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A Spectre is haunting Europe — the Spectre of Magnitsky

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16-21 minutes

Ten years ago, when I first thought of making a film about Sergei Magnitsky, hardly anyone in the West had heard of him. On November 18th 2020, at an online event organised by prominent MEPs, Magnitsky's name reverberated with fame and glory; the glory of a martyr, in the tradition of Giordano Bruno, or Martin Luther King.



From studio shoot in Kiev. © Piraya Film AS

The event reached its political climax when Ursula von der

Leyen, the President of the European Commission, pronounced Magnitsky's name as a symbol of Europe's retaliation against corruption and violence going on outside of the EU. And there was another man the President called by his name: "Mr. Browder" — the only key speaker at the event that held no official position or title, but whom the moderator mysteriously introduced as the "host".

In the process of making that film about Magnitsky I discovered that his story, as it had become known in the West, was a hoax. The author of the hoax was Bill Browder, an American-born manager of a Russian-based hedge fund. Magnitsky was employed as an accountant for (and, occasionally, a figurehead of) corporate investment tools under Browder's control.

Magnitsky died in a Russian prison in 2009, officially from heart failure (he had also hepatitis, diabetes and pancreatitis).

Browder declared that Magnitsky had been murdered because he had uncovered a large swindle and accused police of being behind it. The police officers he had allegedly accused had him arrested and imprisoned. They tortured him, Browder claims, each of the 350 days of his imprisonment, trying to force him to withdraw his accusations. Magnitsky categorically refused to recant, and was beaten to death in an isolation cell as a result.

Believe it or not, that story sounded true to me. There is a long list of things I dislike about contemporary Russia, and so I was politically primed to believe Browder's horror story. But I also liked it as a filmmaker. A martyr-accountant who dies for his principles is a kind of hero that might restore one's faith in humanity in these cynical times, and make a good film.

I then found out that Browder and Magnitsky were both investigated in a brazen tax evasion case, after they faked employment of handicapped people because it helped cut taxes

on Browder's hedge fund's windfall profits to about 5%. I didn't pay much attention to that, as Browder was telling everybody that the case was politically motivated, as he was Putin's critic. "The moment you dare criticise them, he said in a Channel 4 interview, they put a stamp on you: tax evasion!"

The problem with that explanation, I soon realised, was that when the Russian tax authorities and police started investigating him in the early 2000s Browder was a vociferous supporter of Putin, not a critic.

Magnitsky is now known as a whistleblower who fought Putin's kleptocracy but as people who had closely known him for years, and even his own mother, have told me, Sergei was an apolitical, utterly private person interested in serving his clients and earning money. My own serious doubts as to the veracity of Browder's story started with a closer look at a Russian document Browder presented as the evidence of Magnitsky's whistleblowing activity. The document was nothing of the sort. It was a transcript of police questioning Magnitsky, a rather reticent and defensive witness, while they were already investigating scams involving Browder's shell companies. I later found out that some of the things Magnitsky told the investigator were misleading or untrue.

I soon realised that I was dealing with a perfect hoax, whose main character was a fictitious version of a deceased person. The fact that Magnitsky had been completely unknown and almost friendless had both advantages and disadvantages for the hoaxers. It was a bit strange that neither Magnitsky's sensational whistleblowing revelations, nor his arrest, were noticed by the media at the time. But there were more advantages than disadvantages in Magnitsky's anonymity. Browder could totally reinvent his accountant posthumously with

virtually no risk of being caught lying.

And there was a very logical motive behind that. Magnitsky and Browder were investigated in the same criminal case, and making it out as a part of a callous Russian persecution of a hero was Browder's perfect alibi. Let's not forget that the Russians have been trying to get Browder extradited to face trial for aggravated tax evasion.

In [*The Magnitsky Act — Behind the Scenes*](#) I tell a story of swindles involving Browder's shell companies, but also the tale of my own twisty journey from believing Browder to the realisation that he had lied to me, the media, governments and parliaments. The film was to be premiered at the European Parliament in April 2016, but the screening was stopped at the last moment, on the orders of Browder's lawyers.

