



HERMITAGE CAPITAL MANAGEMENT

17 May 2020

Re: Australian Magnitsky Act, second submission

Dear Chairman Fawcett, Chairman Andrews and members of the Committee,

On 17 May 2020 I was contacted by the Joint Standing Committee on Foreign Affairs Defence and Trade of the Australian Parliament with a copy of a submission written by the Lucy Komisar that contained serious allegations against me and offering me a right of reply. I take this opportunity to do so now.

Ms Komisar's submission alleges that Sergei Magnitsky was not beaten in custody, that he had not testified against police officers and that, while Sergei was imprisoned, I did not call attention to his plight.

These allegations are untrue.

The evidence that Sergei Magnitsky was beaten comes from official reports from the Russian government¹, comprising post-mortem photos showing injuries², a reference to a suspected cranial cerebral injury in his death certificate³, the prison certificate on the application of rubber batons to Sergei⁴, and the official post mortem medical opinion that the injuries were consistent with application of rubber baton⁵.

¹ The Russian President's Human Rights Council: "there is reasonable suspicion to believe that the death was triggered by beating Magnitsky: later his relatives recorded smashed knuckles and bruises on his body." [Rus] https://web.archive.org/web/20110807093959/http://www.president-sovet.ru/structure/group_8/materials/council_conclusion.doc [Eng] <http://russian-untouchables.com/rus/docs/Civil-Right-Council-conclusion-report-Executive-summary-ENG.pdf>

² <https://drive.google.com/file/d/0B6nugCIZ1LPPNGc2WUdPVWlxVzg/view?pref=2&pli=1>

³ Official Death Certificate stated that Sergei Magnitsky had suffered a "cerebral cranial injury": [Rus] <https://drive.google.com/file/d/0B6nugCIZ1LPPMWU3TXV2Wm5iSms/view?pref=2&pli=1> [Eng] <https://drive.google.com/file/d/0B6nugCIZ1LPPUHV1cWhnNzRSbHM/view?pref=2&pli=1>

⁴ "used a rubber truncheon on a suspect (an accused party, or a convict) Sergey Leonidovich Magnitsky": [Rus] <http://russian-untouchables.com/rus/docs/D310.pdf> [Eng] <https://drive.google.com/file/d/0B6nugCIZ1LPPOXpFdFdkUUNLUnc/view?pref=2&pli=1>

⁵ **Official Forensic Expert Medical Opinion, No 555/10, 15 June 2011**, issued by the Federal State Institution the Russian Forensic Medical Examination Center of the Ministry of Healthcare and Social Development of the Russian Federation: "*The injuries which S.L. Magnitsky had were caused resultantly from the traumatic application of the blunt hard object (objects) which is confirmed by the closed type of the trauma and their morphological manifestations in the form of the abrasions, ecchymomas, blood effusions into the soft tissues. The determined mechanism of S.L. Magnitsky's injuries formation does not exclude the possibility that part of the injuries formed based on the traumatic impact of the rubber truncheon which is testified by the following:*



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The evidence that Sergei Magnitsky testified against police officers has been publicly available and includes complaints prepared by Magnitsky and filed with the Russian government⁶ as well as his personal testimonies⁷ given to the Russian Investigative Committee describing the roles of individual police officers in the fraud.

After Sergei Magnitsky was arrested in November 2008, I brought his case to the attention of the UK Government, Council of Europe, International Bar Association⁸, The Law Society⁹, the US Helsinki Commission¹⁰ and other international bodies who then contacted the Russian authorities, calling on them to immediately release Sergei from custody. In August 2009, three months before Sergei Magnitsky's killing, the Human Rights and Legal Affairs Committee of the Council of Europe, adopted a report describing the circumstances of Sergei's arrest and ill-treatment¹¹, calling

- *the injuries are caused through the impact of the blunt hard object (objects); the rubber truncheon is a blunt hard object.*" (emphasis added)

RUS: <https://drive.google.com/file/d/0B6nugCIZ1LPPNXIEY2FKUEJtVIE/view?pref=2&pli=1>

ENG: <https://drive.google.com/file/d/0B6nugCIZ1LPPclZXYU1DZmNrVKE/view?pref=&pli=1>

⁶ <https://www.russian-untouchables.com/eng/complaints/>; Complaints filed in December 2007: <http://russian-untouchables.com/docs/D51.pdf>; Complaint filed on July 23, 2008: <http://russian-untouchables.com/docs/D54.pdf>

