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Time for Europe to enact Magnitsky type legislation

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My conviction for European Magnitsky legislation similar to the US Magnitsky Bill stems from a strong belief that such a symbolic measure can save human lives. Although I remain conscious of the fact that the US Magnitsky Law does not replace justice for Sergei Magnitsky, and is not an adequate measure towards punishing those implicated in Sergei’s death, it is nevertheless an alternative instrument to correct certain processes of deviation from democracy that are taking place in contemporary Russia during the third presidential term of Vladimir Putin.

The first time I read about Sergei’s death, I was profoundly saddened by the story of a young man who passed away in a prison cell due to medical negligence. I knew very little about his case at that time. The truth about Magnitsky’s death came as a revelation to me when I heard the late lawyer’s former employer, William Browder, explaining the details of the case to Members of the European Parliament.

Clearly, the embezzlement and fraud of \$230 million of stolen Russian taxes, which was carried out by Russian government officials working together with organised criminal groups, resulted in what was dubbed by Russian human rights defenders as “a professional death in custody”.

Initially exposed by Sergei Magnitsky and further investigated by

Hermitage, the bold corruption scheme lead to atrocious crimes, including murder, and unfortunately is far more than an isolated case. It is an epic picture of a profound malaise in Russian society, suffering from dysfunction of the whole system of justice, caused by the absence of a separation of powers and a real political competition. The grim political reality is one of endemic corruption - the other side of the so-called “stability”, promoted as the major achievement of contemporary Russian rulers.

Sergei lost his life fighting corruption. He said on many occasions that his case is “entirely about money”. I would add that it is about the lust for wealth of certain groups in power choosing to serve Mammon in the most primitive of all possible fashions. Stealing from the Russian treasury, and therefore, from Russian citizens, following money-laundering schemes and hiding the stolen money abroad, mainly in the EU – the traces of these criminal transactions were discovered in many European countries. These findings proved the truth of Sergei’s accusations. He was right and his adversaries were wrong. But Sergei is dead, and they enjoy life.

Once I became engaged in the justice campaign for Sergei, I was dismayed to learn that nobody was held responsible for his death. However, with further involvement in the case, I’ve realised to what extent the Magnitsky case is emblematic for contemporary Russia. The systematic abuse of human rights evident in the Magnitsky case, especially by policemen and judges who should have been the most rigorous defenders of the law, indicates the vital necessity to take measures against the abuses of human rights in Russia.

The Magnitsky case came to the attention of the European Parliament after evaluation of the elections in Russia, when we realised that previous parliamentary and presidential elections were neither free nor fair. The situation worsened further in 2012, when the Russian authorities issued the “foreign agents” law, which requires non-profit organisations in Russia to register as “foreign agents” if they receive any foreign funding. This law was reminiscent of the Stalin era for many people.

However, for those who compare the present attacks on civil society with Stalin’s repressions, I would remind you that the orchestrators of “the red terror” did not pursue selfish personal goals and did not indulge in luxury and

mundane pleasures of consumerism. They had no villas in the Côte d'Azur, they had no accounts in European banks and they were not fond of shopping in London, Paris and Milan, as are the modern corrupt opponents of democratic change.

Yet in contrast to the backsliding of the Russian leadership towards authoritarianism, there is another very encouraging process taking place - the rise of the civil society in Russia. The massive public protests and marches challenging the abuse of constitutional rights came as a breath of fresh air. New faces and personalities emerged, from different ages and social groups, and from different political movements.

Today, more than ever, the democratic forces in Russia need a Western reaction and moral support. As a member of the Council of Europe, and the Organization for Security and Co-operation in Europe (OSCE), the Kremlin should be reminded of these international obligations. Moreover, some in Brussels are still calling Russia “a strategic partner” of the EU, closing their eyes to the anti-democratic mutation of those in power.

The EU and Russia share a responsibility for the future of the European Continent, and turning a blind eye to the anti-democratic process in Russia is untenable and dangerous.

II

Article 215 of the Lisbon legal framework of the European Union provides for the adoption of restrictive measures against natural or legal persons, or groups, or non-State entities (called “targeted sanctions” or “smart sanctions” within the Common Foreign and Security Policy (CFSP)), gives a new perspective of coordinated effort in the EU foreign policy. This is an effective mechanism of defending the EU core values and aligns our words with deeds.

