

REPORT OF THE PUBLIC OVERSIGHT COMMISSION
FOR HUMAN RIGHTS OBSERVANCE IN MOSCOW DETENTION CENTERS

REVIEW OF THE CONDITIONS OF THE DETENTION OF SERGEI MAGNITSKY IN THE
PRE-TRIAL DETENTION CENTERS OF THE CITY OF MOSCOW

Since November 20, 2009, shortly after the death of Sergei Leonidovich Magnitsky, members of the Public Oversight Commission (“POC”) V. V. Borschev (Chairman), L. V. Volkova (Deputy Chairman), T. A. Flerova (Secretary), L. I. Alpern, L. B. Dubikova and Z. F. Svetova have examined the detention conditions of Magnitsky in the Moscow detention centers where he was held prior to his death. The Federal Detention Center 77/2 (Butyrka Prison) and the Federal Detention Center 77/1 (Matrosskaya Tishina Prison) have been visited by the members of the POC on a number of occasions. The Commission members have met with and interviewed the Head of the Moscow Directorate of the Federal Penitentiary Service (“UFSIN”) Vladimir Anatolyevich Davydov; Chief Medical Officer of the Moscow Directorate of the Federal Penitentiary Service Olga Filippovna Grigoryeva; Mr. Davydov’s Assistant for Human Rights, Anastasia Nikolayevna Chzhu; as well as with the heads, employees and medical personnel of the detention wards of Federal Detention Center 77/1 of the Moscow UFSIN, Federal Detention Center 77/2 of the Moscow UFSIN and Federal Detention Center 99/1 of the Russian Penitentiary Service (FSIN) (an internal Detention Center within Matrosskaya Tishina Prison).

Sergei Leonidovich Magnitsky

Birthdate: April 8, 1972

Citizenship: Russian

Residence: Moscow

Education: Higher (Master’s Degree)

Occupation: Auditor at Firestone Duncan law firm

Married with two children

No prior criminal record

Charged as per Part 2, Article 199 of the Russian Federation Criminal Code

Held in custody since November 28, 2008

MAGNITSKY’S TRANSFER FROM
MATROSSKAYA TISHINA PRISON (DETENTION CENTER 99/1)
TO BUTYRKA PRISON (DETENTION CENTER 77/2)

On July 25, 2009, Magnitsky was transferred from Detention Center 99/1 of the Russian FSIN (Matrosskaya Tishina) to Detention Center 77/2 of the Moscow UFSIN (Butyrka Prison). Magnitsky had never filed complaints about his initial conditions at Matrosskaya Tishina. Three persons were held in the 16 square meter cell there, which meets the established standards. He was receiving medical assistance: there is an in-patient clinic, a hospital in Matrosskaya Tishina, with medical doctors of various specializations and medical equipment. There, Magnitsky, “on July 1, 2009, had an ultrasound of the organs of abdominal cavity to identify signs of a disease of organs of the digestive system. Based on the ultrasound results “calculous cholecystitis” was diagnosed.” Upon his examination by a surgeon, a further ultrasound examination was prescribed to be conducted a month later, as well as a planned surgical operation.” This opinion was signed by V. Stepanov, Head of the Medical Unit, Lieutenant-Colonel of the Internal Service and D. Vasiliev, Colonel of the Internal Service. Then, a week prior to the prescribed treatment (ultrasound followed by an operation), Magnitsky was transferred to Butyrka Prison, which has no ultrasound machine and none of the necessary surgical or medical facilities in place. What were the reasons for his transfer?

The head of Matrosskaya Tishina detention center Ivan Pavlovich Prokopenko gave the following reasons:

Prokopenko: "We had decided to do a renovation, and we needed to vacate one floor. I talked to several investigators and got consent from some of them for the transfer of persons under their investigation to another detention center. Magnitsky's investigator Oleg Silchenko was one of them. As a result, we vacated the floor."

POC: "How many people did you transfer to other detention centers?"

Prokopenko: "I cannot recall."

POC: "Some two, three, five people?"

Prokopenko: "Around five."

If the third floor was vacated by transferring to other detention centers only "around five" inmates, it means that the other persons under investigation held in cells on the same floor could be left in the detention center. Why did Magnitsky, who was in need of serious medical assistance, find himself not among those, but among these "around five" inmates?

Prokopenko: "I did not consider Magnitsky sick. Prisoners often try to pass themselves off as sick in order to get better conditions. We are all sick. I, for instance, have osteochondrosis."

Prokopenko's subjective assessment of Magnitsky's health condition is not relevant. What is relevant is the medical doctors' objective opinion. Prokopenko was aware of that opinion. By transferring Magnitsky from Matrosskaya Tishina to Butyrka Prison he deprived Magnitsky of the possibility to receive the needed medical assistance. The renovation plans cannot justify the decision. As this report is published, there is no renovation underway, despite the fact that Magnitsky was transferred five months ago.

Was Magnitsky's transfer to Butyrka solely Prokopenko's initiative? This question arose in light of the fact that on February 21, 2009, pursuant to the order of Interior Ministry Investigator Oleg Silchenko, Magnitsky was transferred to the Temporary Confinement Cell № 1 of the Moscow GUV D (Moscow Ministry of the Interior). Magnitsky's lawyers filed a complaint with the Russian Federation General Prosecutor's Office, which read: "In the absence of an objective, justified and lawful need for Magnitsky's transfer from the investigatory detention center to a temporary confinement cell to conduct investigative actions, even more so, for actions which had already been conducted with respect to him in the detention center, and nothing prevented such further actions in the same center, such decision by the investigator testifies solely to the intention to put psychological and moral pressure on him."

Prokopenko said it was his initiative, and Investigator Silchenko supported it. Russian law regulates transfers of convicts from colony to colony, and transfers of accused persons and suspects from investigatory detention centers to temporary confinement cells, which gave the lawyers the grounds to appeal against the investigator's actions, whereas transfers between detention centers are not regulated by law. Therefore, the law did not limit Prokopenko and Silchenko in deciding on Magnitsky's transfer from Matrosskaya Tishina to Butyrka, and they could justify their action by the "renovations" which are still apparently pending after five months. This is a serious gap in the laws governing the Russian penal system.

ON MAGNITSKY'S CONDITIONS AT INVESTIGATORY DETENTION CENTERS

On October 13, 2009, a month before his death, Magnitsky submitted a statement to Mr. Gritsai, an Investigator of the Investigative Committee of the Interior Ministry, which was included in the docket of his criminal case held by the Investigative Committee of the Interior Ministry, to the effect that unbearable conditions were being created for him with investigators' full knowledge. Magnitsky wrote:

“I believe that [Interior Ministry Lieutenant Colonel Artem] Kuznetsov and other law enforcement officers in conspiracy with him could be involved in the theft of OOO Rilend, OOO Makhaon, OOO Parfenion and the subsequent theft of 5.4 billion rubles from the State Treasury and were extremely interested in suppressing my activity relating to assisting my client in investigating the circumstances connected with these criminal offences. This was the reason for my unlawful criminal prosecution being carried out by investigator Silchenko. I believe that with Silchenko’s participation or with his tacit approval, inhuman conditions were created for me in the detention center, which humiliate human dignity. While in custody, I have been transferred five times to four different detention centers. I am tired of counting the cells to which I have been transferred innumerable times. I am denied medical assistance. On many occasions, for artificial and unjustifiable reasons, my mother’s and wife’s visits were prohibited, as well as telephone conversations with my little children. While in custody, situations have been created for me where I was deprived of the right to have a weekly shower, to watch television, to use a refrigerator, and simply to live under normal conditions, to the extent they can be “normal” in a detention center. I am convinced that such intolerable conditions are being created for me with my investigators’ full knowledge. I am convinced that the only possibility to stop this humiliating treatment is for me to accept false accusations, to incriminate myself and other persons.”

