Appendix 3

THE INDEPENDENT PANEL OF LEGAL EXPERTS (A REGIONAL NGO)

Apt. 418, 24 Dm.Ulyanov St., Moscow 117036
Postal address: p/o box 31, Moscow 107045
Tel. (499)177-20-38, (499)124-32-41
Tel./fax 395-06-88
sovet@neps.ru; cile@rc.ru
www.neps.ru

LEGAL OPINION

Regarding the report "Principal Findings of an Independent Enquiry into the Circumstances of Sergey Magnitsky's Death and the Embezzlement of 5.4 Billion Rubles from the Russian State Budget" by the working group, and the body of documentation in support of the criminal charges against S.L.Magnitsky

The working group report cites and documents the instances of violations of the law by the prosecution team investigating the criminal charges against Sergey Magnitsky, by officials of the temporary detention facility and of the pre-trial detention centres where he was held, and by the judicial authorities which had ruled to remand S.L.Magnitsky in custody.

The conclusion of the working group that these unlawful acts had led to the aggravation of S.L.Magnitsky's medical conditions and his death seem well supported.

Our scrutiny of the aforementioned report and of the substance of criminal case No.153123 has established that the following violations of the Procedural Law and of the international legal standards of due process occurred during the investigation of S.L.Magnitsky's case[1]:

1. Violations related to the placement of S.L.Magnitsky in custody and prolonging the term of his detention:

The violations pertaining to the placement of S. Magnitsky in custody and the prolongation of the term of his detention constitute the most serious breaches of due process in his case.

1.1 The ruling to remand S.Magnitsky in custody was not based on a sufficient body of proof under the terms of Article 97 of the Criminal Procedural Code of the Russian Federation (RF CPC).

Part 1, Article 97 of the RF CPC lists the necessary grounds for remanding a person in custody. Part 1, Article 108 of the RF CPC stipulates that when choosing a custodial measure "…the judge's ruling shall indicate the specific, factual grounds for making that choice."

The European Court has repeatedly emphasized that the grounds for remanding a person in custody must be specific and justified, i.e. substantiated by reliable data. When making that decision, the courts must indicate specific circumstances establishing such grounds, as well as submit evidence proving the existence of the aforesaid circumstances (Klyakhin v. Russia.

[1] This opinion does not cover the circumstances of how S.L.Magnitsky was denied his right to receive adequate medical aid, or the conditions of his pre-trial confinement, since these have been sufficiently well described in the WG report

The 30 November, 2004, Decision of the European Court of Human Rights.).

Contrary to the provisions of sub-clause "c", § 1, Article 5 of the European Convention and Part 1, Article 108 of the RF CPC, the warrant issued by the judge of the Tverskoy Court of Moscow did not cite any specific grounds in support of the decision to remand S.L.Magnitsky in custody, nor did it supply any credible evidence that such grounds existed.

The warrant issued by the judge of the Tverskoy District Court of Moscow, S.G.Podoprigorov, on November 26, 2008, lists the following circumstances as the grounds for the placement of S.L.Magnitsky in custody:

1) The charge of having committed premeditated serious offences;
2) "S.L.Magnitsky has taken steps to lean on witnesses; he has sought to impede the progress of the investigation;"
3) The accused may try to escape from the prosecution and the court.

However, the circumstances cited by the court cannot be regarded as the grounds for applying a custodial measure under the terms of the RF CPC due to the following reasons:

Firstly, the charge of a serious offence is not in itself a justification for remanding the person in custody, and it cannot be used in support of the claim that the accused intends to escape from the prosecution. Pursuant to Article 99 of the RF CPC, such an intent shall only be taken into account by a court when the court is satisfied that sufficient grounds exist to place a person in custody, and not with the view to establishing such grounds.

The European Court of Human Rights holds the same view:

In its ruling of November 30, 2004, in the case of Klyakhin v. the Russian Federation, the Court reiterates that "…although the severity of a possible sentence plays an important role, the seriousness of the charge cannot in itself serve as the justification for a lengthy term of pre-trial detention"(paragraph 65).

The decision of the European Court of July 24, 2003, in the case of Smirnova v. Russia stresses that "…the risk that the accused may escape justice cannot be determined solely by the severity of a possible sentence."

Secondly, the court's conclusion that "S.L.Magnitsky has taken steps to lean on witnesses" and "sought to impede the progress of the investigation" is unspecific. The judge's warrant makes no mention whatsoever as to which witnesses exactly the accused tried to lean on, or exactly in what manner he tried to impede the progress of the investigation. It is clear that such a claim cannot be regarded as "specific" (Part 1, Article 108 of the RF CPC).

