

PRELIMINARY CONCLUSION

of the working group on the study of circumstances of Sergey Magnitsky's death,
the working group on civic engagement in judicial reform,
the working group on citizen participation in prevention of corruption and
and public safety

1. Conflict of interest during the investigation of Sergey Magnitsky's case.

Currently, the full and thorough investigation of all circumstances of the death of S.L. Magnitsky by competent authorities is not complete. However, it seems that certain preliminary conclusions, both general and specific, can be stated based on the reports of a number of public organizations¹ (see Appendices 1-3) and information which became available to the members of Council's working groups during the investigation of the case in relation to the death of Sergey Magnitsky.

This case was initiated on November 24, 2009. However, nearly a year after, on September 7, 2010, according to the public announcement of the Russia's Investigative Committee of the Public Prosecutor's Office, the investigators haven't found any evidence of guilt of the respective officers and, moreover, any materials justifying Sergey Magnitsky's complaints about failure to receive adequate medical care and interference. Conversely, the officials accused by Sergey Magnitsky of implication in illegal tax refund and involved in the investigation on his case, were not brought to criminal responsibility but promoted afterwards. Moreover, they participated in the investigation of theft of the budget funds which was initiated by the Investigative Committee of the Russian Federation Ministry of Internal Affairs on the same petition of Magnitsky. In September 2010, the Investigative Committee of the Ministry of Internal Affairs announced that new suspects in the case of illegal tax refund were identified, and Sergey Magnitsky was named among them.

Thus, the case against Sergey Magnitsky was investigated by the same officers of the Ministry of Internal Affairs and Investigative Committee of the Ministry of Internal Affairs, against whom he had testified in the illegal re-registration of Riland, Parfenion and Makhaon companies and subsequent illegal tax refund of 5.4 billion roubles. Involvement of the officials of the Investigative Committee of the Ministry of Internal Affairs Kuznetsov, Karpov, Tolchinsky, Krechetov and Drozanov in the investigation of the case against Magnitsky created a situation of obvious conflict of interest, which contradicts the requirements of the law. Despite this, enumerated officials of the Ministry of Internal Affairs were not excluded from the investigation team in the case against Sergey Magnitsky. In this situation, petitions from Magnitsky for their disqualification were rejected by the investigator O.F.Silchenko, his immediate supervisor N.V. Vinogradova and administrative authorities of the Investigative Committee at the Ministry of Internal Affairs of the Russian Federation. Refusal to resolve this conflict of interest may be evidence either of negligence or of particular interest of the investigation's supervisors.

During the ongoing investigation of the circumstances led to Sergey Magnitsky's death conducted by the Working Group of the Council, materials confirming the described conflict of interests were referred to investigation, and Investigative Committee of Russian Federation conducts corresponding proceedings in relation to the review of these materials.

In addition, facts presented in the materials submitted by Hermitage Capital, which refer to clear violations and material personal interest of law enforcement officers and representatives of the judiciary connected with the case of Sergey Magnitsky, are not examined yet. There is no ongoing review of statements on a sudden significant increase in income and assets of some of these officials which has occurred after 2008.

2. Independent investigation of the Moscow Public Oversight Commission

¹ Independent Expert and Legal Council; Moscow Public Oversight Commission; National Anticorruption Committee and Transparency International Russia.

established that the failure to deliver medical aid to Sergey Magnitsky and obstruction of the delivery are connected with action (or failure to act) of a number of investigators and prison system officials.

- Head of the federal detention center 99/1 of the Russian Federal Prison and Punishment Agency (FSIN) I.Prokopenko and investigator of the IC at the Russian Interior Ministry O. Silchenko decided to transfer Magnitsky to the Butyrka prison one week before his scheduled physical examination and surgery in the hospital of the Matrosskaya Tishina detention center. The transfer was reasoned by the necessity of facility repair, which was not even started before the death of Magnitsky. This can be regarded as intentional deterioration of Magnitsky's detention conditions and inhibition of his medical treatment.

- Creation of obstacles so that Sergey Magnitsky could not receive medical aid was also manifested in the decision made by the investigator O.F. Silchenko dismissing the petition of his lawyers about transfer to the hospital of the Matrosskaya Tishina for ultrasound examination. Thus, the investigator Silchenko defiantly refused to comply with requirement of the Article 11 of the Criminal Procedural Code of the Russian Federation (RF CPC) on the obligation to take measures to secure rights of suspects and accused.

- Required medical aid was not provided to Sergey Magnitsky by the personnel of the Butyrka prison as well. Against the established rule, Magnitsky was examined by a physician a month after he was taken there. His requests for the routine physician's visit were denied; medications delivered by Magnitsky's mother were not accepted or even sent to another cell. These and many other facts discovered by the public inquiry suggest not only the negligence of medical personnel of the Butyrka prison, but criminal failure to provide aid to the detainee, i.e. violation of the right to life.

- These conclusions of the public inquiry are confirmed by the circumstances of the actual deprivation of medical aid of Magnitsky in the last days of his life. Transfer from the Butyrka prison was organized only when Magnitsky's condition became critical, three days after the aggravation of his chronic illness. Transportation to the hospital of Matrosskaya Tishina detention center was carried out with a delay of six hours, spent on the coordination with the investigator Silchenko.

At the hospital, physician A.V. Gaus instead of taking prompt measures decided that Magnitsky had a psychotic behavior (as he said that they wanted to kill him) and summoned eight guards with special gear and psychiatric emergency, who handcuffed Magnitsky and took him to a cell. An emergency medical team was not permitted to enter; however, it did not stop Gaus from giving false information that Magnitsky received emergency medical treatment from the emergency team, which, however, did not confirm it.

As a result, Magnitsky was completely deprived of medical care before his death. In addition, 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. In addition, there is no medical description of the last hour of his life

According to the Moscow Public Oversight Commission, Investigative Committee under the Prosecution Service of the Russian Federation did not give due attention to the investigation of these officials' guilt in S.L. Magnitsky's death. Discovered by the Commission, false information in testimony of the Matrosskaya Tishina hospital physician A.V. Gaus gives reason to renew the investigation of this episode and must receive a legal assessment from the investigation authorities.

3. Violations of procedural legislation upon the choice of a restriction measure (arrest) and prolongation of the terms of detention.

The decision on placement of S.L.Magnitsky in custody was not based on proved facts as prescribed by Article 97 of the RF CPC and provisions of sub-clause "c", § 1, Article 5 of the European Convention and Part 1, as well as Article 108 of the RF CPC. In the order issued by

the judge of the Tverskoy Court of Moscow, specific actual circumstances proving the existence of grounds for placement in custody, as well as credible evidence of existence of such circumstances were not stated.

As it follows from the order issued by the judge of the Tverskoy District Court of Moscow S.G.Podoprigrorov on November 26, 2008, the following circumstances were stated as the grounds for placement of S.L.Magnitsky in custody:

- 1) Charge with the commission of intentional serious crimes;
- 2) "S.L.Magnitsky took measures to put pressure on the witnesses and tried to impede the performance of investigative actions";
- 3) The accused may try to flee from investigation and the court.

However, the circumstances stated by the court cannot be regarded as the grounds for placement in custody prescribed by the RF CPC due to the following reasons:

Firstly, accusation of a serious crime in itself is not a ground for placement in custody and cannot confirm the intention of accused to flee prosecution. According to Article 99 of the RF CPC such circumstance must only be taken into account by the court subject to the existence of a proved ground for placement in custody, and not instead of it.

Secondly, the court's conclusion that "S.L.Magnitsky took measures to put pressure on the witnesses and tried to impede the performance of investigative actions" is not specific (Part 1, Article 97 of the RF CPC). There is not a single word in the judge's order as to which witnesses exactly the accused tried to put pressure on or the performance of which investigative actions he tried to impede.

Thirdly, the indicated circumstance was substantiated by the documents provided by the investigators which had no procedural value, did not represent the evidence and, moreover, contradicted the specific evidence on the criminal case. Thus, the investigator proves the fact that the accused tried to impede the performance of investigative actions by the report of the senior police investigator A.A.Krechetov which contradicted to the protocol of the search in Magnitsky's apartment, according to which there were no violations on the part of S.L.Magnitsky, and investigator signed that protocol without any remarks.

Furthermore, a special concern is caused by the unchecked by court argument that the accused may try to flee investigation and court, which was confirmed by the investigator O.F.Silchenko by presenting to the court the evidence that S.L.Magnitsky had international passport and was making a visa for departure to Great Britain referring to the certificate of the Economic Security Department of the Federal Security Service of the Russian Federation dated November 24, 2008. However, investigator O.F.Silchenko could not but knew that S.L.Magnitsky's foreign passport was seized during the search in his apartment at the same day, of which fact there is a note in the search protocol.

Therefore, the working groups assume that S.L.Magnitsky was taken into custody without sufficient grounds for application of such restriction measure.

When considering prolongation of the term of Magnitsky's detention in custody, courts violated the provisions of Clause "c", § 1, Article 5 of the European convention, repeatedly referring to the fact that initial reasons for detention of S.L.Magnitsky in custody have not been eliminated. No new grounds for the prolongation of detention were ever given in the orders of the court. Therefore, repeated violations of the specified international legal standard for prolongation of detention of accused were committed.

The court did not take into account the possibility of choosing a less severe restriction measure.

In violation of this provision, in the judge's order on placement of S.L.Magnitsky in custody the conclusion about the impossibility of applying a different restriction measure is not motivated at all.

Another factor pointing at the illegality of placement of S.L.Magnitsky in custody is the court's disregard of the state of his health. The detention of S.L.Magnitsky, considering his

diseases, violated Article 3 of the European Convention, as his treatment there was inhumane and humiliating. Position of the European Court in the decisions on several similar cases it equally applies to the case of S.L.Magnitsky, who for a long period of time was detained in custody in similar conditions, with a serious disease and inability to receive adequate medical aid in the conditions of his detention.

The courts failed to examine the justifiability of the charge brought against Magnitsky.

At the court sessions, when S.L.Magnitsky's arrest and prolongation of his detention were considered, his arguments about the groundlessness of the charge brought against him were not examined; the courts did not oblige the investigator to provide relevant evidence and did not study it at the court sessions, what is a direct violation both of the provisions of Article 108 of the RF CPC and Clause "c" § 1, Article 5 of the European Convention and also contradicts the Clause 2 of Decree No. 22 of the Plenum of the Supreme Court of the Russian Federation of October 29, 2009 "Concerning the court practices of application of restriction measures in the form of placement in custody, pledge and house arrest".

4. Inefficient review of S.L.Magnitsky's complaints by the prosecutor's office and the courts.

Analysis of the provided materials of the criminal case shows that one of the factors which led to S.L.Magnitsky's death was the inefficient review of his complaints, as well as complaints filed by his defense lawyers, in both judicial and extrajudicial proceedings.

Thus, in response to a detailed complaint on 4 pages filed by accused's defense lawyer and addressed to the Prosecutor General of the Russian Federation, which contained specific facts of violation of Magnitsky's rights during his detention at the pre-trial detention center, it has been answered that his rights were not violated. The major part of the arguments provided in the complaint, in violation of Article 124 of the RF CPC, was left without consideration.

Due to violations of S.L.Magnitsky's right to defense caused by his sudden transfer from IZ-77/5 to the Temporary Detention Facility under the Central Internal Affairs Directorate of Moscow, which deprived the accused of the opportunity to use the abstracts from the case during the performance of investigative actions, the defense lawyers filed a respective complaint with the General Prosecutor's Office of the Russian Federation. In the answer of October 09, 2009 given by A.I.Pechegin, the deputy director of the Administration for Supervision of Investigations on Major Cases under the General Prosecutor's Office of the Russian Federation, most arguments given in the complaint were once again left without consideration. The same fate has befallen the other complaints filed by S.L.Magnitsky's defense lawyers and addressed to the Head of the Investigating Committee of the Ministry of Internal Affairs of the Russian Federation, the Prosecutor General of the Russian Federation and other agencies.

The analysis of complaints filed by the defense lawyers of the accused with the courts was equally formal. The majority of the above said complaints filed with the courts were dismissed without a hearing on the merits.

Conclusions and general recommendations

1. In the area of criminal and procedural law and its enforcement

- As it can be seen from S.L.Magnitsky's case, the provisions of Part 1, Article 108 of the RF CPC on the necessity of providing references to specific actual circumstances in the judge's order on placement of an accused person in custody, on the prohibition of referring to the results of investigative activities, which do not conform to the indicia of evidence, are a fiction of law and are not applied in practice.

The only way out of the existing situation is a severe legislative narrowing of the sphere of application of the restriction measure in the form of placement in custody and maximum formalization of grounds for the choice thereof in the criminal procedure legislation.

- Investigator's powers with respect to any aspects of detention of an accused person in custody should not be discretionary, and they also have to be strictly formalized. Refusal to permit such meetings must be substantiated by references to particular circumstances, a list of which is to be formalized in the RF CPC.

- The right of an accused (suspected) person to claim disqualification of persons carrying out the proceedings on the case is absolutely ineffective here. It is a long overdue necessity to formalize in the RF CPC such ground for disqualification as the "bias" of a person carrying out the proceedings on the case. It is necessary to extend the subject matter of other grounds for disqualification, which would eliminate situations similar to S.L.Magnitsky's case, when the investigation was conducted by persons whom the accused himself charged with commitment of corruption-related crimes.

- The studied materials demonstrate the evident inefficiency of the institute of judicial appeals at pre-trial stages of criminal proceedings, which is particularly due to severe narrowing of the sphere of judicial control in Decree No. 1 of the Plenum of the Supreme Court of the Russian Federation of February 10, 2009 "Concerning the practice of consideration of complaints by courts in accordance with Article 125 of the RF CPC".

2. In the area of medical care to detainees

During the time elapsed from the study of circumstances of Sergey Magnitsky's death by the Moscow Public Oversight Commission, public authorities have taken some measures, in particular regarding detention of individuals accused of economic crimes and enumeration of diseases, under which those accused not be taken into custody.

At that, the problem of the illegal and unreasonable interference of investigation in the assignment of detention conditions and delivery of medical aid to persons under investigation remains unsolved. For example, investigators interfered with physicians, investigators and Matrosskaya Tishina officers in a similar way in Vera Trifonova's case (died 04.30.2010 in custody). These practices related to the detention of critically ill and even dying detainees continue to date.

These facts support the need for an independent and competent medical care for those who are in the sphere of responsibility of prison system. Relevant medical institutions may not be related only to the FSIN system and should be within jurisdiction of health authorities as well. Furthermore, a mechanism must be established to provide independent medical examination in custody cases by using, in particular, the proposals developed by the Moscow's human rights ombudsman in collaboration with Moscow Public Oversight Commission.

Appendices:

1. Report of the Moscow Public Oversight Commission for human rights observance in detention centers on the conditions of detention of S.L.Magnitsky in the pre-trial detention centers of Moscow.

2. Conclusion of the Public Anticorruption Committee which has investigated the causal connections led to S.L.Magnitsky's death.

