

Mr. Juan Mendez, Special Rapporteur on Torture

c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14 Avenue de la Paix
CH-1211 Geneva 10, Switzerland
E-mail: urgent-action@ohchr.org

Ms. Gabriela Knaul, Special Rapporteur on the Independence of Judges and Lawyers

c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14 Avenue de la Paix
CH-1211 Geneva 10, Switzerland
Email: SRindependenceJL@ohchr.org

21 December 2010

Dear Mr. Mendez, dear Ms Knaul,

Re: Allegation letter regarding Mr Sergei Magnitsky (Russian Federation)

We write to you both regarding the death in custody of Russian lawyer, Mr Sergei Magnitsky, who was detained and refused medical treatment, leading to his death. This followed the outspoken stance he took after uncovering a 230 million USD tax fraud in Russia, implicating senior Russian officials in corruption and related illegal acts.

The facts set out below engage both of your mandates, as will be described. In summary, just over one year since Mr. Magnitsky's death, there has been a failure to carry out a full, effective and impartial investigation into the allegations capable of leading to the truth of what occurred and as appropriate, the prosecution of those responsible.

We respectfully request that both of your offices enquire into this matter and take the appropriate steps to urge the Russian Federation to ensure that a full and independent investigation is opened immediately and that justice is achieved.

We would welcome the opportunity to provide your offices with further information or to clarify any issues in relation to this matter.

I. Identity of the person subjected to torture

A. Family Name	Magnitsky
B. First and other names	Sergei Leonidovich
C. Sex	Male
D. Birth date or age	8 April 1972
E. Nationality	Russian
F. Occupation	Lawyer
G. Identity card number (if applicable)	Not applicable
F. Activities (trade union, political, religious, humanitarian/ solidarity, press, etc.)	Corporate lawyer
G. Residential and/or work address	Not applicable

II. Summary

Sergei Leonidovich Magnitsky (“Magnitsky”) was born on 8 April 1972 in Russia. He was a corporate lawyer who represented, amongst other clients, Hermitage Capital Management, at one time the largest foreign investment firm in Russia. Mr Magnitsky voluntarily provided testimony on 5 June 2008 and 7 October 2008 accusing Russian Interior Ministry and other state officials of stealing \$230 million from the Russian state budget as part of a complex fraud involving the transfer of title of several Hermitage companies and successfully applying for a tax reimbursement of \$230 million, a figure which represented the amount of taxes previously paid by the Hermitage companies to the Russian Federation. Following his testimonies, Mr Magnitsky was arrested on 24 November 2008 under Criminal Case №153123 by officers who he had implicated in the tax fraud. He was charged with tax evasion on evidence that many observers believed were fabricated.¹ He was never tried but kept in pre-trial detention in worsening conditions. He developed pancreatitis however was repeatedly refused medical treatment despite his continued requests. As a result, he died in pre-trial detention on 16 November 2009 at the age of 37. Complaints filed by Magnitsky and his lawyers regarding his arbitrary detention, requesting his release from pre-trial detention and access to urgent medical care were all rejected.²

Findings by the Council of Europe³, the Public Oversight Commission for Human Rights Observance in Moscow Detention Centres (“the Public Oversight Commission”)⁴ and the

¹ See U.S. Department of State, 2009 Human Rights Report: Russia, at <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136054.htm>.

² For general information on the circumstances of the case against Hermitage Capital Management and the subsequent arrest, detention and death in detention of Magnitsky, see <http://russian-untouchables.com/>. With the exception of Annexes II- IV, all Annexes to this submission are translations from Russian into English. Copies of the Russian original documents are on file with the authors.

³ Parliamentary Assembly of the Council of Europe, “Allegations of politically motivated abuses of the criminal justice system in Council of Europe member states”, 7 August 2009, para.89, available at <http://assembly.coe.int/Documents/WorkingDocs/doc09/edoc11993.pdf>.

⁴ Annex I: Report of Public Oversight Commission of 28 December 2009.

Moscow Helsinki Group⁵ concluded that Magnitsky's treatment amounted to inhuman and degrading treatment, that he was subjected to torturous conditions and that his right to life had been breached by the Russian state.

The International Bar Association⁶ and the Law Society of England and Wales⁷ called on the Russian government on several occasions to respect the role of lawyers and the independence of the judiciary and to ensure that all lawyers and judges are able to carry out their duties without fear of intimidation or harassment and free from interference.

Following Magnitsky's death in detention, Human Rights Watch concluded that the Russian government failed to ensure that state officials had been held to account and to investigate the circumstances of Magnitsky's death.⁸ In its 2009 Human Rights Report, the U.S. Department of State found that despite the announcement of a formal criminal investigation into Magnitsky's death by the Russian State Investigative Committee, no one had been criminally charged by year's end.⁹ To the contrary, on the eve of the one-year anniversary of Magnitsky's death in custody, some of the officials of the Russian Interior Ministry alleged to be responsible for his incarceration and denial of medical care reportedly have been promoted and awarded domestic honours.¹⁰

III. Circumstances surrounding torture

A. Date and place of arrest and subsequent torture

Date and place of arrest: 24 November 2008, Moscow, Russia

Places of detention:

- 1) IVS 1 (24 November 2008/Day of arrest - 2 December 2008);
- 2) SIZO-5 (2 December 2008 – 21 February 2009); moved between at least four different cells while in SIZO-5)
- 3) IVS 1 (21 February – 3 March 2009);

⁵ For an English summary of a letter sent by Lyudmila Mikhailovna Aleksyeva, Chairwoman of the Moscow Helsinki Group on 26 March 2010 to Alexander Ivanovich Bastrykin, First Deputy of the General Prosecutor of the Russian Federation, see <http://www.rightsinrussia.info/home/hro-org-in-english-1/torture/magnitsky>.