During the examination of Magnitsky’s conditions in detention centers, members of the POC have established that while in custody, he was, indeed, transferred between three different investigatory detention centers and among several cells in these detention centers.

Immediately after his arrest on December 2, 2008, Magnitsky was put in Investigatory Detention Center №5. During the nearly five months of his stay here, he was transferred a number of times from cell to cell. In total, he was held in four cells:

- Cell 206 (12 beds, 10 inmates, 48.2 square meters)
- Cell 309 (8 beds, 7 inmates, 32.1 square meters)
- Cell 417(14 beds, 12 inmates, 56.2 square meters)
- Cell 503 (9 beds, 8 inmates, 36.4 square meters)

The cells were equipped with partitioned toilet, wash-basins, a table, benches, a wardrobe, hangers, daytime and night-duty bulbs, windows for daylight, forced ventilation.

Magnitsky never filed any complaints on the conditions in Investigatory Detention Center №5.

Before his arrest, Magnitsky was in good health. His medical record at the out-patient clinic does not contain any information about any diseases, about his seeing medical doctors. He fell ill within less than five months of custody.

On April 28, 2009 he was transferred to the Federal Hospital Unit of the Investigatory Detention Center 1 (Matrosskaya Tishina) where he was held until July 25, 2009.

On July 1, Magnitsky who at that time was held at Detention Center 1 (Matrosskaya Tishina) had an ultrasound to check for diseases of organs of the digestive system. The ultrasound revealed a disease, and “calculous cholecystitis” was diagnosed. Upon examination by a surgeon, a further ultrasound was prescribed to be carried out a month later, as well as a planned operation (the report was signed by V. V. Stepanov, Head of the Medical Unit, Lieutenant-Colonel of the Internal Service and D. I. Vasiliev, Colonel of the Internal Service).

On July 25, Magnitsky was transferred from the Federal Hospital Unit of the Investigatory Detention Center 1 (Matrosskaya Tishina) to the Federal Hospital Unit of Detention Center 77/2 (Butyrka).

The later ultrasound and the planned surgery were never carried out. On November 13, 2009, his condition seriously deteriorated. On November 16, 2009, at 17:22, he was driven in an ambulance car to Matrosskaya Tishina, where he died.

During the course of our investigation of the conditions of Magnitsky in Butyrka detention facility, we have come to the conclusion that the circumstances that have led to the death of detainee Magnitsky cannot be viewed separately from the course of the investigation of the criminal case. He believed that the conditions created for him in Butyrka prison are evidence of the pressure on him to suppress his will by torturous detention conditions and force testimonies admitting guilt. Magnitsky wrote:

“I am convinced that such intolerable conditions are being created for me with my investigators’ full knowledge. I am convinced that the only possibility to stop this humiliating treatment is for me to accept false accusations, to incriminate myself and other persons.”

Of particular concern are two facts. First, on October 16, 2009, Magnitsky made a statement about the large-scale fraud involving theft of state budget money by high-ranking officials of the Russian Interior Ministry. He gave a detailed description of the fraudulent scheme and named names. Second, on November 24, the one year in pre-trial detention was due to expire. The investigators did not have sufficient evidence to prove his guilt.

Therefore, on November 13, 2009, the Tverskoi Court decided to extend his time in custody. As a matter of fact, employees Butyrka Prison had admittedly, apparently by accident, submitted an unduly executed certificate of his health, which was a formal pretext for the court’s decision not to release the severely ill inmate from custody on bail or recognizance not to leave.

Based on conditions of Magnitsky at Butyrka detention facility, members of the Public Oversight Commission have come to the conclusion that in fact psychological and physical pressure was exerted upon him. It appears that Detention Center employees realized this as well. The Head of the Butyrka Detention Center, D. Komnov, showed POC members a note he obtained from Magnitsky prior to the latter’s leaving Butyrka Prison, which read: “During my stay at Butyrka, no pressure was exerted on me, either physical or psychological, on the part of either the administration personnel or fellow inmates.”

One understands only too well the value of such notes of acknowledgement written in confinement. This is the way Komnov explained the note: “In 2008, a certain Shcherbakov left the Butyrka Detention Center and a week later died at Matrosskaya Tishina. Therefore, I asked Magnitsky to write this.” The description of the actual conditions shows that pressure was, undoubtedly, exerted. But there was also another fact about which Magnitsky wrote to the head of the medical unit, “In the evening of October 18, 2009, a man was put into Cell 18 where I was held, who introduced himself as Denis (the man said later that his name was Leonid). The man behaved in a strange way.” In particular, he asked Magnitsky, why he had “done that to him,” although Magnitsky was only meeting him for the first time. The man produced the impression of being mentally disturbed. Concerned about their safety, Magnitsky and his fellow inmate slept in turn. After this disturbed man’s visit, Magnitsky’s health further deteriorated.

The right to decent conditions not humiliating to human dignity was violated.

- It is unprecedented that within a year in custody he was transferred among three investigatory detention centers. As an inmate moves from one detention center to another, from one cell to another, he necessarily leaves personal items and items brought by relatives to provide comfort during his detention.
- During his last three months alone, Magnitsky was moved from cell to cell, each new cell being worse than the previous one. Thus, until August 31, Magnitsky was held in Cell 267. In Butyrka,

in violation of the European penitentiary rules (agreed to by the Russian Federation) requiring at least two showers a week, inmates are taken to the shower room only once a week according to schedule. For Cell 267 the shower day was Tuesday, the day of Magnitsky's arrival. That day, on arrival to the prison Magnitsky was not given the possibility to take a shower in violation of the requirement to have newly arrived inmates sanitized.

- On July 26, Magnitsky had requested a shower, but got no response.

From July 25 to November 16 2009, Magnitsky was held in the following cells of Butyrka: 35, 52, 61, 59, 267, 305, 714, and 708. Magnitsky took notes of the conditions in those cells.

Cell 267 (from July 25 to September 1, 2009). The living space in this cell was 10.8 square meters. There were two other persons together with him during one day. Then, for one day he was alone. After that there were always two people. The cell has four beds. The cell lacked the cold water tap. On August 4, he requested that a tap be installed. No response. The cells in Butyrka have hot water supply, but hot water is not running, the taps are stopped. In keeping with the Internal Regulations, if there is no hot water in the cells, the administration is required to provide hot water every day for laundering and boiling water for drinking. Cell 267 where Magnitsky was put when transferred to Butyrka had no hot water, no water-heater, and no kettle. Upon arrival, he had his water-heater taken and sent to the store-room. He immediately made a written request to have his water-heater returned from the store-room. He asked for boiling water. He was denied boiling water, and the water-heater was returned only a week later. As a result, for 6 days he had no access to boiled water, which affected his health. At night, the mains are disconnected.

On July 26, 2009, during the morning round, Magnitsky handed over to representatives of the Butyrka detention center several written requests, including requests to have his personal items and his water-heater returned from the store-room. In violation of Article 91 of the Internal Regulations approved by the October 14, 2005 Order № 189 of Russian Federation Ministry of Justice, Magnitsky's requests were not accepted, the reason given that requests are not accepted on weekends. His requests were only accepted the next day, on July 27.

On July 29, during the daily round, Magnitsky made a verbal complaint to the effect that he could not get his water-heater back.

On July 30, the administration suggested that he should write another request about having his water-heater back, because his previous request had been lost. He did not get his water-heater back on that day.

