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## **Kafkaesque trial denies justice even after death**

The trial of a Russian lawyer who blew the whistle on a high-level corruption scandal even though he is dead as a result of mistreatment while in detention is an attempt to deflect attention from those who committed the crimes he exposed, Amnesty International said on the eve of the preliminary hearing scheduled for 28 January in a Moscow court.

Sergei Magnitsky – who died on 16 November 2009 – was charged with the very crimes he exposed triggering a sequence of events that led to his premature death.

“The Russian authorities’ intention to proceed with the criminal prosecution of Sergei Magnitsky violates his fundamental rights even in death, in particular the right to defend himself in person,” said John Dalhuisen, Europe and Central Asia Programme Director.

“The trial of a deceased person and the forcible involvement of his relatives is a dangerous precedent that would open a whole new chapter in Russia’s worsening human rights record.

“The legal grounds for the posthumous criminal prosecution against Sergei Magnitski to say the least are dubious and the authorities must halt this travesty.”

The criminal proceedings against Magnitsky were closed 13 days after his death on 29 Nov 2009 as required by the existing law.

However, they were reopened after a 2011 Constitutional Court ruling that in cases where the suspect, or defendant, dies before the relevant criminal proceedings are completed, the family has the right to insist the investigation is completed and the person concerned rehabilitated.

The ruling emphasized the deceased person’s relatives’ right to insist on the completion of the relevant criminal proceedings which would otherwise be closed. However, the Russian criminal prosecution and investigation authorities have used this decision as a pretext to reopen criminal proceedings against Sergei Magnitsky.

“Sergei Magnitsky’s family have always insisted on his innocence, and has been asking for those responsible for his unlawful persecution and death to be brought to justice. They have never requested that the criminal case against him be reopened to rehabilitate him as he was never convicted and the charges were patently fraudulent.” said Dalhuisen.

“This posthumous prosecution is farcical, but unfortunately also deeply sinister. The intention of the authorities to have his close relatives participate in the present Kafkaesque trial amounts to unashamed harassment and an attempt to besmirch the name and work of Sergei Magnitsky.”

As a lawyer and accountant, Sergei Magnitsky worked with a foreign corporate client in the course of which he uncovered a high-scale tax fraud which allegedly cost the Russian Government’s budget more

than USD 200 million dollars.

He testified about his discovery to the Russian criminal investigation authorities.

However, instead of addressing the concerns and allegations he made, Magnitsky himself was arrested as a criminal suspect, on 24 November 2008, on charges of tax fraud.

At least one police investigator put in charge of this case was named in Magnitsky's allegations of corruption and corporate raiding which led to the tax fraud.

"Sergei Magnitsky was a lawyer doing his work conscientiously and he paid for this with his life. His case highlights the deep levels of corruption with the Russian law enforcement system," said Dalhuisen.

Magnitsky spent 358 days in pre-trial detention until his death on 16 November 2009. During this time, he sent numerous letters to the penitentiary administration, Ministry of the Interior, Prosecutor's Office, and court, complaining about his unlawful detention and criminal prosecution, of threats and pressure to force him to withdraw his allegations and to incriminate himself and his client in the crimes he alleged.

He complained of repeated unlawful placement in solitary confinement, ill-treatment and inhuman conditions in detention, worsening health and denial of medical care.

When he was diagnosed with an acute condition and scheduled for a surgical operation at one detention facility he was instead transferred to another centre, 'Butyrka', shortly before the procedure could take place.

Details of Sergei Magnitsky's last days tell a story of agony and despair. On 12 November 2009, he started complaining of severe pains, but it was not until 16 November that his acute medical condition, so far neglected by the administration of 'Butyrka', was recognized.

He was urgently transferred for treatment to the previous detention facility in its prison hospital. Upon arrival, he was allegedly placed in a solitary cell, handcuffed and beaten with rubber batons by penitentiary officials. Magnitsky died the same day.

After months of pressure and lobbying of the Russian authorities by human rights activists and the international community, a criminal case was opened into the circumstances of his death and two medics from 'Butyrka' were charged with negligence.

The case against one of them was closed because of the expiration of the statute of limitations while the other defendant was found not guilty in December 2012.

"For many in Russia and beyond, Sergei Magnitsky's death in custody has come to symbolize the injustices associated with Russia's malfunctioning criminal justice system and failures of the rule of law," said Dalhuisen.

"The justice system has not only failed to uphold and protect his rights, but it has also been abused since to continue to violate his, and now his family's rights, in the form of his posthumous criminal prosecution, and by trying to force his close relatives to take part in this process.

"The posthumous criminal prosecution of Sergei Magnitsky must stop, and the pressure on his family in connection with their objections to this must cease.

"The circumstances of his death as well as the allegations of his arbitrary criminal prosecution must be immediately, effectively and impartially investigated, and all those found responsible brought to justice."