⁶ Annex II; Letter sent by the International Bar Association to President Medvedev, 8 June 2009.

⁷ Annex III: Letter sent by the Law Society of England and Wales to President Medvedev on 24 July 2009;

Annex IV: Letter sent by the Law Society of England and Wales to President Medvedev on 7 December 2009; .

⁸ See Human Rights Watch, Turn Words on Rights Into Action, 28 May 2010, at <http://www.hrw.org/en/news/2010/05/28/eu-russia-summit-turn-words-rights-action>.

⁹ See U.S. Department of State, 2009 Human Rights Report: Russia, at <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136054.htm>.

¹⁰ The Moscow News, "A year on, Magnitsky's probe stalls, 15 November 2010, at <http://www.themoscownews.com/politics/20101115/188205658.html>.

- 4) SIZO-5 (3 March – 28 April 2009);
- 5) SIZO-1 (“Matrosskaya Tishina”) (28 April – 25 July 2009) ;
- 6) SIZO-2 (“Butyrka”) (25 July – 16 November 2009/Day of death; moved between at least 7 different cells while in Butyrka detention centre);
- 7) SIZO-1 (“Matrosskaya Tishina”) (16 November 2009/Day of death).

B. Identity of force(s) carrying out the initial detention and/or torture (police, intelligence services, armed forces, paramilitary, prison officials, other)

Officials of the Russian Interior Ministry Magnitsky previously implicated in his testimonies on the tax fraud, carried out the arrest and administered the detention of Magnitsky. They allegedly ordered and supervised Magnitsky’s detention, including his transfer among numerous detention centers, denying him medical treatment and refusing him any family contact. Members of the Russian Federal Security Service FSB, who allegedly initiated the case against Hermitage, allegedly directed the arrest of Magnitsky.

Officials of the Russian General Prosecutor’s Office and the Russian State Investigative Committee allegedly prevented the prosecution of any officials involved in Magnitsky’s treatment and eventual death in detention. In addition, they rejected complaints and appeals received from Magnitsky and his lawyers about the detention; conditions in detention; the pressure exerted upon Magnitsky to change his testimony; and the fabrications of a criminal case against him.

Detention centre officials are alleged to be responsible for a denial of life-saving medical treatment of Magnitsky and for the administration of torturous conditions of detention.

Moscow district and city judges are also alleged to be responsible for the denial of a legal remedy to Magnitsky and the rejection of his complaints about the cruel, degrading treatment and the denial of prescribed medical treatment while in detention. These courts also sanctioned Magnitsky’s initial arrest and continued detention.¹¹

C. Were any person, such as a lawyer, relatives or friends, permitted to see the victim during detention? If so, how long after the arrest?

Family visits:

¹¹ On 26 April 2010, the U.S. Helsinki Commission issued a list of Russian officials detailing their alleged involvement in the arrest, detention and death of Sergei Magnitsky. See a full list at: http://csce.gov/index.cfm?FuseAction=ContentRecords.ViewDetail&ContentRecord_id=896&ContentType=P&CFID=34818657&CFTOKEN=65242806.

Investigator Oleg Fedorovich Silchenko, Senior Investigator for cases of special importance of the Investigative Committee of the Russian Interior Ministry, repeatedly denied Magnitsky the right to see his mother, wife, two children and aunt stating that he deemed such contacts “inexpedient” and that they would “interfere” with the “current status” of the investigation. Investigator Silchenko also forbade Magnitsky from speaking on the telephone with his children denying Magnitsky’s request for paid-for phone call as “inexpedient” because of the son’s young age.¹²

Aside from court appearances, the first and only time Magnitsky was allowed to see his close family (his wife and mother) during the entire period of his detention was on 28 October 2009.¹³

Access to a lawyer:

According to complaints submitted by Magnitsky during his detention, his opportunities to see his lawyers were severely obstructed. He was formally permitted to see his lawyers, but even after permission was granted, there was limited possibility for the lawyers to actually see Magnitsky. It was necessary for them to get written permission, then to queue and wait. Often Magnitsky would wait in a holding cell for the entire day without seeing his lawyers at all. At best, he usually only managed to see them for a very short time period.¹⁴

Magnitsky was transferred between several detention centres and numerous cells, often at night. His lawyers and his relatives were not informed by investigators about his transfers contrary to the UN Standard Minimum Rules for the Treatment of Prisoners.¹⁵

On 16 November 2009, the day of Magnitsky’s death, Investigators Oleg Fedorovich Silchenko and Sergei Oleinik, Senior Investigator of the Investigative Committee of the Interior Ministry, denied Magnitsky’s lawyers access to their client on the ground that Magnitsky could not leave his cell at Butyrka detention centre. Investigators refused to provide to the lawyers any information about Magnitsky’s state of health or give them a copy of his medical report on the ground that it was an “internal matter of the investigation”.¹⁶

