

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
of the National Anti-Corruption Committee

K.V. Kabanov