation claim.

In the criminal proceedings that are the subject of this question, the Prosecution Service has reached the end of its investigation. It comes to the conclusion that the proceedings against unknown persons must be discontinued in accordance with Art. 319 Paragraph 1 of the Criminal Procedure Code. However, to the extent a connection can be demonstrated between the assets confiscated in Switzerland and the predicate offense committed in Russia, the Prosecution Service intends to order the confiscation of part of the funds currently confiscated.”

37 <https://www.lacote.ch/articles/suisse/mort-d-un-russe-presente-comme-temoin-cle-d-une-enquete-suisse-247419>

38 <https://www.bnpparibas.ch/fr/maria-antonella-bino-est-nommee-responsable-de-la-conformite-des-affaires-juridiques-et-du-controle-permanent-de-bnp-paribas-suisse-sa/>

39 <https://www.swissinfo.ch/eng/swiss-wrap-up-salinas-inquiry/2714180>

40 <https://www.letemps.ch/economie/paul-perraudin-rejoint-banque-bnp-paribas>

41 <https://novayagazeta.ru/articles/2020/05/19/85444-the-prosecutor-for-escort>

42 <https://www.bloomberg.com/news/articles/2020-11-19/swiss-prosecutors-to-end-magnitsky-case-as-browder-calls-foul>

43 <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20205928>

In the Netherlands, in 2017 and 2018 media reported about two cases of presumed involvement of Netherlands-registered companies in laundering of the Magnitsky funds. In 2017, this concerned a submission of Bill Browder relating to funds that Amsterdam-based AFI Europe owed to Cyprus-based Prevezon Holdings. In the USA, Prevezon was suspected of using money from the Magnitsky fraud in buying real estate, a case that was settled in May 2017. In October, a sum of EUR 3 million that AFI reportedly owed to Prevezon was frozen by the Netherlands justice authorities.⁴⁴ The Netherlands Prosecution Service in February 2021 was not willing to provide further information about the state of this “still ongoing” investigation.

In 2018, the reports were about a sum of EUR 8 million of presumed Magnitsky funds that had flowed through Dutch banks via a complicated route including Belize-based Argenta Systems.⁴⁵

In the United States, prosecutors brought a case on money laundering, related to the Magnitsky scheme, to justice in 2013⁴⁶. The trial proceedings took three years and a half, after which a settlement agreement was reached on May 13th, 2017.

The defendant, Russian citizen Denis Katsyv, accepted a settlement after it became clear US prosecutors had had access to Russian judicial documentation even though their request to Russian authorities to cooperate was turned down. The Department of Justice said that *“the Russian Federation, where the fraud took place and where the initial money laundering steps were taken, has not honoured the United States’ request for legal assistance. Instead, a confidential witness lawfully obtained access to and copied a Russian criminal case file containing numerous relevant documents, which will supply the bulk of the Government’s evidence regarding the fraud in Russia and the transfer of its proceeds abroad through shell companies. This criminal case file contains both documents showing how the Russian Treasury Fraud was committed, and bank records and investigative analyses showing how its proceeds were moved through Russia. The Government will seek to authenticate this copy of the criminal file through the recorded testimony of this confidential witness, and to introduce the bank records and investigative analyses contained therein to show the flow of funds”*⁴⁷.

This Prevezon case shows that theoretically prosecutors can use any evidence in court which they obtained, from the sources they find reliable, including from civil society. At the same time, it is difficult to assess whether they would have really led to a conviction, because the case was settled.

44 <https://www.volkskrant.nl/nieuws-achtergrond/hoer-230-miljoen-dollar-uit-het-kremlin-verdween-en-een-gedeelte-mogelijk-in-nederland-terechtkwam~bca2050ac>

45 <https://www.bnnvara.nl/zembla/artikelen/aangifte-tegen-nederlandse-banken-wegens-witwassen>

46 <https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/U.S.%20v%20Prevezon%20et%20al.%20Complaint.pdf>

47 <https://assets.documentcloud.org/documents/3524376/593-Main.pdf>

According to the settlement agreement, Denis Katsyv should pay a fine of USD 6 million, which is 3 times more than the amount which was incriminated to him in the process of money laundering, buying luxury real estate in New-York. In exchange, he has been recognized not guilty, and all the proceedings were abandoned. While both sides were pleased with the settlement, one can be disappointed because there was not any sentence.

In the press release by the defendants we read *“The U.S. Government brought this case without conducting any independent investigation, relying exclusively on the claims of William Browder, a convicted tax evader. Prevezon and Mr. Katsyv have been appalled by the steady stream of false narratives in the U.S. media about this case, and look forward to resuming their legitimate business activities around the world”*⁴⁸. Denis Katsyv’s defence said already, he is completely innocent and they will sue the press, in particularly Russian independent newspaper Novaya Gazeta⁴⁹, as well as Bill Browder, Novaya Gazeta’s journalist Roman Anin told the authors of this report in April 2020 that *“no lawsuit has been filed against Novaya Gazeta so far”*.

Prevezon subsequently argued they could not pay the settlement sum until funds frozen in the Netherlands would be released, an argument that was rejected by Court⁵⁰.

To conclude, Bill Browder’s attempts to fight corruption in Russia seem credible to many investigative journalists, and a series of prosecutorial probes have been opened. However, no sentences were issued so far, there was only a settlement and a fine in the US.

48 <https://www.prnewswire.com/news-releases/prevezon-holdings-llc-statement-on-settlement-with-us-government-300457183.html>

49 http://rapsinews.com/judicial_news/20170524/278697386.html

50 <https://www.reuters.com/article/us-usa-russia-prevezon-idUSKBN1FM2FJ>

2. Firtash's transborder cases: how to overrule a Supreme court decision when your lawyer is a former minister of justice

A glaring example of the way in which prosecution of transborder corruption can be evaded can be observed in the case of the attempted prosecution of Dmytro Firtash.

As our archive traces, it was the Hermitage Foundation founder and Magnitsky's employer Bill Browder himself who in 2005 raised his voice as minority stakeholder, accusing Russian Gazprom of embezzlement of an average of not less than 478 million USD a year⁵¹. The opaque shell companies "Eural Trans Gaz" and "Rosukrenergo" were created by Gazprom to export gas to Ukraine amid suspicions of organized crime's involvement and embezzlement. The scheme was investigated or mentioned in the background of criminal proceedings at least in three Western countries⁵² and in numerous journalistic investigations. Browder's Hermitage Capital was called⁵³ a "lonely critical voice" against the scheme back in 2005 and Browder himself was quickly denied access to Russia. "Eural Trans Gaz" and "Rosukrenergo" were not the first companies giving rise to suspicions; in earlier years, Itera Company had led to the same suspicions of embezzling a part of Gazprom's profit over Russian law enforcers' indifference.⁵⁴

Those gas schemes are linked with figures such as current Russia's justice minister Konstantin Chuychenko⁵⁵, Yuri Boyko, pro-Russian powerful politician in Ukraine, and Ukrainian oligarch Dmytro Firtash, who resides in Austria. Firtash has been mentioned in Austrian police investigations since 2005⁵⁶.

However, Gazprom never claimed any money was missing. Thus, according to a 2006 certificate of a trip of Austrian investigators to Kyiv⁵⁷ in the frame of a preliminary investigation carried out because the Austrian banks' accounts were involved, Andrei Vasilishin (ex-head of the Ministry of Internal Affairs, at that time adviser to the minister), said Ukraine tried to negotiate with Gazprom directly, but Gazprom insisted on an intermediary in the person of Rosukrenergo. Behind Rosukrenergo, according to him, was the FSB, which cooperated with Mogilevich, presumed to be one of Russia's top organized crime bosses⁵⁸.

51 <https://tbcarchives.org/hermitage-capitals-investigation-into-possible-corruption-at-gazprom-eural-trans-gas-and-rosukrenergo-2005/?highlight=Rosukrenergo>

52 <https://tbcarchives.org/hermitage-capitals-investigation-into-possible-corruption-at-gazprom-eural-trans-gas-and-rosukrenergo-2005/?highlight=Rosukrenergo>

53 <https://www.rferl.org/a/1059689.html>

54 See about Itera <https://carnegieendowment.org/2002/03/18/gazprom-and-itera-case-study-in-russian-corporate-misgovernance-event-468>

55 <https://tbcarchives.org/firtash-palchikov/?highlight=Rosukrenergo>

56 <https://tbcarchives.org/bawag-4-8>

57 https://tbcarchives.org/wp-content/uploads/bawag_78-117.pdf, page 26

58 https://en.wikipedia.org/wiki/Semion_Mogilevich#cite_note-3

A case was filed in 2005 in Ukraine⁵⁹ but without results. The Chairman of the board of directors at Raiffeisen Investment AG, confirmed at parliamentary hearings⁶⁰ in Vienna in 2007 that the bank co-founded RosUkrEnergo with Dmytro Firtash and Ivan Fursin. He insisted, however, that the bank had commissioned an audit from Kroll due diligence company which found no criminal links of Firtash. Investigator Erich Zwettler said to parliamentarians: *"The only thing I know is that an FBI representative came to Vienna and said the story was over because representatives of Raiffeisen's board of directors had somehow approached Stuart Levey's [former Under Secretary for Terrorism and Financial Intelligence within the U.S. Department of the Treasury Now he is Chief Legal Officer at HSBC in London] people, so there weren't any grounds to".*⁶¹ ... And *"for quite some time, we have not heard from the American side about RosUkrEnergo. In fact, it is a Swiss company with only a few accounts in Vienna."*⁶²

In response, Deputy Werner Kogler pointed out during the hearings that Ivan Fursin is an Austrian resident and a straw man of Mogilevich and wonders why it is so hard to start an investigation. Mr. Zwettler responded: *"Should the police start an investigation based on these assumptions? We're not on the Balkans; our state respects the rule of law!"*

Anyway, this case was mostly forgotten in the West. In Ukraine, controversy continued over allegations that RosUkrEnergo made exorbitant profits as a middleman in the gas trade.⁶³ After 2010 Firtash gradually expanded and diversified his Ukrainian business empire.⁶⁴

A new prosecution started in 2013 in the US, unrelated to Rosukrenergo⁶⁵. Firtash and five more defendants were suspected of violation of the Foreign Corrupt Practices Act (FCPA), having conspired to pay at least \$18.5 million to Indian officials back in 2006 for several titanium extraction permits. The extraction project was expected to yield over \$500 million in profits a year, including from deals with Chicago-based 'Company A' (apparently, the deals were related to the sale of a major Boeing Company asset). Andras Knopp is a defendant in the Indian corruption case along with Firtash. He is known to have been acquainted with Mogilevich who was involved in gas schemes in the early 2000s. In that period, German investigators of the