3. Scientific advisory opinion of the Independent Expert and Legal Council.

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**REPORT
OF PUBLIC OVERSIGHT COMMISSION
FOR HUMAN RIGHTS OBSERVANCE IN MOSCOW DETENTION CENTERS
ON THE INSPECTION OF S.L. MAGNITSKY CONTAINMENT CONDITIONS AT
PTDCs (PRE-TRIAL DETENTION CENTERS) OF MOSCOW**

Since November 20, 2009 shortly after it became known about S.L. Magnitsky's case and his death the members of Moscow Public Oversight Commission (POC) including V.V. Borschev (Chairman), L. V. Volkova (Deputy Chairman), T. A. Flerova (Secretary), L.I. Alpern, L.B. Dubikova, Z.F. Svetova have examined the detention condition of S.L. Magnitsky at the pre-trial Detention Centers of Moscow. The Federal Detention Center FBU IZ-77/2 (Butyrka PTDC) and The Federal Detention Center FBU IZ-77/1 (Matrosskaya Tishina PTDC) have been visited on a number of occasions. The Commission members have met with and interviewed the Head of Moscow Directorate of the Federal Penitentiary Service (UFSIN for Moscow) Vladimir Anatolievitch Davydov, Chief Medical Officer of Moscow Directorate of the Federal Penitentiary Service (UFSIN for Moscow) Service Olga Filippovna Grigoryeva, Moscow Directorate of the Federal Penitentiary Service (UFSIN for Moscow) Head Assistant for Human Rights Ms. Anastasiya Nikolaevna Chzhu, as well as with the heads, employees, and medical personnel of Moscow Directorate of the Federal Penitentiary Service (UFSIN for Moscow) Detention Center FBU IZ-77/1, Moscow Directorate of the Federal Penitentiary Service (UFSIN for Moscow) Detention Center FBU IZ-77/2, and the Russian Penitentiary Service (FSIN) FBU IZ-99/1.

Sergey Leonidovitch Magnitsky

Birth date: 08.04.1972

Citizenship: Russia

Residence: Moscow

Education: Higher (Master's Degree)

Married, with two children.

Occupation and employer: auditor, Firestone Duncan law firm.

Had no previous criminal record.

Charged as per Part 2, Article 199 of the Russian Federation Criminal Code

Held in custody since November 28, 2008

MATROSSKAYA TISHINA (DETENTION CENTER 99/1)
TO BUTYRKA (DETENTION CENTER 77/2)

On July 25, 2009, S.L Magnitsky was transferred from Russian FSIN Detention Center IZ - 99/1 to Moscow UFSIN Detention Center FBU IZ-77/2. A 16 square meters large cell provided accommodation for 3 individuals which accords with the prescribed standards; the medical assistance was available to him as Matrosskaya Tishina has an in-patient clinic with medical doctors of various specializations and medical equipment. In the clinic, on July 01, 2009, Magnitsky had ultrasound investigation of abdominal cavity organs with the purpose of detecting the digestive organ pathema signs. As per the results of the ultrasound investigation the detected pathema was determined to be the calculous cholecystitis. Upon his examination by a surgeon, a further, reference, ultrasound examination was prescribed to be conducted a month later, as well as a planned surgical operation. This opinion was signed by V. Stepanov, Head of the Medical Unit, Lieutenant-Colonel of the Internal Service and D. Vasiliev, Colonel of the Internal Service. Then, a week prior to the assigned reference ultrasound investigation to be followed by the operation Magnitsky was transferred to Detention Center IZ-77/2 (Butyrka) which has no ultrasound machine and none of the necessary surgical or medical facilities in place. What were the reasons for such transfer?

The head of the Russian Penitentiary Service (FSIN) Detention Center 99/1 Ivan Pavlovitch Prokopenko gave the following explanation:

Prokopenko: “We had decided to do a renovation, and we needed to vacate one floor. I talked to several investigators and got consent from some of them for the transfer of persons under their investigation to another Detention Center. Magnitsky’s investigator Oleg Silchenko was one of them. As a result, we vacated the floor.

POC: “How many people were transferred to other Detention Centers?”

Prokopenko: “I cannot recall.”

POC: “Some two, three or five people?”

Prokopenko: “Around five.”

If the 3rd floor was vacated just by transferring to other detention centers of “approximately five” residents then the other residents of the same floor cells were somehow able to continue to stay in the Detention Center why did Magnitsky who was in need of serious medical assistance not find himself among the ones who stayed but was transferred with those ones whose quantity was ‘approximately five’?

Prokopenko: “I did not consider Magnitsky sick. The detainees are often trying to put on a mask of a sick person in order to improve the conditions for themselves. We are all sick. I, for instance, have osteochondrosis.”

However I.P. Prokopenko’s subjective assessment of Magnitsky’s state of health is not relevant now; the relevant thing now is the objective opinion of the medical doctors. Prokopenko was aware of that opinion. By transferring Magnitsky to Butyrka I.P. Prokopenko deprived him of the possibility to receive the needed medical assistance. The renovation plans cannot justify the decision. As this report is published, there is no renovation underway, despite the fact that Magnitsky was transferred five months ago.

Was Magnitsky’s transfer to Butyrka solely Prokopenko’s initiative? This question arose in light of the fact that on February 21, 2009, pursuant to the order of Interior Ministry Investigator Oleg Silchenko, Magnitsky was transferred from Detention Center 77/5 Temporary Confinement Cell № 1 of the Moscow GUV D (Moscow Ministry of the Interior). Magnitsky’s lawyers filed a complaint with the Russian Federation General Prosecutor’s Office, which read: In the absence of an objective, justified and lawful need for Magnitsky’s transfer from the investigatory

Detention Center to a temporary confinement cell to conduct investigative actions, even more so, for actions which had already been conducted with respect to him in the Detention Center, and nothing prevented such further actions in the same center, such decision by the investigator testifies solely to the intention to put psychological and moral pressure on him.” I.P. Prokopenko said that it was entirely his initiative and that investigator O.F. Silchenko supported it. Russian law regulates transfers of convicts from colony to colony, and transfers of accused persons and suspects from investigatory Detention Centers to temporary confinement cells, which gave the lawyers the grounds to appeal against the investigator’s actions, whereas transfers between Detention Centers are not regulated by law. Therefore, the law did not limit Prokopenko and Silchenko in deciding on Magnitsky's transfer from Matrosskaya Tishina to Butyrka, and they could justify their action by the “renovations” which are still apparently pending after five months. This is a serious gap in the laws governing the Russian penal system.

ON MAGNITSKY’S CONDITIONS AT INVESTIGATORY DETENTION CENTERS

On October 13, 2009, a month before his death, Magnitsky submitted a statement to Mr. Gritsay, an Investigator of the Investigative Committee of the Interior Ministry, which was attached to the materials of his criminal case held by the Investigative Committee of the Interior Ministry, to the effect that unbearable conditions were being created for him with investigators’ full knowledge.

Magnitsky wrote: “I think that with the participation of investigator Silchenko O.F. or with his tacit approval inhuman conditions were created for me in the Detention Center, which humiliate human dignity. While in custody, I have been transferred five times to four different Detention Centers. I am tired of counting the cells to which I have been transferred innumerable times. I am denied medical assistance. On many occasions, for artificial and unjustifiable reasons, my mother’s and wife’s visits were prohibited, as well as telephone conversations with my little children. While in custody, situations have been created for me where I was deprived of the right to have a weekly shower, to watch television, to use a refrigerator, and simply to live under normal conditions, to the extent they can be “normal” in a Detention Center. I am convinced that such intolerable conditions are being created for me with my investigators’ full knowledge. I am convinced that the only possibility to stop this humiliating treatment is for me to accept false accusations, to incriminate myself and other persons.”

In the course of the inspection of Magnitsky’s detention conditions at the Detention Center the POC members found out that while in custody, he was, indeed, transferred between three different investigatory Detention Centers and among several cells in these Detention Centers.

Immediately after his arrest on December 2, 2008, Magnitsky was put in Investigatory Detention Center №5. During the nearly five months of his stay here, he was transferred a number of times from cell to cell (in total, he was held in four cells):

- Cell 206, with 12 beds, 10 inmates, net room area – 48.2 square meters;
- Cell 309 (transferred in connection with the work requirements), net room area - 32.1 sq. m, with 8beds, 7 inmates;
- Cell 417, net room area 56.2 square meters, with 14 beds, 12 inmates.
- Cell 503, net room area 36.4 square meters, with 9 beds, 8 inmates.

The cells were equipped with the partitioned toilets, wash-basins, a table, benches, a wardrobe, hangers, daytime and the night duty lighting, windows for daylight, and with the forced ventilation.

Before he was arrested Magnitsky was in good health. His medical record at the out-patient clinic does not contain any information about any diseases, about his seeing medical doctors. He fell ill within less than five months of custody.

On April 28 he was transferred to Detention Center-1 (Matrosskaya Tishina) where he was kept until July 25, 2009.

On July 01, Magnitsky who at that time was held in custody at Detention Center 1 (Matrosskaya Tishina) had ultrasound of abdominal cavity organs to check for the pathema signs. The ultrasound revealed a disease, and “calculous cholecystitis” was diagnosed. Upon examination by a surgeon, a further ultrasound was prescribed to be carried out a month later, as well as a planned operation (the report was signed by V. V. Stepanov, Head of the Medical Unit, Lieutenant-Colonel of the Internal Service and D. I. Vasiliev, Colonel of the Internal Service).

On July 25, 2009 Magnitsky was transferred from Detention Center 1 (hereinafter referred to as Matrosskaya Tishina DC) to Detention Center 77/2 (hereinafter referred to as Butyrskaya prison DC). The later ultrasound and the planned surgery were never carried out.

On November 13, 2009, his condition seriously deteriorated. On November 16, 2009, at 17:22 he was driven in an ambulance car to Matrosskaya Tishina, where he died.

The above is the brief background of the case.

During the course of our investigation of Magnitsky’s conditions in Butyrka detention facility we have come to the conclusion that the circumstances which lead to the detainee S.L. Magnitsky’s death cannot be reviewed separately from the course of the investigation of the incriminated case. He believed that the conditions created for him in Butyrskaya Detention Center were the evidence of the pressure on him with the aim to suppress his will by means of the torturous detention conditions and force testimonies admitting guilt, so Magnitsky wrote:

“I am convinced that such intolerable conditions are being created for me with my investigators’ full knowledge. I am convinced that the only possibility to stop this humiliating treatment is for me to accept false accusations, to incriminate myself and other persons.”

Of particular concern are two facts:

1. On October 16, 2009 Magnitsky made a statement about the large-scale fraud involving theft of state budget money by high-ranking officials of the Russian Interior Ministry. He gave a detailed description of the fraudulent scheme and named names.

2. Second, on November 24, the one year in pre-trial detention was due to expire. The investigations did not have sufficient prove of his guilt in order to start the court proceedings. That is why on November 13, Tverskoy court session adopted the decision to extend the period of detention in custody. As a matter of fact, employees Butyrka Detention Center had admittedly, apparently by accident, submitted an unduly executed certificate of his health, which was a formal pretext for the court’s decision not to release the severely ill inmate from custody on bail or recognizance not to leave.

Based on the conditions of Magnitsky at Butyrskaya Detention Center 2 the members of the Public Oversight Commission arrived to the conclusion that Sergey Magnitsky was in fact subject to organized physical and psychological pressure. It appears that Detention Center employees realized this as well. Head of Butyrka Detention Center 2, D. Komnov, showed to the POC members the note which he obtained from Magnitsky prior to the latter’s leaving Butyrka Detention Center, which read: “During my stay at Butyrka, no pressure was exerted on me, either physical or psychological, on the part of either the administration personnel or fellow inmates.” Why did he do that? One understands only too well the value of such notes of acknowledgement written in confinement. This is the way Komnov explained the note: “In 2008, a certain Shcherbakov left the Butyrka Detention Center and a week later died at Matrosskaya Tishina. Therefore, I asked Magnitsky to write this.” The description of the actual conditions shows that pressure was, undoubtedly, exerted. But there was also another fact about which Magnitsky wrote to the head of the medical unit, “In the evening of October 18, 2009, a man was put into Cell 18 where I was held, who introduced himself as Denis (the man said later that his name was Leonid). The man behaved in a strange way.” In particular, he asked Magnitsky, why he had “done that to him,” although Magnitsky was only meeting him for the first time. The man produced the impression of being mentally disturbed. Concerned about their safety, Magnitsky and his fellow inmate slept in turn. After this disturbed man’s visit, Magnitsky’s health further deteriorated.

The right to decent conditions not humiliating to human dignity was violated.

- It is unprecedented that within a year in custody he was transferred among three investigatory detention centers. As an inmate moves from one detention center to another, from one cell to another, he leaves necessarily leaves personal items and items brought by relatives to provide comfort during his detention.
- During his last three months alone, Magnitsky was moved from cell to cell, each new cell being worse than the previous one. Thus, until August 31, Magnitsky was held in Cell 267. In Butyrka, in violation of the European penitentiary rules (agreed to by the Russian Federation) requiring at least two showers a week, inmates are taken to the shower room only once a week according to schedule. For Cell 267 the shower day was Tuesday, the day of Magnitsky's arrival. That day, on arrival to the detention center Magnitsky was not given the possibility to take a shower in violation of the requirement to have newly arrived inmates sanitized.
- On July 26, Magnitsky had requested a shower, but got no response.

From July 25 to November 16 2009 Magnitsky was held in the following cells of Butyrka DC -2: 35 , 52, 61, 59, 267, 305, 714, and 708. Magnitsky took notes of the conditions in those cells.

Cell 267 (from July 25 to September 01, 2009). The living space in this cell was 10.8 square meters. There were two other 2 persons together with him during one day. Then, for one day he was alone. After that there were always two people in the cell. The cell had four beds. The cell lacked the cold water tap. On August 4, he requested that a tap be installed. No response. The cells in Butyrka have hot water supply, but hot water is not running, the taps are stopped. In keeping with the Internal Regulations, if there is no hot water in the cells, the administration is required to provide hot water every day for laundering and boiling water for drinking. Cell 267 where Magnitsky was put when transferred to Butyrka had no hot water, no water-heater, and no kettle. Upon arrival, he had his water-heater taken and sent to the store-room. He immediately made a written request to have his water-heater returned from the store-room. He asked for boiling water. He was denied boiling water, and the water-heater was returned only a week later. As a result, for 6 days he had no access to boiled water, which affected his health.

At night the electric mains are disconnected.

On July 26, 2009 during the morning round, Magnitsky handed over to representatives of the Butyrka detention center several written requests, including requests to have his personal items and his water-heater returned from the store-room. In violation of Article 91 of the Internal Regulations approved by the October 14, 2005 Order № 189 of Russian Federation Ministry of Justice, Magnitsky's requests were not accepted, the reason given that requests are not accepted on weekends. His requests were only accepted the next day, on July 27. On July 29, 2009 Magnitsky voiced the complaint that his water-boiler has not been given back to him.

On July 29, during the daily round, Magnitsky made a verbal complaint to the effect that he could not get his water-heater back.

On July 30, suggested that he should write another request about having his water-heater back, because his previous request had been lost. He did not get his water-heater back on that day.