¹² Annex V: Refusal by Interior Ministry Investigator Oleg Silchenko of Magnitsky’s request to see his mother, 18 June 2009; Annex VI: Refusal by Interior Ministry Investigator Oleg Silchenko of Magnitsky’s request to see his aunt, claiming that he has “no reliable basis” for believing this woman to be his aunt and that such a visit would be counterproductive for the investigation, 25 August 2009; Annex VII: Refusal by Interior Ministry Investigator Oleg Silchenko of Magnitsky’s request to make a paid-for phone call to his son born 2001, claiming it “inexpedient” because of the son’s young age, 14 September 2009.

¹³ Information provided to the authors by Magnitsky’s mother.

¹⁴ Annex VIII: Complaint by Sergei Magnitsky of 20 September 2009.

¹⁵ UN Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crimes and the Treatment of Offenders, held at Geneva in 1955, Economic and Social Council Resolution 63 C (XXIV) (31 July 1957) and 2076 (LXII) (13 May 1977), Rule 44 (3).

¹⁶ Annex IX: Complaint submitted by Magnitsky’s lawyers to the General Prosecutor of the Russian Federation of 16 November 2009.

D. Describe the methods of torture used

Frequent Transfers to different detention centres and different cells resulting in worsening conditions of detention

In the first 9 months of his pre-trial detention, Magnitsky was moved between three pre-trial detention centres and between numerous cells. Each transfer required him to change his living conditions, each transfer found Magnitsky in worse conditions relative to the previous cell.¹⁷ From 21 February 2009 to 5 March 2009, Magnitsky was held in a temporary detention centre which is not designed for the custody of detainees (whose detention has been approved by the court), but exist to provide space for custody of those initially taken into custody as suspects. As a result, cells in temporary detention centres have no toilets, no sinks, no individual bed sheets, no dedicated bed to sleep. From 25 July to 16 November 2009, he was held in at least 7 different cells.¹⁸ In these cells, Magnitsky was deprived of food for periods greater than 24 hours, of clean drinking water, of fresh air, showers and access to hot water. He was placed in cells with raw human sewage covering the floor for 35 hours, with no windows to protect him from the cold.¹⁹ The detention of Magnitsky in these cells violated recognised minimum standards of the conditions of detention, such as the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereinafter Body of Principles)²⁰ and the UN Standard Minimum Rules for the Treatment of Prisoners²¹, which apply in Russia by virtue of the European Convention on Human Rights.²² The Council of Europe in a formal report reviewed in June 2009 and adopted in August 2009 held:

“According to his lawyers, he [Magnitsky] is detained in a crowded cell with cockroaches, with more inmates than beds, the light switched on all the time, no privacy for using the toilet, a shower only once a week for ten minutes, lack of ventilation in the cell, and the possibility to walk in a closed courtyard measuring only 3 x 5 metres for less than an hour per day.”²³

The use of substandard conditions of detention in combination with the frequent transfer to different detention facilities and moves to different cells, without informing his lawyers and

¹⁷ Annex X: Application submitted by Sergei Magnitsky on 11 September 2009 to Senior Investigator Oleg Fedorovich Silchenko, p.2 (English version).

¹⁸ See Report of the Public Oversight Commission describing the conditions in each of these cells, pp.3-9, Annex I.

¹⁹ Ibid.

²⁰ UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173 of 9 December 1988.

²¹ UN Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crimes and the Treatment of Offenders, held at Geneva in 1955, Economic and Social Council Resolution 63 C (XXIV) (31 July 1957) and 2076 (LXII) (13 May 1977), Rules 22-26.

²² Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force 3 September 1953, ratified by Russia 5 May 1998.

²³ Parliamentary Assembly of the Council of Europe, “Allegations of politically motivated abuses of the criminal justice system in Council of Europe member states”, 7 August 2009, available at <http://assembly.coe.int/Documents/WorkingDocs/doc09/edoc11993.pdf>

his family, are believed to have been designed to increase the discomfort of the applicant and to reinforce his powerlessness. To this end, this form of detention amounted to ill-treatment.

Isolation from his family throughout his detention

Magnitsky was not allowed to receive visits from his immediate family, except once, over the entire period of his detention of almost 12 months. The continued rejection of his requests to see his wife, children and mother was contrary to the UN Standard Minimum Rules for the Treatment of Prisoners²⁴, which sets out a special regime for prisoners under arrest or awaiting trial and amounted to inhuman treatment of Magnitsky and his family, as confirmed for instance by the African Commission on Human and Peoples' Rights:

“holding an individual without permitting him or her to have contact with his or her family, and refusing to inform the family if and where the individual is being held, is inhuman treatment of both the detainee and the family concerned.”²⁵

The failure to provide adequate medical assistance

Russian authorities were under an obligation to ensure that Magnitsky's detention was “compatible with respect of his human dignity” and that the manner and method of the detention “do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance.”²⁶

Russian authorities failed to render such requisite medical assistance.