59 <https://www.rferl.org/a/1059689.html>

60 <https://tbcarchives.org/rosukrenergo-firtash-chernoy-bawag-parliamentary-inquiry-in-austria-2007-sealed-part/?highlight=Firtash>

61 <https://tbcarchives.org/rosukrenergo-firtash-chernoy-bawag-parliamentary-inquiry-in-austria-2007-sealed-part/?highlight=sealed%20part>, page 56

62 <https://tbcarchives.org/wp-content/uploads/bawag-and-firtash-parliamentary-inquiry-sealed-part-1.pdf> page 32

63 <https://www.theguardian.com/world/2010/dec/01/wikileaks-cables-russian-mafia-gas>

64 <https://www.reuters.com/investigates/special-report/comrade-capitalism-the-kiev-connection/>

65 <https://www.justice.gov/opa/pr/six-defendants-indicted-alleged-conspiracy-bribe-government-officials-india-mine-titanium>

Solntsevskaya gang's money laundering activities came across Knopp's notes⁶⁶, which included Mogilevich's phone number in Knopp's handwriting. This prosecution led in 2016 to a request by the US to Austria to extradite Firtash. The extradition request of the Austrian Procurator General's Office was granted by Austria's Supreme Court of Justice⁶⁷, with is the last instance court⁶⁸. But somehow, in the name of "rule of law", the decision was questioned again. Firtash's attorney Dieter Böhmdorfer (Austrian ex-minister of justice, no less) appealed to the district criminal court of Vienna for a review of the Supreme Court's extradition decision. Strangely, the decision of the Supreme Court apparently was not final, and the extradition was postponed: a Vienna court judge ruled it could only take place after that court had decided on the defence motion to reconsider the matter. Court spokeswoman Christina Salzborn said the defence provided "extremely extensive material." "The accused applied for a reopening of the case and submitted numerous documents ... Due to the load of data and newly submitted evidence, it will take some time to assess the reopening request"⁶⁹.

Firtash always claimed "political prosecution". Ewald Stani, spokesman of the Procurator General's Office of Austria, stated that referring to political motives for prosecution is vague and speculative — otherwise, all pro-Russian tycoons would have already been on the wanted list⁷⁰.

The Austrian ex-minister of justice is not Firtash's only high-profile attorney. Following his arrest, the international pool of his lawyers and PR agents grew significantly⁷¹. The list of his representatives in the 'titanium case', investigated by the US in the frame of FCPA, is impressive by any standard: an ex-director of the FBI⁷², a former assistant of the United States Attorney General, a former foreign minister, a member of the House of Lords, and a major art collector⁷³.

His team also featured, as 'private security consultant', ex-Stasi officer Kristina Wilkening, whose services cost him as much as 700,000 euros. Later she was prosecuted in Germany for bribery⁷⁴.

66 <https://tbcarchives.org/mogilevich-andreas-knopp/>

67 <https://www.ogh.gv.at/medieninformationen/medieninformation-des-obersten-gerichtshofs-auslieferungssache-des-dmitry-f/>

68 [https://en.wikipedia.org/wiki/Supreme_Court_of_Justice_\(Austria\)](https://en.wikipedia.org/wiki/Supreme_Court_of_Justice_(Austria))

69 <https://www.voanews.com/europe/austria-firtash-extradition-us-blocked-extensive-bid-reopen-case>

70 <https://theins.ru/en/uncategorized/191402>

71 https://www.pravda.com.ua/cdn/graphics/2015/09/sprut_dmitrija_firtasha/

72 <https://www.wsj.com/articles/SB117674837248471543>

73 https://www.pravda.com.ua/cdn/graphics/2015/09/sprut_dmitrija_firtasha/

74 <https://www.addendum.org/spionage/wilkening-firtash/>

In the meantime, Spain in 2015 had opened a file on Firtash. "The operations of the business structure deployed by 'Dmytro Firtash's group of companies' (DF) across all of Europe include a range of transactions and investments and serve the ultimate purpose of laundering money obtained through illegitimate activities of the organized crime group headed by Mogilevich," states the indictment for Firtash's Spanish case⁷⁵. The taped conversations of alleged frontmen in Spain mention "affairs in India", "Dima (Firtash)", "Tsuric" (may be Anatoly Tsoura from Mogilevich's organisation).

However, the Spanish case of Firtash was terminated in March 2020 by the Provincial Court of Barcelona. Prosecutors insisted that there are "*documents confirming that the money allegedly laundered in Spain by the investigated criminal organization does not have a legal origin*". Countering this argument, Firtash's defence asserted that the prosecution had not provided rational evidence against his client and argues that by opposition dismissal, it was only trying to keep the case alive to try to "*retain the person under investigation as a prisoner (...) to see if, with any luck, something results that can sustain, minimally, an accusation.*" "*Under the rule of law, this cannot be the procedural prospect,*" assured the lawyers of the businessman, of the firm Business & Law⁷⁶.

Again: it is impressive that alleged huge transnational corruption schemes meticulously documented by journalists, anti-corruption activists⁷⁷ and prosecutors since fifteen years, where we talk about hundreds of millions of Euros a year, have not led to any single sentence so far.

75 <https://tbcarchives.org/firtash-spain/firtash-spain/>

76 https://www.elconfidencial.com/espana/2020-03-11/archivada-causa-barcelona-magnate-ucranio-gas-blanqueo_2489888/

77 <https://www.globalwitness.org/en/reports/its-gas>

3. Russian mafia: many intelligence reports, few sentences

Since the 1990s many terrifying reports on Russian mafia have been written by Western law enforcers⁷⁸. For example, a Swiss counterintelligence analytic report⁷⁹ dated June 2007 and titled “Cooperation between the FSB and organized crime” asserts that criminal boss Semyon Mogilevich was personally present at the Russian-Ukrainian gas negotiations. Against some of the individuals mentioned sanctions have been imposed, in particular by the USA, with impressive explanations of their misdeeds - money laundering, extortion, bribery, and robbery.⁸⁰ But in stricto sensu almost none of the alleged mobsters has been brought to criminal responsibility so far. Sergey Mikhaylov alias Mikhas, settled and prosecuted in Switzerland as head of a criminal organization, was released from prison and even awarded a compensation. Note that one of the difficulties for the prosecution was the killing of a key witness in the Netherlands before the trial began⁸¹; prosecutors were also under threat, prosecutor Bertossa recalls⁸².

Alimjan Tokhtakhunov, known as Taiwanchik – was released from detention in Italy (see charges, in Italian, linked to the case of Bank of New York⁸³) and returned to Russia. Gafur Rakhimov⁸⁴, Semyon Mogilevich, Sergey Lalakin⁸⁵ – all those gentlemen are treated as “authorities” in Russia, maintaining a luxury life style, presenting themselves as businessmen and philanthropists in their interviews⁸⁶ and self-made documentaries⁸⁷. Russia scholars often emphasize that the high tide of organized crime has ended since 2000, when Russian president Vladimir Putin started combatting organized crime.

However, look at this. In 2018, shocking news came from the Russian Embassy in Argentina, where almost 400 kilos of cocaine were found, the Argentinian authorities said. According to Russian authorities, a former employee of the embassy, who was fired before committing the crime, helped a Russian émigré living in Berlin, to place the drugs there during this unique incident. Russian diplomats discovered the cocaine themselves and warned the Argentinian police. The Colombian weekly *Semana* obtained access to the investigation and wrote that only low level criminals seemed to be prosecuted. Some investigators in their interviews to *Semana* said that the practice was wider and spread also to other Latin America countries⁸⁸.

78 See a typical example here: <https://tbcarchives.org/solntsevskaya-fbi/?highlight=Solntsevskaya>

79 <https://tbcarchives.org/fsb-and-organized-crimes-connection-analytical-report-english-translation/?highlight=Swiss>

80 <https://home.treasury.gov/news/press-releases/sm0244>

81 See mention for example here <https://www.rferl.org/a/russia-mobster-mikhailov-putin-wristwatch/26613480.html>, and more extensive info on page 155-157 of a Dutch criminological report, https://repository.wodc.nl/bitstream/handle/20.500.12832/2539/ewb02rus-volledige-tekst_tcm28-74857.pdf?sequence=2&isAllowed=y

82 <https://theins.ru/perevody/71354>

83 <https://tbcarchives.org/wp-content/uploads/spider-web2.pdf>

84 <https://tbcarchives.org/?s=Gafur>

85 <https://tbcarchives.org/arnold-tamm-solntsevskaya-spain>

86 <https://www.svoboda.org/a/28708376.html>

87 <https://www.youtube.com/watch?v=5sVXyF9Bty0&t=2222s>

88 <https://www.semana.com/nacion/articulo/el-caso-de-las-narco-maletas/592902>

Could this happen in a country where organized crime is not important, or where there are just problems with some isolated cases? Lawyers routinely attack intelligence reports in court as not objective evidence: give us direct witnesses on whom extorted what. At the same time, it is clear that there are no contracts on the establishment of “Tambov gang” or “Izmaylovo gang” to show in court.

In Russia itself, among those considered as criminal “authorities”, only Vladimir Kumarin went to prison in 2007 as the head of criminal organization “Tambovskaya”. Remaining in detention since then, he was sentenced in various cases for murders, raid attacks and attempted murders. The last sentence, in 2019, was for a prison term of 24 years⁸⁹. But, before his convictions, he had been systematically attacking journalists who dared to link him to international money laundering. This was the case with German investigative journalist Jürgen Roth (Roth won the suit against him) in 2003⁹⁰. Despite the very popular fiction TV series on “Gangsters’ Sankt-Petersburg”, Tambovskaya or its derivation Malyshevskaya gangs did not exist according to the authorities. Russian newspapers portrayed Kumarin as a businessman until his arrest. At the last birthday of Kumarin when he was free, in 2006, Kumarin showed up in company of a State Duma member, influential journalists, a deputy governor, an influential “Putin’s masseur”⁹¹ and people from the underworld (officially philanthropists) like Lalakin, Mikhas and Mogilevich, in the same time. One of the toasts was for Kumarin’s friends, the “generals”⁹².