On August 5, Magnitsky asked for hot water supply to be arranged for washing and personal hygiene purposes. The detention center's administration responded by saying that they were not obliged to supply hot water to the cells, and the fact that the other detention centers where Magnitsky had been held were having hot water was a violation of the rules. They invited him to file a complaint against the head of Detention Center since there was hot water there in violation of the rules.

On August 13, Magnitsky filed a written complaint against the outlets being disconnected at night. He never got a response.

On August 31, Magnitsky filed a complaint with the Moscow UFSIN saying that the detention center's administration would not receive suggestions, complaints and statements from accused inmates on a daily basis and that the conditions did not meet the Internal Regulations of the Center. The next day, on September 1, Magnitsky was transferred from Cell 267 to Cell 59, which made his conditions significantly worse. Sergei Magnitsky considered the transfer to be retribution for filing the complaint. D. Komnov, the head of the Detention Center gave a vague explanation: "He was transferred because of psychological incompatibility. It was an operating officer's decision. There was

probably some conflict.” Magnitsky never said anything about any conflict. If there was a conflict, his lawyers would have certainly known about it.

Cell 59 (from September 1 to 8, 2009). The living space in this cell was 8.2 square meters. There were four beds and four inmates. The minimum 4 square meters per person required by Russian law (Art. 23 of Federal Law №103-FZ) was not met. The sewage needed to be repaired, there was intolerable odor coming out of the toilet. The cell did not have a table and benches with the number of seats corresponding to the number of inmates, only one person could be seated at the table. The cell had no shelf for toiletries, no wall-mounted mirror, no radio, no refrigerator, no television. The toilet was not partitioned. During Magnitsky’s stay in that cell, the inmates would use bed-sheets as a screen not to be seen when using the toilet. The distance between the toilet and the bed is less than one meter. There is a strong sewage smell coming from the toilet, and the inmates have to plug the sewage hole with plastic bottles. The only electrical outlets were located above the toilet, forcing the inmates to boil water for hot drinks in the stench of sewage. The toilet is located immediately adjacent to the wall, the platform above it is small, and it is difficult to use such toilet. The conditions in this cell ought to be considered as degrading to human dignity. In the evening of September 8, raw sewage began to flow up over the toilet bowl. On that same evening, the inmates were moved from to Cell 35.

Cell 35 (from September 8 to 10, 2009). The living space here is 10.1 square meters. There are 6 beds, and there were three inmates in it. The cell windows had no glass in them; the walls of the cell were wet. On Magnitsky’s second day in this cell, raw sewage under the toilet began to rise, and by evening sewage water covered half of the cell. The inmates asked that the problem be fixed, the plumber did not come until 10 p.m., and he was not able to fix the problem. The inmates asked to be moved to another cell, but they were left in the cell till morning. The next day, the plumber did not come, and the sewage water continued to flood the entire cell floor. The inmates moved around the cell by walking on beds. The plumber only came in the evening, he was trying to fix the trouble for a long time, but he failed. Both the plumber and the warden who brought the plumber were expressing indignation over the conditions in which the inmates had to live. They were asked to move the inmates to another cell, but those employees were not in a position to decide on their transfer without their superiors’ approval. The permission was only received at 11 p.m., after which the inmates were moved to Cell 61. Magnitsky and his fellow inmates had lived in the midst of raw sewage for 35 hours.

Cell 61. The living space is 8.2 square meters. There are four beds. Cell №61 lacked not only window glass, but window frames as well. On September 11, Magnitsky made a complaint requesting that window glass and window frames be installed, but got no response. Because of the cold, the inmates had to sleep with their clothes on and cover themselves with jackets. Yet the window frames would not be installed. On September 18, the inmates filed a complaint saying that they had got a cold because of the lack of the windows, and only after that the window frames and glass were installed. By the time the POC members visited the cell, a television had been installed in Cell 59, and there were 3 inmates there. The space standards were violated, leaving only 2.7 to 2.8 square meters per person.

Cell 708. The living space is 8.2 square meters. There are four beds. There is no daylight because the window looks on the exercise yard. There is a further external screen preventing any light from getting in. When members of the POC came to see the cell at 2 p.m., daylight was not penetrating into the cell. The window was dark.

Cell 714. The living space is 8.2 square meters. Similar to 708, there is no daylight, because the window looks on the exercise yard. There is a further external screen preventing any light from getting in. When members of the POC came to see the cell at 2 p.m., daylight was not penetrating into the cell. The window was dark.

On November 12, 2009, Magnitsky was taken to a pre-trial hearing at Tverskoi District Court, from which he returned to the prison at 7 p.m. Until midnight, he was kept in the collection chamber, and

then he was informed that he was being transferred from Cell 714 to another cell. He requested that the transfer be put off till morning, and that he should not be transferred at night-time, but was refused that. He could only collect his personal items, but was not given time to cook hot meals he had been deprived of the whole day of November 12.

He did not get into Cell 305, where he was transferred, until around 1:30 in the morning, and due to late time and fatigue, he was not able to make hot meals. He was thus deprived of the right to have an 8-hour sleep and deprived of hot meals for over 24 hours.

On November 13, 2009, Magnitsky wrote a complaint to the head of the Detention Center:

“On November 12, during 24 hours, I was deprived of the possibility to have hot meals and deprived of the 8-hour sleep during the night, which may have caused exacerbation of the pain in the area of the pancreas and a fairly discomforting pain in the area of the liver, which I did not have before, as well as nausea. Therefore, I request a recommendation as to whether I should take some medicine for liver treatment, unless the above described pain stops or if it continues systematically. In addition, I ask you to inform me at last when the ultrasound prescribed for as far back as August is going to be done.”

This complaint was written three days before his death. Yet the head of the Detention Center persisted in his claim: “Magnitsky never requested a meeting with me, and he never submitted any complaints. Neither did his lawyer.”

We showed him the response of V. Davydov, Head of the Moscow Directorate of the Federal Penitentiary Service, in which he was answering the questions which we addressed to Komnov. And the latter brought us the log for registration of complaints and requests. And the log did not contain records of Magnitsky’s, his lawyers’ or his mother’s requests or complaints. This shows either negligence or, if such records were made, the log was subsequently rewritten. We looked at the log records, and we had the impression that they had been made with the same hand and with the same pen.

Members of the POC have also met with some of Magnitsky’s inmates. Zelenchuk was a witness of Magnitsky’s last hours in Butyrka and told us “Sergei was very much unsettled by the substitution of criminal case documents at the November 12 court session. On November 24, one year in custody was to expire.” Members of the POC had the impression that he did not tell us everything he knew. Kharitonov left a similar impression: “I was in custody together with him for two months. I did not have much contact with him. He wrote a complaint when water flowed from the toilet bowl in Cell 35. Based on his complaint, we were transferred to another cell.” Namazov told us, “I was in custody with him. He was of no interest to me because of age difference. I saw him taking medicine. I did not have much contact with him, because I have a problem of my own”. Kharitonov and Namazov looked very anxious and scared.

Court Hearings

Participation in the court hearings was conducted with severe humiliation under degrading and dangerous conditions. Magnitsky was brought to the court hearings for the extension of his pre-trial detention on a few occasions. He described this process in his notes in detail.

Collection Cells

Inmates with court appearances are forced to leave your cell at about 7.00 to 7.30 am, i.e. before scheduled breakfast. Then you are detained in the so-called Collection Cell up until 9.00 to 10.00 am. After that the process of delivery to different court locations begins.

