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Refusing impunity for the killers of Sergei Magnitsky

Addendum to the report¹

Committee on Legal Affairs and Human Rights

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1. Introduction

1. The report and its appendix, providing an update from the time of the draft report's first discussion on 26 June 2013, was adopted by the Committee on Legal Affairs and Human Rights on 4 September 2013. Since this date, there have been some new developments:

- the High Court in London rejected the libel suit against Mr Sergei Magnitsky's former client and former employer, Mr William Browder and Mr Jamison Firestone, which had been brought by Mr Pavel Karpov, one of the policemen named as having been involved in the fraud denounced by Mr Magnitsky and the subsequent cover-up;
- some progress was made in following the "money trail": funds from the fraudulent tax reimbursement denounced by Mr Magnitsky were tracked to New York and to a number of European States, in addition to those already mentioned in the main report;
- the Russian authorities cleared Ms Olga Stepanova, the former head of the Moscow tax office No. 28 through which the majority of the fraudulent tax reimbursements denounced by Mr Magnitsky was made; considerable funds from the fraudulent disbursements had been tracked to her husband.

2. These new developments have led me to two interrelated conclusions:

- i. in order to fully elucidate the crime denounced by Mr Magnitsky and to hold to account its perpetrators and beneficiaries, it is particularly important to step up international co-operation, in particular to follow the "money trail" wherever it leads;
- ii. the Russian authorities must be convinced of participating in this international effort: without their co-operation, it is very difficult to establish the detailed circumstances of the predicate offence,² which are needed to successfully prosecute money laundering.

3. The surprising exoneration of Ms Stepanova, despite all the evidence against her and her husband that has already been made public, shows that the competent Russian authorities have still not seriously investigated the crime denounced by Mr Magnitsky. The perpetrators and beneficiaries of this crime are at the same time the prime suspects for the crime committed against Mr Magnitsky; we must continue to refuse their impunity, as it is said in the title of the report adopted by the Committee on Legal Affairs and Human Rights on 4 September 2013.

1. Addendum to the report approved by the committee on 27 January 2014.

2. The tax reimbursement fraud exposed by Mr Magnitsky for which, so far, only the "man of straw", Mr Victor Markelov, has been found guilty by a Russian court following a summary trial (see main report, paragraphs 83-85).



4. In order to give a new impetus to the international co-operation required in this respect, I am suggesting that – in addition to the draft resolution already tabled in September – the Parliamentary Assembly also addresses a recommendation to the Committee of Ministers urging it to take up this matter. I have therefore included a draft for such a recommendation in this addendum.

2. New developments in the “Magnitsky case” since the adoption of the report by the Committee on Legal Affairs and Human Rights

2.1. Rejection of the libel suit against Mr Browder and Mr Firestone

5. Mr Karpov is one of the Russian Interior Ministry investigators accused of complicity both in the US\$230 million tax reimbursement fraud denounced by Mr Magnitsky and in its cover-up, including Mr Magnitsky's death in detention.³ He had sued Mr Browder and Hermitage, Mr Magnitsky's former client, and Mr Firestone, his former employer, for libel, before the High Court in London.

6. He complained about Mr Browder, Hermitage and Mr Firestone having publicly accused him of complicity in the “torture and murder” of Mr Magnitsky, in particular in the films posted on the website “Russian-untouchables.com”.⁴ Mr Karpov is also included in the “Magnitsky list” published by the US Department of Treasury on 12 April 2013 pursuant to the “Sergei Magnitsky Rule of Law Act 2012”.

7. The lawsuit threatened to be extremely costly.⁵ Mr Karpov took out a bank loan guaranteed by an undisclosed friend in order to fund his own costs – having hired a prominent London law firm – and the guarantee he had to post for the defendants' costs.

8. Mr Browder and Mr Firestone asked the Court to reject the application as an “abuse of procedure” before the trial stage. The Court followed their request⁶ even though it did not share all their arguments.

9. Among the arguments which did not persuade the Court was the defendants' claim, based on the unclear funding sources for the lawsuit, that Mr Karpov was in reality not trying to defend his own reputation, but an avowed political objective of the Russian State.

10. Also, the Court did not believe that the defendants had made a successful plea of justification (of the libellous allegations against Mr Karpov). The only overt act relied on is Mr Karpov's involvement in the arrest and imprisonment of Mr Magnitsky. The causal link made between the arrest and imprisonment and Mr Magnitsky's death is “wholly lacking” according to the Court.⁷ The Court even considered that Mr Karpov had achieved a measure of vindication as a result of the views it had expressed on the application.⁸ But the Court has qualified this finding by using the expression “presently set out in the pleadings”, because the possibility existed that the defendants could amend the particulars of the plea of justification to rely on participation in a broad conspiracy and/or joint enterprise (instead of the charge that Mr Karpov was a primary or secondary party to Mr Magnitsky's torture and murder).⁹

11. A key issue for the Court was the need to balance the rights under Article 8 (protection of reputation) and Article 10 (protection of freedom of speech) of the European Convention on Human Rights (ETS No. 5, “the Convention”). Interestingly, also in view of other ongoing work in this committee,¹⁰ the High Court agrees with the defendants' submission based on the case law of the European Court of Human Rights that “where a party acts, in effect as a whistleblower, disclosing serious allegations of what it believes to be misconduct by a public authority, the Court should afford a special degree of protection under article 10”.¹¹

3. See the report (Doc. 13356), in particular paragraphs 63, 67, 80, 86, 88-90, 99-103, 163.

4. See in particular “episode 2: Pavel Karpov”.

5. A fully fledged trial would have amounted to about €7.2 million (£6 million), see www.independent.co.uk/news/uk/crime/russian-police-officer-denies-kremlin-is-funding-sergei-magnitsky-libel-case-in-london-8730139.html.