On August 5, Magnitsky asked for hot water supply to be arranged for washing and personal hygiene purposes. The detention center's administration responded by saying that they were not obliged to supply hot water to the cells, and the fact that the other detention centers where Magnitsky had been held were having hot water was a violation of the rules. They invited him to file a complaint against the head of Detention Center since there was hot water there in violation of the rules.

On August 13, Magnitsky filed a written complaint against the outlets being disconnected at night. He never got a response.

On August 31, Magnitsky filed a complaint with the Moscow UFSIN saying that the detention center's administration would not receive suggestions, complaints and statements from accused inmates on a daily basis and that the conditions did not meet the Internal Regulations of the Center. The next day, on September 1, Magnitsky was transferred from Cell 267 to Cell 59, which made his conditions significantly worse. Sergey Magnitsky considered the transfer to be retribution for filing the complaint. D. Komnov, the head of the Detention Center gave a vague explanation: "He was transferred because of psychological incompatibility. It was an operating officer's decision. There was probably some conflict." Magnitsky never said anything about any conflict. If there was a conflict, his lawyers would have certainly known about it.

Cell 59. (From September 1 to 8, 2009). The living space in this cell was 8.2 square meters. There were four beds and four inmates. The minimum 4 square meters per person required by Russian law (Art. 23 of Federal Law №103-FZ) was not met. The sewage needed to be repaired, there was intolerable odor coming out of the toilet. The cell did not have a table and benches with the number of seats corresponding to the number of inmates, only one person could be seated at the table. The cell had no shelf for toiletries, no wall-mounted mirror, no radio, no refrigerator, and no television. The toilet was not partitioned. During Magnitsky's stay in that cell, the inmates would use bed-sheets as a screen not to be seen when using the toilet. The distance between the toilet and the bed is less than one meter. There is a strong sewage smell coming from the toilet, and the inmates have to plug the sewage hole with plastic bottles. The only electrical outlets were located above the toilet, forcing the inmates to boil water for hot drinks in the stench of sewage. The toilet is located immediately adjacent to the wall, the platform above it is small, and it is difficult to use such toilet. The conditions in this cell ought to be considered as degrading to human dignity. In the evening of September 8, raw sewage began to flow up over the toilet bowl. On that same evening, the inmates were moved from to Cell 35.

Cell No. 35. (from September 8 to 10, 2009). Magnitsky was held there for three days. The living room here is 10.1 square meters. There are 6 beds, and there were three inmates in it. The cell windows had no glass in them; the walls of the cell were wet. On Magnitsky's second day in this cell, raw sewage under the toilet began to rise, and by evening sewage water covered half of the cell. The inmates asked that the problem be fixed, the plumber did not come until 10 p.m., and he was not able to fix the problem. The inmates asked to be moved to another cell, but they were left in the cell till morning. The next day, the plumber did not come, and the sewage water continued to flood the entire cell floor. The inmates moved around the cell by walking on beds. The plumber only came in the evening, he was trying to fix the trouble for a long time, but he failed. Both the plumber and the warden who brought the plumber were expressing indignation over the conditions in which the inmates had to live. They were asked to move the inmates to another cell, but those employees were not in a position to decide on their transfer without their superiors' approval. The permission was only received at 11 p.m., after which the inmates were moved to Cell 61. Magnitsky and his fellow inmates had lived in the midst of raw sewage for 35 hours.

Cell No. 61. The living space is 8.2 square meters. There are four beds. Cell №61 lacked not only window glass, but window frames as well. On September 11, Magnitsky made a complaint requesting that window glass and window frames be installed, but got no response. Because of the cold, the inmates had to sleep with their clothes on and cover themselves with jackets. Yet the window frames would not be installed. On September 18, the inmates filed a complaint saying that they had got a cold because of the lack of the windows, and only after that the window frames and glass were installed. By the time the POC members visited the cell, a

television had been installed in Cell 59, and there were 3 inmates there. The space standards were violated, leaving only 2.7 to 2.8 square meters per person.

Cell No. 708. The living space was 8.2 – 8.5 square meters. There are four beds. There is no daylight because the window looks on the exercise yard. There is a further external screen preventing any light from getting in. When members of the POC came to see the cell at 2 p.m., daylight was not penetrating into the cell. The window was dark.

Cell No. 714. The living space is 8.2 square meters. There are four beds. There is no daylight because the window looks on the exercise yard. There is a further external screen preventing any light from getting in. When members of the POC came to see the cell at 2 p.m., daylight was not penetrating into the cell. The window was dark.

On November 12, 2009 Magnitsky S.L. was taken to a pre-trial hearing at Tverskoy District Court, from which he returned to the detention center at 7 p.m. Until midnight, he was kept in the collection chamber, and then he was informed that he was being transferred from Cell 714 to another cell. He requested that the transfer be put off till morning, and that he should not be transferred at night-time, but was refused that. He could only collect his personal items, but was not given time to cook hot meals he had been deprived of the whole day of November 12.

He did not get into Cell 305, where he was transferred, until around 1:30 in the morning, and due to late time and fatigue, he was not able to make hot meals. He was thus deprived of the right to have an 8-hour sleep and deprived of hot meals for over 24 hours.

On November 13, 2009 Magnitsky wrote a complaint to the head of Detention Center 2:

“On November 12, during 24 hours, I was deprived of the possibility to have hot meals and deprived of the 8-hour sleep during the night, which may have caused exacerbation of the pain in the area of the pancreas and a fairly discomforting pain in the area of the liver, which I did not have before, as well as nausea. Therefore, I request a recommendation as to whether I should take some medicine for liver treatment, unless the above described pain stops or if it continues systematically. In addition, I ask you to inform me at last when the ultrasound prescribed for as far back as August is going to be done.”

This complaint was written three days before Magnitsky’s death. Yet the head of the Detention Center 2 persisted in his claim: “Magnitsky never requested a meeting with me, and he never submitted any complaints. Neither did his lawyer.”

We showed him the response of V. Davydov, Head of the Moscow Directorate of the Federal Penitentiary Service, in which he was answering the questions which we addressed to Komnov. And the latter brought us the log for registration of complaints and requests. And the log did not contain records of Magnitsky’s, his lawyers’ or his mother’s requests or complaints. This shows either negligence or, if such records were made, the log was subsequently rewritten. We looked at the log records, and we had the impression that they had been made with the same hand and with the same pen.

Members of the POC have also met with some of Magnitsky’s inmates. Zelenchuk was a witness of Magnitsky’s last hours in Butyrka and told us “Sergey was very much unsettled by the substitution of criminal case documents at the November 12 court session. On November 24, one year in custody was to expire.” Members of the POC had the impression that he did not tell us everything he knew. Kharitonov left a similar impression: “I was in custody together with him for two months. I did not have much contact with him. He wrote a complaint when water flowed from the toilet bowl in Cell 35. Based on his complaint, we were transferred to another cell.” Namazov told us, “I was in custody with him. He was of no interest to me because of age difference. I saw him taking medicine. I did not have much contact with him, because I have a problem of my own”. Kharitonov and Namazov looked very anxious and scared.

Court Hearings

Participation in the court hearings was conducted with severe humiliation under degrading and dangerous conditions.

Magnitsky was brought to the court hearings for the extension of his pre-trial detention on a few occasions.

He described this process in his notes in detail.

Collection cells.

Inmates with court appearances are forced to leave your cell at about 7.00 to 7.30 a.m., i.e. before scheduled breakfast. Then you are detained in the so-called Collection Cell up until 9.00 to 10.00 am. After that the process of delivery to different court locations begins.

The members of the POC examined the Collection Cells, where the suspects being held in groups before dispatched to a different Moscow courts for hearing. The Collection Cell is about 20 to 22 square meters with no windows. There could be up to 70 suspects to be squeezed in such cell, as a result it is very hard for them to find a place to stay in such cell, we are not even mentioning a possibility to seat. A lot of suspects do smoke in the cell and taking into account that there is no air ventilation in this cell. It is very difficult to breathe. Nearly in all such cells there is no separation made between toilet facility and cell itself. In others there is a tap with cold water, but it is impossible to drink such water without boiling it first. Indeed, during the inspection the members noted that the toilets do not equipped even with wash-out mechanisms and the toilets were not separated from the main the cells by drapes for privacy. A temporary curtain was fixed only during out inspection of such cells. We noticed that only during our second inspection visit, although the employees of the detention centre tried to convince us that curtains were in place at all times.

On September 10, 2009, Magnitsky was kept in such cell from 11 am to 7.30 pm without any hot meal to be served or drinking water. He also missed his scheduled time to take a shower. (This day was his scheduled day for taking a shower, which occurred only once a week.) On that particular day he was not delivered anywhere and ultimately returned to his cell.

Transportation.

For transportation purposes the Detention Centers use special transportation vehicles, which are equipped with special compartments for suspects, having size of approximately of 3.2 meters in length, 1.2 meters wide and 1.5 meters in height. Such compartments are designed to accommodate not more than 15 people, however, usually about 17 to 18 people are squeezed in, and as a result some of them have to remain bended in uncomfortable positions for the entire journey. On average a journey to a court hearing takes about an hour, however, on one occasion Magnitsky spent in such position about 4.5 hours in the evening, due to the fact that the vehicle did not go directly from the court to the detention center, but was collecting other suspects from other courts.

Usually the vehicle is returning back to the detention center about at 7 or 7.30 pm, however, the guards are keeping the suspects in the vehicles up until 8 pm justifying this by the fact that they require to complete the documents.

Thereafter, the just-arrived suspects are placed again into the collection cells and kept there for additional 3 to 3.5 hours. Magnitsky never managed to get into his regular cell earlier than 11 pm on his return from court hearings.

Meals.

On such days when suspects are transported to courts they receive dry packed meals, however, it is impossible to utilize them as there is simply no hot boiled water provided in the Tverskoy Court of Moscow in order to mix it with this dry meal. As has been described above all

inmates return back to their cells late at night. Hot supper could not be provided to them due to the night time, as such effectively it might be that a person could be without any hot meal for 38 hours. If the court hearing is continued for a few days in a roll then the interval between hot meals consumption increases even more.

August 13, 2009 Sergey filed a complaint to the Head of the Tverskoy District Court of Moscow in relation to the fact that there was no boiled water provided for hot drinks during the transportation process. No reply received.

September 14, 2009, again there was no boiled water provided during the court hearings on the extension of his detention. During the court hearing Sergey Magnitsky requested Judge Krivoruchko to provide him with a chance to have a hot meal. The judge declined his request justifying it by the fact that it was not part of responsibilities of the court.

We would like to note that the above mentioned are related to all inmates, who are facing the transportation process to the courts. These violations were brought to the attention of the authorities quite a long time ago, however no progress has been made since.

No Interaction with Family

Magnitsky was under more restricted conditions in Butyrka Detention Center if compared to Matrosskaya Tishina, in particular in relation to contact with his family. Russian law provides the right to correspond with relatives and other people. The established instructions and rules impose a direct responsibility of the detention center administration to collect all correspondence from inmates on a daily basis, to check it and further dispatch to ultimate addresses within three days from such collection being made. Instead inmates are required to leave their correspondence on a special box located in the exercise yard, where the administration is supposed to collect such correspondence in time and further dispatch. Magnitsky's letter, which he left on September 9, 2009, was still there on September 15. The letters from the relatives, which were sent within Moscow, were received with 10 or 12-day delays. The letters from other cities from Sergey's relatives were received on the 25th day from the day it was sent.

During the 11 months of Magnitsky's detention he was not provided even with one opportunity to see his mother, wife or other relatives.

It should be pointed out that the prosecutor's office responsible for overseeing adherence of conditions in detention to law did not perform its functions.

- On September 11, 2009, Magnitsky's attorney Dmitry Kharitonov filled complaints with the Russian General Prosecutor Yuri Chaika, the Head of Investigative Committee of the Interior Ministry Anichin and with the Interior Ministry investigator Oleg Silchenko, in which he requested the following:
- To conduct the investigation of the circumstances, which were described in Magnitsky's complain in particular in relation to violations made against him by administration and employees of Butyrka Detention Center, and in this regard to question other inmates who were delivered together with Sergey to the Tverskoy District Court for hearings on August 6, 10 and 18, 2009.
- To conduct an investigation into the multiple transfers of Magnitsky between the detention centers and to explain the legal grounds for such transfers;
- To compel the administration of the detention centers to provide Magnitsky with his lawful rights for which purpose to demand from Detention Center 77/2 and from the Moscow Directorate of the Federal Penitentiary Service the copy of the text of his complaint dated August 31, 2009 and the information of its lodging and forwarding to the addressee.
- To request Detention Center 77/2 to provide the information in relation to the registration in the logs as per the order prescribed by the Internal Rules and Regulations items 92 and 93 of the applications and complaints submitted by the lawyer; the copies of the above complaints and applications; the data regarding the response to them; the data on the medical

examination and treatment measures prescribed to S.L. Magnitsky; the details of the medical inspections available in his personal medical dossier.

THE QUALITY OF MEDICAL ASSISTANCE TO GIVEN TO MAGNITSKY AT MOSCOW DETENTION CENTERS.

In late April of the year 2009 Sergey Magnitsky was transferred from Investigatory Detention Center No. 5 to the Russian Penitentiary Service Detention Center 99/1 (Matrosskaya Tishina). Neither Magnitsky nor his lawyers were informed about the reason of the transfer. According to his lawyers already when he was at Investigatory Detention Center No. 5, Magnitsky felt periodic pains in the area of the left side hypochondrium. In Matrosskaya Tishina the pains persisted and he complained to the doctor.

On July 1, 2009 at Detention Center 99/1 Magnitsky had the ultrasound investigation of the abdominal cavity and was referred to the surgeon. Physician Valery Sholokhov, the medical doctor who performed the ultrasound diagnosed: “acute pancreatitis with underlying calculous cholecystitis.”

On July 13, 2009 Magnitsky was examined by David Galustov, a surgeon from Matrosskaya Tishina hospital.

On November 23, 2009 года when meeting with members of the POC, Galustov said the following about that consultation: “Magnitsky had cholecystitis, pancreatitis. A planned operation was recommended for him. The verification ultrasound, scheduled after one month, to check on the growth of calculi. Based on the results of the second ultrasound, a planned operation could be insisted upon.”

Thus, based on the recommendation of surgeon Galustov, the verification ultrasound for Magnitsky was scheduled for August 1, 2009. Nevertheless, on July 25, 2009, he was transferred to Butyrka Detention Center where it was impossible to do an ultrasound. Members of the POC were not able to find out if Magnitsky’s transfer was agreed with medical doctors of Matrosskaya Tishina. In the absence of a legislative act establishing a clear procedure for inmates’ transfer from detention center to detention center, there is room for abuse and arbitrary actions on the part of detention center administration and investigators with regard to persons under investigation.

The reasoning given by Ivan Prokopenko, Head of Matrosskaya Tishina detention center – that Magnitsky’s transfer was connected with repairs at the Detention Center – is not credible. Prokopenko could not help but know that within a week’s time Magnitsky was to undergo ultrasound. He was, therefore, to be driven back to Matrosskaya Tishina from Butyrka. As one knows from subsequent developments, Magnitsky was never brought for ultrasound, despite his numerous requests and complaints and despite his lawyers’ complaints to various authorities.