Furthermore, the documents submitted by the prosecution in support of the aforesaid unspecific claim had no procedural value; they did not constitute evidence and, moreover, were in conflict with the concrete evidence that had been presented under this case.

Thus, the head of the investigation team cites, in support of his claim that the accused tried to impede the progress of the investigation, the report by Mr A.A.Krechetov, a Senior Police Investigator, according to which "…S.L.Magnitsky sought, in every possible way, to impede the search (of his apartment) and tried to conceal certain objects and documents". However, a claim of this nature can be only substantiated by a respective Record of the investigative action, and not by a report. Meanwhile, the Record of the search in question makes no mention of any improper

actions on the part of S.L.Magnitsky, and indeed Senior Police Investigator A.A.Krechetov signed that Record without adding any comments.

The court's conclusion that the accused might try to escape from the investigation and the court is equally unsubstantiated. To support this latter claim, the prosecution refers to either "operational findings," likewise of no procedural value, or to reports drawn by members of the investigation team itself. Thus, the court received a report by a member of the investigation team, D.M.Tolchinsky, referring to "the operational findings" that S.L.Magnitsky was intending to bring pressure to bear on the witnesses to make them give false testimony.

By presenting these documents to the court, the prosecution acted in direct violation of Part 1, Article 108 of the RF CPC, according to which the results of investigative actions not conforming to the indicia of evidence may not be used to justify the grounds for an arrest. The report of a police investigator containing assertions without reference to the source of the information does not satisfy the requirements of Clause 2, Part 2, Article 75 of the RF CPC, and is altogether inadmissible as evidence in criminal proceedings.

The lack of credibility with respect to the documents used to justify the court's conclusion concerning S.L.Magnitsky's intention to escape became immediately obvious during the court sessions themselves.

Thus, to justify the proposed choice of judicial action applied to S.L.Magnitsky, Investigator O.F.Silchenko presented to the court his evidence to the effect that S.L.Magnitsky was in the process of obtaining a UK visa. In the course of his presentation, the Investigator referred to a certificate issued by the Economic Security Service of the FSB on 24 November 2008, which stated that S.L.Magnitsky was in possession of his external passport and was taking steps to obtain a British visa.

At the same time, Investigator O.F.Silchenko could not possibly be unaware of the fact that S.L.Magnitsky's external passport had been seized during the search of his apartment on November 24, 2008, a fact duly noted in the Record of the search. S.L.Magnitsky's defence team had received an official letter from the British Embassy certifying that S.L.Magnitsky did not submit any documents to request a UK visa.

However, despite the obviously unreliable nature of the information submitted by the investigation team, the court recognized the existence of sufficient grounds for remanding S.L.Magnitsky in custody.

Therefore, S.L.Magnitsky was taken into custody in the absence of lawful and sufficient grounds for doing so.

The Criminal Judicial Board of the Moscow City Court, having in essence failed to examine a single argument of the appeal filed by the defense in response to that warrant, left the latter without change.

<u>1.2 In considering the matter of remanding S.L.Magnitsky in custody, the court had failed to take into account the evidence permitting the choice of a more lenient measure.</u>

Clause 2, Decree No. 22 of 29 October, 2009, "On the court practice of applying judicial measures, such as remanding in custody, securing a pledge and placing under house arrest" by the Plenary Session of the RF Supreme Court, emphasizes that the choice of a custodial measure shall be made only where a more lenient action cannot be applied.

Contrary to this provision, the judge's warrant for placing S.L.Magnitsky in custody does not contain any arguments whatsoever as to why a more lenient measure may not apply.

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

The court's disregard for the state of S.L.Magnitsky's health presents one more reason why his detention should be considered illegitimate.

S.L.Magnitsky suffered from serious afflictions that could not be adequately diagnosed or treated at the pre-trial detention centre.

Both in court and in his appeal, the appellant had advanced arguments as to the illegitimacy of his detention. However, both the district court and the Moscow City Court failed to justify their decisions not to take these arguments into consideration.

