

[Under Russian law, a deceased person can be tried and convicted of a crime *only* if the case is brought to rehabilitate him of the charge. "An initiated criminal case is subject to termination on the death of the suspect or accused except in cases where criminal proceedings are necessary for rehabilitation of the deceased." In this case it was Magnitsky's mother, with the Browder-allied attorney Gorokhov, who wanted to continue the case. The Russian court declined, quite the opposite of what Browder charged.]

APPROVED

City of Moscow on May 22, 2014

Tverskoy District Court of Moscow, consisting of the chairman- Judge Neveroeva TV, under the secretary Potapkina ES, with the participation of: the prosecutor from the second department for the supervision of the investigation of criminal cases in the Investigation Committee of the Russian Federation of the Office for the Supervision of Investigation of especially important cases of the Prosecutor General's Office of the Russian Federation Tyukavkin SA, lawyer Gorokhov NA, having examined in an open court session a complaint submitted in accordance of art. 125 of the Code of Criminal Procedure of the Russian Federation by Magnitskay N.N. for the action of the senior investigator for particularly important cases of investigation of organized criminal activity in the sphere of economy of the Investigative Committee of the Ministry of Internal Affairs of Russia Urzhumtseva OV, expressed in a rendering on December 28, 2010 a decree on refusal to initiate Criminal case proceedings against Magnitsky S.L. on the basis, Stipulated by item 4 of part 1 of Art. 24 of the Code of Criminal Procedure,

Established:

December 28, 2010 by senior investigator for particularly important cases of the Office for the Investigation of Organized Crime in the sphere of economics of the Investigative Committee under the Ministry of Internal Affairs of Russia Urzhumtsev OV in the criminal case No. 152979, a decision was rendered to deny the initiation of criminal proceedings against Magnitsky S.L. On the basis, stipulated by item 4 of part 1 of Art. 24 of the Code of Criminal Procedure.

Applicant Magnitskaya NN, who is the mother of Magnitsky SL, appealed to the court with a complaint under Art. 125 of the CCP RF, requesting to deem as illegal and unfounded the actions of the senior investigator for especially important cases of management to investigate organized criminal activity in the sphere of economics of the Investigative Committee under the Ministry of Internal Affairs Russia Urzhumtseva OV. The actions of Urzhumtseva were expressed in the pronouncement on December 28, 2010 decision on refusal to initiate criminal proceedings against Magnitsky S.L. on the basis provided for by Clause 4 Part 1 of Art. 24 of the Code of Criminal Procedure, pointing out that those set forth in the descriptive-motivational part of the given decisions of the action, falling under the signs of the corpus delicti, stipulated by Part 4 of Art. 159 of the Criminal Code, that Magnitsky S.L. was not accused or suspected by the court of committing those criminal actions.

The prosecutor asked to refuse the complaint, since acceptance of this decision by the investigator did not violate the criminal procedure law norms.

After hearing the participants in the process, having studied the arguments of the complaint, submitted for judicial review of materials, the court comes to the next.

According to Part 1 of Art. 125 of the Criminal Procedure Code of the decision of the investigator, investigator, the head of the investigative body **on the refusal to initiate criminal proceedings, on termination of the criminal case**, as well as other decisions and actions (inaction) Investigator, head of the investigative body and the prosecutor, which can damage the constitutional rights and freedoms of participants of criminal proceedings or impede the access of citizens can be appealed to the district court at the place of preliminary investigation.

Based on the results of the examination of the crime report, the inquiry body, Investigator, head of the investigative body takes in the decision to refuse to open a criminal case (Article 145 of the Code of Criminal Procedure).

In the absence of grounds for instituting criminal proceedings, the head Investigative body, investigator, inquiry body or investigator makes the decision to refuse to open a criminal case (Part 1, Article 148 of the Code of Criminal Procedure).

In accordance with paragraph 4 of part 1 of Art. 24 CCP RF criminal case cannot be instituted, and an initiated criminal case is subject to termination, for **following reason: death of the suspect or accused, for except in cases where criminal proceedings are necessary for rehabilitation of the deceased.**

As follows from the case materials, investigator Urzhumtsev O.V. Guided by these provisions of the criminal procedure law, **refused to initiate criminal proceedings against Magnitsky SL, deceased on November 16, 2009**, as this circumstance excluded the opportunity to initiate an investigation in a criminal case.

Despite the arguments of the complaint, the decision to refuse the initiation of a criminal case does not indicate criminal prosecution of Magnitsky SL, which, in the sense of the criminal procedure law is carried out by the prosecution in order to expose the suspect, accused of committing a crime, and is associated with holding the initiation of a criminal case of a complex of investigative actions for the collection, verification and evaluation of evidence of a person's guilt in committing a crime, therefore, does not establish the guilt of SL Magnitsky in the commission of an act containing the elements of a crime.

If the refusal to open a criminal case against Magnitsky SL, the investigator follows the procedure for issuing this decision, which is accepted appropriate official, within the limits of his authority, if available The grounds provided for by law and in compliance with the requirements of the criminal-procedural law.

Contrary to the arguments of the complaint, about this decision, December 28, 2010. Investigator to the wife of Magnitsky S.L. - Zharikova NV It was appropriate notice, with the counsel. Arguments about the non-receipt of the message by the addressee, do not refute Information available in the case.

On the basis of the above, the court, considering that in the arguments of the applicant were found, in connection with which, the complaint does not satisfy.

The court does not see grounds for the adoption of a private decision in respect of Officials of the investigative body.

Guided by art. 123, 125 of the Code of Criminal Procedure, the court

Decided:

The complaint of Magnitskaya N.N. On the actions of a senior investigator for Important cases of management to investigate organized crime activities in the field of economics of the Investigative Committee under the Ministry of Internal Affairs of Russia Urzhumtseva OV, expressed in the pronouncement on December 28, 2010. Of the refusal to open a criminal case against Magnitsky S.L. The grounds provided for by cl. 4 p. 24 of the Code of Criminal Procedure, - are without satisfaction.

The decision may be appealed to the Moscow City Court, through Tverskoy District Court of Moscow, within 10 days from the date of removal.