The following is the description of the situation with provision of medical assistance to Magnitsky at Butyrka as described by Magnitsky himself.

Upon getting to Butyrka, Magnitsky was not examined by a medical doctor.

On June 26, 2009, Magnitsky submitted a written request to the administration to have an appointment with a doctor. There was no response.

On August 9, Magnitsky requested a meeting with the head of the detention center, noting that the health was in danger. There was no response.

On August 11 Magnitsky wrote a request for an appointment with a doctor, noting that the scheduled time for prescribed medical examination had long passed. There was no appointment with a doctor and no response.

Besides written requests, Magnitsky made verbal requests during paramedics’ rounds (once or twice a week). The response: “Write a request. You did? Then wait.”

On August 14, Magnitsky submitted a request that the medicines prescribed by the medical doctor in Matrosskaya Tishina could be passed from his relatives.

On August 17, Natalya Magnitskaya, Magnitsky's mother, brought the medicines. They were not passed over. After the mother's applying to the administration, it was found out that the medicines had been passed over to another cell by mistake. Natalya Magnitskaya bought the medicines again, and only after that, on September 4, the medicines were passed – 18 days later.

On September 18, 2009, Magnitsky's lawyers applied to Komnov, the head of the detention center. In accordance with the medical doctor's recommendation, a second ultrasound was prescribed to be performed in early August. They requested:

- ensure the performance of the second ultrasound;
- to inform the lawyers about the results of the examination and the prescribed treatment

August 24, "The disease has become so acute that I could no longer lie in bed. At 4 p.m., the fellow-inmate began to kick the door, demanding that I should be taken out to see a doctor. The warden promised to invite a doctor. The fellow-inmate repeatedly demanded an appointment with a doctor. I was taken to a doctor only five hours later. The doctor was dissatisfied. Concerning the complaints and the lack of treatment she said that the medical record said that I had already been treated. To my request to have clinical nutrition prescribed, she said that I needed to get an appointment with a surgeon, and he would resolve the matter."

August 25, Magnitsky wrote a request for an appointment with a surgeon. There was no response.

Clinical nutrition was never provided for Magnitsky.

August 26, as the deputy head of Butyrka Detention Center was making a round of the cells Magnitsky complained that medical assistance is not provided, that the prescribed examination has not been performed. He tried to show the letter indicating the diagnosed disease. He was not given the possibility to do that, receiving the response, "You are delaying us."

August 31, there was another visit. Magnitsky wrote to his lawyer, "A similar round. Another detention center administration official came and took the letter. The head of the medical unit promised to sort out the matter. Concerning the operative therapy he said: "You will have it when you are released. Here, nobody is obliged to provide it to you". And he left." (Cited from Magnitsky's letter to the defense).

- There was no initial medical examination or sanitization performed upon Magnitsky's arrival to Butyrka Detention Center.
- Medical assistance was not initially provided, and the first appointment with a medical doctor was arranged only 30 days after his written request.
- The medical examination (a second ultrasound of the organs of abdominal cavity) prescribed by medical doctors of Matrosskaya Tishina and scheduled for early August was not performed.

During the meeting with the POC members the head of Butyrka Detention Center Dmitriy Komnov said that upon arrival on July 25, 2009, Magnitsky was examined by paramedic Chepylyova. He presented no complaints. He did not complain of heart troubles. Whereas Magnitsky, in his statements, points out that upon his arrival to Butyrka he had no medical examination. One is surprised by paramedic Chepylyova's statement that Magnitsky did not complain of anything during the initial examination. In any case, he was to mention the need to have a second ultrasound.

On August 24, 2009 Magnitsky felt unwell and asked that a medical doctor be called for. According to his statement, he was given medical assistance only five hours later. He was examined by paramedic Khokhlova. She diagnosed intercostal neuralgia. According to Magnitsky's complaint, he told Khokhlova that he wanted to be examined by a doctor. According to Magnitsky, Khokhlova read in his presence an excerpt from his medical record, which said what treatment Magnitsky had been given in Matrosskaya Tishina.

Nevertheless, paramedic Khokhlova never transmitted Magnitsky's request for an appointment to Dr. Larissa Litvinova, the head of the medical ward of Butyrka. It was Larisa Litvinova herself who told this to the POC members. What is surprising is that the medical

personnel of Butyrka do not keep diaries recording the details of provision of medical assistance to inmates.

Members of the POC have met twice with Dr. Litvinova, the head of the therapeutic ward of Butyrka. She told members of the POC that she first saw Magnitsky on October 7, 2009: “During the doctor’s round, he complained of exacerbation of chronic cholecystitis. He had with him a hospital discharge record preceding custody. I read the record and gave it back to him. Magnitsky said that he was having aggravation of osteochondrosis. We placed him in the therapeutic ward.” Magnitsky stayed at the therapeutic ward of SIZO Butyrka from October 7 to November 12, 2009.

Dr. Litvinova told members of the POC that she studied his medical history from his medical record book. She could not but know that he had had ultrasound of abdominal cavity in Matrosskaya Tishina. And during the conversation with members of the POC, Litvinova said that she “did not recall” that a second ultrasound was prescribed for him to be performed after one month.

Members of the POC noted that both Litvinova and Dmitry Kratov, the chief medical officer of the detention center were trying to dodge the question of the second ultrasound. Members of the POC were persistent in their questions, to which Dmitry Kratov responded grudgingly: “An escort is needed to take Magnitsky to Matrosskaya Tishina for ultrasound. And one does not know when the escort is going to be available.”

Dmitry Kratov told members of the POC that Magnitsky had never complained to him during the doctor’s rounds of the lack of medical assistance. This statement is surprising.

According to the text of the notes “On Conditions in Butyrskaya Detention Center,” written by Magnitsky, he spoke with Kratov on September 4, 2009, about having ultrasound, when Kratov brought him the medicines delivered by his relatives, and Kratov said that he had written a report on Magnitsky’s transfer to Matrosskaya Tishina for performing ultrasound. Kratov promised that this can be done not earlier than three weeks later. Kratov gave the same promise to Magnitsky’s mother during their face-to-face meeting.

The question arises why Kratov said nothing to members of the POC that he had written a report on the need for Magnitsky to have ultrasound? Did he actually write such report? Or did Kratov deceive Magnitsky and his mother Natalia Magnitskaya?

Magnitsky’s Treatment in Butyrka

Physician Larisa Litvinova informed POC members that she examined Magnitsky every day from October 7 to November 12, 2009. She said, “He had positive dynamics. During last two weeks in therapy he didn’t complain. He reacted badly to the ongoing court rulings and investigation. He asked me to give him written confirmation that he was hospitalized.”

Physician Litvinova gave Magnitsky the confirmation he was asking for. The text of the confirmation certificate read, “Magnitsky has been treated in hospital with the following diagnosis: gallstones and acute cholecystopancreatitis. His general health conditions are satisfactory. Electro cardiogram – sinusoid rhythm is correct, 66 beats per minute, EOS (electrical axis of heart) is normal, blood pressure – 120/70, pulse 72 beats per minute. Deemed able to participate in court and investigative activity. Deemed able to be held in pre-trial detention.”

The names of the Head of Butyrka Dmitry Komnov and Deputy Head for Medicine Dmitry Kratov are written on this document, but there are neither signatures nor any stamp it. Judge of Tverskoy Court Stashina declined to accept this document for the case, although she had all the opportunities to verify the validity of this information. We should also point out here that this is the same Judge Stashina who at the request of investigators has kept in pre-trial detention Mr. Tkachenko, an inmate to has extremely severe medical conditions and who has suffered four heart attacks. He is accused of economic crime and has spent three years in pre-trial detention and could die at any moment. Only after POC members visited Matrosskaya Tishina

was the detention measure against Mr. Tkachenko was changed and he was released under bail. He remains alive. If the court had made similar decision regarding Magnitsky, he could have stayed alive. We believe that the Supreme Court and the legal community must review the current situation not only with judge Stashina, but also in general with seriously ill detainees. While there is a list of diseases for convicted persons that gives them right for release from prison, there is no similar list for people in pre-trial detention. Without any doubts it is necessary to identify the list of diseases, the presence of which will give enough reason for release suspected and accused people from pre-trial detention and change their detention measures. As it was mentioned above, on November 12, 2009 Magnitsky was discharged from Butyrka's medical center and returned to the cell. Nevertheless, already on November 13, 2009, after questioning by the investigator Magnitsky felt badly and was hospitalized again.

Physician Litvinova told the POC members that she was already absent on the second half of Friday, November 13, 2009. Magnitsky complained about vomiting and severe pain on his right side. He was hospitalized by a medical assistant who informed Litvinova about his medical conditions. According to Litvinova she fully trusts medical assistants who over the weekend (when she was not present) were applying to the same therapy as earlier when he was staying at the hospital as an in-patient.

POC members found this approach of Litvinova questionable. If a person who was released after improvement in his status subsequently shows a deterioration in his medical conditions, does it not mean that requires additional, more qualified medical assistance?

Litvinova claimed to members of POC that "if she believed she would not be able to deal with Magnitsky herself, then she would have hospitalized him."

According to Litvinova at the morning on Monday November 16, 2009, when she examined Magnitsky she spotted that "his stomach is reasonably tensed, acute belting pain, vomiting every three hours." Litvinova decided that his status "required surgical examination, because the gallstone could close the canal." Besides that, as Litvinova admitted to POC members "it was necessary to push for an examination – I thought he had a chronic disease." This statement of Litvinova – "it was necessary to push for an examination" – could not be described as only a slip of tongue. It looks like somebody was preventing Magnitsky's treatment and Litvinova used his worsening conditions to initiate the treatment that was prescribed to him almost four months before.

The ambulance was called at 14:47. Litvinova informed the investigator who came for the next questioning that Magnitsky has acute medical conditions. Members of POC paid attention to the fact that Litvinova's reaction on medical conditions of Magnitsky differed from reaction of Dmitry Kratov. He assured members of POC that emergency doctor didn't consider Magnitsky status hard enough to move him to Matrosskaya Tishina. The conversation he had over the phone with doctors in Matrosskaya Tishina and which he told about to members of POC illustrate this:

Kratov: "I made a call to Matrosskaya Tishina and said to Olga Alexandrovna (doctor of Matrosskaya Tishina, 'We are transporting a patient to you. It would be nice to examine him. Pancreatitis."

Olga Alexandrovna: "Does he have pancreonecrosis? (a lethal condition requiring immediate treatment)

Kratov: "No."

Olga Alexandrovna: "Then why are you transporting him?"

Kratov: "Just acute Pancreatitis."

According to the head of Butyrka Detention Center, the ambulance took away Magnitsky to Matrosskaya Tishina at 17:10.

Dmitry Kratov and Dmitry Komnov insisted on the fact that Magnitsky status was not critical and he "left Butyrka on his own legs."

The POC members expressed the desire to talk to the escort officers who escorted Magnitsky in the ambulance to Matrosskaya Tishina in order to find out what was his condition during the transfer. Komnov said, - 'I will not give you the name of the escorting officer. I don't want him to be killed.' We do not know the reason for Komnov's fears.

Upon reviewing the medical attention given to Magnitsky, we can unequivocally conclude that **the appropriate medical assistance was not provided to Magnitsky in Butyrka Detention Center.**

His requests for visits with doctors were ignored, doctors didn't undertake necessary steps to send Magnitsky to Matrosskaya Tishina for the second ultrasound which was prescribed to Magnitsky and registered in his medical record.

We do not know the reason for such an unprofessional attitude from medical staff to their medical duties. Members of POC who tried to get more details about circumstance of Magnitsky treatment in Butyrka during the second visit failed to talk to therapist Litvinova. Deputy Head of the Moscow Directorate of the Federal Penitentiary Service A. Chzhu took Litvinova away and didn't provide any opportunity for members of POC to speak to her. Furthermore, during their first visit, members of POC were informed that medical assistant Khokhlova is not at her working place, but by accident members of POC met Khokhlova by chance during the course of that visit. Why had members of POC not been provided an opportunity to speak to medical assistant Khokhlova despite the fact that she examined Magnitsky under his request on August 24, 2009?

Why did the head of Butyrka's medical ward, Larisa Litvinova, who described the positive dynamics of Magnitsky disease and who returned him on November 12 back to his cell, was not surprised with the fact that on November 13 he again complained about acute status of his disease? In report which was read to us in Matrosskaya Tishina, it was said that Magnitsky was hospitalized on 16 November due to negative developments in his condition. It is clear even to a non-specialist that the disease progressed quite fast and he should have been hospitalized starting with 13 November when he again asked for medical assistance.

Why was not he moved to Matrosskaya Tishina hospital with the needed ultrasound system and the specialists available on November 14 or 15?

Perhaps the question should be: Did management Butyrka not get permission for Magnitsky's transfer from the investigator? Why did it take so long on November 16 to move Magnitsky to Matrosskaya Tishina? Physician Litvinova identified that he required surgery examination already during the morning round. Did his movement from PTDC to PTDC have to be reconciled with the investigators?

What was the position of investigator Silchenko in this matter In his reply to the request, which was sent to him by the advocates of Sergey Magnitsky in accordance with Article 11 of the Criminal Conduct Code of Russia, requesting him to force the administration of the pre-trial detention ward to "conduct the ultrasound examination of abdominal section of the suspect – Sergey Magnitsky ..." he stated that the request had been considered and that "on August 31, 2009 he issued a full denial to such request ... as the current legislation does not empowered an investigator to control a health condition and treatment of a detained suspect."

Taking into account this whole story which had been lasting for more than 3 months about some sort of barrier which was impossible to overcome in order to provide the scheduled ultrasound investigation Silchenko's statement was the most cynical showing the reluctance of investigator O.F. Silchenko to comply with Article 11 of the Russian Criminal Procedural Code which clearly formulates that: "The courts, prosecution office, investigator or operating officer must provide all required explanations to a suspected person and/or an accused person, and /or a victim or any other civil claimant or defendant, or any other participants in the criminal court proceeding their lawful rights, responsibilities and provide them with ability to utilize their rights."

In this case investigator O.F. Silchenko did not want to provide [Sergey Magnitsky] with ability to utilize [his] rights.” Why?

In addition, another provision of the law was ignored by him, the provisions of Article 122 of the Russian Criminal Procedural Code, which requires an investigator to convey his reply to the knowledge of the suspect. Bodies conducting preliminary investigations are required to provide a copy of their reply or statement to a claimant or establish a time for the claimant to be acquainted with such reply or statement, for the purposes of the latter to consider the lawfulness of such reply or statement and to have the opportunity to challenge it in the court in accordance with the current legislation. Not a single copy was provided by the investigator to the advocates. Therefore, provisions of Articles 7 and 11 of the Criminal Procedural Code were abolished by the investigator, which further caused breach of the right for an appeal. The actions of Investigator Silchenko evidence either his negligence or a deliberate intent to conceal the motivation of his refusal to provide a medical examination, which was requested in the appropriate complaint by Magnitsky on August 31, 2009.