The members of the POC examined the Collection Cells, where the suspects being held in groups before dispatched to a different Moscow courts for hearing. The Collection Cell is about 20 to 22 square meters with no windows. There could be up to 70 suspects to be squeezed in such cell, as a result it is very hard for them to find a place to stay in such cell, we are not even mentioning a possibility to seat. A lot of suspects do smoke in the cell and taking into account that there is no air ventilation in this cell. It is very difficult to breathe. Nearly in all such cells there is no separation made between toilet facility and cell itself. In others there is a tap with cold water, but it is impossible to drink such water without boiling it first. Indeed, during the inspection the members noted that the toilets do not equipped even with wash-out mechanisms and the toilets were not separated from the main the cells by drapes for privacy. A temporary curtain was fixed only during out inspection of such cells. We noticed that only during our second inspection visit, although the employees of the detention centre tried to convince us that curtains were in place at all times.

On September 10, 2009, Magnitsky was kept in such cell from 11 am to 7.30 pm without any hot meal to be served or drinking water. He also missed his scheduled time to take a shower. (This day was his scheduled day for taking a shower, which occurred only once a week.) On that particular day he was not delivered anywhere and ultimately returned to his cell.

Transportation

For transportation purposes the Detention Centers use special transportation vehicles, which are equipped with special compartments for suspects, having size of approximately of 3.2 meters in length, 1.2 meters wide and 1.5 meters in height. Such compartments are designed to accommodate not more than 15 people, however, usually about 17 to 18 people are squeezed in, and as a result some of them have to remain bended in uncomfortable positions for the entire journey. On average a journey to a court hearing takes about an hour, however, on one occasion Magnitsky spent in such position about 4.5 hours in the evening, due to the fact that the vehicle did not go directly from the court to the prison, but was collecting other suspects from other courts.

Usually the vehicle is returning back to the prison about at 7 or 7.30 pm, however, the guards are keeping the suspects in the vehicles up until 8 pm justifying this by the fact that they require to complete the documents. Thereafter, the just-arrived suspects are placed again into the collection cells and kept there for additional 3 to 3.5 hours. Magnitsky never managed to get into his regular cell earlier than 11 pm on his return from court hearings.

Meals

On such days where suspects being transported to courts they received so-called dry mixed formula, however, it is impossible to utilize it, as there is simply no hot boiled water provided in the Tverskoi Court of Moscow in order to mix it with this dry formula. As has been described above all inmates are returning back to their cells late night. Hot supper could not be provided to them due to the night time, as such effectively it might be that a person could be without any hot meal for 38 hours. In case the court hearing is continued for a few days in a roll then the interval between hot meals consumption increased substantially.

On August 13, 2009, Sergei filled a complaint to the Head of the Tverskoi District Court of Moscow in relation to the fact that there was no boiled water provided for hot drinks during the transportation process. No reply received.

On September 14, 2009, again there was no boiled water provided during the court hearings on the extension of his detention. During the court hearing Sergei Magnitsky requested Judge Krivoruchko to provide him with a chance to have a hot meal. The judge declined his request justifying it by the fact that it was not part of responsibilities of the court.

We would like to underline that the above mentioned are related to all inmates, who are facing the transportation process to the courts. These violations were brought to the attention of the authorities quite a long time ago, however no progress has been made since.

No Interaction with Family

Magnitsky was under more restricted conditions in Butyrka Prison compared to Matrosskaya Tishina, in particular in relation to contact with his family. Russian law provides the right to correspond with relatives and other people. The established instructions and rules impose a direct responsibility of the prisons administration to collect all correspondence from inmates on a daily basis, to check it and further dispatch to ultimate addresses within three days from such collection being made. Instead inmates are required to leave their correspondence on a special box located in the exercise yard, where the administration is supposed to collect such correspondence in time and further dispatch. Magnitsky's letter, which he left on September 9, 2009, was still there on September 15. The letters from the relatives, which were sent within Moscow, were received with 10 or 12-day delays. The letters from other cities from Sergei's relatives were received on the 25th day from the day it was sent. Sergei was not allowed to see his close family (his mother and his wife) during the whole period of his detention.

It should be pointed out the prosecutor office who are responsible for overseeing adherence of conditions in detention to law, did not perform their functions.

On September 11, 2009, Magnitsky's attorney Dmitry Kharitonov filled complaints with the Russian General Prosecutor Yuri Chaika, the Head of Investigative Committee of the Interior Ministry Anichin and with the Interior Ministry investigator Oleg Silchenko, in which he requested the following:

- To conduct the investigation of the circumstances, which were described in Magnitsky's complain in particular in relation to violations made against him by administration and employees of Butyrka Prison, and in this regard to question other inmates who were delivered together with Sergei to the Tverskoi District Court for hearings on August 6, 10 and 18, 2009.
- To conduct an investigation into the multiple transfers of Magnitsky between the detention centers and to explain the legal grounds for such transfers;
- To compel the administration of Butyrka Prison to provide Magnitsky with his lawful rights described in his complaint to the administration of August 31, 2009.
- Requested to provide the administration of Butyrka Prison all information in relation registration of Magnitsky's filled complaints, providing in accordance with Sections 92 and 93 of the Internal Rules and Regulation, all registration notes of the complained filled from the relevant registrars, replies, copies of advocates' complaints, other information to this matter, as well as information on medical examination and prescribed medical treatment, which were available in the personal medical dossier of Magnitsky.

THE QUALITY OF MEDICAL ASSISTANCE TO GIVEN TO MAGNITSKY AT MOSCOW DETENTION CENTERS.

In late April 2009, Magnitsky was transferred from Investigatory Detention Center №5 to Matrosskaya Tishina Prison. Neither Magnitsky, nor his lawyers were informed about the reasons for the transfer. According to his lawyers, already at Investigatory Detention Center №5 Magnitsky felt periodic pains in his abdomen. In Matrosskaya Tishina, the pains persisted, and he complained to a doctor.

On July 1, 2009, at Matrosskaya Tishina Magnitsky had an ultrasound of the abdominal cavity and he was referred to a surgeon. Valery Sholokhov, the medical doctor who performed the ultrasound, diagnosed: “acute pancreatitis with underlying calculous cholecystitis.”

On July 13, 2009, Magnitsky was examined by David Galustov, a surgeon from the hospital unit of Matrosskaya Tishina.

On November 23, 2009, when meeting with members of the POC, Galustov said the following about that consultation: “Magnitsky had cholecystitis, pancreatitis. A planned operation was recommended for him. The verification ultrasound, scheduled after one month, to check on the growth of calculi. Based on the results of the second ultrasound, a planned operation could be insisted upon.”

Thus, based on the recommendation of surgeon Galustov, another ultrasound for Magnitsky was scheduled for August 1, 2009. Nevertheless, on July 25, 2009, he was transferred to Butyrka Prison where it was impossible to do an ultrasound. Members of the POC were not able to find out if Magnitsky’s transfer was agreed with medical doctors of Matrosskaya Tishina. In the absence of a legislative act establishing a clear procedure for inmates’ transfer from detention center to detention center, there is room for abuse and arbitrary actions on the part of prison administration and investigators with regard to persons under investigation.

The reasoning given by Ivan Prokopenko, Head of Matrosskaya Tishina detention center – that Magnitsky’s transfer was connected with repairs at the Detention Center – is not credible. Prokopenko could not help but know that within a week’s time Magnitsky was to undergo ultrasound. He was, therefore, to be driven back to Matrosskaya Tishina from Butyrka. As one knows from subsequent developments, Magnitsky was never brought for ultrasound, despite his numerous requests and complaints and despite his lawyers’ complaints to various authorities.

The following is the situation with provision of medical assistance to Magnitsky in Butyrka Prison, as described by Magnitsky himself.

Upon getting to Butyrka, Magnitsky was not examined by a medical doctor.

On June 26, 2009, Magnitsky submitted a written request to the administration to have an appointment with a doctor. There was no response.

On August 9, Magnitsky requested a meeting with the head of the prison, noting that the health was in danger. There was no response.

