



Resolution 1966 (2014)¹

Final version

Refusing impunity for the killers of Sergei Magnitsky

Parliamentary Assembly

1. The Parliamentary Assembly reiterates its strong support for the fight against impunity and against corruption as a threat to the rule of law, in line with its [Resolution 1675 \(2009\)](#) and [Recommendation 1876 \(2009\)](#), and [Resolution 1943 \(2013\)](#) and [Recommendation 2019 \(2013\)](#), and for the protection of whistle-blowers expressed in [Resolution 1729 \(2010\)](#) and [Recommendation 1916 \(2010\)](#).
2. It is appalled by the fact that Sergei Magnitsky, a tax and accountancy expert with a Moscow-based law firm, died in pretrial detention in Moscow on 16 November 2009 and that none of the people responsible for his death have yet been punished.
3. Mr Magnitsky had carried out investigations on behalf of a client on a massive fraud against the Russian fiscal authorities. The suspects he identified had effectively obtained the reimbursement of taxes paid by his client's companies, which had been fraudulently re-registered in the names of known criminals.
4. The complaints were addressed to senior representatives of Russian law-enforcement bodies, but they were sent for investigation to the same Interior Ministry officials who had been accused of complicity. Mr Magnitsky had been placed in pretrial detention, in increasingly harsh conditions, for alleged tax evasion committed in 2001 together with his then client William Browder. After six months in detention, Mr Magnitsky was diagnosed with pancreatitis. Shortly before his scheduled treatment, he was transferred to another prison without adequate medical facilities.
5. After almost a year in detention, on 16 November 2009, Mr Magnitsky, whose state of health had further deteriorated, was transferred back to a detention centre equipped with relevant medical facilities. Following his arrival, he was beaten with rubber batons and died the same evening. Civilian emergency doctors called in by prison officials were kept waiting for more than an hour, after which they found Mr Magnitsky's lifeless body on the floor of a holding cell.
6. The precise time and causes of Mr Magnitsky's death are still unclear. Contradictory testimony and official records have not yet been fully investigated.
7. Two prison officials were indicted for negligence. The proceedings against one of them were terminated on 2 April 2012 due to the statute of limitations. The other was acquitted in line with the prosecutor's request on 28 December 2012. None of the people present at the time of Mr Magnitsky's death, or accused by his family of having orchestrated the pressures he had complained about, was ever indicted.
8. The trial of Mr Magnitsky, who is now accused of having participated himself in the fraud he had denounced and in alleged tax evasion by his client, is being pursued posthumously, despite numerous protests from his widow and his mother. Russian law allows posthumous trials only exceptionally, at the request of the family, for rehabilitation purposes.

1. *Assembly debate* on 28 January 2014 (3rd Sitting) (see [Doc. 13356](#) and [addendum](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Andreas Gross). *Text adopted by the Assembly* on 28 January 2014 (3rd Sitting).

See also [Recommendation 2031 \(2014\)](#).