The centrepiece of Browder's successful campaign to sanctify Magnitsky has been the so-called Magnitsky Act, initially proscribing sanctions against the "killers and torturers" of Magnitsky in the U.S. Now that Browder is pushing a Magnitsky Act through the European Parliament I considered it necessary to remind the EU establishment of my banned film, and of the facts and documents that show Magnitsky wasn't the man Browder had made him out to be.

I [wrote an open letter](#) to Ursula von der Leyen who had vowed to implement the "European Magnitsky Act" in her State of the European Union address in September 2020. I then forwarded the letter to all members of the European Parliament. Eight weeks later, on November 17th, 2020, I received a short reply (dated November 13th), "on behalf of the President", from the EU "Managing Directorate Russia, Eastern Partnership" etc. The Directorate "took note" of my "views", the letter said.



Acting Managing Director

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cooperation and OSCE – EURCA.EAST

Brussels, 13 November 2020

A(2020) 4935808 – reply to Ares A(2020) 6177624

Subject: Your letter of 21 September 2020 regarding a “Magnitsky Act”

Dear Mr Nekrasov,

On behalf of the President of the European Commission, I would like to thank you for your open letter of 21 September 2020 presenting your views on late Mr Sergei Magnitsky and the symbolic meaning of using his name to refer to the EU Global Human Rights Sanctions Regime once adopted.

I take note of your views, based on your work and as portrayed in your film entitled “The Magnitsky Act – Behind the Scenes”.

The EU Global Human Rights Sanctions Regime, which the President of the European Commission referred to in the State of the Union address, is subject to ongoing discussions. The details of the regime is the competence of the EU Member States.

Yours sincerely,



Luc DeWigne

I don't know whether the fact that the reply came shortly before an event that called for the adoption of the EU Magnitsky Act, in which Von der Leyen appeared, was a coincidence. What I do know, is that she and the speakers at the event (MEPs, to whom I had forwarded the open letter) simply ignored all the facts and documents I had painstakingly laid out. Neither Von der Leyen nor the MEP speakers deviated one inch from Browder's Magnitsky story I had refuted in my letter.

The MEPs, Messrs. Sikorski, Glucksmann and Auštrevičius, also [ignored the questions I had sent them](#), invited to do so in

the event's introduction email. As it happened, the moderator did not find time for questions and answers.

In my letter and my posted questions I emphasised that since completing my film I had seen other serious media, including "Der Spiegel", Danish papers "Finans" and "Børsen", raising doubts over Browder's narrative and motives. Nothing seemed to have impressed the MEPs or Von der Leyen. The Magnitsky event was described as a "Global debate", but all participants happened to be fully synchronised in their support for the one and only official (Browder's) narrative.



Petras Austrevicius ✓
@petras_petras



Join us for Global #Magnitsky debate on 18 November.

bit.ly/3oJYSkw

ONLINE EVENT together with **William Browder**
EU Magnitsky Act
18 November from 05:00PM until 7:00PM CET time
Organized by
Petras Auštrevičius, Renew Europe
Raphaël Glucksmann, S&D
Radosław Sikorski, EPP



4:27 PM · Nov 3, 2020 · Twitter for iPhone

Why do I think people should pay attention to all this? I am not the first nor the last to complain that the powers that be ignore grievances of the ordinary mortals. And, as Churchill famously said, “Indeed (...) democracy is the worst form of Government except for all those other forms that have been tried...”

The problem, however, is that fewer and fewer people actually agree that we live in a democracy today. And a brief exchange I had with the EU leadership on such a relatively obscure issue as Magnitsky, can in fact tell us more about the state of democracy than grandiloquent ideological rants from the political right, left and centre.

Are measures against COVID too harsh or too lax? Have some countries got it wrong, while others did much better? People can argue about that forever. In international affairs it’s even worse. Russia has become more aggressive during Putin’s rule? Certainly, for some, but others ask, ironically, “Where to invade next”, and it’s not Russia they mean to be the invader. Again, you can argue forever about these things and are likely to end up preaching to the converted, within your political echo chamber. And each echo chamber will decry the post-truth era, meaning, of course, that others are responsible for it.