On August 11, Magnitsky wrote a request for an appointment with a doctor, noting that the scheduled time for prescribed medical examination had long passed. There was no appointment with a doctor and no response.

Besides written requests, Magnitsky made verbal requests during paramedics’ rounds (once or twice a week). The response: “Write a request. You did? Then wait.”

On August 14, Magnitsky submitted a request that the medicines prescribed by the medical doctor in Matrosskaya Tishina could be passed from his relatives.

On August 17, Natalya Magnitskaya, Magnitsky’s mother, brought the medicines. They were not passed over. After the mother’s applying to the administration, it was found out that the medicines had been passed over to another cell by mistake. Natalya Magnitskaya bought the medicines again, and only after that, on September 4, the medicines were passed – 18 days later.

On September 18, Magnitsky's lawyers applied to Komnov, the head of the detention center. In accordance with the medical doctor's recommendation, a second ultrasound was prescribed to be performed in early August. They requested

- ensure the performance of the second ultrasound;
- to inform the lawyers about the results of the examination and the prescribed treatment

On August 24, Magnitsky wrote, "The disease has become so acute that I could no longer lie in bed. At 4 p.m., the fellow-inmate began to kick the door, demanding that I should be taken out to see a doctor. The warden promised to invite a doctor. The fellow-inmate repeatedly demanded an appointment with a doctor. I was taken to a doctor only five hours later. The doctor was dissatisfied. Concerning the complaints and the lack of treatment she said that the medical record said that I had already been treated. To my request to have clinical nutrition prescribed, she said that I needed to get an appointment with a surgeon, and he would resolve the matter."

On August 25, Magnitsky wrote a request for an appointment with a surgeon. There was no response.

Clinical nutrition was never provided for Magnitsky.

On August 26, as the deputy head of Butyrka Prison was making a round of the cells Magnitsky complained that medical assistance is not provided, that the prescribed examination has not been performed. He tried to show the letter indicating the diagnosed disease. He was not given the possibility to do that, receiving the response, "You are delaying us."

On August 31, there was another visit. Magnitsky wrote to his lawyer, "A similar round. Another prison administration official came and took the letter. The head of the medical unit promised to sort out the matter. Concerning the operative therapy he said: "You will have it when you are released. Here, nobody is obliged to provide it to you". And he left."

There was no initial medical examination or sanitization performed upon Magnitsky's arrival to Butyrka Prison.

Medical assistance was not initially provided, and the first appointment with a medical doctor was arranged only 30 days after his written request.

The medical examination (a second ultrasound of the organs of abdominal cavity) prescribed by medical doctors of Matrosskaya Tishina and scheduled for early August was not performed.

During the meeting with members of the POC, Dmitry Komnov, Head of Matrosskaya Tishina detention center said that upon arrival on July 25, 2009, Magnitsky was examined by paramedic Chepylyova. He presented no complaints. He did not complain of heart troubles. Whereas Magnitsky, in his statements, points out that upon his arrival to Butyrka he had no medical examination. One is surprised by paramedic Chepylyova's statement that Magnitsky did not complain of anything during the initial examination. In any case, he was to mention the need to have a second ultrasound.

On August 24, Magnitsky felt unwell and asked that a medical doctor be called for. According to his statement, he was given medical assistance only five hours later. He was examined by paramedic Khokhlova. She diagnosed intercostal neuralgia. According to Magnitsky's complaint, he told Khokhlova that he wanted to be examined by a doctor. According to Magnitsky, Khokhlova read in his presence an excerpt from his medical record, which said what treatment Magnitsky had been given in Matrosskaya Tishina.

Nevertheless, paramedic Khokhlova never transmitted Magnitsky's request for an appointment to Dr. Larissa Litvinova, the head of the medical ward of Butyrka. What is surprising is that the medical

personnel of Butyrka do not keep diaries recording the details of provision of medical assistance to inmates.

Members of the POC have met twice with Dr. Litvinova, the head of the therapeutic ward of Butyrka. She told members of the POC that she first saw Magnitsky on October 7, 2009: “During the doctor’s round, he complained of exacerbation of chronic cholecystitis. He had with him a hospital discharge record preceding custody. I read the record and gave it back to him. Magnitsky said that he was having aggravation of osteochondrosis. We placed him in the therapeutic ward.” Magnitsky stayed at the therapeutic ward of SIZO Butyrka from October 7 to November 12, 2009.

Dr. Litvinova told members of the POC that she studied his medical history from his medical record book. She could not but know that he had had ultrasound of abdominal cavity in Matrosskaya Tishina. And during the conversation with members of the POC, Litvinova said that she “did not recall” that a second ultrasound was prescribed for him to be performed after one month.

Members of the POC noted that both Litvinova and Dmitry Kratov, the chief medical officer of the detention center were trying to dodge the question of the second ultrasound. Members of the POC were persistent in their questions, to which Dmitry Kratov responded grudgingly: “An escort is needed to take Magnitsky to Matrosskaya Tishina for ultrasound. And one does not know when the escort is going to be available.”

Dmitry Kratov told members of the POC that Magnitsky had never complained to him during the doctor’s rounds of the lack of medical assistance. This statement is surprising.

According to the notes “On Conditions in Butyrskaya Prison,” written by Magnitsky, he spoke with Kratov on September 4, 2009, about having ultrasound, when Kratov brought him the medicines delivered by his relatives, and Kratov said that he had written a report on Magnitsky’s transfer to Matrosskaya Tishina for performing ultrasound. Kratov promised that this can be done not earlier than three weeks later. Kratov gave the same promise to Magnitsky’s mother during their face-to face meeting.

The question arises why Kratov said nothing to members of the POC that he had written a report on the need for Magnitsky to have ultrasound? Did he actually write such report? Or did Kratov deceive Magnitsky and his mother?

Magnitsky’s Treatment in Butyrka

Litvinova informed POC members that she examined Magnitsky every day from October 78 to November 12, 2009. She said, “He had positive dynamics. During last two weeks in therapy he didn’t complain. He reacted badly to the ongoing court rulings and investigation. He asked me to give him written confirmation that he was hospitalized.”

Litvinova gave to Magnitsky the following confirmation, “Magnitsky has been treated in hospital with the following diagnosis: gallstones and acute cholecystopancreatitis. His general health conditions are satisfactory. Electro cardiogram – sinusoid rhythm is correct, 66 beats per minute, EOS (electrical axis of heart) is normal, blood pressure – 120/70, pulse 72 beats per minute. Deemed able to participate in court and investigative activity. Deemed able to be held in pre-trial detention.”

The names of the Head of Butyrka Dmitry Komnov and Deputy Head for Medicine Dmitry Kratov are written on this document, but there are neither signatures nor any stamp it. Judge of Tverskoi Court Stashina declined to accept this document for the case, although she had all the opportunities to verify the validity of this information. We should also point out here that this is the same Judge Stashina who at the request of investigators has kept in pre-trial detention Mr Tkachenko, an inmate to has extremely severe medical conditions and who has suffered four heart attacks. He is accused of economic crime and has spent three years in pre-trial detention and could die at any moment. Only

after POC members visited Matrosskaya Tishina was the detention measure against Mr Tkachenko was changed and he was released under bail. He remains alive. If the court had made similar decision regarding Magnitsky, he could have stayed alive. We believe that the Supreme Court and the legal community must review the current situation not only with judge Stashina, but also in general with seriously ill detainees. While there is a list of diseases for convicted persons that gives them right for release from prison, there is no similar list for people in pre-trial detention. Without any doubts it is necessary to identify the list of diseases, the presence of which will give enough reason for release suspected and accused people from pre-trial detention prison and change their detention measures. As it was mentioned above, on November 12, 2009 Magnitsky was discharged from Butyrka's medical center and returned to the cell. Nevertheless, already on November 13, 2009, after questioning by the investigator Magnitsky felt badly and was hospitalized again.