In its ruling in the case of Khudobin v. Russia, the European Court concluded that the provisions of Article 5 of the European Convention had been breached, since " …the court decisions gave no grounds for remanding the appellant in custody. Meanwhile, such factors as Khudobin's age, his health issues, the absence of a criminal record, the fact that he had a permanent abode, that he was a family man all mitigated in favour of giving serious consideration to his petitions to be released from prison. " Since the failure by the court to name any grounds for the prisoner's continued detention in its decisions was no accident, but rather represented an accepted practice in reviewing petitions for release from custody, the European Court ruled that the detention of the appellant was unjustified and did not comply with Article 5(3) of the Convention, which provides for the possibility of release prior to the trial (*Khudobin v. Russia*, *108*).

It is clear that the aforesaid ruling by the European Court fully applies to the case of S.L.Magnitsky.

In addition, S.L.Magnitsky's detention, given the poor state of his health, ran contrary to Article 3 of the European Convention because his treatment was inhumane and undermined his dignity.

The European Court defines inhumane treatment as treatment causing extreme physical and/or moral suffering.

To be considered in conflict with the provisions of Article 3, bad treatment needs to be qualified as having reached a minimum level of cruelty. Deciding when this minimum level has been reached depends on all the circumstances of the case, including the duration of such treatment, its impact on the victim's physical or mental health and, in some cases, the gender, age and the general state of health of the victim of such treatment. (Raninen, 55).

In its ruling in the case of Khudobin v. Russia, the European Court concluded that Article 3 of the European Convention had been breached, since "the appellant was HIV-positive, suffered from a psychiatric disorder; because his detention further aggravated his suffering, while the failure to extend him timely and competent medical aid led to his physical suffering along with imparting a strong sense of vulnerability."

It is obvious that this view equally holds in the case of S.L.Magnitsky, who had been long held in similar conditions of detention, suffered from a serious illness, and was unable to receive adequate medical assistance at the remand centre.

Thus, the remand centre and the courts had infringed on S.L.Magnitsky's right under Articles 3 and 5 of the European Convention.

1.3 While considering the matter of whether S.L.Magnitsky should be remanded in custody, the courts had failed to verify that the charges against him were "well justified," thus violating the provisions of Clause "c" § 1, § 4, Article 5 of the European Convention.

The WG report indicates that "…the charges against Magnitsky were fabricated by officials of the Ministry of Home Affairs and the Federal Security Service of the Russian Federation. The allegations of his involvement in the tax evasion by two companies belonging to his client in 2001 were not rooted in actual facts, since the tax authorities had made no claims as to any irregularities on the part of the aforesaid companies, while the deadline for submitting such claims expired back in 2004. Indeed, in 2001 Magnitsky himself had nothing to do with the activities of these companies or their tax accounts: he was neither a constituent member, nor a manager, nor an accountant of these companies. Therefore, contrary to the provisions of the European Convention on Human Rights and despite repeated objections on the part of the defense, the court issued warrants for the arrest and detention of Mr Magnitsky in the absence of any established facts which could justify the suspicion that he had committed offences under the law".

During the sessions which ruled on S.L.Magnitsky's detention and the prolongation of its term, the courts **ignored** his arguments regarding the unfounded nature of the charges against him. The courts did not subpoena the investigator to present relevant evidence, did not examine such evidence in the course of the hearings.

By not acting in this manner, the courts failed to comply with Article 108 of the RF CPC. Clause 2 of Decree No. 22 of 29 October, 2009, "On the court practice of applying judicial measures, such as remanding in custody, securing a pledge and placing under house arrest" by the Plenary session of the RF Supreme Court stipulates that: "In ruling on the applicability of a custodial measure with regard to a person suspected or accused of having committed an offence for which the criminal law prescribes a term of incarceration in excess of two years, the court shall, in each particular case, verify that the suspicion of the person's involvement in the said crime is well founded. While doing so, the court shall be mindful of the fact that a suspicion can be considered justified in the presence of sufficient information proving that the person is capable of having committed this crime, including the grounds specified in Article 91 of the RF CPC."

This failure to act on the part of the Russian courts is also in conflict with the provisions of Clause "c" § 1, Article 5 of the European Convention, which stipulates that:

"1. Everyone has the right to liberty and personal inviolability. No one shall be deprived of liberty, save in the following cases and in accordance with a procedure prescribed by the Law:

c) the lawful arrest or the detention of a person effected for the purpose of bringing the person before the competent legal authority upon reasonable suspicion that the person has committed an offence, or when there exist sufficient grounds to justify the need to prevent the person from committing an offence or escaping after having committed an offence."