Objective criteria for truth do exist, but they are logical, not political, and, compared to emotional issues of human rights (in authoritarian countries), logic is, actually, boring.

The objective truth is correctness of inferences and it can be shown in syllogisms such as this:

“All humans are mortal. All Greeks are humans. Therefore: all Greeks are mortal.”

There are aspects of the Magnitsky case that seem too boring for politicians to consider, yet it is precisely those aspects that are able to yield something close to objective truth.

Let's look at the case from the point of view of logic. Firstly, there are facts no one disputes. Magnitsky was arrested and imprisoned. The question is why? The official — Browder's — version, Magnitsky's hero fame, the "Magnitsky Acts" — are all based on the proposition that he was **arrested and imprisoned by corrupt officials because he had exposed their corruption.**

Having studied the documents, I realised that Magnitsky's imprisonment was not a result of any fight against corruption. He was arrested for being complicit in economic crimes. But in my letter to Ursula von der Leyen I did not say I was right and Browder was wrong **because** I'd already shown it all in my film, and generally am an honest guy. That would be, in the context of the letter, circular logic, something called begging the question. And so I wrote, inter alia, that my findings had been confirmed by the European Court of Human Rights.

The Court concludes that the first applicant's (Magnitsky's — A.N.) arrest was not arbitrary, and that it was based on reasonable suspicion of his having committed a criminal offence. (Case of Magnitskiy and others v. Russia; Applications nos. 32631/09 and 53799/12; JUDGMENT, § 250, p. 40.)

The Magnitsky Acts are named after Sergei Magnitsky because he is said to have been wrongfully imprisoned and intentionally killed for fighting corruption. They are **not** named after Magnitsky because he died in a Russian prison because of poor conditions, lack of proper medical care or even criminal negligence, having been imprisoned for tax evasion. Yet it is the

latter version that has basis in fact, while the former does not. There is no justification, therefore, for an “Act” named after Magnitsky.

I did look into Browder’s claims that Magnitsky was tortured during his imprisonment. Even here, Browder has been economical with the truth. For a period of time, Magnitsky was kept in a better equipped “VIP” prison block, and himself reported medical care in that facility to be adequate. Browder never talks about that. But at times the imprisonment conditions were very poor indeed. I deal with this in the film and in the letter to Ms von der Leyen. This changes nothing, however, in the fact that Magnitsky was in prison as a suspect in a legitimate criminal investigation and not as a fighter of corruption.

The question whether Magnitsky was murdered is of course an extremely serious one. Again, I’ve dealt with it extensively, only to be ignored by Ursula von der Leyen who in her Magnitsky speeches simply goes from one talking point of Browder’s to another. She takes his unsubstantiated claim that Magnitsky was murdered for granted, having allegedly “taken note” of my letter where I quote Andreas Gross, Council of Europe’s special rapporteur on Magnitsky and even Sergei’s own mother. Gross states that “they” (Russian authorities) did not have the intention to kill Magnitsky, it was not a murder but a case of negligence. Magnitsky’s mother blames the prison doctor for her son’s death.

The big question, of course, is whether in this, and other cases, politicians are just being ignorant, ill-advised and perhaps even a little witless, or they are deliberately obfuscating the truth for political or personal reasons. This is probably a subject for another article. What needs to be said for the purposes of this one is that even if the mistake some people make believing

Browder over the arguments I adduce might seem innocent, the system that stubbornly prevents such mistakes from being corrected is anything but innocent.

The system is set to repeat ad nauseum that it is democratic (and superior to all others) while making sure it can stonewall all undesirable communication and rule out any debate in which it could conceivably lose. To prepare for the sacred ritual of “free election” there is the party system to keep all but the career conformists neatly locked out. (The non-conformists who do get in against all odds will have to fall in line or be locked out politically, for example as “anti-democrats”). The only thing that is still working half-decently, in my humble opinion, is judiciary, technically, with one big “**If**”. If you have money for the lawyers.