Evidence from the Spanish criminal case “Troika”, judged in 2018 (see chapter 4.1), shows that his rival Gennadios (Gennadi) Petrov was behind the crackdown on Kumarin⁹³. Petrov’s phone was taped and it was clear that Petrov spent a lot of efforts, using his influence in the Russian administration, to make it happen. When Kumarin was arrested in 2007, Petrov received a fax about this at his home on Mallorca. The Russian prosecutor Office also questioned Petrov as a witness in Kumarin’s case, in 2009, but he said “*I know Kumarin as the founder of Tambov gang. He proposed me to join the gang but I refused*”⁹⁴.

Who is Mr Petrov? Former neighbour of Kumarin in a luxury house in the centre of St Petersburg (in the beginning the gangs “Tambovskaya” of Kumarin and “Malyshevskaya” of Petrov acted

89 <https://www.fontanka.ru/2019/03/20/020/>

90 <https://www.fontanka.ru/2007/06/18/028/>

91 <https://www.youtube.com/watch?v=3YsjJzRvoJs>

92 <https://theins.ru/korruptsiya/155709>

93 <https://tbcarchives.org/summary-of-taped-conversations-petrov/>

94 Video recording of the interrogation of Petrov by the Spanish prosecution, in the frame of a rogatory letter from the Russian prosecutor’s office, from October 10, 2009, available to TBCA’s contributors.

together and later became rivals⁹⁵), Gennadi Petrov himself had been prosecuted in Russia in 1994. His criminal case Д 534530 contained 22 volumes, 18 people were arrested⁹⁶. The indictment in this criminal case describes the “Tambov-Malyshev gang – creation of an organized crime community, extortion, gathering of slush funds and their laundering in Europe. Main defendants were Gennady Petrov, Sergey Kuzmin, Alexander Malyshev. Cash, arms, including pistols and an arbalest to shoot on “live victims” were seized by the investigators during searches at different locations, including Petrov’s office - cash in plastic bags was seized at Petrodin’s company.⁹⁷ One of those arrested as a member of the gang was Valery Ob’edkov, a policeman who used a government-issued weapon during raid attacks, according to this indictment.

As the criminal case shows, the gang included several hundred members. Only in the “most difficult” cases the victim of extortion was delivered directly to Petrov’s office at the company Petrodin (in other cases threats sufficed). Such a victim was businessman Mr Belikov, who initially resisted to pay “krysha” (illegal protection) by the gang. Problem: during the trial in 1995 at Sankt Petersburg City Court Belikov said that he “mixed up” Petrov and his associate Malyshev with somebody else. Other witnesses also forgot their accusations. Malyshev was in the end only convicted for illegal possession of a pistol. If we look at the accusations against Kumarin, who did not have the chance to be discharged by court, we can see that the enterprises mentioned as “raided by Kumarin”, for example, Sankt-Petersburg Oil Terminal⁹⁸, are operating until today through Monaco, Liechtenstein and Panama by people linked to Iliya Traber (from Tambovskaya, identified in Monaco’s police report as being from organized crime⁹⁹). In other words, for some reason, the former associates of Kumarin continue to work, enjoy new government procurements, up to using the same intermediaries with Liechtenstein¹⁰⁰.

From the point of view of the investigation of transborder corruption, the testimony of Kumarin himself is interesting, about how he was summoned in 2003 in Sankt-Petersburg, in the frame of a German rogatory letter in the SPAG case of suspected money laundering, on which German journalist Juergen Roth reported:

“I was interrogated by our city prosecutor’s office on a separate German order in the framework of mutual assistance and so on. St. Petersburg investigator in the presence of a German began to ask questions. I did not know whether to laugh or to be indignant. “Is it true that you are the leader of the Tambov criminal community?” I asked if he had handcuffs with him. He replied ‘no’. Then I helped him and answered in the negative. If I would have had recognized leadership, how would they immediately have chained me? The apotheosis was a question about Vladimir Putin. I said that I would answer this question only in the presence of Schroeder, then he was Chancellor of Germany. In the end, it became so unpleasant that I told the prosecutors: “Look, you’re not ashamed, you know that we are not in Berlin here?!”¹⁰¹

95 Interview of a journalist, former police officer, convicted for membership in a crime gang Evgeni Vyshenko, time code 38:53 – 44:14, December 3, 2020 <https://www.youtube.com/watch?v=X-wmamXE8w>

96 <https://tbcarchives.org/wp-content/uploads/Drapkin-Petlyanova.pdf>

97 <https://tbcarchives.org/petrodin-search-protocol/>

98 <https://www.kommersant.ru/doc/3763828>

99 <https://tbcarchives.org/skigin-traber-vasiliev-monaco/?highlight=Traber>

100 <https://theins.ru/en/uncategorized/86991>

101 <https://www.fontanka.ru/2007/06/18/028/>

This case of German prosecution against citizens of Russia, Germany and Spain, on alleged money laundering through the company SPAG, was ceased when the statutory period of limitation was reached in 2009.¹⁰² Two years before, Kumarin had been already arrested in Russia but it did not impact his German case. While Kumarin remained in custody, awaiting new trials all the time, another former suspect from the SPAG case, being officially retired, continued to establish new Swiss foundations¹⁰³, and a Spanish suspect from that case served at the board of a now closed controversial bank in Lithuania¹⁰⁴. In other words, even selective prosecution in Russia has not really clarified the SPAG transborder case.

No further cases against Russian “criminal authorities” followed the one against Kumarin for a while. Some of them were shot dead – Vyacheslav Ivankov, alias Yaponchik in 2009, Aslan Usoyan in 2013, both in Moscow. In 2015 “Shakro the young” and Zakhar Kalashov were arrested, after a spectacular shooting in the centre of Moscow. Kalashov was convicted, a high rank Investigative Committee Official along with him for bribery¹⁰⁵. A State Duma Deputy who was involved in bribery, according to the documentation of the case¹⁰⁶, was not charged¹⁰⁷. Prosecution of the alleged leaders of another crime gang from Moscow, called Taganskaya, started in 2020 (the defence spoke about proscription)¹⁰⁸. By June 2020 the investigation was terminated¹⁰⁹, but the trial had not yet started.

But before all this, Spain had already declared war on Russian criminals, tracking money laundering on its territory. Precisely Shakro who was close to Soltsevskaya and Taganskaya representatives was first prosecuted and convicted in Spain. Shakro was convicted in 2010 in Madrid, and a number of Taganskaya members by 2013 on Mallorca (among them – Alexander Romanov, who Spanish law enforcers, based on taped conversations and other evidence, believed to be frontman of the senator and banker Alexander Torshin¹¹⁰). At that time, Russia was far from suing them or from giving substantial help to the Spaniards.

Shakro’s conviction in Spain in 2010 was for belonging to a criminal community¹¹¹. In 2005, the Swiss prosecution service investigated¹¹² Credit Suisse for Kalashov (alias Shakro)’s money laundering but the outcome of this probe is unknown. At that time, Swiss investigators believed¹¹³ that Kalashov was de facto controlling a significant part of Lukoil giant Russian oil company.

102 https://www.focus.de/finanzen/news/marktplatz-geldwaesche-verfahren-gescheitert_aid_414204.html

103 <https://tbcarchives.org/sens-de-la-vie-creation/?highlight=Sens%20de%20la%20vie>

104 <https://en.wikipedia.org/wiki/Snoras>

105 <https://zona.media/article/2018/08/16/nikandrov>

106 <https://tbcarchives.org/?s=Shakro>

107 <https://theins.ru/news/222173>

108 <https://www.kommersant.ru/amp/4221444>

109 <https://tass.ru/proisshestviya/8695041>

110 <https://tbcarchives.org/direba-sentencia>

111 <https://tbcarchives.org/shakro-kalashov-case>

112 <https://tbcarchives.org/lukoils-link-to-mobster-zakhari-kalashov/?highlight=Shakro>

113 Ibid

4. Spanish crackdown on Russian mafia

4.1. Troika case

The above mentioned (page x) Swiss Prosecutor Patrick Lamon, who had inherited Magnitsky's case is also known to have conducted a preliminary investigation into Ilia Traber. It has not led to the opening of any case. Ilia Traber was residing in Switzerland for many years, having a second residency on Mallorca, Spain. Since 2000 he was linked by Monaco's investigators to organized crime¹¹⁴. He bought a luxury apartment in Paris¹¹⁵. There is no public information about whether he has attracted any interest of French investigators.

Since 2016, Traber was put on the Interpol's wanted list¹¹⁶ by the Spanish Anticorruption Prosecutor's office in connection to the so-called "Troika" or Tambovskaya criminal organization's case. It is the most notorious of at least six recent cases on "Russian mafia" in Spain¹¹⁷. Traber did not come to court in 2018. His lawyer (acting technically as a lawyer of companies involved in the case) openly claimed that Spain was the only country where Mr Traber, good respected businessman, had troubles with this warrant¹¹⁸.

The case had started ten years earlier. In 2008, a large scale anti-mafia operation called "Troika", after the three presumed main mobsters targeted – Gennady Petrov, Alexander Malyshev and Sergey Kuzmin - was carried out in Spain. Several dozen people were arrested on charges of involvement in a criminal organisation and money laundering of ca. 50 million euros. Prior to detention, the phones of the supposed gangsters had been patted during more than one year.

Ten years later, after failed recurrent attempts of the Russian prosecutors to request the transfer of the case for prosecution in Russia¹¹⁹, based on the European Convention on the Transfer of Proceedings in Criminal Matters of 1972¹²⁰, which allows to request such a transfer, the trial took place in Madrid.

After spending one and a half years under arrest, the main defendant Petrov had been released on his own promise not to leave – the Spanish judge took into account that he

114 <https://tbcarchives.org/skigin-traber-vasiliev-monaco/?highlight=Traber>

115 <https://tbcarchives.org/luxury-apartment-of-iliias-traber-suspected-of-ties-with-tambov-gang-in-paris>

116 <https://aleph.occrp.org/search?limit=30&q=Ilias%20Traber&fbclid=IwAR3zpDdtIS4RBoly5LVkONAxOLWtigv-sYiQMNG7iUJqByKwKa39lwYctw#preview%3Aid=5374552.5ad95f0331d046a1afd5d8636c991165f080bacc>

117 Known and referenced in the TBCA are (chronologically): Kalashov (Shakro)'s case (judged), Izmaylovskaya case (dropped), Taganskaya case (judged), Kutaiskaya – Taniel Oniani case (judged), Solntsevskaya Case (ongoing), Dmitry Firtash's case (dropped)

118 <https://newtimes.ru/articles/detail/158697>

119 <https://tbcarchives.org/spanish-refusal-to-give-petrovs-case-to-russians>

120 <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/073>

"did not have criminal records"¹²¹ – after which he left for his home city, St. Petersburg, on authorized leave for health reasons and never returned nor show up at court.