After seven months in pre-trial detention in deteriorating conditions and continuous pressure to confess, Magnitsky's health started to deteriorate in June 2009. He was examined and diagnosed on 1 July 2009 by medical officials of Matrosskaya Tishina detention centre with “acute pancreatitis with underlying calculous cholecystitis.”²⁷ Prior to

²⁴ UN Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crimes and the Treatment of Offenders, held at Geneva in 1955, Economic and Social Council Resolution 63 C (XXIV) (31 July 1957) and 2076 (LXII) (13 May 1977), para.92.

²⁵ African Commission of Human and Peoples' Rights, Communications 48/90, 50/91 and 89/93, Amnesty International and others v Sudan, para.54; see also Communication No. 275/2003, Article 19 v Eritrea, paras. 100, 101.

²⁶ European Court of Human Rights, *Kudla v Poland*, Application no 30210/96 (26 October 2000), para.94; *Mouisel v. France*, Application no. 67263/01 (14 November 2002), para. 40.

²⁷ Annex XI: Federal Service of Punishment Execution of Moscow, Federal State Institution, 14 July 2009, No 10/44- 768; Medical statement issued by Dr. V.V. Stepanov, Head of medical ward, Lieutenant – Colonel of Home Affairs and D.I. Vasiliev, Acting Director and Colonel of Home Affairs.

his arrest, Magnitsky did not have any of these illnesses or at least did not have any symptoms thereof.²⁸ He was prescribed a second ultrasound examination within a month, i.e. by 1 August 2009. Based upon the results of the second ultrasound, a surgery was to be conducted.²⁹

On 25 July 2009, a week before any examination and surgery was due to be conducted, Magnitsky was moved to Butyrka detention centre, which had no surgery facilities and no ultrasound machine. He was not medically examined by a doctor on arrival to Butyrka. Despite written and oral requests over the next four weeks, he was not examined by a doctor. On 24 August 2009, the continued lack of treatment resulted in pain so severe that he could not lie down. His cellmate started to call for help.³⁰ Magnitsky was taken to see a doctor five hours later, who advised Magnitsky to see a surgeon to resolve the issue and who dismissed his request for examination by responding “Do you think we are going to treat you every month?” That same day, he was examined by a paramedic who diagnosed intercostals neuralgia. Neither the doctor nor the paramedic transferred Magnitsky’s request to be examined by a surgeon. Magnitsky had to wait until the doctor’s routine prison visit on 7 October 2009 to be examined by Dr. Litvinova, the head of the therapeutic ward of Butyrka. He was then placed in the therapeutic ward of Butyrka detention centre until 12 November 2009.³¹

On 12 November 2009, in the middle of the night Magnitsky was ordered to be moved to a new cell. His request to delay his transfer until the morning was denied, according to his complaint from 13 November 2010.³² During Friday, 13 November 2009, Magnitsky developed severe pains and vomiting. His written request for a medical ultrasound examination filed on same day was ignored.³³ He was allegedly given some anti-spasm medicine by medical staff as the doctor had already left for the weekend. Upon the doctor’s examination on Monday morning, 16 November 2009, he was diagnosed with acute pancreatitis requiring an additional ultrasound and possibly surgery.³⁴ According to Butyrka detention centre officials, an ambulance was called to Butyrka between 2 and 3 pm, and Magnitsky was transferred from Butyrka detention centre at 17:10 in the late afternoon and arrived at Matrosskaya Tishina detention centre at 18:30.

According to the Public Oversight Commission’s report, the accounts of detention centre officials and doctors about what happened next, were contradictory in every detail and appear to deliberately conceal the truth about what really happened to him.³⁵

²⁸ Annex XII: Complaint by Sergey Magnitsky about Inhumane Conditions in Detention, 18 September 2009 (English translation of forty pages of hand written text).

²⁹ Annex I, Report of the Public Oversight Commission, p.10; Annex XI.

³⁰ Annex XII.

³¹ Annex I.

³² Annex XIII.

³³ Annex XIII: Hand-written Application by Sergei Magnitsky for Medical Help, 13 November 2009, to the Head of the Medical Unit of FBU IZ 77/2 (Butyrka pre-trial detention centre).

³⁴ Annex I.

³⁵ Annex I, p. 19.

According to interviews and medical records presented by Matrosskaya Tishina detention centre officials to the Public Oversight Commission, Magnitsky was examined by the doctor on duty on his arrival at Matrosskaya Tishina detention centre. He was again diagnosed with acute cholecystitis and pancreatitis and his status was described as moderately severe.³⁶ He was prescribed to be hospitalized to the surgery department. However, at around 19:00, the doctor diagnosed Magnitsky with a psychotic incident and 8 officials came to handcuff and place him in an isolated room, rather than the surgery ward. The official time of Magnitsky's death was 21:50. According to the official autopsy carried out by officials in the Russian General Prosecutor's office, he died as a result of an acute cardiac deficiency (cardiomyopathy). However, no explanation was provided for the serious inconsistencies between this finding and statements by doctors given to the Public Oversight Commission, as well as medical reports confirming Magnitsky's overall good heart condition and finding of acute pancreatitis and cholecystitis. No explanation was provided also for the bruises found by his relatives at the funeral.³⁷ His mother was denied an independent autopsy or the participation of an independent expert during the official autopsy.