Litvinova told to members of POC that she was already absent on the second half of Friday November 13, 2009. Magnitsky complained about vomiting and severe pain on his right side. He was hospitalized by a medical assistant who informed Litvinova about his medical conditions. According to Litvinova she fully trusts medical assistants who over the weekend (November 14 and 15) applied the same therapy as before.

POC members found this approach of Litvinova questionable. If a person who was released after improvement in his status subsequently shows a deterioration in his medical conditions, does it not mean that requires additional, more qualified medical assistance?

Litvinova claimed to members of POC that "if she believed she would not be able to deal with Magnitsky herself, then she would have hospitalized him." She understood it too late. According to Litvinova at the morning on Monday November 16, 2009, when she examined Magnitsky she spotted that "his stomach is reasonably tensed, acute belting pain, vomiting every three hours." Litvinova decided that his status "required surgical examination, because the gallstone could close the canal." Besides that, as Litvinova admitted to POC members "it was necessary to push for an examination – I thought he had a chronic disease." This statement of Litvinova – "it was necessary to push for an examination" – could not be described as only a slip of tongue. It looks like somebody was preventing Magnitsky's treatment and Litvinova used his worsening conditions to initiate the treatment that was prescribed to him almost four months before.

The ambulance was called at 14:47. Litvinova informed the investigator who came for the next questioning that Magnitsky has acute medical conditions. Members of POC paid attention to the fact that Litvinova's reaction on medical conditions of Magnitsky differed from reaction of Dmitry Kratov. He assured members of POC that emergency doctor didn't consider Magnitsky status hard enough to move him to Matrosskaya Tishina. The conversation he had over the phone with doctors in Matrosskaya Tishina and which he told about to members of POC illustrate this:

Kratov: "I called to Matrosskaya Tishina and said to Olga Alexandrovna (doctor of Matrosskaya Tishina, 'We are transporting a patient to you. It would be nice to examine him. Pancreatitis.'"

Alexandrovna: "Does he have pancreonecrosis? (a lethal condition requiring immediate treatment)

Kratov: "No."

Alexandrovna: "Then why are you transporting him?"

Kratov: "Just acute Pancreatitis."

According to Komnov, the ambulance took away Magnitsky to Matrosskaya Tishina at 17:10. Dmitry Kratov and Dmitry Komnov insisted on the fact that Magnitsky status was not critical and he "left Butyrka on his own legs."

Members of POC expressed the desire to speak to officers who escorted Magnitsky in the ambulance to Matrosskaya Tishina in order to find out how he felt during the trip. Komnov said that "I will not tell you the name of escorting officer. I don't want him to be killed." We do not know the reason for Komnov's fears.

In summary, upon reviewing the medical attention given to Magnitsky, we can unequivocally conclude:

The appropriate medical assistance was not provided to Magnitsky in Butyrka. His requests for visits with doctors were ignored, doctors didn't undertake necessary steps to send Magnitsky to Matrosskaya Tishina for the second ultrasound which was prescribed to Magnitsky.

We do not know the reason for such an unprofessional attitude from medical staff to their medical duties. Members of POC who tried to get more details about circumstance of Magnitsky treatment in Butyrka during the second visit failed to talk to therapist Litvinova. Deputy Head of the Moscow Directorate of the Federal Penitentiary Service A. Chzhu took Litvinova away and didn't provide any opportunity for members of POC to speak to her. Furthermore, during their first visit, members of POC were informed that medical assistant Khokhlova is not at her working place, but by accident members of POC met Khokhlova by chance during the course of that visit. Why had members of POC not been provided an opportunity to speak to medical assistant Khokhlova despite the fact that she examined Magnitsky under his request on August 24, 2009?

Why did the head of Butyrka's medical ward, Larisa Litvinova, who described the positive dynamics of Magnitsky disease and who returned him on November 12 back to his cell, was not surprised with the fact that on November 13 he again complained about acute status of his disease? In report which was read to us in Matrosskaya Tishina, it was said that Magnitsky was hospitalized on 16 November due to negative developments in his condition. It is clear even to a non-specialist that the disease progressed quite fast and he should have been hospitalized starting with 13 November when he again asked for medical assistance.

Why wasn't he moved to the hospital in Matrosskaya Tishina where the needed specialists exist as well as ultrasound examination?

Perhaps the question should be: Did management Butyrka not get permission for Magnitsky's transfer from the Interior Ministry? Why did it take so long to move Magnitsky to Matrosskaya Tishina? Litvinova identified that he needed surgery examination that morning. Did his movement from detention center to detention center need to be reconciled with investigators?

What was the position of investigator Silchenko in this matter? In his reply to the request, which was sent to him by the advocates of Sergei Magnitsky in accordance with Article 11 of the Criminal Conduct Code of Russia, requesting him to force the administration of the pre-trial detention ward to "*conduct the ultrasound examination of abdominal section of the suspect – Sergei Magnitsky ...*" he stated that the request had been considered and that "*on August 31, 2009 he issued a full denial to such request ...as the current legislation does not empowered an investigator to control a health condition and treatment of a detained suspect.*"

Taking into account the whole history with this ultrasound examination, which had been lasting for more than three months, investigator Silchenko's statement was the most cynical, showing the failure of investigator Silchenko to comply with Article 11 of the Russian Criminal Procedural Code, which clearly formulates that: "*The courts, prosecution office, investigator or operating officer must provide all required explanations to a suspected person and/or an accused person, and /or a victim or any other civil claimant or defendant, or any other participants in the criminal court proceeding their lawful rights, responsibilities and provide them with ability to utilize their rights.*"

In this case investigator Silchenko did not wish to "*provide [Sergei Magnitsky] with ability to utilize [his] rights.*" Why?

In addition, another provision of the law was ignored by him, the provisions of Article 122 of the Russian Criminal Procedural Code, which requires an investigator to convey his reply to the

knowledge of the suspect. Bodies conducting preliminary investigations are required to provide a copy of their reply or statement to a claimant or establish a time for the claimant to be acquainted with such reply or statement, for the purposes of the latter to consider the lawfulness of such reply or statement and to have the opportunity to challenge it in the court in accordance with the current legislation. Not a single copy was provided by the investigator to the advocates. Therefore, provisions of Articles 7 and 11 of the Criminal Procedural Code were abolished by the investigator, which further caused breach of the right for an appeal. The actions of Investigator Silchenko **evidence either his negligence or a deliberate intent to conceal the motivation of his refusal to provide a medical examination**, which was requested in the appropriate complaint by Magnitsky on August 31, 2009.

On September 15, 2009 Magnitsky's lawyer, Kharitonov, filed a complaint requesting to inform the defense with the issued denial in response to the filled complaint of August 31, 2009.

On September 23, 2009, Kharitonov filed a complaint with the Federal Directorate of the Penitentiary Service (UFSIN).

The conclusion of the analysis can be summarized as follows: the actions of medical staff at detention center was not just negligence, it was not just 'non-provision of medical care.' These actions raise the question of the violation of his right to life.

THE LAST DAY OF SERGEI MAGNITSKY

According to Dr. Litvinova, Magnitsky had acute pancreatitis pains that started on Friday, November 13, when the doctor had already left for the weekend. The patient suffered from nausea and pains in the right part of the adnominal area. However, the "seasoned medical staff" (in her words) arranged for proper treatment over the weekend: "they placed the patient in a medical room and gave him some anti-spasm medication. They were ready to call an emergency if needed."