On September 15, 2009 Magnitsky’s lawyer, Kharitonov, filed a complaint requesting to inform the defense with the issued denial in response to the filled complaint of August 31, 2009.

On September 23, 2009, Kharitonov filed a complaint with the Federal Directorate of the Penitentiary Service (UFSIN).

The conclusion that can be made from the situation analysis can be summarized as follows: the actions of medical staff at detention center was not just negligence, it was not just ‘non-provision of medical care.’ These actions raise the question of the violation of his right to life.

THE LAST DAY OF SERGEY MAGNITSKY

According to Butyrka physician Dr. Litvinova, Magnitsky had acute pancreatitis pains that started on Friday, November 13, when the doctor had already left for the weekend. The patient suffered from nausea and pains in the right part of the adnominal area. However, the “seasoned medical staff” (in her words) arranged for proper treatment over the weekend: “they placed the patient in a medical room and gave him some anti-spasm medication. They were ready to call an emergency if needed.”

Dr. Litvinova saw Magnitsky on Monday morning, during the regular survey of the patients. He was very stressed and agitated and she understood that it was a “psycho-emotional stress.” According to her, Magnitsky usually had such acute pains when emotionally stressed although this time he said he had eaten some fish, thus violating the diet.

When the doctor examined Sergey Magnitsky’s abdomen she found it very tense which she thought was a symptom of the acute pancreatitis pains. She decided to move the patient to the hospital located at Matrosskaya Tishina detention center to conduct an additional ultrasound and to perform a possible surgery.

The ambulance was called, but sources differ on the exact timing: Litvinova said it arrived at 2pm while Olga Grigorieva from the Medical Division of the Moscow Department of the Federal Penitentiary Service indicated 2:47 p.m.

It is not clear when the ambulance arrived at Butyrka Detention Center but, according to the head of Butyrka, Dmitry Komnov, it left “in the direction of Matrosskaya Tishina” at 5:10 p.m. So, more than 5 hours passed between the moment when the decision to send Magnitsky to the hospital was taken and the time of actually transporting him to the hospital.

Apparently, all that time was spent on all sorts of consultations involving the investigator, the Moscow department of the Federal Penitentiary Service and the administration of Butyrka and Matrosskaya Tishina Detention Centers.

In particular, we have an account of the discussion between the medical director of Butyrka, Dr Kratov, with Alexandrovna at Matrosskaya Tishina. Dr. Kratov told us: “I didn’t see the patient myself. I spoke with the ER doctor. She said that the patient’s condition was not that

bad to require the transfer to Matrosskaya Tishina. But I called Olga Alexandrovna at Matrosskaya Tishina and told her that we were going to deliver to their hospital a patient with pancreatitis. I said it would be good to examine him. Olga Alexandrovna asked if the patient had pancreonecrosis. I said, no. “Why then are you bringing him to us?” she asked.

Dr Litvinova from Butyrka also referred to the opinion of the ER doctor: “The ER doctor looked at the abdomen and confirmed my diagnosis.”

However, this ER doctor disappeared and it was some “young nurse” who brought Magnitsky to Matrosskaya Tishina. This is known from the surgeon Alexandra Gauss from Matrosskaya Tishina. She said that, “In Detention Center No. 2 the document regarding the transfer of Magnitsky was delivered to her by a “young nurse.” Dr Gauss interpreted this fact as a sign that the patient’s illness was not dangerous. “Otherwise he would have been accompanied by the doctor”, she said.

This young nurse was also mentioned by those who recounted what happened to Sergey Magnitsky in the ambulance. This girl was said to be sitting next to the driver while the patient was sitting next to the guard so the nurse and the patient didn’t see each other. The commission failed to get any details on the ambulance crew or the guards from the officers of the detention center. When asked if it would be possible to talk to the guards, the head of Butyrka, Mr. Komnov replied, “No, he can be killed for that.”

Therefore, Magnitsky left Butyrka at 5:10 p.m. The commission members watched the video tape showing his exit from the detention center. The tape showed a man in a light jacket going down the corridor accompanied by two other men. Magnitsky was holding 2 bags and 2 plastic bags. The two men accompanied him to the door. According to Komnov, they are not allowed to go beyond that point as they are the service staff of the detention center. Then the tape shows Magnitsky’s profile. He bends down to pick his bags. Then the camera shows him from above. However, Magnitsky’s relatives have not seen this tape yet, so it not possible to confirm at the moment that the man on the tape is actually Magnitsky.

What happened to Sergey Magnitsky in Matrosskaya Tishina?

There is no video tape that would show how Magnitsky arrived at Matrosskaya Tishina.

The head of Matrosskaya Tishina Detention Center, Fikret Taguev recounts the last hours of Sergey Magnitsky the following way:

“He was brought to the detention center at 6:30pm. He walked in by himself, holding his bags. He was in a normal condition. He was brought to the nurse on duty. The nurse called for the surgeon, Dr Gauss. The patient started “to play”, which means he went hysterical. He asked “Why have you brought me here?” Then he started to threaten. He didn’t want to leave the nurse’s room. The staff on duty “pacified” and handcuffed him. They called a psychiatric doctor and put Magnitsky into the single 15 square meter room where he “awaited” the arrival of the doctor. However, the psychiatrists did not enter that room as the patient felt badly by the time they arrived. His heart stopped beating at 9:50pm after the reanimation attempts which were carried out by the nurse named Sasha who was later joined by doctors.

Tagiyev showed to the commission members the following abstract from the medical records:

November 16, 2009

6:30 p.m. Review by the doctor on duty. Diagnosis: Acute Cholecystitis and Pancreatitis. Hospitalized to the surgery department. For dynamic monitoring and treatment.

7:00 p.m. The patient behaves inadequately. Talks to a “voice,” looks disorientated, and shouts that someone wants to kill him. He condition is diagnosed as psychosis. The emergency doctor was called (order No. 904253). There are no body damages apart from traces of handcuffs on the wrists. It was planned to make an anti-spasm therapy prior to the arrival of the psychiatrist but such therapy was not possible due to the aggressive behavior of the patient.

9:15 p.m. The patient was surveyed again as his condition deteriorated. When the psychiatrist was examining the patient the latter's condition deteriorated sharply. He lost conscience. The reanimation procedure was started (indirect heart massage and ventilation of lungs using the Ambu pillow). The patient was transferred to the special room where he was received an artificial ventilation of lungs and a hormones injection. Reanimation procedure lasted 30 minutes. At 9:50pm the patient died.

The body was transferred to morgue No. 11. The preliminary diagnosis is cardiomiopathy – an acute cardiac deficiency. Gallbladder and pancreas are in a perfect condition.” This diagnosis stemmed from an indentified source as the result of the official autopsy was not known yet. As Tagiyev learnt from a colleague who participated in the autopsy, it turned out that Magnitsky had an abnormally large heart, twice larger than normal. One has to search for the cause of his death in the four days following the November 12 court decision that rejected his request to release him from the jail.

Here's the version of surgeon Alexandra Gauss:

She saw Magnitsky in the nurse's cabinet. He was accompanied by the guard from Butyrka and he was already in a special isolation cell.

As it was mentioned earlier, the transfer documents were delivered by the young nurse from the ambulance. Magnitsky said that he had been sick since Thursday, November 12 when he started feeling abdominal pains.

During the survey, his abdomen was tense; he felt pains in both the left and right parts of the area which is an obvious symptom of pancreatitis. In the medical records, she read about a prescription to undergo a repeat ultrasound examination. During the survey, Magnitsky had twice a desire to vomit (with no actual vomiting), and she gave him a hygienic bag. Initially, he was calm, agreed to a hospitalization and signed on the medical records.

At 7 p.m. suddenly he started to behave anxiously, started to talk: “Why are you inspecting my bags?” He had three bags and two plastic bags. She replied to him “Nobody is inspecting your bags.” He: “No, you see that they are being inspected now!” and seized the bench that was in the isolation cell where he was during the questioning. (Afterwards we observed this isolation cell, and it was apparent that it would be hard to swing the bench inside the cell due to the cell's small size.) He then sat down and covered himself with a plastic bag and said that they want to kill him. It continued for a short period of time and he hit twice the floor with the cot, then put it back and scared and started to hide behind the plastic bag again, which she gave to him. According to her opinion it looked like acute psychosis and delirium of persecution. That is why they called for psychiatric emergency.

When asked whether his hands were damaged, she replied that there were signs of handcuffs and it was reflected in medical card. When asked how the psychiatric emergency was called, what her own actions were, she said that called for enforcement DPNSI (Fedorovich) who came with approximately eight people. They put handcuffs on Magnitsky's hands. He didn't oppose them, but stayed in handcuffs, looked inadequate and gazed round. After handcuffs she ordered to make him injection in order diminish pain in stomach.

Medical assistant Sasha made injection under her prescription. Injection was made in her absence, she left entrance department and came to surgery. She didn't see psychiatrists.

At 21:20 a female voice called from entrance department and informed that a patient is on the floor in the fourth isolation cell. Medical conditions are questionable.

The doctor on duty, Nafikov, ran in to perform resuscitation procedures. The medical assistant Sasha was conducting resuscitation procedures with the help of special equipment (cushion of Ambu). There were no handcuffs on Magnitsky's hands. At 21:50 heart stopped.

Testimony of DPNSI Officer Dmitry Markov (Fyodorych) who was pacifying Magnitsky:

Markov was accompanied by his deputy, Lieutenant Kuznetsov. When we asked him whether Magnitsky's hands were blue (as it was known from Magnitsky's mother, she found that his hands were damaged), he replied that he saw only signs of handcuffs. He was brought to Matrosskaya Tishina in handcuffs. He came to the entrance department himself. Thirty minutes after fit of psychosis already in the isolation cell, the handcuffs were taken off him, he was normal. Psychiatric emergence came to the room and during the examination he felt bad, he was sitting on the floor, he had obvious difficulty breathing and he was sweating.

Medical attendant Alexander Alexandrovitch Semenov (Sasha), in the presence of Head of Medical Department of Matrosskaya Tishina Ibatulina and Head of SIZO Matrosskaya Tishina Tagiyev said that **he made injection before psychosis**. He made an anti-spasm injection and left the room. Returned back during the psychosis, heard that Magnitsky shouted "Where is my stuff?" Psychosis started at 7 p.m.

Psychiatric emergency was called for examination at 7.30 p.m. Emergency team arrived at 8.48 p.m. When emergency doctors entered to the special cell, Sergey was sitting on the cot, felt very badly with his eyes unfocused. At the time from 7.30 p.m. up until the arrival of the Emergency team, he was left unattended without medical support. The supervision was conducted by the guard on duty through the little box in the cell door. The guard also uncuffed Sergey. Unfortunately we have not received any answer to our question: whether it is a normal behavior to leave the patient unattended without any medical supervision, due to the fact that medical superiors did not allow medical assistant Sasha to speak. Sasha was looked scared.

To our question what he thinks about all of this, he replied that it is a typical event: psychosis and death.

Our conversation with Dr. Vitaly Vladimirovich Karnilov, the psychiatrist from the emergency ward (over the telephone) helped to understand more in details:

The ambulance arrived to the Matrosskaya Tishina Detention Center at 8 p.m., and not at 8.48 p.m. as it was reported earlier by the administration, however, the doctors were not allowed to go through to see the patient, as such they were waiting for an hour. Dr Karnilov further added: "Being the doctors from the Emergency Services, we were waiting in case our help in providing reanimation actions would be requested. Finally we were called upon. We entered into the cell. The patient was lying on the floor lifeless and we concluded that he had already died. There were a number of medical personal there. Then a male doctor came in. I do not recall seeing any female doctor there."

Many statements hardly match. The emergency ambulance doctor appears to be 'missing,' the stories by Dr Gauss and Medical Assistant Sasha about the timing of injection before or after he allegedly developed symptoms of psychosis contradict each other. Statements by various people are conflicting about every detail of the timing of events, his behavior during the psychotic episode, and everything that happened to him after placing him in isolation ward

There is no plausible explanations could be given to these, as all these people have been questioned on a number of occasions now by the investigators.

The Head of Matrosskaya Tishina insisted on the heart failure being the cause of death, as was presented by the investigators, saying that pancreatitis is not the correct diagnosis, that everything was conducted in correct manner, in particular initial transfer of Magnitsky to Butyrka Detention Center, further supporting himself that Magnitsky was not required any medical treatment. He also added that possibly Magnitsky was under deep stress, when the court on November 12, 2009 extended his pre-trial detention and that fact could provoke his death, saying that the heart is unpredictable and this could happen with anyone.

The inflamed stomach and echocardiogram heart examination conducted shortly prior to Magnitsky's death do not support this version. As for his psychosis – based on Sergey saying that someone wants to murder him – it could have been an appropriate response to what was happening to him. In addition, he was demanding his personal belongings to be returned (and indeed his notes were gone missing), which further explains how his reaction was indeed adequate to the surrounding reality at that time.

The reaction and behavior of Dr Gauss raises more questions. Why did she leave Magnitsky unattended in this special cell in a critical medical condition without any medical support? Dr Gauss mentioned that Magnitsky was attempting to vomit repeatedly, which clearly confirms worsening of the pancreatitis. Also she mentioned that Magnitsky's psychosis was short and he came down quite quickly. Why he then was not transferred immediately to the surgery unit?

Based on the witness statements provided by the medical personal of the Matrosskaya Tishina Detention Center, the members of the POC could not come to a conclusion as to what really happened with Magnitsky when he arrived there. One thing is clear to us: the reports by doctors contradict each other. It is obvious that they are deliberately concealing the truth. Indeed, there is no assurance that Magnitsky was indeed experiencing psychosis, which prevented him being transferred to the surgery unit.

The main conclusion that can be made is that no medical help was provided to Sergey Magnitsky in Matrosskaya Tishina Detention Center when it was urgently required and for which purpose he had been transferred from Butyrka Detention Center.

An ill person in severe condition was effectively left without medical attention (for 1 hour 18 minutes) to die in an isolation ward.

FINAL CONCLUSIONS

A man who is kept in a detention center is not capable of using all the necessary means to protect either his life or his health. This is a responsibility of a state which holds him captive. Therefore, the case of Sergey Magnitsky can be described as a breach of the right to live. The members of the of the civic supervisory commission, have reached the conclusion that Magnitsky had been experiencing both psychological and physical pressure in a detention center, and the conditions in some of the wards of Butyrka can be justifiably called torturous. The people responsible for this must be punished.

The reform of the penitentiary system, when it was split out of the Interior Ministry and transferred to the Ministry of Justice, was aimed at the separation of the latter from the inquest. The prosecution must be independent from the detention. It must keep detainees and convicts in the respective institutions following the conditions set out by the law and not by inquest's attitude to them. The interference of the inquest in determining the conditions for the convicts and accused ones is not acceptable. Nevertheless, this happens quite often. It is an offense against the law. The members of the Public Oversight Commission believe that it is necessary to find out the role of the investigators in creating conditions and subjecting Magnitsky to them in detention, and the degree of their responsibility.