On the bench of defendants were business associates, lawyers and clerks of Petrov, Malyshev, Kuzmin and of the forth alleged mobster in absentia – Viktor Gavrilentov. The prosecution had to prove that they had known that they participated in money laundering. And the mission revealed to be impossible.

In October 2018, The Spanish court Audiencia Nacional acquitted the 17 defendants presented in court. The press release of the Audiencia Nacional on the sentence from October 18, 2018, on the acquittal of all 17 defendants has a key last paragraph: *"However strange, uneconomic or unconventional were the commercial operations in which the defendants invested, if the origin of the acquired, converted, transmitted or concealed property is not proven of being from criminal activity, there is no money-laundering offence"*¹²². This paragraph quotes page 52 of the court sentence¹²³.

Acquitted were even two defendants who had pleaded guilty – Mikhail Rebo¹²⁴ and Leonid Khazin. Michael Rebo, a German citizen, admitted that in the 2000s he was involved in money laundering in Germany and Cyprus in the interests of Alexander Malyshev through Peresvet and another companies. After his testimony, for health reasons, Rebo had been allowed to leave the court room.

Leonid Khazin had admitted that he managed companies in the interests of Sergei Kuzmin. It was about companies located in Spain, Panama, Liberia and BVI. When asked if he knew that money from the criminal activities of Sergei Kuzmin passed through the companies, Khazin answered "yes," after which he was allowed to leave the court room too.

The acquittal of the defendants who had pleaded guilty created a precedent in the Spanish system. Mere confessions are not sufficient for conviction, however in this case the court argued that the conformity of their declarations with facts presented by the prosecution was not sufficient either. They possibly had not been aware of the scope of their confession. Normal procedure is that the defendant negotiates terms with the prosecutors, while pleading guilty. In this case the defendant's presence in the court, except the first and the last sessions,

121 [Cruz Morcillo, Pablo Muñoz](#) Palabra de Vor: Las mafias rusas en España

122 <https://tbcarchives.org/spanish-russian-mafia-troika-case-press-release-of-the-court-on-uneconomic-transactions-of-the-defendants>

123 <https://tbcarchives.org/wp-content/uploads/2018-10-18-sentencia-operaci%C3%B3n-Troika.pdf>

124 <https://tbcarchives.org/rebo>

is not necessary. It happened this way in Madrid. Two defendants pleaded guilty on money laundering for Alexander Malyshev and Sergey Kuzmin in the first session and left the court. Yet the judges acquitted them without further questioning, saying that they did not trust their plea.

Another paragraph of the press release summarizing the sentence is of great importance. It stipulates that the criminal organization Malyshevskaya exists, as it is exposed by experts from Spanish law enforcement, but ... Malyshev is unrelated to it¹²⁵: *"After analysing the evidence practiced, the Chamber concludes that although the criminal organizations Tambovskaya and Malyshevskaya exist, it has not been proven that the defendants we are judging belong to them, or to another criminal association dedicated to laundering assets obtained by the criminal activity of those two"*.

When he was in pre-trial detention in 2009, Petrov had been interrogated by the Spanish Prosecutor's office on the Russian Kumarin cases, as a witness, in the frame of rogatory letters from the Russian prosecution service. Petrov explained that he had been introduced to Kumarin, whom he knows as a member of Tambovskaya gang: *"Viktor Gavrilencov introduced me to Kumarin. Kumarin proposed to me to create a gang but I turned it down"*. The Spanish judges in Troika were convinced by the fact that Petrov was questioned only as a witness by Russian Prosecutors: *"in January 2009, Malyshev and Petrov declared as witnesses and there is no evidence that they were subsequently charged, which leads us not to be able to conclude from the information that the Russian authorities gave and asked for, that they were certain and proved that they belonged to the criminal organizations Tambovskaya and Malyshevskaya"*. Therefore it cannot be stated that the money they invested in Spain comes from their illicit activity, continue the judges.

Usually, not showing up at court is an aggravating circumstance. But the judges give the full legitimate floor to Petrov and Malyshev, despite their absence: *"In the frame of the execution of rogatory letters, on 26.01.2009 a statement was taken from Genadios Petrov and Alexander Malyshev as witnesses, with representatives of the Russian Prosecutor's Office present. In these statements, Petrov and Malyshev declared that they did not belong to the Tambovskaya criminal organization. Malyshev stated that he came to Spain because he was afraid of Kumarin. Petrov claimed to have been a victim of the Tambovskaya who wanted to take away his business and kill him because he did not follow his dictates"* (p. 62 of the sentence).

This particular sentence even led to press reports that "Petrov and Malyshev were acquitted", which is technically impossible as they did not show up, but it persisted as a general public perception. For example, as the newspaper RBC put it with reference to a Russian lawyer (technically not even a lawyer at the Spanish court, Alexander Gofshtein) in the article entitled "How the defendants in the "Russian mafia" case were acquitted in Spain": *"All are acquitted. Our compatriots Vladislav Reznik, Diana Gindin, Kirill Ilyin. But in general, all the defendants in this case were acquitted, which indicates that the whole case, as we reliably knew from the beginning, was a gross, obvious fake. The only pity is that it took ten years of life of worthy, respected, innocent people, as well as their family members, to expose it"*¹²⁶.

¹²⁵ <https://tbcarchives.org/spanish-russian-mafia-troika-case-press-release-of-the-court-on-uneconomic-transactions-of-the-defendants>

¹²⁶ <https://www.rbc.ru/society/18/10/2018/5bc862e99a79470ecde07890>

Prosecutors tried rather not to go much back in history, basing themselves on the evidence collected in 2007-2008. They insisted that the defendants explain the origin of credits and how they were reimbursed and why there is no trace of reimbursement, and that they declare on the purpose of wire transfers – for example, Petrov's associate defendant Igor Salikov failed to do so (a separate sentence on him for tax evasion is described below). Another defendant, Petrov's secretary Yulia Ermolenko kept at her home schemes involving Spanish, Panamanian companies and a Liechtenstein trust¹²⁷. She could not explain some transactions – "probably it was to pay taxes for Caspian". "But you said the company did not belong to Petrov, why did you do it?", - asked the prosecutor. Yulia Ermolenko was sure that Petrov is an honest wealthy businessman who "probably was active in business of meat".

Testimonies of Spanish intelligence officers, Guardia Civil and other law enforcers, as well as documentation from other European law enforcers allowed the court to decide that the criminal organizations *"Malyshevskaya and Tambovskaya exist"*. But *"the result of these reports must be connected to the information obtained from the Russian authorities in the investigation phase and that provided by the parties up to the time of the trial"*, - said the sentence. Malyshev was convicted only for illegal arm procession in 1995, while Petrov was not convicted at all – the witness Belikov mixed up Petrov with somebody else in 1995 and this is credible, the judges decided.

The judges found irrefutable "exculpatory evidence" in Russia itself, including in the 1980s and 90s. Pages 66 – 67 of the sentence deserve to be quoted integrally – it is a perfect example of a transborder prosecution or rather a well-documented transborder acquittal, under the guise of rule of law : *"According to the report by the Russian Federal Security Service (FSB) from 29.01.09 (fol. 31.244 and Volume 67 pdf 494) they do not have information that Guennadios Petrov belongs to the organized criminal group "Tambovsko-Malyshevskaya", there are no criminal cases, nor causes instructed against Mr. Petrov. The only criminal record that Petrov had was that derived from the Judgment of the People's Court of the Zhdanovsky District of Leningrad in the year 1985. –The conviction was for abuse of office (art. 170.2 part), careless fulfilment of obligations (art. 172) and fraud in the fulfilment of a charge (art. 175) and was remitted in accordance with the law, (VOLUME 60, folios 21617 and following) -and the facts were that, occupying from 01.03.81 until 18.11.82 the position of administrator of a food warehouse as an official with material responsibility, [Petrov] fulfilled his functional duties in a criminal and negligent manner and as a result caused damages to the interests of the State for a total amount of 53,557.38 roubles; 4,317.67 roubles and 1,019 roubles, -not reaching 6,000 euros -. The amount of damages shows that this crime cannot be the source of the investments made by Guennadios Petrov in Spain investigated in this procedure.*

Also in a judgment of September 2, 1995, the Collegiate Court of Criminal Decisions of the Municipal Court of Saint Petersburg acquitted Gennadios Petrov, Serguey Kuzmin and Alexander Malyshev, accused in that process, of belonging to a criminal gang that was dedicated to committing one or more raid attacks against people, organizations and institutions, convicted of the last for illegal possession of weapons. In this sentence it was verified that the version of the facts that Petrov and Malyshev gave was the true one ...

¹²⁷ <https://tbcarchives.org/santon-foundation-petrov/?highlight=santon>

The evidence had shown that the exculpatory version of the accused was true. This was said among others by the following: “... During the criminal investigation, Belikov in fact made statements that Parshuk¹²⁸ and Filippov took him to the meeting with Malyshev and Petrov ... During the investigation, Malyshev and Petrov asked the investigator a few times to organize a confrontation between them and Belikov to clarify who Belikov is and what were the circumstances of his meeting with them ... At the hearing, the explanations of Malyshev and Petrov have been verified. Belikov has said that he does not see Malyshev and Petrov among the defendants and when the court introduced him to Malyshev and Petrov he stated that Parshuk and Filippov introduced other people to him by posing as Malyshev and Petrov”, – describe the Spanish judges.

“This sentence refers to Malyshev and Petrov’s criminal records of the years 1984 and 1985 in the first, and of 1985 in the second, which are said to have been cancelled, and regarding Sergey Kuzmin, it is said that he has no criminal record. That is, this sentence acquitted Malyshev and Petrov of the crime of banditry because their exculpatory version had already been proven, as well as Serguey Kouzmine”.

“Add the aforementioned certificate from the St. Petersburg City Department of the Federal Security Service (FSB) that no criminal investigation has been initiated against GV Petrov for murder, arms trade, extortion, rape, fraud, forgery of documents, influence peddling, bribery, prohibited operations and transactions, contraband, drug trafficking (...). In the same sense, the Certificate of 20.01.2009 from the General Directorate of the Interior in Saint Petersburg and the Leningrad Province. The certificate of 18.02.09 of the Federal Service of the Federation”

The prosecutors presented taped conversations at court proving that Petrov, the main defendant in absentia, promoted his candidate for the position of the chief of the Investigative Committee, Bastrykin (sanctioned by the USA in 2017, and by the UK in 2020¹²⁹). Other evidence suggests that Petrov had good relations with an FSB high ranking official¹³⁰.