The European Court has repeatedly stressed that an arrested person or a detainee has the right to a judicial review in respect of the procedural and material conditions, which are essential for their detention to be "legal" under the Convention. (Brogan, § 65; Nikolova, § 58; Assenov, § 162; Nieitbala, § 66; Trzaska, § 74) This means that it is incumbent on a competent court to examine not only the compliance with procedural requirements (such as those set forth in the

national legislation), but also whether the suspicion providing the basis for the arrest is a reasonable one, as well as the legality of what is to be achieved by the arrest (Brogan § 65; Chahal, § 127; Nikolova, § 58).

In ruling on the case of Nikolova v. Bulgaria the European Court emphasized the following: "<The court> that considered her appeal against the decision to remand her in custody presumably acted in accordance with the practice, which was current in the work of the Supreme Court at the time, 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 premeditated offence" as defined in the Criminal Code, and whether she was eligible for release on health grounds.
.
However, in her appeal <...> she put forward persuasive arguments calling into question the robustness of the charges against her and the existence of sufficient grounds for her arrest. She made reference to specific facts, i.e. that she did not try to escape or to impede the course of the investigation for several months after she had become aware of the existence of criminal charges against her, and that she had a family and led a stable life. The appellant also stated her belief that the evidence against her was not of sound nature, since the prosecution had based its case solely on the findings of a judicial review. In her opinion, there was absolutely no evidence to indicate that it was she who spent the missing money, and not one of the other six persons having the keys to the cash register. In its ruling <...> <the court> did not enter into the discussion of any of these arguments, having apparently decided that they were not relevant to the matter of legality of placing the appellant under arrest.

Although § 4, Article 5 of the Convention does not make it incumbent on the presiding judge to take into consideration each and every argument contained in an appeal, all legal constraints would be lost if a judge were free to follow his inner code and law, ignoring or ruling out as irrelevant any specific evidence the detainee may cite to sow doubt in the existence of the necessary conditions to make the deprivation of liberty "legal" in the meaning defined by the Convention. Indeed, the appellant's arguments <...> referred to such specific evidence, 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 aforementioned court sessions, having failed to verify Magnitsky's arguments regarding the groundless nature of the charges against him, were in violation of the provisions of Clause "c" § 1, § 4, Article 5 of the European Convention and Article 108 of the RF CPC.

Such violations were committed by both the judges of the Tverskoy District Court of Moscow upon taking S.L.Magnitsky into custody and prolonging the term of his detention, and by the judges of the Judicial Criminal Board of the Moscow City Court, who examined these rulings during the appeal hearings.

<u>1.4 By extending the term of S.L.Magnitsky's detention the courts acted contrary to the provisions of Clause "c", § 1, Article 5 of the European Convention.</u>

As they deliberated extending S.L.Magnitsky's term of detention, the jurors repeatedly referred to the fact that the initial grounds for keeping S.L.Magnitsky in custody still held. The eventual rulings made no mention of any new grounds for the prolongation.

Meanwhile, the European Court of Human Rights believes that the provisions of Clause

"c", § 1, Article 5 of the European Convention imply the need to "update" the grounds for continued incarceration, particularly if a significant period of time has elapsed since the issue of the original warrant.

The European Court of Justice has pointed out in a number of its rulings that: "The Court is quite aware of the need for the authorities to hold the accused in custody, at least at the start of the investigation, so as not to let him/her impede the investigation, especially when the latter involves (...) a complex case requiring laborious and numerous inquiries. However, the investigative needs alone are not enough to justify the detention towards the end of the investigation: the risk usually decreases with time, as the detective work is done, the witness testimonies have been recorded and all the checks have been performed" (W. c. Suisse, 33, 35; the same principle, Clooth, 43).

When ruling on the case of Khudobin v. Russia, the European Court concluded that Article 5 of the European Convention had been breached, since "… the court's decisions gave no grounds to justify continued detention…" (Khudobin v. Russia, 108).

Therefore, the aforementioned courts have breached the international legal norm for extending a term of detention.

2. Infringements on S.L.Magnitsky's right to contact with close relatives.

The case documentation shows that the preliminary investigation authorities had repeatedly denied prisoner S.L.Magnitsky's requests to allow visits by his relatives (a member of his immediate family and other relatives), or a telephone call to his son. When refusing to grant these requests, Investigator O.F.Silchenko did not, in any way, justify his actions. He only said that granting the prisoner's requests would have been improper . In the Investigator's words, the provisions of the RF CPC and of the Federal Law of July 15, 1995, "On the Custodial Detention of Persons Suspected or Accused of Committing Offences," "…do not contain a list of guidelines for investigators as to when to allow or refuse" contacts with relatives of a detainee.