Magnitsky's treatment in Butyrka detention centre was far from adequate in light of the diagnosis made on 1 July 2009, the prescribed treatment and his deteriorating condition as a result of a denial of that treatment. It was contrary to the UN Standard Minimum Rules for Treatment of Prisoners which provide that "sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers."³⁸

The European Court of Human Rights held that

"a failure to take reasonably available measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the State" and that "the pattern of lack of investigation, communication and co-operation by the relevant authorities disclosed in this case must be regarded as having a significant influence on the course of events and that proper and effective management of their responsibilities might, judged reasonably, have been expected to avoid, or at least minimise the risk or the damage suffered."³⁹

Magnitsky required and was prescribed specialized treatment by 1 August 2009, namely a

³⁶ Annex XIV: Federal Service of Punishment Execution of Moscow, Federal State Institution, 04.12.09, No 0-12; Medical statement issued by F.G. Tagiev, Director of FGU IZ- 77/1, Colonel of Home Affairs and S.N. Mazurov, Head of Hospital, Head of Unit and Treating Doctor.

³⁷ For photos of the bruises, see <http://dr-timur.ru/page/sergei-magnitskii>.

³⁸ UN Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crimes and the Treatment of Offenders, held at Geneva in 1955, Economic and Social Council Resolution 63 C (XXIV) (31 July 1957) and 2076 (LXII) (13 May 1977), Rule 22 (2).

³⁹ European Court of Human Rights, E. and others v. United Kingdom, application no. 33218/96 (26 November 2002), paras.99, 100.

second ultrasound examination and possible surgery. Instead of overseeing him in preparation for such treatment, he was transferred on 25 July 2009, one week before the prescribed surgery, from Matrosskaya Tishina detention centre to Butyrka detention centre, which did not have facilities either for surgery or ultrasound. During the subsequent month of August 2009 at Butyrka detention centre, Magnitsky's daily requests for a doctor examination were denied or ignored. In October 2009, he was eventually placed in a therapeutic ward, where no ultrasound examination equipment or treatment for the acute pancreatitis and cholecystitis was available. Only when it was too late, did authorities decide to afford him with treatment and transfer him from Butyrka back to Matrosskaya Tishina. However, upon arrival to Matrosskaya Tishina, he was handcuffed and isolated, rather than treated even though his condition was diagnosed as moderately severe. The lack of adequate treatment exposed him to acute pain and suffering over almost four months and appears to have ultimately caused his death in detention.

The denial of necessary medical treatment to Magnitsky, despite repeated requests, therefore violated his right to life. It also exposed him to a level of distress and hardship of an intensity that went beyond the unavoidable level of suffering inherent in detention and was in clear violation of international standards prohibiting torture and cruel, inhuman or degrading treatment.⁴⁰ His good health prior to detention and his death in detention furthermore gives rise to the presumption that his treatment while in detention amounted to torture.⁴¹

The methods used against Magnitsky, singly and in combination- the inhuman detention conditions, the isolation from his family, the lack of regular access to his lawyers and the intentional refusal to provide adequate medical assistance resulted in the deliberate infliction of severe pain and suffering, and ultimately his death.⁴² These measures were designed to increase his discomfort and to put further pressure on him to confess and testify against others. The methods were also used to force Magnitsky to retract his testimonies against Russian officials. The acts were committed by officials as set out above. For these reasons, the acts were of such a severity and carried the requisite purpose to have amounted to torture in violation of Article 2 (1) and Article 1 of the UN Convention against Torture.

E. What injuries were sustained as a result of the torture?

During his detention, Magnitsky, a previously healthy 36 year-old man, developed severe pancreatitis, gallstones and cholecystitis. He suffered agonising pain but was denied any medical attention, and died in custody having been deprived of pain relief or any life-saving

⁴⁰ Ibid; see also European Court of Human Rights, *Kalashnikov v. Russia*, application no. 47095/99 (15 July 2002), para.95.

⁴¹ See for instance European Court of Human Rights, *Corsacov v Moldova*, application no. 18944/02 (2006), para. 55.

⁴² See also Annex I, conclusion of the Public Oversight Commission of 28 December 2009 in its Report, finding that physical and psychological pressure was exerted on Magnitsky, he was subjected to torturous conditions and his right to life had been breached by the state.

treatment. Magnitsky was also subjected to severe psychological pain as he was deprived of almost all contact with his close family during almost 12 months of pre-trial detention.⁴³

Magnitsky described his pain in his complaints and letters to his lawyers and family where he compared his suffering to “being put through a meat grinder” and being worse than being in prison or labour camps.⁴⁴

The extent of physical suffering Magnitsky was subjected to between 13 November and 16 November 2009 when he was pronounced dead is not yet fully known. The precise injuries sustained as a result of the treatment during the last 4 days of his life are difficult to ascertain. After Magnitsky’s death, requests from his relatives to include an independent expert in the official post-mortem examination were refused. Similarly refused were their requests to conduct an independent autopsy. The authorities further refused to release Magnitsky’s body to the relatives for a funeral and only released it on the strict condition of an immediate burial.