Magnitsky's situation highlighted the fact that the doctors of the investigative isolation ward failed to fulfill their responsibilities. We believe that this is due to their dependence on the administration of the penitentiary system's institutions. The health care in the above-mentioned institutions must not be a part of the prosecution authority, it must be independent.

It is necessary to set out the legal framework of transfers of the detainees from one detention center to another, clearly define the rules of the transfer from one isolation ward to another, the responsibility for the unlawful worsening of jail conditions. We must prevent what happened to Sergey Magnitsky from happening again.

We must provide the solution to the long overdue question of choosing the right punitive measures for the accused in custody, especially for ones accused in economic crimes. We must use alternative measures of restraint; we do have them.

We must define by law under which conditions an accused person must not be placed in the isolation ward, when he or she must be set free, when the alternative measures of restraint must be used. Courts, while deciding on the measures of restraint, must take into consideration the health conditions of the accused.

We must put the Russian normative acts in accordance with the European penitentiary rules. This discrepancy was a precise reason for the complaints of Magnitsky regarding the conditions under which detainees are kept in the isolation wards, limitations of the shower use, the failure to provide the necessary medical help, isolation from the communication with the family and public members and others.

The participation in the court hearings is accompanied by the cruel and disgraceful conditions which disgraces a human life. This includes the preparation procedures of transportation to court and the transportation itself, and the conditions in court, including deprivation of hot meals. This is an old and general problem, but the one which is not at all solved.

V. Borschev, Chairman of the Public Oversight Committee, Moscow

L. Volkova, Deputy Chairman of the Public Oversight Committee, Moscow

T. Flerova, Secretary of the Public Oversight Committee, Moscow

L. Alpern, Member of the Public Oversight Committee, Moscow

L. Dubikova, Member of the Public Oversight Committee, Moscow

Z. Svetova, Member of the Public Oversight Committee, Moscow

REPORT
OF THE NATIONAL ANTI-CORRUPTION COMMITTEE ON ANALYSIS OF THE
CAUSE-AND-EFFECT RELATIONS LED TO S.L. MAGNITSKY'S DEATH
IN THE PRE-TRIAL DETENTION CENTER

The working group was appointed for the purpose of analyzing the circumstances that led to the death of S.L. Magnitsky and for finding the existence or absence of the signs of the personal interest of the officials involved in investigation of the criminal case initiated against S.L. Magnitsky, in criminal prosecution against him, creating the unbearable conditions of holding him in custody in the pre-trial detention center and violation of his rights. The work of the group was based on the analysis of the materials available in free access, conversations with the persons possessing the information on this case and sending inquiries to law enforcement authorities and investigation authorities.

In the course of its work, the group assumed that for the purposes of the analysis it is necessary to study in full and closely the materials and facts on the three cases which are related to each other and to the "Magnitsky Case" interpreted in the broad sense:

1. The case on tax evasion against Hermitage company under which S.L. Magnitsky was placed in custody.

2. The case on the illegal refund of 5.4 billion rubles on which S.L. Magnitsky made statements.

3. The case on the death of S.L. Magnitsky in the pre-trial detention center on November 16, 2009.

All these cases that are being investigated by various authorities (Investigation Committee of the Ministry of Internal Affairs, Investigation Committee of RF) and are in the different phases of investigation, and some of them are discontinued or completed, are surely directly related to each other. Assuming that formally they relate to totally different events and deal with totally different event lines, the same persons appear in them and the decisions made as part of the investigation of one case directly deal with the events related to other cases. On the basis of that, the group inspected the materials of these cases and series of the events related to them as full dependency and drew its conclusions by weighing the actual actions of certain officials between 2007 and 2011.

As part of these activities the working group has ascertained as follows:

On July 4, 2007, police lieutenant colonel Artyom Kuznetsov, Officer of Tax Crime Subdivision within the Main Department of Internal Affairs (MDIA) in Moscow, conducted the search in the Moscow Office of Hermitage Fund, as a result of which the seals and original copies of the constituent documents of the Russian companies Riland, Parfenion and Makhaon (owned by Hermitage Fund) were confiscated. The search was conducted as part of the criminal case initiated on the fact of tax evasion by LLC Kameya. All confiscated documents were kept in custody of major Pavel Karpov, Investigator of the Main Investigation Department within MDIA in Moscow.¹

During the period between August and October of 2007 the three above mentioned Russian companies were owned by LLC Pluton (Kazan) registered in the name of Viktor Markelov². The copies of the documents confiscated in the course of the search on July 4, 2007 were used in re-registration of the constituent documents of Riland, Parfenion and Makhaon which is confirmed with the existence in these documents of the same mistakes and typing errors

¹ Later the Ministry of Finance of RF confirmed the absence of tax claims to LLC Cameya, moreover, the company overpaid 4 million rubles of taxes.

² Previously Viktor Markelov was convicted for murder.

which had existed in the confiscated constituent documents. In October-November 2007, the arbitration courts in Moscow, Kazan and Saint Petersburg initiated proceedings on six claims to the total amount of USD 1.26 billion against Riland, Parfenion and Makhaon. It was stated in the agreements which formed the basis of the claims that in 2005 they had agreed to sell the shares of OJSC Gazprom but then cancelled those agreements without compensation for the lost profit. All claims were filed on behalf of the person who had lost his passport.

The interests of Riland, Parfenion and Makhaon were represented in various courts by the same lawyers (attorneys Pavlov, Mayorova and Maltseva). Also they represented the interests of the plaintiff and this fact directly proves the existence of the common intent. The arbitration courts in Moscow, Kazan and Saint Petersburg passed the judgements in favour of the fraudsters for USD 974 million (23.3 billion rubles). The analysis of the plaintiff's claims showed that they fully coincide with the profit of Riland, Parfenion and Makhaon for 2006, these companies paid taxes on this profit to the budget of Russia, i.e. the disputed obligations brought the realized profit to zero. Following the results of 2006, these companies paid taxes to the amount of USD 230 million.

In the middle of September 2007 Riland, Parfenion and Makhaon were re-registered from Inspectorates of the Federal Tax Service (IFTS) No. 10 and No. 15 of Moscow to IFTS No. 25 and No. 28 of Moscow which in December 2007 on the grounds of the above mentioned judgements of the arbitration courts transferred 5.4 billion rubles from the budget of Russia to the accounts of the new owner of the companies in the Universal Savings Bank.

It was ascertained in the course of analysis of the materials related to this case that a few years before the mentioned events Viktor Markelov in whose name Riland, Parfenion and Makhaon Companies had been re-registered and A. Kuznetsov, Officer of MDIA in Moscow, who performed operating follow-up of the case on tax non-payment, were conspirators in the case on kidnapping.³

S.L. Magnitsky, who was an attorney-auditor of Firestone Duncan, the auditor of Hermitage Fund, discovered the illegal re-registration of Hermitage Fund companies in October 2007. On the basis of this information, on December 3 and 11, 2007 the lawyers of Hermitage Fund and representatives of its trust manager HSBC Bank filed petitions to the name of Chayka, Prosecutor General of RF, Bastrykin, Director of Investigation Committee within Prosecutor's Office of RF (ICPO), and Draguntsov, Head of Internal Security Department of the Ministry of Internal Affairs of RF. These petitions pointed to the fact of theft of Riland, Parfenion and Makhaon and to the signs of the imminent crime on the illegal refund of 5.4 billion rubles of tax receipts. These petitions had not been investigated properly and illegal repayment of the funds took place 3 weeks after their filing. Investigation on the petitions from Hermitage Fund was initiated only on February 5, 2008 when all funds had already been stolen.

On June 5, 2008 S.L. Magnitsky testified as a witness as part of the criminal case initiated on complaint from Hermitage Fund on the stolen companies. At that time S.L. Magnitsky found out that the same lieutenant colonel Kuznetsov who had been involved in the events resulted in re-registration of Riland, Parfenion and Makhaon and illegal refund of tax receipts which was mentioned in the petition of Hermitage Fund dated December 3, 2007, was engaged to investigation of this criminal case.

On October 7, 2008 S.L. Magnitsky testified as a witness on involvement of officers of MDIA in Moscow, in particular, in respect of Kuznetsov and Karpov, in the theft of 5.4 billion rubles from the budget of Russia.

On November 12, 2008 Logunov, Deputy Director of Investigation Committee of the Ministry of Internal Affairs of Russia, appointed an investigating group and engaged A. Kuznetsov to work in it, i.e. the person in respect of which S.L. Magnitsky testified on fraud. O.F. Silchenko, Investigator of IC of MIA of Russia, was appointed by Logunov as the head of the investigating group and he was and is the direct subordinate to N.V. Vinogradova, Deputy Head of Department of IC of MIA of Russia. Also officers from "K" Department within the

³ The case is stored in the archives of the Presnensky Court of Moscow.

Economic Security Department of the Federal Security Service of Russia were engaged to the operating follow-up of the investigation.

On November 24, 2008 S.L. Magnitsky was placed in custody on the grounds of the report from the officer from "K" Department of the Federal Security Service of Russia. The unbearable living conditions were created for him in the pre-trial detention center and he was denied the medical treatment there. After that investigator Silchenko, following the instructions from his superior Vinogradova, has not allowed S.L. Magnitsky to see his relatives for eleven months, as well as rejected the petitions on provision of the detainee with the required medications.

The charges brought against S.L. Magnitsky resulting in his arrest were based on the information about his involvement in tax non-payment by two companies of his client in 2001. These allegations were not based on the actual facts since the tax authorities presented no claims against the said companies, the term for presentation of such claims expired in 2004 and S.L. Magnitsky had nothing to do with the activities of those companies and their tax accounting in 2001, he was neither the founder, director nor accountant of those companies.

In the petitions to the General Prosecutor's Office of RF and the court submitted three months after the arrest (on February 25, March 6 and March 23, 2009), S.L. Magnitsky and his attorneys appealed against his unlawful transfer to the temporary detention facility performed by Silchenko, investigator of IC of MIA, secretly from the attorneys and relatives. The appeals were dismissed both by the court and prosecutor's office.

On May 18, 2009 the Court Collegium of the Moscow City Court comprising judges Markov, Andreeva and Sharapova refused to cancel the sanction for arrest of Magnitsky despite the facts of the aggravating health of Magnitsky and unbearable conditions in the detention facility mentioned by the attorneys. The said appeal of Magnitsky's attorneys was dismissed.

On September 11, 2009 in the petition to the name of Yu.Ya. Chayka, Prosecutor General of Russia, and Anichin, Deputy Minister of Internal Affairs, S.L. Magnitsky's attorneys stated that this criminal case was investigated with the numerous violations of law and demanded disqualification of the investigators who committed violation of law.

In the course of the court session on September 14, 2009, S.L. Magnitsky stated before Krivoruchko, Judge, Burov, Prosecutor, and O.F. Silchenko, investigator, that the investigators do not have any evidence of his involvement in the crime he was being accused of. He asked to attach a number of complaints on the unbearable conditions of detention to the materials of the case. Judge Krivoruchko denied Magnitsky in consideration of these and his other complaints at the court session and extended the term of his detention for more than 11 months.

At the court session on October 6, 2009 on consideration of the appeal against his unlawful prosecution by the interested investigators, S.L. Magnitsky stated: the charges were framed up and criminal prosecution was conducted only for the purpose of keeping him as a hostage so that I could not help my clients.

On October 13, 2009 S.L. Magnitsky wrote an appeal and gave testimony in which he stated the unlawful nature of the criminal prosecution of him conducted by Silchenko, investigator of IC of MIA, and that the criminal prosecution which is being conducted in respect of him was intended to punish him for the assistance which he rendered to his client with regard to investigation of the circumstances of stealing Riland, Parfenion and Makhaon owned by his client. S.L. Magnitsky stated once again that in the course of his own investigation he found out about possible involvement of officers of MIA of RF in the theft, as well as that later the stolen companies were used by the violators for theft from the State treasury of the sum of taxes in the amount of 5.4 billion rubles earlier paid by the companies at the time when they were controlled by his client. In his appeals S.L. Magnitsky stated that he was put under pressure for the purpose of forcing him to renounce the given testimony.

For the period of staying in detention S. Magnitsky sent more than 300 petitions and appeals against acts of the police officers, but they were left without consideration or dismissed. Thus, on August 31, 2009 O. Silchenko drew up, by order of N. Vinogradova, the resolution on

refusal to satisfy Magnitsky's petition on the state of health because "the effective laws do not charge an investigator with the duty to monitor the state of health of suspects and accused persons placed in custody".

On November 16, 2009 Sergey Magnitsky who was 37 years old died in the pre-trial detention center where he spent twelve months at the phase of preliminary investigation.

After the death of S.L. Magnitsky his relatives filed petitions on initiation of a criminal case against the officials and, in particular, officers of law enforcement authorities liable for his unlawful arrest. As it follows from the initial refusal to initiate the criminal case on this petition dated June 21, 2010 signed by investigator Trikul, the inspection performed by the General Prosecutor's Office was completed back in April 2010 and no violations of law in the prosecution of S.L. Magnitsky were found, and investigator himself found no signs of the crime in the acts of the interrogated officers of MIA (Silchenko, Oleynik, Kuznetsov and Tolchinsky) who totally denied their guilt. On June 30, 2010 the decision on refusal to initiate the criminal case against the officers of MIA was cancelled and the petition was referred to additional inspection.

The criminal case which is currently being processed in respect of Magnitsky's death was initiated on November 24, 2009. It came out from the "results" of that investigation announced by Bastrykin, Director of ICPO of RF, on September 7, 2010 that the ICPO investigators found no evidence of the guilt of the officials and, moreover, they could not find any complaints from Magnitsky on non-providing medical treatment for him and putting him under pressure.

The officials involved in the investigation of the case against S.L. Magnitsky and accused by him for possible involvement in the illegal re-registration of Riland, Parfenion and Makhaon and illegal refund of 5.4 billion rubles of tax receipts which was made after that, were promoted. (Kuznetsov and Karpov were transferred from MDIA in Moscow to MIA of RF, Silchenko was promoted to lieutenant colonel, Urzhumtsev, officer of Kazan Department of Internal Affairs, was transferred to IC of MIA of RF, Logunov, Deputy Director of IC of MIA, was appointed as Head of the Legal Department of the General Prosecutor's Office.

The criminal case on stealing the Hermitage Fund companies was initiated by ICPO of RF on February 5, 2008 (based on the Fund's petition dated December 3, 2007). Having obtained the testimony from S.L. Magnitsky on involvement of the officers of MIA, including Kuznetsov and Karpov, in the theft, Gordievsky, Investigator in South Administrative District of Investigation Department within ICPO in Moscow, who was investigating the case, at first engaged Kuznetsov to the group of operating follow-up of the investigation and then released those officers of MIA, as well as Viktor Markelov, from criminal prosecution and dismissed the criminal case on October 20, 2008.