The courts, with which the complaints about the Investigator's decisions had been lodged, failed to consider them for reasons specified below.

Thus, S.L.Magnitsky's right to contact with close family had been denied and infringed upon.

3. Infringements on the prescribed procedure for staffing a team to investigate S.L.Magnitsky's case

The WG report reads: "Magnitsky was prosecuted by the very same officials of the Ministry of Home Affairs (Kuznetzov, Tolchinsky, Krechetov, Droganov) whom he had previously accused of involvement in criminal corruption. Despite the obvious conflict of interests, these officials were put on the investigation team working on Magnitsky's case".

S.L.Magnitsky's defence moved to recall the team leader, O.F.Silchenko, as well as to remove other members of the investigation team: A.O.Droganov, A.A.Krechetov and D.M.Tolchinsky. The defence motion referred to specific evidence that these officials had a personal stake in the outcome of the case, the fact which, pursuant to Part 2, Article 61 of the RF CPC, justified their recall.

The motion was nevertheless dismissed by the head of the investigation authority. The subsequent appeals to reconsider this dismissal were also denied by the courts.

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

A careful examination of the case documentation reveals that one of the factors leading to S.L.Magnitsky's death was the inefficient review of his complaints, as well as of the complaints lodged by his defense lawyers, in both judicial and extrajudicial proceedings.

Thus, in response to a detailed, four-page complaint by S.L.Magnitsky's defense counsel, which he addressed to the Prosecutor General of the Russian Federation, citing specific instances of S.L.Magnitsky's rights having been infringed during his incarceration at the pre-trial detention centre(with references to the 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 of the Internal Regulations of the Department of Detention Centres), the defence received a text which, in a few terse sentences, pointed out that no statutory provisions (without indicating which provisions exactly) had been breached.

In violation of Article 124 of the RF CPC, the reply **did not address** the bulk of the arguments in the complaint.

The defence lodged another complaint with the RF General Prosecutor's Office regarding the infringements on S.L.Magnitsky's right to defend himself, this time in conjunction with his sudden transfer from IZ-77/5 to the Temporary Detention Facility of the Moscow Main Directorate of Home Affairs, as a result of which the accused was no longer able to make use of abstracts from the case as the investigation proceeded further.

In his brief reply of October 09, 2009, A.I.Pechegin, Deputy Head of the Directorate for the Supervision of Serious Crime Investigations at the RF General Prosecutor's Office, once again failed to address most of the arguments put forth in the complaint.

The same treatment was meted out to other complaints sent by S.L.Magnitsky's counsel for the defence to the Head of the Investigations Committee of the RF Ministry of Home Affairs, the RF Prosecutor General and other departments.

The courts were equally inefficient in dealing with the complaints by S.L.Magnitsky's counsel for the defence.

A large number of the aforesaid complaints that had been lodged with the courts **was dismissed out of hand!**

For example, S.V.Ukhnaleva, a judge at the Tverskoy District Court of Moscow, in her decree of October 12, 2009, summarily dismissed S.L.Magnitsky's complaint regarding the unlawful actions by the investigator, who had arbitrarily refused to grant the accused his requests for a family visit and a paid telephone call. The judge justified her decision by ruling that "decisions or actions (inaction) by the officials mandated to conduct a pre-trial investigation of a criminal case may be appealed against," whereas the said powers of the investigator (to permit a visit or a call) do not bear upon the prosecution of a criminal offence, and so may not be challenged in court.

This view is in conflict with Part 1, Article 125 of the RF CPC, which stipulates that the decisions or actions (inaction) by officials at the pre-trial stages of criminal proceedings may be subject to challenge in a judicial procedure, provided such decisions or actions are capable of prejudicing constitutional rights and freedoms of the participants of criminal proceedings, or of other persons

whose rights and legitimate interests have been infringed, or when they can inhibit the access to justice. The RF CPC does not provide for any other limitations of the right to judicial appeal.

It must be pointed out, however, that the judge's view is fully in line with the interpretation contained in Clause 3, Decree No. 1 of 10 February, 2009, "On the court practice of handling complaints within the scope of Article 125 of the RF CPC," by the Plenary Session of the RF Supreme Court, which reads: "…the decisions and actions (inaction) by the officials whose purview does not bear upon the prosecution of a criminal offence in pre-trial proceedings (for example, by a prosecutor upholding the charges on behalf of the state in court, or by the head of a pre-trial detention center) are not subject to challenge within the scope of Article 125 of the RF CPC."