During his burial, Magnitsky’s relatives saw and recorded bruises and marks on his hands indicating possible physical struggle in his final hours.⁴⁵

F. What was believed to be the purpose of the torture?

There are strong indications that the torture was performed in order to coerce Magnitsky into retracting testimony he had previously made regarding the involvement of Russian Interior Ministry officials and other state officials in the theft of \$230 million of state funds.

For instance, as documented in his complaints written during his pre-trial detention, Magnitsky was told that the torture would end and he would be released if he retracted his testimony and falsely implicated himself and his client in alleged tax crimes and the theft of \$230 million.⁴⁶ He consistently refused to retract his testimony and to compromise his integrity. Instead he filed new complaints with the Interior Ministry and the Russian General Prosecutor, Yuri Chaika, in which he stated his innocence and described his repression by Interior Ministry officers who he termed corrupt, the torturous conditions and the deprivation of urgent medical care and his status as a hostage of the officers who abetted the theft of \$230 million of budget funds. His complaints were rejected.⁴⁷

G. Was the victim examined by a doctor at any point during or after his/her ordeal? If so, when? Was the examination performed by a prison or government doctor?

⁴³ Ibid.

⁴⁴ See Annex XV: Hand-written letter written by Sergei Magnitsky to his lawyer about ‘Human Meat Grinder’, 8 August 2009.

⁴⁵ For photos of the bruises, see <http://dr-timur.ru/page/sergei-magnitskii>.

⁴⁶ Annex XVI: Complaint by the lawyers of Sergei Magnitsky Regarding the Fabrication of Evidence by Investigator Silchenko, 13 November 2009.

⁴⁷ Annex XX: Complaint by Magnitsky’s lawyers to General Prosecutor of the Russian Federation Chaika Yu.Ya., 11 September 2009.

Dr Valery Sholokhov, of the Matrosskaya Tishina detention centre examined Magnitsky on 1 July 2009. Based on ultrasound results, he diagnosed Calculous Cholecystitis.⁴⁸

David Galustov surgeon from the hospital unit of Matrosskaya Tishina examined Magnitsky on 13 July 2009. He told the Public Oversight Commission that “Magnitsky had cholecystitis, pancreatitis.” A planned operation was recommended for him after a second ultrasound examination.⁴⁹

On 24 August 2009, Magnitsky was examined by a paramedic working in Butyrka detention centre, Ms Khokhlova, who diagnosed intercostals neuralgia.⁵⁰

On 7 October 2009, Magnitsky was examined by Dr Litvinova, the head of the therapeutic ward at Butyrka detention centre, who placed him in the therapeutic ward.

On 11 November 2009, Dr Litvinova examined Magnitsky with an echo-cardiogram at Butyrka detention centre which stated the normal functioning of his heart and repeated the diagnosis of pancreatitis and cholecystitis. The official certificate issued stated that he was fit to be kept in pre trial detention.⁵¹

On 4 December 2009, the Director of Matrosskaya Tishina detention centre, F.G. Tagiev and the head of hospital, S.N. Mazurov, notified Magnitsky’s lawyers in writing that Magnitsky was transferred to Matrosskaya Tishina detention centre on 16 November 2009 with a diagnosis of “cholelithiasis, acute calculous cholecystitis, acute pancreatitis” and that his status was “moderately severe”.⁵² However, the official death certificate issued on 19 November 2009 stated that the cause of his death was acute heart failure and cardiomyopathy.⁵³

H. Was appropriate treatment received for injuries sustained as a result of the torture?

No. It is submitted that the development of gallstones and acute cholecystitis pancreatitis was a direct result of the continued detention of Magnitsky in worsening conditions and the psychological and physical pressure exercised upon him. The treatment for these injuries, prescribed on 1 July 2009, was never carried out. His good health prior to detention and his death in detention furthermore gives rise to the presumption that his treatment while in detention amounted to torture.⁵⁴ Instead of treating his acute condition upon arrival at the

⁴⁸ Annex XI.

⁴⁹ Annex I, p.10

⁵⁰ Ibid, p.11.

⁵¹ Annex XVII: Federal Service of Punishment Execution of Moscow, Federal State Institution, 11.11.09, No 50/2/2-8828; Medical Statement signed by D.V. Komnov, Head of FBU IZ- 77/2 UFSIN Russia of Moscow, Lieutenant- Colonel of Home Affairs and D.B. Kratov, Deputy Head for medical issues of FBU IZ- 77/2 UFSIN Russia of Moscow, Lieutenant- Colonel of Home Affairs.

⁵² Annex XIV.

⁵³ Annex XVII: Death Medical Certificate, Serial Number 45#217204, 19 November 2009, Serial Number 2052.

⁵⁴ See for instance European Court of Human Rights, Corsacov v Moldova, application no. 18944/02 (2006), para. 55.

hospital on 16 November 2009, he was handcuffed, isolated and doctors were allegedly prevented from entry to his cell until his death.⁵⁵

I. Was the medical examination performed in a manner which would enable the doctor to detect evidence of injuries sustained as a result of the torture? Were any medical reports or certificates issued? If so, what did the reports reveal?

As described by Magnitsky in his complaints, his requests to be seen by a doctor and for a medical examination to treat calculous cholecystitis have been denied, starting from 25 July 2009 until his death on 16 November 2009.