Dr. Litvinova saw Magnitsky on Monday morning during the regular survey of the patients. He was very stressed and agitated and she understood that it was a "psycho-emotional stress." According to her, Magnitsky usually had such acute pains when emotionally stressed although this time he said he had eaten some fish, thus violating the diet.

When the doctor examined Sergey Magnitsky's abdomen she found it very tense which she thought was a symptom of the acute pancreatitis pains. She decided to move the patient to the hospital located at Matrosskaya Tishina detention center to conduct an additional ultrasound and to perform a possible surgery.

The ambulance was called, but sources differ on the exact timing: Litvinova said it arrived at 2pm while Olga Grigorieva from the Medical Division of the Moscow Department of the Federal Penitentiary Service indicated 2:47pm.

It is not clear when the ambulance arrived at Butyrka Prison but, according to the head of Butyrka, Dmitry Komnov, it left "in the direction of Matrosskaya Tishina" at 5:10pm. So, more than 5 hours passed between the moment when the decision to send Magnitsky to the hospital was taken and the time of actually transporting him to the hospital.

Apparently, all that time was spent on all sorts of consultations involving the investigator, the Moscow department of the Federal Penitentiary Service and the administration of Butyrka and Matrosskaya Tishina Prisons.

In particular, we have an account of the discussion between the medical director of Butyrka, Dr Kratov, with Alexandrovna at Matrosskaya Tishina. Dr. Kratov told us:

“I didn’t see the patient myself. I spoke with the ER doctor. She said that the patient’s condition was not that bad to require the transfer to Matrosskaya Tishina. But I called Olga Alexandrovna at Matrosskaya Tishina and told her that we were going to deliver to their hospital a patient with pancreatitis. I said it would be good to examine him. Olga Alexandrovna asked if the patient had pancreonecrosis. I said, no. “Why then are you bringing him to us?” she asked.

Dr Litvinova from Butyrka also referred to the opinion of the ER doctor: “The ER doctor looked at the abdomen and confirmed my diagnosis,”

However, this ER doctor disappeared and it was some “young nurse” who brought Magnitsky to Matrosskaya Tishina. This is known from the surgeon Alexandra Gauss from Matrosskaya Tishina. She said that, “In Detention Center No. 2 the document regarding the transfer of Magnitsky was delivered to her by a “young nurse.” Dr Gauss interpreted this fact as a sign that the patient’s illness was not dangerous. “Otherwise he would have been accompanied by the doctor”, she said.

This young nurse was also mentioned by those who recounted what happened to Sergey Magnitsky in the ambulance. This girl was said to be sitting next to the driver while the patient was sitting next to the guard so the nurse and the patient didn’t see each other. The commission failed to get any details on the ambulance crew or the guards from the officers of the detention center. When asked if it would be possible to talk to the guards, the head of Butyrka, Mr Komnov replied, “No, he can be killed for that.”

Therefore, Magnitsky left Butyrka at 5:10pm. The commission members watched the video tape showing his exit from the detention center. The tape showed a man in a light jacket going down the corridor accompanied by two other men. Magnitsky was holding 2 bags and 2 plastic bags. The two men accompanied him to the door. According to Komnov, they are not allowed to go beyond that point as they are the service staff of the detention center. Then the tape shows Magnitsky’s profile. He bends down to pick his bags. Then the camera shows him from above. However, Magnitsky’s relatives have not seen this tape yet, so it not possible to confirm at the moment that the man on the tape is actually Magnitsky.

What happened to Magnitsky in Matrosskaya Tishina?

There is no video tape that would show how Magnitsky arrived at Matrosskaya Tishina.

The head of Matrosskaya Tishina Prison, Fikret Taguev recounts the last hours of Sergey Magnitsky the following way:

“He was brought to the detention center at 6:30pm. He walked in by himself, holding his bags. He was in a normal condition. He was brought to the nurse on duty. The nurse called for the surgeon, Dr Gauss. The patient started “to play”, which means he went hysterical. He asked “Why have you brought me here?” Then he started to threaten. He didn’t want to leave the nurse’s room. The staff on duty “pacified” and handcuffed him. They called a psychiatric doctor and put Magnitsky into the single 15 square meter room where he “awaited” the arrival of the doctor. However, the psychiatrists did not enter that room as the patient felt badly by the time they arrived. His heart stopped beating at 9:50pm after the reanimation attempts which were carried out by the nurse named Sasha who was later joined by doctors.

Taguiev showed to the commission members the following abstract from the medical records:

“November 16, 2009

6:30pm. Review by the doctor on duty. Diagnosis: Acute Cholecystitis and Pancreatitis. Hospitalized to the surgery department. For dynamic monitoring and treatment.

7:00pm. The patient behaves inadequately. Talks to a “voice,” looks disorientated, and shouts that someone wants to kill him. His condition is diagnosed as psychosis. The emergency doctor was called (order N 904253). There are no body damages apart from traces of handcuffs on the wrists. It was planned to make an anti-spasm therapy prior to the arrival of the psychiatrist but such therapy was not possible due to the aggressive behavior of the patient.

9:15pm. The patient was surveyed again as his condition deteriorated. When the psychiatrist was examining the patient the latter’s condition deteriorated sharply. He lost conscience. The reanimation procedure was started (indirect heart massage and ventilation of lungs using the Ambu pillow). The patient was transferred to the special room where he was received an artificial ventilation of lungs and a hormones injection. Reanimation procedure lasted 30 minutes. At 9:50pm the patient died.

The body was transferred to morgue No. 11. The preliminary diagnosis is cardiomyopathy – an acute cardiac deficiency. Gallbladder and pancreas are in a perfect condition.”

This diagnosis stemmed from an unidentified source as the result of the official autopsy was not known yet. As Taguiev learnt from a colleague who participated in the autopsy, it turned out that Magnitsky had an abnormally large heart, twice larger than normal. One has to search for the cause of his death in the four days following the November 12 court decision that rejected his request to release him from the jail.

Account of Dr. Gauss

She saw Magnitsky in the nurse’s cabinet. He was accompanied by the guard from Butyrka and he was already in a special isolation cell.

As it was mentioned earlier, the transfer documents were delivered by the young nurse from the ambulance. Magnitsky said that he had been sick since Thursday, November 12 when he started feeling abdominal pains.

During the survey, his abdomen was tense; he felt pains in both the left and right parts of the area which is an obvious symptom of pancreatitis. In the medical records, she read about a prescription to undergo a repeat ultrasound examination. During the survey, Magnitsky had twice a desire to vomit (with no actual vomiting), and she gave him a hygienic bag. Initially, he was calm, agreed to a hospitalization and signed on the medical records.

At 19:00 suddenly he started to behave anxiously, started to talk: “Why are you inspecting my bags?” He had three bags and two plastic bags. She replied to him “Nobody is inspecting your bags.” He: “No, you see that they are being inspected now!” and seized the bench that was in the isolation cell where he was during the questioning. (Afterwards we observed this isolation cell, and it was apparent that it would be hard to swing the bench inside the cell due to the cell’s small size.) He then sat down and covered himself with a plastic bag and said that they want to kill him. It continued for a short period of time and he hit twice the floor with the cot, then put it back and scared and started to hide behind the plastic bag again, which she gave to him. According to her opinion it looked like acute psychosis and delirium of persecution. They called for psychiatric emergency.

Being asked, whether his hands were damaged, she replied that there were signs of handcuffs and it was reflected in medical card. Being asked what psychiatric emergency did, what did doctor do, she said that called for enforcement DPNSI (Fedorovich) who came with approximately eight people. They put handcuffs on Magnitsky’s hands. He didn’t oppose them, but stayed in handcuffs, looked inadequate and gazed round. After handcuffs she ordered to make him injection in order diminish pain in stomach.