This interpretation by the RF Supreme Court, which runs contrary to the letter of Article 125 of the RF CPC, had therefore served as a basis for dismissing S.L.Magnitsky's complaint.

In a similar manner, the Tverskoy District Court of Moscow summarily dismissed the objection by S.L.Magnitsky's defence counsel in respect of his transfer from the pre-trial detention centre to the temporary detention facility. In the opinion of the court, upheld by the Moscow City Court, "…the limitation of rights and freedoms of accused persons lawfully held in custody" may not in itself be subject of judicial proceedings within the scope of Article 125 of the RF CPC.

Conclusions:

1. The present examination of case documentation in support of the criminal charges against S.L.Magnitsky has highlighted the existence of systemic flaws in the current RF criminal procedural law and the practice of its application.

As can be gleaned from S.L.Magnitsky's case, the provisions of Part 1, Article 108 of the RF CPC mandating the need for references to specific facts in a judge's warrant to remand the accused in custody and prohibiting the use of operational reports, which do not conform to the indicia of evidence, in court proceedings, are legal fiction honoured in its breach.

In spite of the amassed body of rulings by the European Court of Human Rights in respect of Russia, the Court's views regarding the standards of imprisonment and detention of accused persons (suspects) have not significantly affected the practice of law enforcement in the Russian Federation. The courts persistently depart from due process in the same manner that has in the past been repeatedly qualified by the European Court as violating Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This, in fact, bears witness to the non-compliance by the Russian Federation with the aforesaid decisions of the European Court, since the state has not been taking systemic measures of the kind needed to eliminate such abuses in the future.

It would seem that the only way out of the current quandary is to radically narrow down the legislative scope for the application of custodial measures and, as much as possible, to codify the grounds for the choice thereof in the criminal procedural law.

What also appears necessary is to transpose the international legal standards governing detention directly into the letter of the RF CPC.

2. Our scrutiny of S.L.Magnitsky's case has revealed a recent weakening of the system of criminal procedural guaranties of the rights of accused persons (suspects) remanded in custody. The codification in the RF CPC of the absolutely unbounded, indeed discretional powers of an investigator in deciding how to treat a detainee's request to be allowed contacts with relatives

places the investigator in a position to make arbitrary decisions, leverage his powers so as to force the accused into giving any desired testimony. All this can hardly be in keeping with the principle of legitimacy of criminal judicial proceedings enshrined in Article 7 of the RF CPC, the principle of respect for a person's honour and dignity (Article 9 of the RF CPC), international norms of the detention in custody.

It would seem that investigators must not be granted discretionary powers over all and any aspects of a detainee's existence, and that these powers also have to be strictly codified. The provisions of Part 4, Article 7 of the RF CPC must fully apply to the investigator's decisions as to whether to allow a detainee to have family visits. A refusal to permit such visits must be motivated by references to specific reasons, a list of which needs to be codified in the RF CPC.

The right of an accused person (suspect) to request the recall of officials in charge of handling their case is absolutely ineffectual. We believe that this is largely due to the substance of the provision defining the grounds for an official's recall in Part 2, Article 61 of the RF CPC. The need is long overdue to codify in the RF CPC reasons for recall, such as the "bias" of a person handling the case (such grounds are covered in the CPC of a number of CIS countries). What is needed is to extend the legal coverage to other reasons for recall. Doing so would rule out situations such as S.L.Magnitsky's case, where some officials taking part in the investigation were the very same persons implicated by the accused in criminal corruption.

3. Our reading of the case documentation brings out the inefficacy of the institute of judicial appeals at the pre-trial stages of criminal proceedings, which, in our view, can be explained by a radical circumscription of the scope for judicial control following the publication of Decree No. 1of 10 February, 2009, "On the court practice of handling complaints within the scope of Article 125 of the RF CPC," by the Plenary Session of the RF Supreme Court.

What is needed is to remove all limitations of the right to challenge any inaction, illegitimate actions or decisions on the part of the officials and authorities handling a criminal case.

4. We cannot but support all of the proposals to amend the legislation and the practice of its application contained in the report of the city of Moscow's Public Supervisory Commission.

We believe that nothing short of a comprehensive revision of Russia's criminal procedural legislation will make it possible to prevent what had transpired in S.L.Magnitsky's case from occurring in the future.

Chairman of the Board,
The Independent Panel of Legal Experts (a regional NGO),
M.F.Polyakova, Candidate of Law