6. See High Court of Justice, Queen's Bench Division, Approved Judgment of 14 October 2013, Cases Nos. HQ12DO3133 and HQ12DO1742, citation No. [2013] EWHC 3071 (QB).

7. Ibid., paragraph 128.

8. Ibid., paragraph 141.

9. Ibid., paragraph 141 *in fine*.

10. I am referring to, in particular, Mr Pieter Omtzigt's work on protection of whistle-blowers and mass surveillance (see Assembly Doc. 13278 of 5 July 2013 and Doc. 13288 of 6 August 2013; the committee elected Mr Omtzigt as rapporteur for the two related subjects on 6 November 2013).

11. See judgment (footnote 6 above), paragraph 47; the Court cases referred to are *Guja v. Moldova* (Application No. 14277/04) and *Heinisch v. Germany* (Application No. 28274/08).

12. The main reasons for the Court's rejection of the libel claim as an abuse of procedure the following:
- “the Claimant cannot establish a reputation within this jurisdiction sufficient to establish a real and substantial tort ... and that there is ‘a degree of artificiality’ about his seeking to protect his reputation in this country”,¹² the natural forum for such a claim would have been the Russian courts;
 - “if the case were to proceed, the Court would be faced with a difficult causation issue arising from the delay in bringing proceedings, and that much of the damage to the Claimant's reputation occurred before that date, outside the jurisdiction and not as a consequence of the defamatory publications”;
 - finally, the likely costs and court time required for a full trial balanced against the limited benefits even of a hypothetical favourable judgment for the claimant, applying the above-mentioned “proportionality” or “ultimate balancing” test (between Article 8 of the Convention – protection of reputation, and Article 10 – freedom of speech), led the Court to the conclusion that “these proceedings should be struck out as abuse of the process”.¹³

2.2. Some progress in money laundering investigations

13. Since the adoption of the main report, some progress has been made in tracking funds originating from the fraudulent tax reimbursement denounced by Mr Magnitsky to Luxembourg, Denmark, France and the United States.

2.2.1. Complaint filed by Hermitage in Luxembourg on 10 September 2013

14. Two more “money trails” totalling €14 million originating in the fraudulent tax reimbursements and leading to accounts in Luxembourg have been discovered in the course of further analysis of the information provided by whistle-blower Perepilichny (whose death in England in November 2012 remains unelucidated).¹⁴

15. The first stations of the “money trail” (from the treasury via the unlawfully seized Hermitage companies' accounts with Universal Savings Bank and Intercommerz via Russian and Moldovan screen companies (Fausta, Anika, ZhK, Univers in Russia and SC Bunicon-Impex SRL and SC Elenast-Com SRL in the Republic of Moldova), and the transfer out of Russia being the work of a bank notorious for money laundering, Krainiy Sever, finally the accounts of Bunicon and Elenast with Banca De Economii in the Republic of Moldova are common to both “money trails”. Similar way stations were also used for transfers of funds ending, for example, in Cyprus and in Switzerland.

16. In the Republic of Moldova, the “trails” split, one reaching Luxembourg via Lithuania, and one via Estonia: two transfers from Bunicon and Elenast went to Vanterey's (a firm registered in the British Virgin Islands) account with Ukio Bankas in Lithuania, and from there to the account of a company named CLP in Luxembourg. Another went from Elenast in the Republic of Moldova to the account of Argenta Systems (Belize) with Sampo Pank in Estonia, and from there two payments of €6.9 million each were made to the Luxembourg accounts of three financial companies, one of which, now listed as defunct, was incorporated in Mauritius.

17. In its detailed complaint addressed to the Luxembourg authorities on 10 September 2013, Hermitage submitted the relevant documentation and requested *inter alia* that a criminal investigation be opened into the suspicious transactions, that the accounts holding the illicit funds be frozen pending investigation and that the end beneficiary of the transactions be identified.

2.2.2. Complaint filed by Hermitage in Denmark on 16 September 2013

18. About US\$1 million was traced from the fraudulent tax reimbursements in question to two corporate accounts of offshore companies with Nordea Bank in Denmark. One of the offshore companies was registered in the Bahamas to a shareholder from Montenegro.

19. These funds reached Denmark in part through Estonia (from the account of a corporate way station, Jackwell LLP at Estonia's Sampo Pank, which had in turn received the funds from Elenast and Bunicon, in Moldova), and in part through Lithuania (from Vanterey(British Virgin Islands)'s account at Ukio Bankas).