In the sentence, the Spanish judges (a panel of three judges) easily quote “exculpatory evidence” received from Russian Federal Security Service (FSB), and even from the FSKN - Federal Drug Control Service of Russia – its deputy chief Nikolay Aulov was a good friend of Petrov, as it was demonstrated by their dozens of taped conversations in court¹³¹. The FSKN Service was dissolved in 2016 amid corruption scandals. But “the certificate of 18.02.09 from the Federal Service of the Russian Federation for Drug Trafficking, Operational Department of Inquisitions, says that Guenadios Petrov has not been or is not registered in the records as a participant in criminal activity related to drug trafficking”, informs the Sentence.

128 <https://tbcarchives.org/parshuk-witness-interrogation-malyshev-case-st-petersburg>

129 <https://www.theguardian.com/law/2020/jul/06/magnitsky-sanctions-who-are-those-being-targeted-by-uk>

130 <https://theins.ru/en/uncategorized/135013>

131 <https://tbcarchives.org/summary-of-taped-conversations-petrov>

The taped conversations of the defendants with Petrov were not taken into account by the court. Among them conversations on “official” and “non official” money, credits from Russian banks to receive via “kick backs”. Other conversations were undertaken by Petrov with Mikhail Glushenko, a former State Duma deputy convicted for the murder of Russia State Duma deputy Galina Starovoytova. There were conversations on how to solve problems with prolongation of the Greek passport of Petrov, in order to which there is a need to erase something “from the computer”. The judges did not take the conversations into account – they said that there was no proof that Petrov had such powers to “erase something from the computer” [of law enforcers].

Insisting that Petrov was an honest businessman, Spanish judges assert: “it turns out that he was a shareholder-founder and administrator in 3 operating companies and leasing of automatic gaming devices (more than 200 units) in Leningrad, concretely:

- Limited Liability Company “Liga” from 1990 to 1993
- Limited Liability Society “Petrodin”, 1990-93
- The joint venture “Petrodin S” (Russia-Sweden), 1990-93.

He was also:

- Founder and shareholder of 27% of the bank “Bank Rossiya” (Saint Petersburg) from 1992 to 2003. (...)
- Shareholder of the Open Society Company “Baltiskaya Stroitel'naya Kompaniya” (BSK) for over 12 years.

Petrodin is the same company whose offices were searched in the 90s: “In 1993, a box with cash in plastic bag was found in the office of Petrodin Joint Venture, a company of Gennady (Gennadios, in Spanish) Petrov”, the protocol on the search of Petrodin’s offices says. “Din” in the Joint Venture name came from the name of Dyna – a Swedish gambling company run by Osaka mafia clan, as reportedly recalled by the former Swedish–Japanese founder¹³².

The main defendants simply ignored the trial and therefore remained wanted, undertaking unprecedented efforts to be withdrawn from the Interpol list. Thus, the defendant Ilias Traber, who failed to show up at court in 2018, among other lawsuits, tried to sue one of the Spanish prosecutors under the law of defamation, arguing that the prosecutor slandered him, simply by advancing the accusation. Such a lawsuit was legally not acceptable and was rejected (a defendant must show up in court with a lawyer. He can’t treat a prosecutor as a citizen who just “defames” him).

The transactions as such, which the prosecutors were targeting, were not addressed much in the trial. The alleged participation of the defendant State Duma deputy Vladislav Reznik in money laundering would have been proven, if Petrov’s mafia activity would have been proven – Reznik bought a house and a boat from Petrov and his family co-owned a plane with Petrov’s son. But the judges were satisfied with FSB reports presented by Reznik, and his general explanations, for example, that he was also founder and a wealthy shareholder of Bank “Rossiya”.

132 <https://novayagazeta.ru/articles/2012/02/08/48148-komu-neva-dala-shans>

“According to the report of the Russian Federal Security Service (FSB) from 29.01.09 (fol. 31.244 and Volume 67 pdf 494) they do not have information that Guennadios Petrov belongs to the organized criminal group “Tambovsko-Malyshevskaya”, there are no criminal cases, nor causes instructed against Mr. Petrov. The only criminal record that Petrov had was those derived from the Judgment of the People’s Court of the Zhdanovsky District of Leningrad of the year 1985. – The conviction was for abuse of office (art. 170.2 part), careless fulfilment of obligations (art. 172) and fraud in the fulfilment of a charge (art. 175) and was remitted in accordance with the law, (VOLUME 60, folios 21617 and following) -and the facts were that, occupying from 01.03.81 until 18.11.82 the position of administrator of a food warehouse as an official with material responsibility, fulfilled his functional duties in a criminal and negligent manner and as a result caused damages to the interests of the State for a total amount of 53,557.38 roubles; 4,317.67 roubles and 1,019 roubles, -not reaching 6,000 euros -. The amount of the damages shows that this crime cannot be the source of the investments made by Guennadios Petrov in Spain”.

The sentence even mentions that certain Russian media who claimed that Petrov was a criminal were convicted for defamation. This was indeed the case of the local newspaper “Peterburgski obozrevatel”, convicted by St Petersburg’s Kuibyshevski district court for defamation against Petrov. The judges spend two pages to describe this “exculpatory evidence” – the conviction of “Peterburgski obozrevatel” (pages 68 -69).

The sentence creates a serious precedent when a state of rule of law takes seriously such proves of conviction of press outlets in Russia, FSB certificates, a Russian court sentence in a 22 volumes case, where certain witnesses said that they forgot everything about extortion from them. No Spanish journalists, among them the authors of a book on Russian mafia, including Petrov, were convicted in Spain. Even in Russia, “Peterburgski obozrevatel” was an exception, and many media outlets were not convicted for linking Petrov to mafia.

The prosecutors’ petition to appeal to the decision was rejected by the Supreme Court¹³³.

What are the consequences of the case? Petrov can’t travel outside Russia with his Russian passport due to a valid arrest warrant, at least, until proscription. His Greek passport was cancelled by a Greek court years ago. Thus, in 2015 Petrov’s indictment in Spain refers to a notification from Interpol of Greece submitted already in 2003 to Madrid with information that Petrov falsified data to obtain Greek citizenship in a fraudulent manner¹³⁴. Petrov had three different IDs with different dates of birth¹³⁵.

¹³³ In Spain, Supreme Court should decide, whether it allows appeal to be considered. In this case, such a petition was rejected.

¹³⁴ <https://tbcarchives.org/wp-content/uploads/Troika-accusation-act-2015.pdf> p. 7

¹³⁵ La palabra de vor. Las mafias rusas en España. Cruz Morcillo, Pablo Muñoz, Madrid, Espaca Libros, 2010.

The only consequence for State Duma deputy Vladislav Reznik seems to be the fact that he was included on the US’ Treasury sanction list straight after the trial in April 2018¹³⁶. Bank “Rossiya”, which Reznik co-founded (Petrov also was a co-founder, and Kuzmin a shareholder¹³⁷; Reznik denied any coincidence at court), is under US sanctions since 2014. “The following entity is being designated because it is controlled by, has acted for or on behalf of, or has provided material or other support to, senior Russian government officials. Bank Rossiya is the personal bank for senior officials of the Russian Federation. Bank Rossiya’s shareholders include members of Putin’s inner circle associated with the Ozero Dacha Cooperative, a housing community in which they live”¹³⁸.

Bank Rossiya has until now only been sanctioned (as entity by the US, the EU has imposed personal sanctions on some of its owners) over its ‘Ukraine-related’ involvement. Whistle blower Sergey Kolesnikov’s 2010 accusations of opacity and corruption, i.e. linked to the construction of Putin’s Palace¹³⁹, have not led to additional sanctions.

In March 2021, EU and US have introduced new sanctions against Russian officials due to Alexey Navalny’s case. (Among those sanctioned is the Chief of the Investigative Committee Alexander Bastrykin. The Spanish case, exposing Bastrykin’s link to Petrov, had already damaged the image of Bastrykin before.) After being poisoned with a nerve agent in August 2020, the Russian anti-corruption blogger and political activist Alexei Navalny issued a documentary on the alleged wealth of Putin and his secret palace. The palace was again linked to corruption and fraudulent operations in Putin’s inner circle¹⁴⁰. Swiss, Liechtenstein and other off shore schemes to finance the palace were again exposed and seen more than 100 million times. This time the Russian main propaganda tv-show presented by Dmitry Kiselev, “Vesti Nedeli”, issued as news: the Swiss Prosecutors’s office already studied the financial evidence on the palace and found no corruption¹⁴¹.

In reality, the Swiss recommended to Russia to open its own investigation, the Swiss Tages Anzeiger reported¹⁴²: *“as evidence, Kiseljow holds a cessation order from the Federal Prosecutor’s Office from December 2015 into the camera and translates two sentences from it into Russian. (...) In fact the dismissal order from Bern is more of a damning verdict on the Russian judiciary. Kolesnikov reported that Petromed Company sold imported products for double and triple the price in Russia and hid the profit in Swiss accounts of offshore companies. These millions were used exclusively for the construction of the palace on the Black Sea coast. In Switzerland, the investigations began in July 2014 following a report from the Money Laundering Reporting Office Switzerland (MROS). Two Swiss banks and a Zurich company had contacted MROS with suspected money laundering related to Petromed and affiliated offshore companies. The Federal Prosecutor blocked several accounts and opened criminal investigations against Kolesnikow and his two ex-partners. There the Federal Prosecutor wrote*

¹³⁶ <https://home.treasury.gov/news/press-releases/sm0338>

¹³⁷ <https://novayagazeta.ru/articles/2009/05/13/42880-rossiya-i-k>

¹³⁸ <https://www.treasury.gov/press-center/press-releases/Pages/jl23331.aspx>

¹³⁹ <https://www.rferl.org/a/russia-putin-whistle-blower-only-option-power/26709968.html>

¹⁴⁰ See e.g. https://en.wikipedia.org/wiki/Putin's_Palace

¹⁴¹ <https://vesti7.ru/article/2520688/episode/07-02-2021>

¹⁴² <https://www.tagesanzeiger.ch/die-bundesanwaltshaft-wird-als-kronzeugin-des-kreml-genannt-742555846077>

that it was able to determine the transfer of money into investment projects, “for example in the construction of a luxurious property on the Black Sea coast”. The Swiss investigators have to leave open the question of whether the money flowed into “Putin’s palace”: In order to clarify that, “evidence proceedings and numerous interrogations in Russia” would have been required, according to the ruling. However, the Swiss investigators give their colleagues in the Russian judiciary the worst possible testimony: Russia, as is well known, never hears its own citizens for legal assistance. The Swiss therefore informed the Russian General Prosecutor’s Office, apparently in the hope that they would open their own proceedings. Which obviously didn’t happen. Nothing of that is mentioned in the Russian TV report”.