Later, IC of MIA of RF initiated a criminal case on investigation of the theft of the budget funds which was investigated by the same officers of MIA and IC of MIA Logunov, Silchenko, Kuznetsov, Tolchinsky, Krechetov, Drozanov (the persons whose possible involvement in the illegal re-registration of Riland, Parfenion and Makhaon and illegal refund of 5.4 billion rubles of tax receipts made after that was stated by S.L. Magnitsky). Only Viktor Markelov was held liable on this case on the illegal refund of 5.4 billion rubles of tax receipts, the tax authorities were qualified as "the party affected" and Markelov's crime associates – "as those not aware of the implication of their acts". IC of MIA keeps investigating this case. In September 2010, the officials of IC of MIA announced the information about identification of the new suspects in this case and S.L. Magnitsky himself was qualified as one of the associates in committing this crime.

Conclusions:

1. The case against S.L. Magnitsky was investigated by the same officers of MIA and IC of MIA against whom Hermitage Fund and S.L. Magnitsky himself brought charges of involvement in the illegal re-registration of Riland, Parfenion and Makhaon and illegal refund

of 5.4 billion rubles of tax receipts which was made after that. Engagement of the officers of MIA and IC of MIA Kuznetsov, Karpov, Tolchinsky, Krechetov, Drozanov in the investigation of the case against S.L. Magnitsky set up a situation of the obvious conflict of interest. This situation was not identified and corrected. The petitions filed by S.L. Magnitsky on disqualification of the interested members of the investigating group were dismissed by investigator Silchenko and senior officials of IC of MIA. The fact of non-identification and non-correction of the conflict situation shows either the negligence or personal interest of the persons involved. Despite the obvious conflict of interest, those officers of MIA were members of the investigating group on the case initiated against S.L. Magnitsky.

2. In order to substantiate the placement of S.L. Magnitsky in custody and prolongation of his detention in the pre-trial detention center, the materials signed by officers of MIA Tolchinsky, Krechetov and Drozanov, in respect of whom S.L. Magnitsky gave testimony about their possible involvement in the illegal re-registration of Riland, Parfenion and Makhaon and illegal refund of 5.4 billion rubles of tax receipts which was made after that, were used. When passing the judgement on arrest and prolongation of detention in custody, the court ignored the fact that those documents had been submitted by the interested persons. The arrest and detention of Magnitsky in custody were sanctioned by Podoprigrorov, Krivoruchko, Ukhnaev and Stashina, Judges of the Tverskoy Court of Moscow.

3. As of June 2011, IC of RF keeps investigating the circumstances that led to S.L. Magnitsky's death. The working group forwarded petitions on the necessity to consider the materials pointing to possible personal interest of the officials, involved in the investigation of the case against S.L. Magnitsky, in holding him in custody and creating the unbearable conditions of his detention, to the investigators. Also the materials pointing to the situation of the conflict of interest which existed in respect of a number of the officials involved in the investigation of the case against S.L. Magnitsky were forwarded to the investigators. These petitions were attached to the case by the investigator of IC of RF and procedural acts are performed in respect thereof.

4. At the same time, at this stage, the investigators and supervisory authorities have not made a legal evaluation of the acts of the investigators from the Main Investigation Department within MDIA in Moscow and IC of MIA of Russia who investigated the criminal case against Magnitsky and the role of the operating officers of MDIA in Moscow and officers from "K" Department within the Economic Security Department of the Federal Security Service of Russia who were engaged in the operating follow-up on this criminal case has not been assessed. The working group registers the facts of sabotage in the investigation and interference with the investigation on the part of the officials involved in the investigation of the case on the illegal re-registration of Riland, Parfenion and Makhaon and illegal refund of 5.4 billion rubles of tax receipts which was made after that. Also the facts of the interdepartmental resistance to this investigation were registered.

5. As of June 2011, the facts stated in the materials of the independent investigations conducted both by the representatives and attorneys of Hermitage Capital Company and expert councils, are not verified yet, though these materials contain the information indicating the direct law violations and personal material interest both of the officers of law enforcement authorities and members of the community of judges. The statements on the sudden and substantial increase, in the period after 2008, of the amount of income and property of the persons involved in the investigation of the case against S.L. Magnitsky and the persons in respect of which he had made statements on their possible involvement in the illegal re-registration of Riland, Parfenion and Makhaon and illegal refund of 5.4 billion rubles of tax receipts which was made after that, have not been examined.

Chairman
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**SCIENTIFIC ADVISORY
OPINION**

on the working group report “Principal Results
of an Independent Enquiry into the Circumstances of Sergey Magnitsky’s Death and Theft
of 5.4 Billion Rubles from the Russian State Budget” and materials of the criminal case based on
the charge against S.L.Magnitsky

In its report the working group enumerated and confirmed by relevant documents the facts of violations of law by investigators, who organized criminal prosecution against Sergey Magnitsky, the officials of the temporary detention facility and the pre-trial detention centers, where he was held in custody, and judicial authorities, which made decisions on detention of S.L.Magnitsky in custody.

The report gives enough evidence to agree with the conclusion of the working group that the described unlawful acts led to the aggravation of S.L.Magnitsky’s diseases and his death.

Analysis of the provided report and the materials of the criminal case (No.153123) made it possible to establish the following violations of procedural legislation and international legal standards of criminal proceeding committed during the investigation of the case of S.L.Magnitsky¹:

1. Violations related to the placement of S.L.Magnitsky in custody and prolongation of the terms of his detention.

Among all the procedural violations committed during the proceedings on the case of S.L.Magnitsky, the most prevailing are the violations related to his placement in custody and prolongation of the terms of his detention.

1.1 The decision on placement of S.L.Magnitsky in custody was not based on proved facts as prescribed by Article 97 of the Criminal Procedural Code of the Russian Federation (RF CPC).

According to Part 1, Article 97 of the RF CPC, placement in custody is only possible upon presence of grounds listed in the specified provision of law. As it is pointed out in Part 1, Article 108 of the RF CPC, upon the choice of a restriction measure in the form of placement in custody “...the judge’s order shall indicate the specific, actual circumstances, on the basis of which the judge made such decision”.

European Court of Justice has repeatedly emphasized that the grounds for detention of a person in custody must be specific and justified, i.e. substantiated by reliable information. In case of making such decision the courts must indicate specific circumstances constituting these grounds, as well as evidence proving the presence of such circumstances (Klyakhin v. Russia. Decision of the European Court of Human Rights of November 30, 2004).

¹ This opinion does not dwell upon the aspects of violation of S.L.Magnitsky’s right to receive adequate medical aid and his confinement conditions at pre-trial detention centers, as both these issues were discussed in detail in the report prepared by the working group.

In violation of the provisions of sub-clause “c”, § 1, Article 5 of the European Convention and Part 1, Article 108 of the RF CPC, in the order issued by the judge of the Tverskoy Court of Moscow, specific actual circumstances proving the existence of grounds for placement of S.L.Magnitsky in custody, as well as credible evidence of existence of such circumstances **were not stated**.

As it follows from the order issued by the judge of the Tverskoy District Court of Moscow S.G.Podoprigrorov on November 26, 2008, the following circumstances were stated as the grounds for placement of S.L.Magnitsky in custody:

- 1) Charge with the commission of intentional serious crimes;
- 2) “S.L.Magnitsky took measures to interfere with the witnesses and tried to impede the performance of investigative actions”;
- 3) The accused may try to flee from investigation and the court.

However, the circumstances stated by the court cannot be regarded as the grounds for placement in custody prescribed by the RF CPC due to the following reasons:

Firstly, accusation of a serious crime in itself is not a ground for placement in custody and it cannot confirm the intention of an accused person to flee from prosecution. According to Article 99 of the RF CPC such circumstance must only be taken into account by the court subject to the existence of a proved ground for placement in custody, and not instead of it.

The European Court of Human Rights holds the same position:

In its decision of November 30, 2004 on the case of Klyakhin v. the Russian Federation the court reminds that “...though the seriousness of the possible sentence plays an important role, the seriousness of the charge in itself cannot serve as a justification for long terms of pre-trial detention”(paragraph 65).

In the decision of the European Court of July 24, 2003 on the case of Smirnova v. Russia it is pointed out that “...the risk of running away cannot be confirmed solely by the seriousness of the possible sentence”.

Secondly, the court’s conclusion that “S.L.Magnitsky took measures to interfere with the witnesses and tried to impede the performance of investigative actions” is **unspecific**. There is not a single word in the judge’s order as to which witnesses exactly the accused tried to interfere with or the performance of which investigative actions he tried to impede. Obviously, such circumstance cannot be regarded as “specific” (Part 1, Article 108 of the RF CPC).

Furthermore, the indicated unspecific circumstance was substantiated by the documents provided by the investigators, which had **no procedural value**, did not represent the evidence and, moreover, contradicted the specific evidence on the criminal case.

Thus, the investigator proves the fact that the accused tried to impede the performance of investigative actions by the report of the senior police investigator A.A.Krechetov, according to which “...S.L.Magnitsky tried in every possible way to impede the search and tried to hide certain objects and documents”. However, this circumstance cannot be established by the report, but only by the respective protocol of investigative activity. Meanwhile, as it follows from the protocol of the search in question, there were no violations on the part of S.L.Magnitsky, and the senior police investigator A.A.Krechetov signed that protocol without any remarks.

The court’s conclusion that the accused might try to flee from investigation and the court is equally unsubstantiated. The investigators also prove this circumstance by “investigative information” of no procedural value or by reports prepared by the members of the investigation team themselves. Thus, a report was presented to the court prepared by a member of the investigation team D.M.Tolchinsky, who claimed that according to the “investigative information” S.L.Magnitsky was intending to interfere with the witnesses and was forcing them to give false testimony.

Presentation of these materials to the court by the investigators is a direct violation of Part 1, Article 108 of the RF CPC, according to which the results of investigative activities, which do not conform to the indicia of evidence, may not be used to justify the grounds for arrest. The

report of the police investigator containing assertions without reference to the source of information does not satisfy the requirements of Clause 2, Part 2, Article 75 of the RF CPC and on the whole cannot be accepted as evidence in criminal proceedings.

The falsity of materials justifying the court's conclusion about S.L.Magnitsky's intention to flee was already evident during the abovementioned court sessions.

Thus, to justify the submitted petition for the choice of a restriction measure with respect to S.L.Magnitsky, investigator O.F.Silchenko presented to the court the evidence he had confirming that S.L.Magnitsky was making a visa for departure to Great Britain. In this connection the investigator referred to a certificate of November 24, 2008 issued by the Economic Security service under the Federal Security Service of Russia, stating that S.L.Magnitsky has a foreign passport on hand and is making a British visa.

However, investigator O.F.Silchenko **could not but knew** that S.L.Magnitsky's foreign passport was seized during the search in his apartment on November 24, 2008, of which fact there is note in the protocol of the search. Moreover, S.L.Magnitsky's defense lawyers received a document from the British Embassy confirming that S.L.Magnitsky did not submit any documents for the issuance of a British visa.

However, despite the obvious falsity of information provided by the investigators, the court accepted the abovementioned grounds for placing S.L.Magnitsky in custody.

Therefore, S.L.Magnitsky was taken into custody without lawful and sufficient grounds for application of such restriction measure.

Judicial division for criminal cases of the Municipal Court of Moscow has not substantially considered a single argument of the cassation petition filed by the defense in response to this order and left the latter without changes.

1.2 While considering the question of taking S.L.Magnitsky in custody, the court did not take into account the circumstances giving evidence of the possibility of choosing a different, less severe restriction measure.

In Clause 2 of Decree No. 22 of the Plenum of the Supreme Court of the Russian Federation of October 29, 2009 "Concerning the court practices of application of restriction measures in the form of placement in custody, pledge and house arrest" it is pointed out that placement in custody as a restriction measure can only be chosen if it is impossible to apply a different, less severe restriction measure.

In violation of this provision, in the judge's order on placement of S.L.Magnitsky in custody the conclusion about the impossibility of applying a different restriction measure is not motivated at all.

Meanwhile, at the court session the defense repeatedly referred to the existence of such alternatives (the possibility of applying a pledge).

Another factor pointing at the illegality of placement of S.L.Magnitsky in custody is the court's disregard of the state of his health.

S.L.Magnitsky suffered from serious diseases that could not be adequately diagnosed at the pre-trial detention center, which also lacked facilities for treatment of such diseases.

The appellant provided arguments evidencing the illegality of his placement in custody at the court session and in the cassation petition in response to the judge's order, but these arguments were unfoundedly left without consideration by the court of first instance and the Municipal Court of Moscow.

In the decision on the case Khudobin v. Russia the European Court came to a conclusion on violation of Article 5 of the European Convention, because "...no grounds for detention of the appellant were indicated in the court decisions. Meanwhile, such factors as Khudobin's age, health problems, absence of "criminal record", availability of permanent place of residence and

stable family provided sufficient grounds for a serious consideration of his petition for discharge”. Since the absence of references in the court’s decisions to any grounds for the prolongation of imprisonment was not an accident, but rather an accepted practice for review of petitions for discharge, the European Court decided that the detention of the appellant was unjustified and did not comply to Article 5(3) of the Convention, which provides for the possibility of discharge before the trial (*Khudobin v. Russia, 108*).

Clearly, the above stated position of the European Court fully applies to the case of S.L.Magnitsky.

In addition to that, the detention of S.L.Magnitsky, considering his diseases, violated Article 3 of the European Convention, as his treatment there was inhumane and humiliating.

According to the European Court inhumane treatment means treatment causing extreme physical and moral suffering.

Abusive treatment will be in violation of Article 3 if it reaches the minimum level of cruelty. The assessment of such minimum level depends on all the circumstances of the case, including duration of such treatment, its influence on the physical or mental state and in some cases the sex, age and the state of health of the victim of such treatment. (Raninen,55).

In the decision on the case *Khudobin v. Russia* the European Court came to a conclusion on violation of Article 3 of the European Convention, as “the appellant was HIV-positive, suffered from a mental disorder, detention in custody only aggravated his sufferings, and the failure to render timely and competent medical aid led to his physical suffering along with a strong feeling of vulnerability”.

Obviously, this equally applies to the case of S.L.Magnitsky, who for a long period of time was detained in custody in similar conditions, with a serious disease and inability to receive adequate medical aid in the conditions of his detention.

Therefore, the above mentioned investigation authority and the courts violated S.L.Magnitsky’s right under Articles 3 and 5 of the European Convention.

1.3 While considering the question of taking S.L.Magnitsky in custody, the courts failed to examine the “justifiability of the charge”, which was a violation of the provisions of Clause “c” § 1, § 4, Article 5 of the European Convention.

In the report provided by the working group it is stated that “ ... the charge against Magnitsky was fabricated by the officers of the Ministry of Interior and the Federal Security Service of the Russian Federation. Allegations about his involvement in tax evasion organized in 2001 by two companies belonging to his client were not based on actual facts, since there had been no claims to those companies from the tax authorities, and the deadline for submission of such claims passed back in 2004, whereas Magnitsky himself had no relation to the activities of those companies and their tax accounts in 2001, and he was neither a founder, nor director or accountant of those companies. As can be seen from the above, in violation of the provisions of the European Convention on Human Rights and despite repeated appeals submitted by the defense, the court issued orders on arrest and detention of Magnitsky in the absence of any actual facts justifying the suspicion of Magnitsky in commitment of any illegal acts”.