The following medical reports/ certificates were provided to Magnitsky's lawyers:

- 14 July 2009: listing the diagnosis "Calculous Cholecystitis" and prescribing a control ultra- sound examination and a scheduled operation a month later;⁵⁶
- 11 November 2009: stating normal functioning of his heart, repeating the diagnosis of "Gallstones and Cholecystitis Pancreatitis at an acute stage";⁵⁷
- 4 December 2009: stating that Magnitsky was transferred to FGU IZ – 77/1 [Matrosskaya Tishina] on 16 November 2009 with a diagnosis of Cholelithiasis, Acute Calculous Cholecystitis and Acute Pancreatitis" and that his status was "moderately severe"⁵⁸

J. If the victim died in custody, was an autopsy or forensic examination performed and which were the results?

An official autopsy was carried out by a pathologist and overseen by officials of the Russian General Prosecutor's office on 17 November 2009. The officials allegedly have been involved in denying Magnitsky access to medical care and all legal remedies while in pre-trial detention. The autopsy stated an acute heart problem as the cause of death, despite a medical examination carried out only 5 days before his death, finding that he was suffering from gallstones and cholecystitis pancreatitis at an acute stage, but that and after carrying out a electrocardiogram, his health was satisfactory.⁵⁹

An independent autopsy was requested by Magnitsky's family but it was initially refused, as was the request for an independent observer of the official autopsy. Magnitsky's body was released to the family on the strict condition it only be used for immediate burial.

A review of medical certificates, the post mortem report of 17 November 2009, and other

⁵⁵ Annex I.

⁵⁶ Annex XV

⁵⁷ Annex XV

⁵⁸ Annex XII

⁵⁹ Annex XV

case documents such as letters and testimonies was eventually carried out on 12 May 2010. The review confirmed the finding of the first post mortem of Magnitsky's death from acute heart failure. According to a published summary of the report, however, it also noted insufficient medical care to Magnitsky and absent medical entries in his medical records.⁶⁰

III. Remedial action

Were any domestic remedies pursued by the victim or his/her family or representatives (complaints with the forces responsible, the judiciary, political organs, etc.)? If so, what was the result?

During pre trial detention:

Sergei Magnitsky and his lawyers filed approximately 450 complaints appealing arrest, continued detention, unlawful acts by investigators [including his treatment, detention conditions, the denial of medical care, denial of family visits, lack of response to applications and complaints]. Aside from 2 complaints, all were denied or dismissed.

Magnitsky also filed a complaint with the Russian Constitutional Court to clarify provisions of Russian law that were used by investigators to deny him justice. However, the hearing date was not set during his life.

Six months before Magnitsky's death, the Special Rapporteur of the Council of Europe requested from the Russian General Prosecutor's office information about Magnitsky's arrest and treatment and concluded on the basis of the official replies:

"...I cannot help but suspecting that this co-ordinated attack must have the support of senior officials. These appear to make use, for their own purposes, of the persisting systemic weaknesses of the criminal justice system in the Russian Federation."⁶¹

Five months prior to Magnitsky's death, the International Bar Association and the UK Law Society sent letters to Russian President Medvedev and General Prosecutor Chaika demanding that Magnitsky be released from detention and his illegal persecution by the Interior Ministry officers he accused be ended.

Following Magnitsky's death in detention:

The Moscow Helsinki Group requested from the Investigative Committee of the Russian General Prosecutor's Office to open a criminal case against the Interior Ministry officers for the

⁶⁰ Annex XIX: Translation of excerpts from "Examination of Documents" by a commission of post mortem experts of the Department of Health of the City of Moscow, in relation to the death of S.L.Magnitsky, born in 1972, completed 12 May 2010.

⁶¹ Parliamentary Assembly of the Council of Europe, "Allegations of politically motivated abuses of the criminal justice system in Council of Europe member states", 7 August 2009, para.111, available at <http://assembly.coe.int/Documents/WorkingDocs/doc09/edoc11993.pdf>

murder of Magnitsky “committed with special brutality in order to conceal the role of officials in the theft of \$230 million exposed by Magnitsky.”⁶² This request has been denied by the Investigative Committee on the ground that there is an on-going investigation into the negligence by unidentified persons. However, on the eve of the one year anniversary of Magnitsky’s death in custody, some of the officials of the Russian Interior Ministry alleged to be responsible for his incarceration and denial of medical care reportedly have been promoted and awarded domestic honours.⁶³

The US State Department in its 2009 Human Rights report on Russia recognised that after “a year in pre-trial detention, Magnitsky developed an infection in his pancreas but was refused medical treatment and died” and further found that despite the Justice Ministry’s announcement of a formal investigation into Magnitsky’s death, no one had been criminally charged by the end of 2009.⁶⁴

The Committee against Torture has regularly found that there is no need to exhaust domestic remedies where there are insurmountable procedural impediments, resulting for instance from the refusal of the authorities to allow the complainant to take particular procedural steps necessary for the exercise of those remedies which are available.⁶⁵ Russia is under an obligation to effectively investigate the allegations of Magnitsky’s torture and the circumstances and cause of his death in pre-trial detention. To comply with its obligations, it is incumbent on the Russian government to order a prompt, independent and thorough investigation that is subject to public scrutiny.