Anyway, publicly Arkady Rotenberg suddenly says that the luxury building belongs to him.

As TBC Archive shows, ABR Management, a Bank Rossiya managing company, specifically mentioned in the US sanctions list¹⁴³, has a Frenchman close to Sarkozy, an Italian close to Berlusconi and a former Monegasque minister of finances on its board¹⁴⁴. The TBCA team is yet to find out why none of the non-Russian managers of Bank Rossiya is under sanctions. The whistle blower Sergey Kolesnikov himself was a neighbour of Petrov¹⁴⁵ in a luxury house in St Petersburg together with friends of Putin, such as Arkady Rotenberg and Gennady Timchenko. Petrov sold his apartment in that house only in 2017. Also, on the taped conversation of Petrov a Sergey Kolesnikov is mentioned as a trouble solver at least on some occasions¹⁴⁶.

Therefore, the political dimension of this criminal case “Troika” is undeniable.

4.2. Salikov case – tax evasion conviction

Finally, shortly after all the 17 defendants were discharged in the Troika case, a new trial started against one of the same defendants – partner of Gennadi Petrov, Yuri Salikov and his wife Marlena Barbara Salikova – on tax evasion¹⁴⁷.

On 4 April 2019, Yuri Salikov was convicted by the Spanish court Audiencia Nacional for tax evasion (for the same transactions earlier incriminated in the money laundering case which collapsed at court).

Salikov was co-owner and then took over the Spanish company Sunstar SL from Gennadios (Gennadi) Petrov who is fleeing Spanish justice, one can read in the sentence. In 2002-2003 Yuri Salikov increased the capital of the company by more than 2 million euros, simulating three loans, which were fictitious, considered the court. The company invested funds of unknown origin to invest in real estate (p. 5). Doing so, “Yuri Salikov omitted to declare the income, received in the 2002 financial year, of 2 283 830 euros, failing to pay a fee to public finances which should be 938 235 euros” (p. 6).

143 <https://www.riskadvisory.com/sanctions/russia-sanctions-list>

144 <https://tbcarchives.org/bank-rossiya>

145 <https://tbcarchives.org/petrov-kamenny-ostrov>

146 <https://tbcarchives.org/summary-of-taped-conversations-petrov>

147 <https://tbcarchives.org/russian-mafia-case-in-spain-conviction-for-tax-evasion-of-the-defendant-salikov/?highlight=Salikov>

The court condemned Yuri Salikov “as the author responsible for a crime against the Public Treasury, defining a penalty of one year and three months in prison and a fine of 469 117 euros, with subsidiary personal responsibility of six months in case of default. The convicted person must also indemnify the Public Treasury as civil liability in the amount of EUR 938,235 plus legal interest.”

As is clear from the sentence, Salikov and his wife, participating in the business of her husband and Gennadios Petrov, both have German citizenship. Any interest of Germany in studying their activity is unknown.

Yuri Salikov is considered by the Spanish investigation to be close to Bank Rossiya’s long-time major shareholder Gennadios Petrov, and to Iskander Makhmudov (accused of belonging to the Izmaylovo gang)¹⁴⁸ who, the Spanish Prosecutor’s office believes, paid for bailing out Salikov in 2008¹⁴⁹.

Salikov’s lawyer insisted that his client had already been discharged in the Troika case and therefore is innocent in the case of tax evasion but the court did not take it into account. On the contrary, the crime of tax evasion consists of not declared income from a source that has not been considered criminal by the Court in the Troika case.

The Salikov sentence is already some success for those who are really interested in corruption prosecution practices. Let’s remember that the legendary Al Capone was convicted only for tax evasion.

4.3. ‘Water of Mikhas’ Solntsevskaya ongoing case in Spain and petitions from the Russian ombudswoman

In 2019 and 2020, the Commissioner for Human Rights of the Russian Federation, Tatyana Moskalkova, sent two official letters to the Ombudsman of Spain, Francisco Marugan (seen by the writers of this report), asking him to check the observance of human rights and the grounds for initiating proceedings against Oleg Kuznetsov and Alexander Grinberg, suspects in the money laundering case of the Solntsevskaya organized crime group in Spain, as well as to provide all the information on their case¹⁵⁰. This is not the first time that the Kremlin has defended the suspected leaders of Russian organized crime groups who have been investigated in Europe.

148 <https://tbcarchives.org/updated-accusation-act-of-troika-tambovskaya-gang-case-and-gennady-petrov-in-spain-october-2015-final>

149 <https://theins.ru/en/uncategorized/95461>

150 <https://theins.ru/korruptsiya/183335>

Arnold Spivakovsky (formerly Tamm; took his former wife's last name) was arrested in Spain in September 2017 along with Oleg Kuznetsov, Sergey Dozhdev, Alexander Grinberg, and other defendants under suspicion of tax evasion, money laundering, and involvement in the active ties of the Solntsevskaya organized crime group. The court arrested a total of eleven individuals. In the Civil Guard's pre-trial investigation report¹⁵¹, Arnold Tamm is listed as the third most important member of the Solntsevskaya gang after Sergei Mikhailov ('Mikhas') and Viktor Averin ('Avera'). In February 2018, Spivakovsky was released on a bail of 750,000 euros until the hearing on the merits. He died two months later, aged 51 (the death was not reported as suspicious).

In the phone of Spivakovsky, pictures with the most notorious "philanthropists" – mobsters Mikhas (his official occupation is "philanthropist"¹⁵²), Gafur and Mogilevich – were found.

The Spanish investigators' attention has been focused on two commercial organizations registered in the province of Mijas, Malaga. The name of one of them, Agua de Mijas, interestingly coincided with the crime lord's name – Mikhas. Later, it was renamed to Agua Sierra de Mijas («Water of Mount Mikhas»). The second company under investigation is Arrendamientos de maquinaria industrial Mardoz SL («Mardoz Industrial Machinery Rental»). The first company was managed by Sergey Dozhdev and his spouse, with Oleg Kuznetsov (he is suspected to be linked to Gafur criminal authority) and Ekaterina Kadina listed as partners. The second company had Sergey Dozhdev, Ekaterina Kadina, and Valery Kulibaba as equity holders.

Ekaterina Kadina, who co-owned both companies, is the widow of Vladimir Kadin, vice president of the Volgograd Boxing Federation, who was murdered in 2011 in a drug cartel shootout. Her stake in the companies was a compensation of sorts. As for Dozhdev and Kuznetsov (like Tamm, they were arrested to be released on bail a few months later), Spain treats them as members of the Solntsevskaya gang. They were frequently seen in Arnold Tamm's company on yachts and FC Marbella matches (a club sponsored by Agua de Mijas and owned by Alexander Grinberg, who is also under investigation).

Agua de Mijas declared a turnover of 1.7 million euros in 2015 and 3 million euros in 2016. The Prosecutors study whether those figures correspond to the reality.

"The Solntsevskaya gang gradually increased its presence in legitimate business, which eventually enabled this criminal organization to obtain a semblance of lawfulness, an efficient money-laundering mechanism, and representation in sectors of both national and international economies," wrote the Spanish Civil Guard in its report.

151 <https://tbcarchives.org/informe-oc-solntsevskaya>

152 See the interview of "a businessman and philanthropist Sergey Mikhaylov" to Dmitry Gordon, 2018 <https://www.youtube.com/watch?v=MUn92TxlzPg>

In late December 2020 the Spanish Prosecutor's office announced the opening of a new criminal case against another Russian gang. This time the investigation is directed against Podolskaya¹⁵³, and also Kutaiskaya (Kutaiskaya is described on page 38). The searches took place in Alicante and Benidorm. Interestingly enough, French newspaper Le Monde, writing on the so called "OpenLux" (Luxembourg's beneficiary owners' registry's recent discoveries), referred to the Spanish (and not Russian or any other) justice: *"The Grand Duchy was not astonished by the pedigree of Russian businessman Maxim Lalakin, who injected 28 million euros into Axiom Property. Created in 2011, this company will celebrate its tenth anniversary in July, when Mr. Lalakin is now the target of a criminal investigation by the Spanish justice system, which describes him as "one of the heads of the Podolsk crime syndicate, a mafia group from Moscow"* ¹⁵⁴.

Why has Spain been prosecuting Russian money laundering so extensively? We can hypothesize that the Spanish crackdown on Russian mafia seems to be possible due to the fact that Spain has less political engagements with Russia than Germany, Italy, France etc. Unfortunately, during professional talks with prosecutors, we hear some of them admitting that the success of rogatory letters and, therefore, of a transborder investigation, depends on the "relations between two countries".

153 <https://www.lavanguardia.com/local/valencia/20201228/6153862/mafia-rusa-comunidad-valenciana-juan-carlos-galindo.html>

154 https://www.lemonde.fr/les-decodeurs/article/2021/02/12/openlux-profil-sulfureux-et-argent-sale-prosperant-dans-le-centre-financier-du-grand-duche_6069676_4355770.html

5. Izmaylovskaya cases: Spanish, German, US practices

So does only Spain start criminal proceedings against money laundering by politically-connected criminal gangs while other European countries tolerate their presence? The situation is still not that black and white.

In 2007 Spain started proceedings against the Izmaylovskaya gang: see, for example, a request by Spanish Anticorruption Prosecutor's Office to the judge to conduct certain investigative actions related to the case of Izmaylovskaya gang – Iskander Makhmudov, Oleg Deripaska, Mikhail Chernoi (Cherny), that motivated these steps as follows: *“Oleg Deripaska, together with Chernoi and Majmudov, controlled the company “Rual Trade, Ltd.” residing in Tortola (British Virgin Islands), then the world’s third largest producer of aluminium (the company “RussAl” was a subsidiary of said “Rual Trade, Ltd.”) and which was the subject of several suspicious communications of money laundering in the “FinCEN”: one, for a total of \$ 11,598,499; another, for \$ 4,869,310,635 between the years 2003 and 2007”.* ¹⁵⁵(p.5)

“Money laundering that is the subject of this investigation has been fundamentally channelled, on the one hand, through the company “Vera Metallurgica, S. A.”; on the other, through “Fima Veneer & Plywood Corporation, S. L.”; and, finally, by means of companies with registered offices in tax havens (thus, Cyprus and the British Virgin Islands) that have served as a screen to introduce money from criminal activities into Spain”. (p.23, *ibid*)

But in 2012 the case was transferred to Russia for a better investigation, in the frame of the above mentioned European Convention on the Transfer of Proceedings in Criminal Matters from 1972. See a summary by the Russian Prosecution from 2015: ¹⁵⁶ “On April 10, 2007, the Central Investigative Court No. 4 of the National Audience of the Kingdom of Spain initiated a criminal case (Nº101 / 2007-D) regarding Makhmudov I.K., Deripaska O.V., and other persons under Art. 515 (creation of a criminal association), Art. 301 (money laundering), and Art. 305 (offense against the State Treasury) of the Criminal Code of the Kingdom of Spain.