12. Judgment (footnote 6 above), paragraph 139.

13. Ibid., paragraph 145.

14. See the report, paragraphs 104-107.

2.2.3. Complaint filed by Hermitage in France on 17 September 2013

20. A total of €23 million have been traced to a French company (an interior design firm in St Tropez) owned by a Russian woman with dual citizenship. The “trail” is identical to that leading to Luxembourg via Estonia until Argenta Systems (Belize)’s account with Sampo Pank. From there, the funds were transferred to the St Tropez firm’s accounts with the local branches of two major French banks. Again, Hermitage submitted a detailed complaint to the competent authorities and asked for the opening of an inquiry along the same lines as in Luxembourg and Denmark.

21. It will surely be interesting to find out why, for example, a small Russian-owned decorating firm on the Côte d’Azur received €23 million from a company registered in Belize via an account with an Estonian bank.

2.2.4. US Department of Justice files case to seize Manhattan luxury properties on 10 September 2013

22. On 10 September 2013, the US Attorney for the Southern District of New York lodged a civil forfeiture complaint against real estate corporations allegedly involved in laundering proceeds of the fraudulent tax refund denounced by Sergey Magnitsky. The assets in question included five luxury apartments and three high-end commercial spaces in Manhattan worth over US\$23 million. According to the filing, the funds originating in the US\$230 million tax refund were laundered through several shell companies into Cyprus-based Prevezon Holdings, whose current registered shareholders include the son of a former Minister of the Moscow regional government, Denis Katsyv; and the funds transited through the same two Moldovan shell companies (Bunicon and Elenast) and their accounts with Banka de Economii, which already appear, *inter alia*, in the above-mentioned fresh “money trails” to Luxembourg, Denmark and France.

2.3. Exoneration by the Russian authorities of Ms Stepanova

23. On 15 April 2011, Mr Magnitsky’s former employer, Mr Firestone, had filed a complaint against tax officials, including the former head of Tax Office No. 28 in Moscow, Ms Stepanova, who had approved a large portion of the fraudulent tax refunds denounced by Mr Magnitsky.

24. In November 2013, the Russian Investigative Committee informed Mr Firestone that it found no grounds to prosecute Ms Stepanova and two of her deputies, Ms Olga Tsareva and Ms Elena Anisimova.

25. The Investigative Committee also informed Mr Firestone that the authorities had not been able to question Ms Stepanova because she had not been at the known addresses for a long time. The two deputies had bought luxury apartments in Dubai, together with Ms Stepanova’s (ex-)husband, Mr Vladlen Stepanov, shortly after the fraudulent refunds made in December 2007.

26. I presented some information on Ms Stepanova’s suspicious travels and her (or her husband’s) suspicious assets in the main report.¹⁵ I must say I am rather surprised that the competent Russian authorities are either incapable or unwilling to hold Ms Stepanova to account for what seems to amount to a key role in a serious crime against the Russian people. This is not a good signal as regards the authorities’ willingness to fully investigate this affair.

3. Conclusions

27. The above-mentioned new developments in the Magnitsky case lead me to draw the following conclusions:

- The laundering of the funds that can be traced back to the fraudulent US\$230 million tax refund denounced by Mr Magnitsky has involved a large number of European States and now even the United States of America. Given the complexity of the criminal investigations required and the obvious need for international co-operation, the Assembly should also seize the Committee of Ministers in order to ensure that this important affair is included on the agenda of intergovernmental co-operation and that the Assembly receives a reply from the governments.
- The Russian authorities have not made any progress in investigating the matters highlighted in the main report and in the draft resolution adopted by the Committee on Legal Affairs and Human Rights on 4 September 2013. On the contrary, one of the main suspects – Ms Stepanova – has recently been exonerated by the Investigative Committee, without reference to the suspicious circumstances

15. See paragraphs 88-91 and 99-103.

surrounding the disbursement in record time of a record amount of tax refunds into freshly opened bank accounts of criminals known as such by the authorities, with a small and ill-famed bank that closed soon after the receipt of the funds and “lost” all records.

28. Regarding the consequences that should be drawn from these conclusions as to whether the time has now come to call for “smart sanctions” against the perpetrators and beneficiaries of the crime against Sergey Magnitsky, I prefer not to take position myself at this stage but to leave this to the discussion that we will have in the Assembly during the January 2014 part-session.

4. Draft recommendation¹⁶

1. The Parliamentary Assembly refers to its Resolution ... (2014) on refusing impunity for the killers of Sergei Magnitsky, and invites the Committee of Ministers to examine ways and means:

1.1. of improving international co-operation in investigating the “money trail” of the funds originating in the fraudulent tax reimbursements denounced by Mr Magnitsky; and, in particular,

1.2. of ensuring that the Russian Federation fully participates in these efforts and holds to account the perpetrators and beneficiaries both of the crime committed against Sergey Magnitsky and that denounced by him.

16. Draft recommendation adopted by the committee on 27 January 2014.