Accordingly, the investigation must be fully independent of the institutions and persons accused by Magnitsky to be involved in the tax fraud and allegedly involved in his torture. The independent nature of the investigation is particularly important as the individuals alleged to be involved in this case include high ranking government officials, whose investigation requires political consent. The investigation must be able to pronounce on the responsibility of the Russian government if proved to have known and be involved in Magnitsky’s torture and eventual death and identify any individuals responsible, irrespective of their rank and position.

⁶² Moscow Helsinki Group: Magnitsky’s Murderer’s Must be Brought to Justice, 23 April 2010, at <http://www.rightsinrussia.info/home/hro-org-in-english-1/torture/magnitsky>

⁶³ *Supra*, n.10.

⁶⁴ See 2009 Human rights report: Russia, March 2010, at <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136054.htm>.

⁶⁵ See *Saadia Ali v. Tunisia*, Comm. No. 291/2006, decision of 26/11/2008, UN doc. CAT/C/41/D/291/2006, para. 12.3.

IV. Information concerning the authors of the present report:

REDRESS is an international human rights non-governmental organisation, based in London, with a mandate to assist torture survivors to seek justice and other forms of reparation. It fulfils its mandate through a variety of means, including casework, law reform, research and advocacy. It has accumulated a wide expertise on the various facets of the right to reparation for victims of torture under international law and regularly takes up cases on behalf of victims of torture before national, regional and international human rights mechanisms and courts and tribunals.

REDRESS
87 Vauxhall Walk
SE11 5HJ
London
United Kingdom
Tel.: 0044 20 7793 1777
Fax: 0044 20 7793 1719
www.redress.org

Jürgen Schurr, Legal Advisor
juergen@redress.org

Dated

ANNEXES

- Annex I “Report of Public Oversight Commission for Human Rights Observance in Moscow Detention Centres- Review of the Conditions of the Detention of Sergei Magnitsky in the Pre Trial Detention Centres of the City of Moscow”, 28 December 2009
- Annex II Letter sent by the International Bar Association to President Medvedev, 8 June 2009
- Annex III Letter sent by the Law Society of England and Wales to President Medvedev on 24 July 2009
- Annex IV Letter sent by the Law Society of England and Wales to President Medvedev on 7 December 2009
- Annex V Refusal by Interior Ministry Investigator Oleg Silchenko of Magnitsky’s request to see his mother, 18 June 2009
- Annex VI Refusal by Interior Ministry Investigator Oleg Silchenko of Magnitsky’s request to see his aunt, 25 August 2009
- Annex VII Refusal by Interior Ministry Investigator Oleg Silchenko of Magnitsky’s request to make a paid-for phone call to his son
- Annex VIII Complaint by Sergei Magnitsky of 20 September 2009
- Annex IX Complaint submitted by Magnitsky’s lawyers to the General Prosecutor of the Russian Federation of 16 November 2009
- Annex X Application submitted by Sergei Magnitsky on 11 September 2009 to Senior Investigator Oleg Fedorovich Silchenko
- Annex XI Federal Service of Punishment Execution of Moscow, Federal State Institution, 14 July 2009, No 10/44- 768; Medical statement issued by Dr. V.V. Stepanov, Head of medical ward, Lieutenant – Colonel of Home Affairs and D.I. Vasiliev, Acting Director and Colonel of Home Affairs
- Annex XII Complaint by Sergey Magnitsky about Inhumane Conditions in Detention, 18 September 2009
- Annex XIII Hand-written Application by Sergei Magnitsky for Medical Help, 13 November 2009, to the Head of the Medical Unit of FBU IZ 77/2 (Butyrka pre-trial detention centre)
- Annex XIV Federal Service of Punishment Execution of Moscow, Federal State Institution, 04.12.09, No 0-12; Medical statement issued by F.G. Tagiev, Director of FGU IZ- 77/1, Colonel of Home Affairs and S.N. Mazurov, Head of Hospital, Head of Unit and Treating Doctor

- Annex XV Hand-written letter written by Sergei Magnitsky to his lawyer about Human Meat Grinder, 8 August 2009
- Annex XVI Complaint by the lawyers of Sergei Magnitsky Regarding the Fabrication of Evidence by Investigator Silchenko, 13 November 2009
- Annex XVII Federal Service of Punishment Execution of Moscow, Federal State Institution, 11.11.09, No 50/2/2-8828; Medical Statement signed by D.V. Komnov, Head of FBU IZ- 77/2 UFSIN Russia of Moscow, Lieutenant- Colonel of Home Affairs and D.B. Kratov, Deputy Head for medical issues of FBU IZ- 77/2 UFSIN Russia of Moscow, Lieutenant- Colonel of Home Affairs
- Annex XVIII Death Medical Certificate, Serial Number 45#217204, 19 November 2009, Serial Number 2052; the official death certificate listed an acute heart problem as reason for Magnitsky's death
- Annex XIX Excerpts from "Examination of Documents" by a commission of post mortem experts of the Department of Health of the City of Moscow, in relation to the death of S.L.Magnitksy, born in 1972, completed 12 May 2010
- Annex XX Complaint by the lawyers of Magnitsky to General Prosecutor of the Russian Federation Chaika Yu.Ya., 11 September 2009