On 07.12.2012, this criminal case, with the qualifications of the offense under Art. 174, 210 of the Criminal Code of the Russian Federation, was transferred by the Deputy Prosecutor General of the Russian Federation according to the Art. 151, 459 of the Code of Criminal Procedure of Russia for further investigation in the Investigative Department of the Ministry of the Interior of Russia.” ¹⁵⁷

¹⁵⁵ <https://tbcarchives.org/accusation-act-of-izmaylovskaya-case-aschenbrenner-deripaska-makhmudov-in-spain>

¹⁵⁶ <https://tbcarchives.org/confirmation-of-proceedings-in-russian-prosecutorss-office-on-makhmudov-and-deripaska/?highlight=Deripaska>

¹⁵⁷ <https://tbcarchives.org/confirmation-of-proceedings-in-russian-prosecutorss-office-on-makhmudov-and-deripaska/?highlight=Deripaska>

In 2016, Spanish Prosecutor's Office tried to revive the case but the Spanish judge ended the proceedings in 2016. From Russia, no further news has become available since then.

Germany did better this time. A sentence was issued in 2010 in Stuttgart, Germany, against Alexander Afanasiev and others — found guilty of money laundering and illicit association with the Izmaylovskaya criminal group¹⁵⁸. The court documents provide interesting background testimony by witnesses found reliable by the court on the activity of Oleg Deripaska and Iskander Makhmudov. The witness, Dzhadol Khaidarov, states¹⁵⁹ that they were all part of Izmaylovskaya, led by Mikhail Chernoy and Anton Malevski, and laundered criminal money in Germany and other countries.

All these people had been discharged in the US in the frame of RICO complaints submitted by Mikghail Zhivilo and Dzhadol Khaidarov. They mentioned raid attacks by Izmaylovskaya which used Delaware based accounts and frontmen. The reiterated petitions to US courts continued at least until 2009¹⁶⁰; only in that year again he was allowed entry in the US¹⁶¹ (A further sanctions episode took place in 2018-2019 when a number of businessmen were sanctioned over the Russian interference in US elections¹⁶².)

In France, one of the same people, Iskandar Makhmudov, is currently said to be involved in a financial criminal investigation. He is mentioned in a French Senate investigation released in February 2019¹⁶³ on President Emmanuel Macron's former aid Alexandre Benalla. The results of the judicial probe¹⁶⁴ on a suspicious transfer of 300 thousand euros “for security services” to Benalla's associate remain unknown. One French newspaper suggested the payment was supposed to facilitate a residence permit for Makhmudov on the French Riviera, where he used to reside (Makhmudov had such a permit since 2009 but had to prolong it)¹⁶⁵. The Senate concluded “Serious suspicions of false testimonies and conflict of interests”. The French Riviera property of Makhmudov¹⁶⁶, worth about 100 million euros, had arisen no suspicion before Alexandre Benalla's case. Makhmudov is also a partner of the son of Gennadi Petrov.

Key French businesses Alstom and Bouygues possess shares of Makhmudov's Transmashholding. Their representatives called Makhmudov and his partner Andrey Bokarev “not only partners but friends”¹⁶⁷. They say they have never heard about any suspicions of money laundering in Spain, let alone in Germany.

¹⁵⁸ <https://tbcarchives.org/izmaylovskaya-sentence-germany>

¹⁵⁹ <https://tbcarchives.org/izmaylovskaya-criminal-case-in-germany-witness-dzhadol-khaidarov-testimony/?highlight=Khaidarov>

¹⁶⁰ <https://tbcarchives.org/petition-to-us-court-against-the-raid-attacks-by-izmaylovskaya-gang-2009>

¹⁶¹ <https://www.nytimes.com/2018/11/04/world/europe/oleg-deripaska-russia-oligarch-sanctions.html>

¹⁶² https://en.wikipedia.org/wiki/Oleg_Deripaska#U.S._sanctions

¹⁶³ http://www.senat.fr/fileadmin/Fichiers/Images/redaction_multimedia/2019/2019-Documents_pdf/20190220_Conf_presse_Rapport_Benalla_compilation.pdf

¹⁶⁴ <https://www.mediapart.fr/journal/france/171218/les-affaires-russes-d-un-gendarme-au-coeur-du-dossier-benalla>

¹⁶⁵ https://www.lexpress.fr/actualite/societe/justice/benalla-a-t-il-aide-un-oligarque-a-obtenir-des-papiers_2061423.html

¹⁶⁶ <https://tbcarchives.org/les-pins-property-sci-makhmudov/?highlight=Makhmudov> (one of the villas)

¹⁶⁷ <https://www.mediapart.fr/journal/international/110416/alstom-et-bouygues-se-sont-associes-un-proche-de-poutine-lie-la-mafia>

6. Only 15 years of waiting: Spain convicts Tariel Oniani from Kutaiskaya gang

The second reason why Spain made a great law enforcement effort, must be that Spain is a preferred place of real estate dirty money's investments¹⁶⁸ and that the concentration of money of dubious origin exceeds that of other countries. However, as the examples show, in cases of people well-connected in Russian leading circles, also in Spain it is complicated to get a conviction.

In the case of Oniani, it is not an exaggeration to say that Spain has waited 15 years until he fell in disgrace in Russia before it could convict him.

Oniani was convicted on 11th March 2020. The case had started in 2005, when 24 people were targeted by the "Avispa operation". Former FSB-dissident Alexander Litvinenko, brutally murdered in 2006, had given a testimony for that investigation¹⁶⁹. Oniani lived in Barcelona, but the Spaniards failed to detain him and he escaped to Russia. Since that time, Spain tried to get him extradited. In 2009 Russia itself put Oniani in prison Russia accepted the extradition to Spain only in autumn of 2019 (in the meantime, Oniani faced the withdrawal of his Russian citizenship). Accepting the extradition, Russia ruled that the period of limitation for "money laundering" offence had already passed under Russian law and Russia prohibited to judge Oniani for that.

Therefore, he was judged for leading an "illicit association"¹⁷⁰. The court rejected objections of the defence that that crime is "absorbed" by the money laundering offence.

On March 20 and 21, 2003, a meeting had been held at the Hotel Montíboli in Villajoyosa, Alicante, attended by well-known "thieves in law" such as Zakhar Kalashov, convicted in Spain in 2010; Vitali Izguilov; Aslan Usoyan, assassinated in January 2013; Dzemal Khachidze; Vajtang Kardava, killed in April 2005; Mamuka Mikeladze; Albert Levadovitch Tcholakian and Tariel Oniani. In this meeting, the apparent reason of which was to celebrate the birthday of Zakhar Kalashov, issues such as decision-making on the next expansion of investments were discussed, both in Spain and in other western countries to which they had extended their activities, explained the court in the sentence.

The court managed to prove that Oniani was selling a luxury villa in Barcelona to himself, while he was head of Kutaiskaya gang in 2000-2005. Oniani is the true owner of Gibraltar's company Moler Ltd. This company has as its sole partner the Portuguese Ribanceira Investimentos LDA, which "coincidentally" is also the sole owner of all the shares of the C 30 INMUEBLES SL company, seller of the property at Joan D'Alos 24 (to Moler Ltd)]
"Tariel Oniani is not being tried for the crime of money laundering for which he was accused at the time, but the reported money laundering operations related to the acquisition of the C / Joan D'Alos 24 property have the meaning in this judgment to show that this activity, money laundering, was the objective sought by said association", said the sentence.

We can also find some Moscow's bank recommendation for Oniani in the sentence. But, since the money laundering was prohibited to judge, without further detail. However, the fact that the Spanish judicial system found a way to consider the matters at all, is impressive. Again, however, the trial was only possible after the person had fallen into disgrace in Russia.

¹⁶⁸ See in particular: <https://www.offshorealert.com/conference/london/spains-costa-del-fraud-are-the-crooks-untouchable/>
Spain's Costa del Fraud: Are the Crooks Untouchable?

¹⁶⁹ <https://www.youtube.com/watch?v=R7Q9HKPplao>

¹⁷⁰ <https://tbcarchives.org/wp-content/uploads/oniani-sentence-recognized.pdf>

7. Non conviction based confiscation as an option to address corruption and money laundering

As the previous chapters illustrate, to prove money laundering, evidence is required that criminal acts have been committed that produced the funds that are being laundered. In the case where the original crime was corruption in another state, this evidence is not easy to acquire, in particular not when that state has been captured wholly or partially by the very allies of those engaging in the corruption.

One approach to tackle this issue would be to redouble efforts to produce ever more conclusive information on the alleged acts of corruption, by-passing law enforcement and judicial systems that are corrupted themselves. A criminal investigation mind-set in which from the beginning the aim is not to wait for legal cooperation from these systems, but to find indications and proof independently, might produce positive results. Journalistic investigations and civil society intelligence gathering might be a great ally in this respect.

A second approach could be to not go for the standard criminal investigation and prosecution. Note for example that in the Swiss Magnitsky case, described in chapter 1 (page 10), where “unknown persons” could not be identified for prosecution, the authorities still announced their intention to impound USD 4 million (out of a total of 24 million) of the allegedly corruptly obtained sum.

Here we enter the realm of non-conviction-based confiscation (NCBC); people are stripped of assets without the stripping being mandated in a criminal conviction. NCBC is generally seen as a measure to counter organized crime, and corruption in many ways can be seen to be covered by the ‘organized crime’ concept.

NCBC was discussed extensively in the 29 January 2019 hearing of the European Parliament about “Money laundering cases involving Russian individuals and their effect on the EU”¹⁷¹ Bill Browder at this hearing said: “So what are my recommendations? The first recommendation is, because it takes so long for people to share information, most countries don’t want to even begin money-laundering investigations. There should be a central EU body that collects all bank financial information, and that body should not just collect information for investigation purposes, it should collect that information for prosecution purposes. It should become evidence that’s available for prosecutions. By doing this, this would make it possible for many money laundering cases to happen that can’t happen now.