9. The lawyers who acted on behalf of the true owners of the fraudulently re-registered companies, in order to help them regain control, are now being prosecuted for acting on false power of attorney, as they had not obtained their powers from the false owners of the companies.
10. The Russian Public Oversight Committee, mandated by the State to inspect all places of detention in the Russian Federation, carried out an investigation into the circumstances of Mr Magnitsky's ill-treatment and death in detention. It pointed out numerous inconsistencies, omissions and contradictions in the official records concerning the case.
11. The Presidential Council on Human Rights, on the basis of the Public Oversight Committee's findings, thoroughly evaluated the case of Mr Magnitsky and urged the competent Russian authorities to hold to account those responsible for his death.
12. Mr Magnitsky's former client, William Browder, who is now wanted by the Russian authorities for tax fraud, is leading a worldwide campaign in favour of visa bans and account freezes against people allegedly sharing in the responsibility of Mr Magnitsky's death and the ensuing cover-up. Following the adoption of the "Magnitsky Act" in the United States of America, he is campaigning for similar sanctions in Europe.
13. As a reaction to the Magnitsky Act, the Russian State Duma adopted a law envisaging similar measures against United States officials involved in human rights violations. The law also prohibits the adoption of Russian orphans by American families, and senior government representatives have publicly commended the officials covered by sanctions under the Magnitsky Act for their actions.
14. In view of the above, the Assembly urges the competent Russian authorities:
 - 14.1. to fully investigate the circumstances and background surrounding Mr Magnitsky's death and the possible criminal responsibility of all officials involved, in particular:
 - 14.1.1. the contradictory testimony by prison officials and other witnesses concerning the events following Mr Magnitsky's arrival at the Matrosskaya Tishina pretrial detention centre on 16 November 2009;
 - 14.1.2. the existence of two different versions of the "death report" of 16 November 2009 signed by Dr Gaus and others;
 - 14.1.3. the reasons why Mr Magnitsky was moved to Butyrka prison one week before the second ultrasound and surgery scheduled at Matrosskaya Tishina prison;
 - 14.1.4. the assignation of a mere hygiene specialist to provide medical care for Mr Magnitsky, who had previously been diagnosed with serious diseases, in particular pancreatitis;
 - 14.1.5. the prescription and administration, to Mr Magnitsky, of the drug Diclofenac, which is suspected of, *inter alia*, aggravating pancreatitis in certain circumstances;
 - 14.1.6. the unavailability of CCTV footage of the arrival of Mr Magnitsky at Matrosskaya Tishina prison on the day of his death, in view of testimony according to which investigators had taken away the recordings;
 - 14.1.7. the incompleteness of the legally required ledger of complaints made during a critical period at Butyrka prison, in view of testimony that the extracts of the ledger presented during the proceedings appeared to have been rewritten on a single occasion;
 - 14.1.8. the personal relations existing between persons suspected of participating in the criminal conspiracy denounced by Mr Magnitsky, including certain officials and former officials of the Ministry of the Interior and of the tax offices implicated in the fraudulent tax reimbursement, the owner of the bank used in the laundering of the proceeds, and lawyers involved in the fictitious law suits, including instances of joint travel to Dubai, Cyprus and London;
 - 14.1.9. the origin of the extreme wealth displayed by certain retired Interior Ministry and tax department officials;
 - 14.1.10. the fraudulent law suits before the arbitration courts in St Petersburg, Moscow and Kazan recognising the fictitious debts that purportedly annulled the profits of the fraudulently re-registered companies in preparation for the tax reimbursement fraud denounced by Mr Magnitsky;
 - 14.1.11. the procedure followed by the two tax offices involved in the fraud denounced by Mr Magnitsky in approving reimbursements amounting to the equivalent of US\$230 million, within twenty-four hours of the application, in particular whether the required background checks

with the Interior Ministry had taken place, given that the Interior Ministry had previously received detailed information prepared by Mr Magnitsky on the fraudulent re-registration of the companies asking for the reimbursement;

14.2. to fully co-operate with the competent authorities of all countries, including Cyprus, Estonia, Finland, Latvia, Lithuania, the Republic of Moldova and Switzerland, which have opened criminal investigations into money laundering in light of information received on suspect transfers of funds that can be traced back to the fraud denounced by Mr Magnitsky, or to similar crimes committed beforehand or afterwards;

14.3. to hold to account for their acts and omissions all those who share in the responsibility for Mr Magnitsky's death, in particular those who ordered his frequent moves between prisons and cells, with ever-deteriorating conditions of detention, failure to provide necessary medical treatment, and, just before his death at Matrosskaya Tishina prison, the beatings and the manner in which Mr Magnitsky was left alone in a cell in an apparently critical condition;

14.4. to close the posthumous trial against Mr Magnitsky and cease putting pressure on his mother and his widow to participate in these proceedings;

14.5. to cease the persecution of other lawyers acting for the true owners of the fraudulently re-registered companies.

15. The Assembly commends the Russian Federation for having set up the robustly mandated and independent Public Oversight Committee, which can serve as a model for many other member States of the Council of Europe. In order to further strengthen this valuable prison oversight instrument, the resources at its disposal should be increased and access by detainees facilitated for preventive purposes.

16. It calls on the competent Russian authorities to persist in fighting corruption at all levels by:

16.1. improving co-ordination between bodies possessing relevant information, such as the Central Bank, and others who are empowered to carry out criminal investigations and to prosecute perpetrators;

16.2. further promoting transparency in business relations, especially by improving public access to corporate information (beneficiary ownership, directors, balance sheets and court and tax records) and by obliging all banks to inform the Central Bank of all transfers of funds over and above a certain threshold;

16.3. promoting modern public service ethics based on transparency (including recruitments and promotions), fair pay and zero tolerance for extortion, bribe taking and influence peddling.

17. The Assembly invites all other member States of the Council of Europe to consider ways and means of encouraging the Russian authorities to hold to account those responsible for the death of Mr Magnitsky and to fully investigate the crime he had denounced, in the interest of the Russian Federation and of all its hard-working and tax-paying citizens.

18. The Assembly resolves to follow closely the implementation of the above proposals. It recalls its [Resolution 1597 \(2008\)](#) and [Recommendation 1824 \(2008\)](#) on United Nations Security Council and European Union blacklists. It further resolves that if, within a reasonable period of time, the competent authorities have failed to make any or any adequate response to this resolution, the Assembly should recommend to member States of the Council of Europe to follow as a last resort the example of the United States in adopting targeted sanctions against individuals (visa bans and freezing of accounts), having first given those named individuals the opportunity to make appropriate representations in their defence.