Medical assistant Sasha made injection under her prescription. Injection was made in her absence, she left entrance department and came to surgery. She didn’t see psychiatrists.

At 21:20 a female voice called from entrance department and informed that a patient is on the floor in the fourth isolation cell. Medical conditions are questionable.

The doctor on duty, Nafikov, ran in to perform resuscitation procedures. The medical assistant Sasha was conducting resuscitation procedures with the help of special equipment (cushion of Ambu). There were no handcuffs on Magnitsky's hands. At 21:50 heart stopped.

Testimony of Officer Dmitri Markov (officer who restrained Magnitsky)

Markov was accompanied by his deputy, Lieutenant Kuznetsov. When we asked him whether Magnitsky's hand were blue (as it was known from Magnitsky's mother, she found that his hands were damaged), he replied that he saw only signs of handcuffs. He was brought to Matrosskaya Tishina in handcuffs. He came to the entrance department himself. Thirty minutes after fit of psychosis already in the isolation cell, the handcuffs were taken off him, he was normal. Psychiatric emergency came to the room and during the examination he felt bad, he was sitting on the floor, he had obvious difficulty breathing and he was sweating.

Medical Assistant Alexander Semenov (Sasha), in the presence of Head of Medical Department of Matrosskaya Tishina Ibatulina and Head of SIZO Matrosskaya Tishina Tagiev said that he made injection before psychosis. He made an anti-spasm injection and left the room. Returned back during the psychosis, heard that Magnitsky shouted "Where is my stuff?" Psychosis started at 19:00.

Psychiatric emergency was called for examination at 19:30. Emergency team arrived at 8.48 pm. When emergency doctors entered to the special cell, Sergei was sitting on the cot, felt very badly with his eyes unfocused. At the time from 7.30 pm up until the arrival of the Emergency team, he was left unattended without medical support. The supervision was conducted by the guard on duty through the little box in the cell door. The guard also uncuffed Sergei. Unfortunately we have not received any answer to our question: whether it is a normal behavior to leave the patient unattended without any medical supervision, due to the fact that medical superiors did not allow medical assistant Sasha to speak. Sasha was looked scared.

On our question what he thinks about all of these, he replied that it is a typical event: psychosis and death.

Our **conversation with Dr. Vitaly Karnilov, the psychiatrist from the emergency ward**, (over the phone) helped to understand more in details. The ambulance arrived to the Matrosskaya Tishina Prison at 8 pm, and not at 8.48 pm as was reported earlier by the administration, however, the doctors were not allowed to go through to see the patient, as such they were waiting for an hour. Dr Karnilov further added: "Being the doctors from the Emergency Services, we were waiting in case our help in providing reanimation actions would be requested. Finally we were called upon. We entered into the cell. The patient was lying on the floor lifeless and we concluded that he had already died. There were a number of medical personal there. Then a male doctor came in. I do not recall seeing any female doctor there."

Many statements hardly match. The emergency ambulance doctor appears to be 'missing,' the stories by Dr Gauss and Medical Assistant Sasha about the timing of injection before or after he allegedly developed symptoms of psychosis contradict each other. Statements by various people are conflicting about every detail of the timing of events, his behavior during the psychotic episode, and everything that happened to him after placing him in isolation ward

There is no plausible explanations could be given to these, as all these people have been questioned on a number of occasions now by the investigators.

The Head of Matrosskaya Tishina insisted on the heart failure being the cause of death, as was presented by the investigators, saying that pancreatitis is not the correct diagnosis, that everything was conducted in correct manner, in particular initial transfer of Magnitsky to Butyrka Prison, further supporting himself that Magnitsky was not required any medical treatment. He also adding that possibly Magnitsky was under deep stress, when the court on November 12, 2009 extended his pre-trial detention and that fact could provoke his death, saying that the heart is unpredictable and this could happen with anyone.

The inflamed stomach and echocardiogram heart examination conducted shortly prior to Magnitsky's death do not support this version. As for his psychosis – based on Sergei saying that someone wants to murder him – it could have been an appropriate response to what was happening to him. In addition, he was demanding his personal belongings to be returned (and indeed his notes were gone missing), which further explains how his reaction was indeed adequate to the surrounding reality at that time.

The reaction and behavior of Dr Gauss raises more questions. Why did she leave Magnitsky unattended in this special cell in a critical medical condition without any medical support? Dr Gauss mentioned that Magnitsky was attempting to vomit repeatedly, which clearly confirms worsening of the pancreatitis. Also she mentioned that Magnitsky's psychosis was short and he came down quite quickly. Why he then was not transferred immediately to the surgery unit?

Based on the witness statements provided by the medical personal of the Matrosskaya Tishina Prison, the members of the POC could not come to a conclusion as to what really happened with Magnitsky when he arrived there. One thing is clear to us: the reports by doctors contradict each other. It is obvious that they are deliberately concealing the truth. Indeed, there is no assurance that Magnitsky was indeed experiencing psychosis, which prevented him being transferred to the surgery unit.

The primary conclusion which the POC could produce is that no medical help was provided to Sergei Magnitsky in Matrosskaya Tishina Prison when it was urgently required and for which purpose he had been transferred from Butyrka Prison. An ill person in severe condition was effectively left without medical attention (for 1 hour 18 minutes) to die in an isolation ward.

CONCLUSIONS

A man who is kept in prison is not capable of using all the necessary means to protect either his life or his health. This is a responsibility of a state which holds him captive. Therefore, the case of Sergei Magnitsky can be described as a breach of the right to live. The members of the of the civic supervisory commission, have reached the conclusion that Magnitsky had been experiencing both psychological and physical pressure in prison, and the conditions in some of the wards of Butyrka can be justifiably called torturous. The people responsible for this must be punished.

The reform of the penitentiary system, when it was split out of the Interior Ministry and transferred to the Ministry of Justice, was aimed at the separation of the latter from the inquest. The prosecution must be independent from the detention. It must keep prisoners and convicts in the respective institutions following the conditions set out by the law and not by inquest's attitude to them. The interference of the inquest in determining the conditions for the convicts and accused ones is not acceptable. Nevertheless, this happens quite often. It is an offense against the law. The members of the Public Oversight Commission believe that it is necessary to find out the role of the investigators in creating conditions and subjecting Magnitsky to them in detention, and the degree of their responsibility.

Magnitsky's situation highlighted the fact that the doctors of the investigative isolation ward failed to fulfill their responsibilities. We believe that this is due to their dependence on the administration of the penitentiary system's institutions. The health care in the above-mentioned institutions must not be a part of the prosecution authority, it must be independent.

It is necessary to set out the legal framework of transfers of the prisoners from one prison to another, clearly define the rules of the transfer from one isolation ward to another, the responsibility for the unlawful worsening of jail conditions. We must prevent what happened to Sergei Magnitsky from happening again.

We must provide the solution to the long overdue question of choosing the right punitive measures for the accused in custody, especially for ones accused in economic crimes. We must use alternative measures of restraint; we do have them.

We must define by law under which conditions an accused person must not be placed in the isolation ward, when he or she must be set free, when the alternative measures of restraint must be used. Courts, while deciding on the measures of restraint, must take into consideration the health conditions of the accused.

We must put the Russian normative acts in accordance with the European penitentiary rules. This discrepancy was a precise reason for the complaints of Magnitsky regarding the conditions under which prisoners are kept in the isolation wards, limitations of the shower use, the failure to provide the necessary medical help, isolation from the communication with the family and public members and others.

The participation in the court hearings is accompanied by the cruel and disgraceful conditions which disgraces a human life. This includes the preparation procedures of transportation to court and the transportation itself, and the conditions in court, including deprivation of hot meals. This is an old and general problem, but the one which is not at all solved.

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