My second recommendation is to expand the statute of limitations. I was just in Denmark and I was meeting with the Danish prosecutors, and they told me that no part of the Magnitsky case could be prosecuted in Denmark, because the statute of limitations expires after five years after the crime is committed. The statute of limitations should be at least ten years, and it should apply when a crime is discovered, not when the crime was committed.

My final recommendation is to reverse the burden of proof – we call this the Dutch approach. In Holland, the people who are suspected of money laundering, who have suspicious transactions, have to prove that their money was legitimate, as opposed to the other way around. In that way you avoid all these complicated deals and situations where the governments in Europe have to go to the Russian government and ask them for mutual legal assistance.”

Following up on this latter point, Günter Schirmer, Head of the Secretariat of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, said: “[T]he Parliamentary Assembly has also recently had a report on anti-money laundering and more specifically on the confiscation of illegal assets. From the Council of Europe’s human rights perspective, the report invites all member states of the Council of Europe, which includes, of course, all Member States of the EU to follow – you called it the Dutch model, we call it the Irish – model of reversal of the burden of proof for confiscation of illegal assets for non-conviction-based confiscation of assets.

That is the only tool which will work. In the preparation of this report I have had a lot of contact with prosecutors – frontline, coalface prosecutors – from many countries, including from my own country, Germany, who are totally frustrated about the degree of evidence that is required to confiscate anything from anybody because of the wrong understanding of ‘protection of private property’ which, according to the case law of the European Court of Human Rights, does not protect illegally-acquired property.

171 https://www.europarl.europa.eu/cmsdata/161080/CRE_TAX3_20190129.pdf page 25

*We have basically offered our Member States on a silver platter the possibility to bring in really sharp tools to take away from organised criminals and beneficiaries of high-level corruption what they are really in it for – namely the money. So we hope that this will lead to giving prosecutors the tools that they need to do their jobs; otherwise they will just give up.”*¹⁷²

Schirmer referred to a 2018 report and resolution by the Parliamentary Assembly of the Council of Europe on “Fighting organised crime by facilitating the confiscation of illegal assets”¹⁷³.

The report noted that several member states of the Council of Europe “have already passed specific legislation to facilitate the confiscation of illegal assets. Such measures were found to be compatible with human rights, including the presumption of innocence and the protection of property.”

It highlighted that “countries, such as Ireland, Italy, the Netherlands and the United Kingdom, which have adopted legislation to facilitate confiscation of criminal assets by lowering or even, under certain conditions, reversing the burden of proof (or by establishing rebuttable factual presumptions) have had far more success in freezing and confiscating criminal assets than those which have maintained the need for the State to prove a link between the target’s wealth and his or her criminal activities, or, as is still the case in some States, even between a particular crime and a particular asset targeted for confiscation.”

“In order for confiscation to be compatible with human rights, the factual presumption of criminal origin must be based on solid evidence presented by the competent authorities at least up to a civil “balance of probabilities” standard, and the presumption must be rebuttable. Proceedings leading to confiscation must be fair and subject to scrutiny by an independent and impartial tribunal. If the tribunal finds that an asset freeze or confiscation was unlawful, it must also be able to grant compensation to the victim of such an error. Finally, in order to make the judicial remedy truly effective, legal aid should be available to putative victims of unlawful freezes or confiscations who cannot afford proper legal representation – a situation that may well be caused by the very asset freezes in dispute.”

The report noted that “Criminal organisations have responded to robust rules permitting confiscation of their assets in some countries by moving their assets abroad. It is therefore vital that law-enforcement authorities also co-operate across borders. Much has been done, again, primarily at EU level, in order to promote international co-operation in this field. For obvious reasons, such co-operation must urgently be extended to non-EU member States.”

¹⁷² https://www.europarl.europa.eu/cmsdata/161080/CRE_TAX3_20190129.pdf, page 31

¹⁷³ https://pace.coe.int/en/files/24507/html#_TOC_d19e423

It then continues to laud the work of “international networks of competent officials, such as the CARIN (Camden Asset Recovery Inter-Agency Network) and the ARO (Asset Recovery Offices) platform or other relevant fora.” However, countries with a high degree of state capture by corrupt elites, often linked to organised crime, are also member of such networks. Uncritical use of such existing networks should be avoided in order not to hamper effective investigation and recovery strategies regarding assets emanating from these countries.

Two recent European Commission documents deal with NCBC, a Commission Staff Working Document of 2019, “Analysis of non-conviction based confiscation measures in the European Union”¹⁷⁴, and a Report from the Commission to the European Parliament and the Council of 2020, entitled “Asset recovery and confiscation: Ensuring that crime does not pay”¹⁷⁵. Both documents refer to the UN Convention against Corruption as one of the international instruments that contain provisions on asset confiscation, but do not elaborate further on whether and how legal provisions of the EU and its member states could be used to specifically address corruption across its border that invades the EU’s financial and economic sphere. Yet, the UN Office on Drugs and Crime (UNODC), the body overseeing the implementation of the Convention, specifically refers to the advantages of employing non-conviction based confiscation:¹⁷⁶

- it can be used when no conviction is possible (perpetrator absconded, political opposition, weakened judicial system in the requested country)
- a civil standard of proof is applied from the beginning (confiscation may be possible although the perpetrator has to be acquitted by criminal standards)
- no need for dual criminality (the act does not have to be criminalized in both countries concerned)

The Stolen Asset Recovery handbook issued by the STAR project, a joint initiative of the Worldbank and UNODC, refers to non-confiscation based asset forfeiture as “a critical tool for recovering the proceeds and instrumentalities of corruption. It is a legal mechanism that provides for the restraint, seizure, and forfeiture of stolen assets without the need for a criminal conviction; it can be essential to successful asset recovery when the violator is dead, has fled the jurisdiction, is immune from investigation or prosecution, or is essentially too powerful to prosecute. A growing number of jurisdictions have established NCB asset forfeiture regimes and such regimes have been recommended at regional and multilateral levels by a number of organizations. The United Nations Convention against Corruption (UNCAC) urges countries to consider permitting non conviction based asset forfeiture of stolen assets when the offender cannot be prosecuted.”¹⁷⁷

¹⁷⁴ <https://ec.europa.eu/transparency/regdoc/rep/10102/2019/EN/SWD-2019-1050-F1-EN-MAIN-PART-1.PDF>

¹⁷⁵ https://ec.europa.eu/home-affairs/news/20200602_commission-adopts-report-asset-recovery-confiscation-ensuring-crime-does-not-pay_en

¹⁷⁶ See page 6 in this presentation, https://www.unodc.org/documents/NGO/UNODC_UNCAC_Chapter_V_Asset_recovery.pdf

¹⁷⁷ https://www.unodc.org/documents/corruption/Publications/StAR/StAR_Publication_-_Non-conviction-based_Asset_Forfeiture_E.pdf, Page 1

This seems to be precisely the situation in which we find ourselves with respect to pursuing sanctions against corrupt kleptocratic elites. However, as UNODC notes¹⁷⁸, the most directly relevant provision of the Convention against Corruption (article 54, section 1c) is optional for states that ratify the Convention. Looking at the overview that the April 2019 Working Document provides, many EU member states have not or only partially legislated for this potentially most effective use of NCBC. The applicable EU-level legislation is contained in Directive 2014/42/EU, and as the Working Documents recalls, at the time “the EU legislators took divergent views” on its main provision on NCBC. The European Parliament strongly supported “introducing a general provision on non-conviction based confiscation, which would not apply only in specific cases. The Council did not support such a broad approach at the time and (...) the proposal was replaced by Art. 4(2) which (...) obliges Member States to enable confiscation in a limited number of cases, including at least illness and absconding”.

As referred to already in the Introduction, the UK in recent years has become an exception to the rule that NCBC is not used in dealing with presumably corruptly obtained assets. The Unexplained Wealth Order issued in 2019 to Zamira Hajiyeva, the wife of a banker jailed in Azerbaijan, received huge media attention.¹⁷⁹ She challenged the order in court, but by the end of 2020 lost her latest appeal, and reportedly may “lose her £12m London home – and a separate golf course”.¹⁸⁰

In a second case, which targeted assets of a Kazakhstani family, the court however nullified an Unexplained Wealth Order reportedly aimed at properties worth GBP 80 million.¹⁸¹ The court concluded that the information used by the agency that had drawn up the Order had been “unreliable” and that there was “cogent evidence” that the properties had been bought with funds obtained from ordinary business activity, even though off-shore, complex and opaque structures were used to transfer them. The court stated that there should be an “irresistible inference” that the property was derived from crime.¹⁸² This has led to a discussion on the question of why the NCBC procedure with supposedly a lower bar for taking action than in an outright criminal procedure has been legislated for to begin with.¹⁸³

178 See again page 6 of https://www.unodc.org/documents/NGO/UNODC_UNCAC_Chapter_V_Asset_recovery.pdf

179 <https://www.bbc.com/news/uk-48433012>

180 <https://www.bbc.com/news/uk-55389134>

181 <https://www.bbc.com/news/uk-52216011>

182 <https://www.debevoise.com/insights/publications/2020/04/uk-unexplained-wealth-orders-english-high-court>

183 <https://www.spotlightcorruption.org/the-ncas-kazakh-unexplained-wealth-order-uwo-a-costly-decision>

By the end of 2020, fresh revelations from civil society sources shed new light on how the fortune of the family was amassed and how the UK court was possibly misled¹⁸⁴. The family member who supposedly originally owned this fortune had fallen in disgrace in Kazakhstan – he died in prison awaiting trial for murder and while under investigation for money laundering. His heirs though are close relatives of Kazakhstani strongman, former president Nazarbayev. We can hypothesize that this increases the difficulty of producing an “irresistible inference”: at least this inference is extremely unlikely to come from Kazakhstani courts, who will not normally question the legality of business operations of this family circle.

Legal battles over the application of the UK’s Unexplained Wealth Order will probably continue, and lessons will be learned on how legislation can best be framed, and which types of evidence gathered to sustain an Order. This report concludes that similar efforts should be prioritized in European Union member states, using existing legislation where possible, introducing new legislation where needed, and committing the necessary resources to its implementation.

184 <https://www.source-material.org/blog/sherlock-holmes-and-the-mystery-of-the-kazakh-millions>



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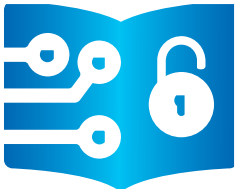
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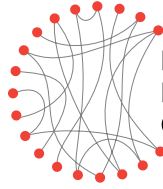
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