

Magnitsky's Defense Requests Recusal of Prosecutor as Posthumous Trial Begins

By [The Moscow Times](#)

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Moscow's Tverskoi District Court began proceedings into the posthumous tax evasion trial against deceased lawyer Sergei Magnitsky on Friday.

Prosecutors say Magnitsky, who died in a pretrial detention facility in 2009, acted as an accomplice to Hermitage Capital and the fund's director, William Browder, in a tax evasion scheme that saw the men steal \$230 million from the state budget. The allegations were made shortly after Magnitsky himself accused tax officials of stealing the \$230 million by using fake tax refunds.

At the very beginning of Friday's hearing, Magnitsky's defense lawyers asked to recuse the prosecutor, Mikhail Reznichenko, citing the fact that he'd given defense lawyers limited time to read 60 volumes of case materials, the BBC's Russian service reported.

Magnitsky's defense lawyers also asked prosecutors to clarify the procedure for a trial against a dead person, requesting that the Tverskoi District Court submit a request for such clarification to the Constitutional Court, which earlier issued a decree stating that posthumous trials violate the presumption of innocence until proven guilty.

"There was no reason for the investigation. I believe the case was re-opened only because of an incorrect understanding of the decree of the Constitutional Court," Nikolai Gerasimov, a lawyer for Magnitsky, said in comments carried by Lenta.ru.

The court turned down the defense's request, however, after state prosecutors noted that Magnitsky's mother had requested the case be reopened to prove her son's innocence in court, thus obligating the court to review the case in accordance with an earlier ruling by the Constitutional Court that posthumous trials were allowed to exonerate the deceased.

Ahead of a hearing into the case in February, however, a defense lawyer read a statement from Magnitsky's mother saying she did not authorize anyone to represent her son and that the trial against him was "unlawful."

Critics have said the sole purpose of the posthumous trial is to discredit Magnitsky, citing as evidence the fact that the investigation into his death was prematurely closed despite the Kremlin human rights council finding that Magnitsky did not die under normal circumstances. The council said in 2011 that he was most likely pressured by prison authorities over his testimony in the tax fraud case and left to die of pancreatitis in an isolation cell.

The trial, in which Browder also faces tax evasion charges in absentia, was postponed in late February after defense lawyers requested more time to study case materials.

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