⁷ 2008 06 05 Magnitsky testimony: "Officer Karpov mentioned 13 times; Officer Kuznetsov mentioned 14 times"; "Therefore, the above circumstances objectively demonstrate that the three companies, Parfenion LLC, Makhaon LLC and Reland LLC, were stolen in 2007 along with all their assets, with possible *use of records and information seized during the search conducted as part of criminal proceedings*" [Rus] [https://www.russian-untouchables.com/rus/docs/2008%2006%2005%20Magnitsky%20testimony%20\(ENG\).pdf](https://www.russian-untouchables.com/rus/docs/2008%2006%2005%20Magnitsky%20testimony%20(ENG).pdf) ; [Eng] [https://www.russian-untouchables.com/rus/docs/1.%202008%2006%2005%20Magnitsky%20testimony%20outlined%205%20June%202008%20\(Eng\).pdf](https://www.russian-untouchables.com/rus/docs/1.%202008%2006%2005%20Magnitsky%20testimony%20outlined%205%20June%202008%20(Eng).pdf); 2009 10 14 Magnitsky testimony: "“... *Kuznetsov and other law enforcement officials that have entered into a conspiracy with him could have been involved in stealing Makhaon LLC, Parfenion LLC and Rilend LLC followed by stealing RUB 5.4 bln from the budget ... they were vitally interested in suppression of my activity connected with the assistance I was rendering to my client in investigating the circumstances of the above crimes. It was the ground for my prosecution*”" [Rus] <http://russian-untouchables.com/rus/docs/6.%202009%2010%2014%20Magnitsky%20wintess%20testimony%20on%20Interrogation%20by%20Gritzai-s%20RUS%20outlined.pdf> [Eng] http://russian-untouchables.com/rus/docs/6.%202009%2010%2014%20Testimony%20by%20Mr%20Magnitsky_eng.pdf

⁸ <http://russian-untouchables.com/docs/D103-2009-06-08-Letter-to-Medvedev.pdf>

⁹ <http://russian-untouchables.com/docs/D105-2009-07-09-law-Society-to-Medvedev.pdf>

¹⁰ On June 23, 2009. Commission on Security & Cooperation in Europe – the U.S. Helsinki Commission. Testimony of William Browder: "Magnitskiy uncovered the information about the theft of the Hermitage Fund companies and the fraudulent tax refund that formed the foundation of criminal complaints filed by HSBC with the Russian authorities on December 3, 2007, July 23, 2008 and October 27, 2008. Magnitskiy also gave three formal witness statements to the Russian authorities detailing the fraud against the Russian government and demonstrating how it was possible only with the documents seized by the Moscow Interior Ministry during its office raids." <https://www.csce.gov/sites/helsinkicommission.house.gov/files/TESTIMONY.Browder.pdf>

¹¹ 21 August 2009 the Parliamentary Assembly of Council of Europe (PACE) Rapporteur Sabine Leutheusser-Schnarrenberger has written her Report: 'Allegations of politically-motivated abuses of the criminal justice system in Council of Europe member states': "“89. On 24 November 2008, independent lawyer Sergei Magnitsky, who had helped HSBC/Hermitage to expose frauds and abuses of office,



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on Russian government to stop persecution of Sergei Magnitsky and other lawyers who exposed the Russian government's fraud¹². The Russian government either ignored or rejected all calls for justice. Sergei Magnitsky was killed at the age of 37 on 16 November 2009, leaving a wife and two children.

Ms Komisar's sources in her submission to the Committee lack credibility and comprise four Russian nationals convicted, indicted or designated for criminal conduct:

- (i) Natalia Veselnitskaya who was indicted by the US Department of Justice for obstruction of Justice in relation to Magnitsky case¹³,
- (ii) Andrei Pavlov who was sanctioned by the US Treasury for his role in fraud uncovered by Sergei Magnitsky¹⁴,
- (iii) Konstantin Ponomarev, a Russian national convicted for falsifying evidence¹⁵;
- (iv) Oleg Lurie convicted for extortion in relation to dissemination of false information¹⁶.

For reasons unknown to me, Ms Komisar has been trying to spread misinformation about me engaging with individuals whose credibility has been thoroughly discredited. As a result, Ms Komisar's multiple requests for publication have been rejected by numerous fact-checkers and

was arrested and placed in pre-trial detention. On the same day, his law office was searched by police, and, in breach of Russian procedural law"

"90. I had included questions on the alleged harassment of HSBC/Hermitage lawyers and the detention of Sergei Magnitsky in my letters to the head of the Investigative Committee and to the prosecutor general. 110 The reply from the Investigative Committee confirmed that Mr Magnitsky was heard as a witness in one particular criminal case 111 but insisted that no coercive measures had been taken against him and, in particular, that he was "not detained"

110. "Instead of taking action against the corporate "raiders", the authorities began intimidating all lawyers acting for HSBC/ Hermitage in the Russian Federation and targeting them through police searches and questioning as witnesses. In particular, independent lawyer Sergei Magnitsky, who had helped to expose the frauds and the abuses of office, was arrested on 24 November 2008 and has since been detained" <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17778&lang=en;>

¹² <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnVveG1sL1hSZWYvWDJILURXLWV4dHluYXNwP2ZpbGVpZD0xMjI3NiZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRC1BVC1YTUwyUERGLnhzbA=&xsltparams=ZmlsZWlkPTEyMjc2>

¹³ <https://www.justice.gov/usao-sdny/pr/russian-attorney-natalya-veselnitskaya-charged-obstruction-justice-connection-civil>

¹⁴ <https://home.treasury.gov/news/press-releases/sm0240>

¹⁵ <https://www.themoscowtimes.com/2020/02/05/russian-businessman-claims-he-was-hoodwinked-by-government-capital-amnesty-program-a69169>

¹⁶ <http://judie-jud.blogspot.com/2009/03/journalist-oleg-lurie-rendered-verdict.html>



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media organisations around the world. Equally, they should not be taken seriously by this Committee.

Sincerely,



William Browder
Head of the Global Magnitsky Justice Campaign