In the interest of a stable and flourishing Russia, the EU should form a common position to adopt an EU Magnitsky Act, as soon as possible, in accordance with the European Parliament’s recommendation of 23 October 2012 to the European Council on establishing common visa restrictions for Russian officials involved in the Sergei Magnitsky case, which was voted on

at the European Parliament's plenary session in Strasbourg.

The European Parliament's recommendation reminds Russia of its international engagements; as members of the Council of Europe and the OSCE, the Russian government has committed itself to fully respect fundamental human rights and the rule of law. I view the 2011 report on the Magnitsky case, which was prepared under the leadership of the Presidential Council on Human Rights, chaired by Ella Panfilova, as a real achievement for the period of Medvedev's presidency as a whole and for the establishment of truth in the Magnitsky case in particular. Not before and not since this report have the Russian people received such eloquent evidence of the malfunctioning of the system of justice; in fact this report can be considered as one the most sincere and striking documents narrating the wretchedness of the state institutions, deformed by the corruption flourishing in the absence of the separation of powers.

Yet despite the 2011 conclusions of the inquiry conducted by the Russian President's Human Rights Council on the illegality of Sergei Magnitsky's arrest, detention and denial of access to justice, the investigations are now closed and the officials involved have been exonerated. It was such actions on the part of the Russian authorities that demonstrated the politically motivated nature of Magnitsky's prosecution.

The European Union has repeatedly offered additional assistance and expertise to help the Russian Federation to modernise and abide by its constitutional and legal orders. It has urged the Russian authorities on many occasions and formats, from regular human rights consultations to summit-level meetings, to conduct thorough independent investigations in this special, well-documented case, and to put an end to the current climate of impunity.

However, the posthumous prosecution of Sergei Magnitsky in Russia in 2013 demonstrates that further action is needed. It is a violation of international and national laws and clearly shows the malfunctioning of the Russian criminal justice system.

Several national parliaments of EU member states – among them the Netherlands, the United Kingdom, Sweden and Poland – have already passed

resolutions urging their governments to introduce sanctions on the Magnitsky case. The visa restrictions and other restrictive measures are not traditional judicial sanctions, but constitute a political signal of the EU's concern to a larger target audience and thus remain a necessary and legitimate foreign policy tool.

The EU sanctions on the Magnitsky case could prompt the Russian authorities to make genuine and fresh efforts to address, in a more concrete and convincing manner, the question of the rule of law in Russia and the current climate of impunity. The entry denial and asset freezes for all violators of human rights, including the judges who pronounce odious decisions contrary to the constitution, are a symbolic but effective gesture.

III

I want to express my sympathies to Sergei Magnitsky's family, his widow and especially his mother, who continues to defend her son's legacy with courage and tenacity.

I have a profound admiration for Magnitsky's former colleagues and their global justice campaign. They have shown remarkable devotion to expose the crimes against Magnitsky and others, and their extensive research and efforts to establish the money laundering schemes of the Kluyev's group in Europe allow us to pursue Magnitsky legislation on facts and figures as much as on emotions and aspiration for justice.

The Russian democratic opposition regularly explains and communicates the significance of European Magnitsky legislation to the cause of fighting corruption and establishing an independent system of justice. Russian human rights defenders have publically denounced the decision by the Kremlin to protect all those implicated in the death of Sergei and the cover-up which has followed.

I'm convinced the key to Magnitsky legislation in Europe is inside Russia. The attitude of Russians themselves, Russian public opinion and their calls for visa bans to be imposed against corrupt Russian officials and gross human rights offenders is an integral element of the request. Born in the Soviet

Union, I lived one of the most amazing moments in human history, when the entire Soviet Empire collapsed. Nobody could foresee it, nobody could have predicted it.

But this triumph of freedom didn't come by itself. Behind the scenes there was a great deal of work carried out by a great many people. I believe that we have to look back at these moments in history to find our inspiration and encouragement to fight for freedom, justice and a better future for all of us. Sergei Magnitsky told one of the judges in his case that he considered himself to be "a hostage" of those corrupt individuals he exposed. Today in the fight against corruption the number of hostages has increased. In fact, all the Russian orphans who have been denied their adoptions by US families have become a group of hostages in the Kremlin's ongoing protection of corruption. The methods of Putin's clan can be answered in the ultimate way - taking a moral stand on our values demanding justice. A Magnitsky Law for Europe has the power to exercise the influence of the advantages of democracy over the authoritarianism, exposing vices of the latter and the virtues of the former.

The rapid adoption of Magnitsky legislation across Europe can make a difference; there is no time to lose!