Even though Bill Browder was able to dupe lawmakers in such exemplary democracies as the USA, Canada and the UK, into adopting his “Magnitsky Acts”, he did not manage, not once, to secure a successful judgement for his Magnitsky hoax in a court of law. And he did try, very hard, as only a court, not the media, not symbolic votes of clueless parliamentarians for the name of his accountant on a “sanctions regime”, can guarantee that no authority in the West would ever believe the Russians that Browder cheated them out of many millions of dollars.

This is why Browder initiated dozens of civil and criminal procedures around the world against whoever he could accuse with some superficial circumstantial plausibility of benefitting from the Magnitsky case. He was happy to flatly accuse whole banks in most reputable countries, such as Denmark and Sweden, of laundering the Magnitsky case money. A whole raft of bizarre claims calling out suspected beneficiaries of the Magnitsky crime, ranging from Prince Charles to a quarry in Norway appeared in the press. No one has been convicted so

far.

The most famous case in the slew of Browder's legal raids was against a company called Prevezon, owned by a Russian, Denis Katsyv. The company stood accused in the US and Switzerland. After many years of highly advertised proceedings, described by Browder and the media as definitive clamping down on Russian corruption in the West, the US government had to sheepishly settle the case without trial, with no guilt admitted by Prevezon.

On November the 20th, having spent 10 years (!) on the Prevezon case initiated by Browder, the Swiss prosecutor general withdrew it, and ordered Katsyv's frozen money to be returned to him. Rather ominously for Browder, the prosecutor's office announced that it would probe Browder's role in initiating the case.

How does such a decision by a European authority make the President of the European commission look when she calls for the freezing of the foreigners' assets on a nebulous legal basis? Among those targeted by the first American Magnitsky Act were people who investigated Browder's tax evasion schemes. A little later, under another "Magnitsky Act" a rival of Browder's clients was stuck under sanctions.

So who will be deciding whose assets should be frozen under the European "Magnitsky Act", if even experienced professionals, like those Swiss prosecutors, entrusted with weighing evidence before taking it to judges, can be stuck on a wrong track for years in just one case? Is the quality of such case, initiated by none other than William Browder, not something to go by while exploring asset freezing under Browder's pet "Magnitsky Act" project?

Interestingly, addressing the Magnitsky event, Ms Von der

Leyen proudly announced that the European Union had recently sanctioned Burmese generals, with much success. It clearly did so without any Magnitsky Acts. So — where's the logic?

The essential arbitrariness, and therefore *illegality* of Magnitsky laws, (“acts”), is obvious to any unbiased observer, but there clearly is a competition between logic and law, on the one hand, and politics on the other and the latter has an unfair advantage. Politicians have invested heavily in Browder's narrative (so useful in the epic battle against what's left of the evil empire) and can't afford to cut their losses and come clean about the Magnitsky disaster.

Bill Browder has made sure every mainstream news outlet, every major political party in the West has put its signature under a false accusation of the most ignominious kind. An accusation from the high moral ground of democracy and human rights, that has turned out to be a lie motivated by greed. Some mistakes do get admitted, but admitting this one is seen as a total capitulation with unpredictable consequences.

That gives one private citizen named Browder the confidence to bully entire countries, e.g. Cyprus, as he fast-tracks sanctions ultimatums through the European institutions, lest the police continue to do their job and investigate his dubious shell companies. Now it's Switzerland's turn.

Browder [has just threatened Swiss citizens](#), should they act on the instructions of their country's legal authorities, with “civil and criminal penalties in the United States”.

And so I dare predict that the Magnitsky case's trajectory from an obscure financial crime to the biggest international cover-up in modern history will run its full course in all its absurdity, sliminess and geopolitical precariousness. Causing, in these

uncertain times, an unforeseeable damage to the health of democracy, which has enough underlying conditions as it is.