At the court sessions, when S.L.Magnitsky’s arrest and prolongation of his detention were considered, his arguments about the groundlessness of the charge brought against him **were not examined**, the courts did not oblige the investigator to provide relevant evidence and did not study it at the court sessions.

By these acts of omission the above said courts committed a violation of Article 108 of the RF CPC. In Clause 2 of Decree No. 22 of the Plenum of the Supreme Court of the Russian Federation of October 29, 2009 “Concerning the court practices of application of restriction measures in the form of placement in custody, pledge and house arrest” it is stated that: “In order

to decide on the possibility of applying a restriction measure in the form of placement in custody of a person accused or suspected of a crime, for which the criminal law prescribes punishment in the form of imprisonment for a period over two years, the court shall in each particular case examine the justifiability of suspecting the person of being involved in the committed crime. And it is important to bear in mind that a justified suspicion requires availability of sufficient information proving that the respective person could have committed such crime, including the information specified in Article 91 of the RF CPC”.

The above mentioned omission of the Russian courts also contradicts the provisions of Clause “c” § 1, Article 5 of the European Convention, which sets forth the following:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so”.

The European Court repeatedly pointed out that an arrested person or a detainee has the right to revision in respect of procedural and material conditions, which are essential for “justifiability”, as defined by the Convention, of his imprisonment. (Brogan, § 65; Nikolova, § 58; Assenov, § 162; Nieitbala, § 66; Trzaska, § 74) This means that a competent court should examine not only the compliance with procedural requirements (set forth in the national legislation), but also the reasonableness of the suspicion providing the basis for arrest and the legality of objectives pursued by the arrest (Brogan § 65; Chahal, § 127; Nikolova, § 58).

In its decision on the case of Nikolova v. Bulgaria the European Court underlined the following: “<The court>, which considered the appellant’s petition concerning her placement in custody, probably followed the existing at that moment practice of the Supreme Court and therefore limited the consideration of the case to checking if the appellant had been accused by the investigator and the prosecutor of a “serious intentional crime” as defined in the Criminal Code, and whether her state of health requires discharge.

However in its petition <...> the appellant brought forward strong arguments calling in question the substantiality of charges against her and justifiability of her arrest. She referred to specific circumstances. Namely: that she did not try to flee or impede the investigating activities for several months after she learned about the criminal prosecution against her, that she has a family and an established way of living. The appellant also stated that the evidence against her is weak, since the charge is based only on the act of revision. In her opinion, nothing proves the charge, which alleges that it was she, and none of the other six persons having keys to the safe, really embezzled the missing money. In its decision <...> <the court> did not consider any of this arguments, having decided, probably, that they were not relevant to the question of legality of placement of the appellant in custody.

Though § 4, Article 5 of the Convention does not oblige the judge, who considers the petition concerning the legality of arrest, to take into consideration each argument provided in the appellant’s petition, the guarantees would lose their main point if the judge, relying on the internal law and practice, could ignore or regard as irrelevant the specific facts provided by the detainee, which can call in question the existence of circumstances material for “justifiability”, as defined by the Convention, of imprisonment. The appellant’s arguments stated in the petition <...> contained such specific facts and did not seem implausible or shallow. Having failed to take these circumstances into consideration, the regional court did not ensure judicial supervision to the extent and in the manner required by § 4, Article 5 of the Convention”. (Nikolova, § 61).

Therefore, the above mentioned courts, which during the court sessions failed to consider Magnitsky’s arguments on the groundlessness of the charge brought against him, committed a

violation of the provisions of Clause “c” § 1, § 4, Article 5 of the European Convention. Article 108 of the RF CPC.

This violation was committed both by the judges of the Tverskoy District Court of Moscow upon taking S.L.Magnitsky in custody and prolongation of the term of his detention in custody, and by the judges of the Judicial division for criminal cases of the Municipal Court of Moscow, which examined the above said decisions in appeal hearing.

1.4 The prolongation of S.L.Magnitsky’s detention was in violation of Clause “c”, § 1, Article 5 of the European Convention.

When deciding on prolongation of S.L.Magnitsky’s detention the courts repeatedly referred to the fact that the initial grounds for placement of S.L.Magnitsky in custody were still in place. No new grounds for the prolongation of detention were ever given in the orders of the court.

Meanwhile, the European Court of Human Rights believes that the provisions of Clause “c”, § 1, Article 5 of the European convention require an “update” of the grounds for keeping a person in detention, particularly if it has been quite a long period since this restriction measure was applied.

In the decisions of the European Court on several cases it was noted that: “The court easily understands that the authorities have to hold an accused person in custody, at least at the beginning of investigation, so as not to let him/her impede the investigation, especially when (...) it is a complicated case requiring a hard and long investigation. However the essential requirements of investigation are not enough to justify the detention after the end of investigation: generally, the risk decreases with time, after the investigation is over, the witness testimonies are written down and all the checks are performed” (W. c. Suisse, 33,35; the same principle, Clooth, 43).

In its decision on the case Khudobin v. Russia the European Court came to a conclusion on violation of Article 5 of the European Convention, because “...no grounds for the prolongation of detention were indicated in the court’s decisions...” (Khudobin v. Russia, 108).

Therefore, the above mentioned courts committed a violation of the specified international legal standard for prolongation of detention of accused persons.

2. Violations of S.L.Magnitsky’s right to contacts with close relatives.

As it follows from the provided materials, the preliminary investigation authorities repeatedly refused to approve petitions submitted by S.L.Magnitsky, while he was held in custody, in which he asked to allow him meetings with his relatives (close relatives and others) and a telephone talk with his son. Each time when investigator O.F.Silchenko refused to approve those petitions, he did not provide any grounds for such decision and referred only to the fact that it was inexpedient to approve S.L.Magnitsky’s petitions. In this connection the investigator pointed out that the standards set forth by the RF CPC and Federal Law of July 15, 1995 “On the Custodial Detention of Persons Suspected or Accused of Committing Offences” “...do not provide a list of grounds for an investigator to be governed by when he allows or refuses” contacts with relatives to an accused person held in custody.

The courts, to which the complaints on such decisions of the investigator were filed, left them without consideration for reasons specified below.

Thus, S.L.Magnitsky’s right to have contacts with close relatives proved to be unsecured and violated.

3. Violation of legitimacy of investigation team members appointment for the investigation of S.L.Magnitsky’s case

In the report provided by the working group it is pointed out that: “Magnitsky was prosecuted exactly by the same officials of the Ministry of Interior (Kuznetsov, Tolchinsky, Krechetov, Drozanov) whom he previously accused of committing a serious corruption-related crime. Despite the obvious conflict of interests, the above named officials were members of the investigation team working on the case against Magnitsky”.

S.L.Magnitsky’s defense lawyers filed a petition for disqualification of the investigation team head O.F.Silchenko and the members of the investigation team: A.O.Drozanov, A.A.Krechetov and D.M.Tolchinsky. In that petition the lawyers pointed out specific circumstances evidencing the personal interest of those officials in the outcome of the case, which, in accordance with Part 2, Article 61 of the RF CPC, is a ground for their disqualification.

However, that petition was dismissed by the head of the investigation authority. Complaints on the refusal to satisfy the petition for disqualification were also dismissed by the courts.

4. Inefficient review of S.L.Magnitsky’s complaints by the prosecutor’s office and the courts.

Analysis of the provided materials of the criminal case shows that one of the factors, which led to S.L.Magnitsky’s death, was the inefficient review of his complaints, as well as complaints filed by his defense lawyers, in both judicial and extrajudicial proceedings.

Thus, in response to a detailed complaint on 4 pages filed by S.L.Magnitsky’s defense lawyer and addressed to the Prosecutor General of the Russian Federation, which contained specific facts of violation of S.L.Magnitsky’s rights during his detention at the pre-trial detention center (with references to violations of specific provisions of the Federal Law of July 15, 1995 “On the Custodial Detention of Persons Suspected or Accused of Committing Offences” and Internal Regulations of the Department of Detention Centers), only a short answer was received consisting of several sentences stating that statutory provisions (without indicating any specific provisions) were not violated.

The major part of the arguments provided in the complaint, in violation of Article 124 of the RF CPC, was left **without consideration**.

Due to violations of S.L.Magnitsky’s right to defense caused by his sudden transfer from IZ-77/5 to the Temporary Detention Facility under the Central Internal Affairs Directorate of Moscow, which deprived the accused of the opportunity to use the abstracts from the case during the performance of investigative actions, the defense lawyers filed a respective complaint with the General Prosecutor’s Office of the Russian Federation.

In the short answer of October 09, 2009 given by A.I.Pechegin, the deputy director of the Administration for Supervision of Investigations on Major Cases under the General Prosecutor’s Office of the Russian Federation, most arguments given in the complaint were once again left without consideration.

The same fate has befallen the other complaints filed by S.L.Magnitsky’s defense lawyers and addressed to the Head of the Investigating Committee of the Ministry of Interior of the Russian Federation, the Prosecutor General of the Russian Federation and other agencies.

The analysis of complaints, which S.L.Magnitsky’s defense lawyers filed with the courts, was equally inefficient.

The majority of the above said complaints filed with the courts **were dismissed without a hearing on the merits!**

Thus, in the order of October 12, 2009 S.V.Ukhnaleva, the judge of the Tverskoy District Court of Moscow, refused to satisfy and dismissed without a hearing on the merits S.L.Magnitsky’s complaint on unlawful actions of the investigator, who without any motives denied the accused a meeting with his relatives and a paid telephone call. The basis for such decision was the judge’s conclusion that “decisions and actions (omissions) of respective officers,

whose powers relate to prosecution within the framework of a pre-trial procedure on a criminal case, may be regarded as subjects of appeal”, whereas the specified powers of the investigator (to grant permission for a meeting and a call) do not relate to the criminal prosecution, i.e. they cannot be challenged in court.

Such position contradicts Part 1, Article 125 of the RF CPC, according to which the decisions and actions (omissions) of officials made and performed at pre-trial stages of criminal proceedings are subject to challenge in a judicial procedure, if they can impair the constitutional rights and freedoms of the participants of criminal proceedings or other persons, whose rights and legitimate interests are violated, or can inhibit the access to justice for individuals. There are no any other limitations of the right to judicial appeals in the RF CPC.

However such position fully complies with the explanation provided in Clause 3 of Decree No. 1 of the Plenum of the Supreme Court of the Russian Federation of February 10, 2009 “Concerning the practice of consideration of complaints by courts in accordance with Article 125 of the RF CPC”, stating that “ ... decisions and actions (omissions) of officers, whose powers do not relate to criminal prosecution within the framework of a pre-trial procedure on a criminal case (for example, those of a prosecutor appearing for the official prosecution in the court, head of a pre-trial detention center) are not subject to challenge in accordance with Article 125 of the RF CPC”.

Thus, the specified explanation of the RF Supreme Court contradicting the literal essence of Article 125 of the RF CPC served as a basis for dismissal of S.L.Magnitsky’s complaint.

Similarly, the Tverskoy District Court of Moscow dismissed without a hearing on the merits the petition of S.L.Magnitsky’s lawyers concerning his transfer from the pre-trial detention center to the temporary detention facility. In the opinion of the court, which was supported by the Municipal Court of Moscow, as it is, “ ...the limitation of rights and freedoms of accused persons legally held in custody” may not be regarded as a judicial matter in accordance with Article 125 of the RF CPC.

Conclusions:

1. The study of materials of the criminal case based on a charge against S.L.Magnitsky shows that there are systemic deficiencies in the current Russian criminal procedure legislation and the practice of its application.

As it can be seen from S.L.Magnitsky’s case, the provisions of Part 1, Article 108 of the RF CPC on the necessity of providing references to specific actual circumstances in the judge’s order on placement of an accused person in custody, on the prohibition of referring to the results of investigative activities, which do not conform to the indicia of evidence, are a **fiction of law** and **are not applied** in practice.

Despite a mass of decisions of the European Court of Human Rights in respect of Russia, its positions concerning the standards of imprisonment and detention of accused (suspected) persons **had no material effect** on the practice of law enforcement in the Russian Federation. The courts continue to commit those procedural violations, which have repeatedly caused the European Court to acknowledge violations of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In fact, it shows that the specified decisions of the European Court **are not executed** in the Russian Federation, since the state does not take any “measures of a general nature” to eliminate such violations in future.

Probably, the only way out of the existing situation is a severe legislative narrowing of the sphere of application of the restriction measure in the form of placement in custody and maximum formalization of grounds for the choice thereof in the criminal procedure legislation.

Besides, it appears necessary to formalize the international legal standards of placement in custody directly in the text of the RF CPC.

2. The study of S.L.Magnitsky's case demonstrates a continuing weakening of the system of criminal and procedural guaranties of the rights of accused (suspected) persons placed in custody. The formalization in the RF CPC of absolutely unlimited, actually, discretionary powers of an investigator to decide upon petitions concerning permissions for meetings of a detainee with relatives allows the investigator to make **arbitrary** decisions and manipulate his powers, forcing the accused to give the required evidence. All that hardly comports with the principle of legality of criminal proceedings formalized in Article 7 of the RF CPC, the principle of respect for a person's honor and dignity (Article 9 of the RF CPC), international standards of detention in custody.

It appears that the investigator's powers with respect to any aspects of detention of an accused person in custody **should not be discretionary**, and they also have to be strictly formalized. The provisions of Part 4, Article 7 of the RF CPC must fully apply to the investigator's decisions on permitting the detainee to have meetings with his/her relatives. Refusal to permit such meetings must be substantiated by references to particular circumstances, a list of which is to be formalized in the RF CPC.

An absolutely ineffective right is the right of an accused (suspected) person to claim disqualification of persons carrying out the proceedings on the case. From our point of view, to a large extent this is due to the subject matter of the grounds for disqualification formalized in Part 2, Article 61 of the RF CPC. It is a long overdue necessity to formalize in the RF CPC such ground for disqualification as the "bias" of a person carrying out the proceedings on the case (such ground is included in CPC of a number of CIS countries). It is necessary to extend the subject matter of other grounds for disqualification, which would eliminate situations similar to S.L.Magnitsky's case, when the investigation was conducted by persons, whom the accused himself charged with commitment of corruption-related crimes.

3. The studied materials demonstrate the evident inefficiency of the institute of judicial appeals at pre-trial stages of criminal proceedings, which, from our point of view, is due to severe narrowing of the sphere of judicial control in Decree No. 1 of the Plenum of the Supreme Court of the Russian Federation of February 10, 2009 "Concerning the practice of consideration of complaints by courts in accordance with Article 125 of the RF CPC".

It is necessary to exclude all the limitations of the right to judicial appeal of omissions, unlawful actions and decisions of persons and authorities carrying out the proceedings on the case.

4. It appears necessary to support all the proposals on changes in the law and the practice of its enforcement presented in the Report of the working group and the expert opinion provided by V.Pokhmelkin.

It seems that only a complex improvement of the Russian criminal procedure legislation will help to avoid in future situations similar to that of S.L.Magnitsky.

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