

In December 2012 Sergei Magnitsky Rule of Law Accountability Act of 2012 was signed by US President Obama. The adoption of this Act was preceded by a three-year lobbying campaign of its supporters, which began even before the events described in the Act.

The last drop that prompted Congress to pass the act, was the testimony to the Committee on Foreign Affairs of a former US citizen – William Browder, who was the initiator of the adoption of that Act which had an extremely negative impact on the interstate relations between Russia and the US.

Available documentary evidence and testimony, including those collected in a civil case before the Federal Court of the Southern District of New York, confirmed that the “facts” reported by Browder to the US Congress, put down into the text of the act from his hearsay, were either deliberately distorted, or contrary to the truth. However, the same story has been put as the basis of the Global Magnitsky Act currently considered in the Congress.

Governmental and legal investigations revealed that William Browder, CEO of Hermitage Capital Management (Guernsey) and a financial advisor to Hermitage hedge fund (which existed until 2013 under the control of HSBC Group), a British citizen, who renounced his US citizenship in 1998 for tax reasons, had for 10 years lived in Russia on a tourist visa, in the period from 1999 to 2006 implemented in the territory of Russia an illegal scheme of buying up Gazprom shares by foreign companies to bypass the ban on foreign direct investments into Gazprom shares without permission of the Government of Russia.

The applied share purchase scheme not only allowed buying the shares at a price 1.5 times lower than through the American depository receipts, but also allowed investors and their advisers avoid government control and monitoring of capital sources, its movement and taxation in US and Russia corresponding to the investment activities.

In addition to Hermitage Fund, one of Browder’s largest investing customers was a US Group – Ziff Brothers Investments.

In the period of late 1999 to 2004, two companies – Speedwagon Investors 1 and 2, registered in New York, and owned by the said US investors, acting through three Cypriot companies, Giggs Enterprises Limited, Zhoda Limited, Peninsular Heights Limited illegally acquired more than 133 million Gazprom shares in the amount exceeding USD 80 million in the name of the Russian companies Kameya, Lori, Excalibur, Sterling Investments.

Once Browder’s activities drew the attention of the Russian law enforcement authorities, and he was not allowed any more to visit Russia on a tourist visa, in January 2006 all the assets controlled by Ziff Brothers Investments were removed from the jurisdiction of the Russian Federation. In 2006 US owners of the chain of companies mentioned above gained an income of over USD 800 million, including 66 million Gazprom shares received as dividends. According to preliminary estimates, the damage to the Russian budget in the form of unpaid taxes from those activities exceeded RUB 1 billion. There is every reason to believe that the investment activity was not declared and was not included in the reports to the US Securities Committee and US tax authorities, and no taxes were paid by US companies on the income received as a result of the turnover of the shares of the Russian companies.

In 2007, realizing the realistic threat of exposure by both the Russian and US law enforcement authorities, Browder accomplished an egregious scheme of embezzlement of funds from the Russian Treasury, the main element of it being to create an alibi of him having nothing to do with the embezzlement, by way of simulation of theft of three Russian portfolio companies from Hermitage Fund (HSBC). Later on the death in detention of one of Browder’s financial advisors – Sergei Magnitsky, who was arrested on a completely different matter (in a criminal case brought in 2004 against Browder and his accomplices on tax evasion) was used by Browder in creating an image of an “anti-corruption crusader” politically persecuted by Russia turning Magnitsky into “a lawyer who disclosed the theft of budget funds, was tortured and murdered, and consequently posthumously convicted because he defended Browder.” There is not a jot of truth in Browder’s story, but this is the doctrinal essence of the story known as the “Magnitsky case” put in as a basis for the US Act that caused the most severe damage to the US-Russian relations in recent

years.

The collected evidence can be brought before the Subcommittee on Oversight and Investigations of the Committee of the House of Representatives, and other concerned US government agencies to investigate the causes and the reliability of information that prompted the adoption of the Magnitsky Act.

Changing attitudes to the Magnitsky story in the Congress, obtaining reliable knowledge about real events and personal motives of those behind the lobbying of this destructive Act, taking into account the pre-election political situation may change the current climate in the interstate relations. Such a situation could have a very favorable response from the Russian side on many key controversial issues and disagreements with the United States, including matters concerning the adoption procedure.