



Den Haag, 10 juni 2011

Voortouwcommissie: **vaste commissie voor Buitenlandse Zaken**

Activiteit: **bijzondere procedure**
Datum: woensdag 15 juni 2011
Tijd: 17.00 - 18.00 uur
Openbaar/besloten: besloten

Onderwerp: Dood Russische advocaat in gevangenis

Agendapunt: **Het lid Ferrier ontvangt in het kader van de bijzondere procedure de heer Bill Browder over Sergei Magnitsky, een Russische advocaat die onder dubieuze omstandigheden in een Russische gevangenis om het leven is gekomen.**

Het lid Ferrier nodigt u van harte uit hierbij aanwezig te zijn.

Zaak: Brief van lid/fractie/commissie - - 21 april 2011
verzoek gesprek Bill Browder - 2011Z08588

Griffier: T.J.E. van Toor

Activiteitsnummer: 2011A02434

**The Sergei Magnitsky Case:
Testimony to the
Dutch Parliament, Human Rights Committee
By William Browder
Chief Executive Officer, Hermitage Capital Management
15th June 2011**

Madam Chairman, Ladies and Gentlemen of the Human Rights Committee.

Thank you for inviting me to speak to you today about the case of Sergei Magnitsky. The devastating fate of this young Russian lawyer, and the cover-up orchestrated after his murder in police custody, truly exemplifies the corruption, graft and lawlessness that rules Russia today. Moreover, it is a terrible human rights tragedy that, if ignored, will set a new precedent for corrupt officials the world over, who continue to act with impunity while prisoners of conscience suffer in silence.

Allow me to first give you some background, about myself and about how I got to know Sergei Magnitsky.

I was the largest foreign portfolio investor in Russia between 1996 and 2005, with 6000 investors from 36 countries totalling \$4 billion under management. The core of my fund's work was built around anti-corruption activism. When I discovered that high-level, government-sanctioned fraud was taking place in the large, state-owned companies I invested in, my team and I would conduct detailed forensic audits of the people committing the fraud, sharing our research with international news organizations such as *The New York Times*, the *Financial Times of London*, and *The Washington Post*.

The public outrage our exposés often triggered usually worked to halt the fraud or, at the very least, minimize it greatly. This, in turn, would improve the overall health and viability of the company in question, as well as its share price. As a result, I became as much an anticorruption activist as I was an investor, establishing a reputation in Russia for improving minority shareholder rights, promoting corporate governance, and fighting graft.

But I was going up against very powerful people, who had strong vested interests and government connections. In 2005, after my fund exposed the details of several multibilliondollar corruption schemes, the Russian foreign ministry expelled me from the country, declaring that I was a "threat to national security." Then the regime turned its massive resources towards persecuting my colleagues and me.

On June 4th, 2007, twenty-five police officers raided our Moscow office and the office of our law firm, Firestone Duncan, seizing two vanloads of documents and computers. The documents were then used to fraudulently transfer ownership of our three investment holding companies and to steal from the government \$230 million that we had paid in taxes the previous year.

While all of this was going on, I hired one of the smartest men I knew – a young Russian lawyer named Sergei Magnitsky – to help us conduct an independent investigation into the massive crime taking place right before our eyes. He was 36 years old, worked for Firestone Duncan, an American law firm, and was highly respected by his clients and colleagues as a trustworthy expert on tax law.

Sergei conducted an independent forensic investigation, diligently following the money trail of the stolen \$230 million. He discovered that government officials had participated in the fraud and that our company had fallen victim to an organized criminal syndicate that had already established a reputation in Russia for "corporate raiding."

After he testified about the involvement of Interior Ministry officers, going on the record in October 2008 to identify them, the same officials came to his home one month after his testimony and arrested him on fabricated charges. It was a clear retaliation, not to mention a cynical and highly organized attempt by officials to cover-up the traces of their crimes.

Sergei was imprisoned without a trial. He was methodically tortured for one year in an effort to force him to retract his incriminating testimony. Every time he refused to perjure himself,

his captors applied more pressure: he was thrown into a cell flooded by raw sewage, then into a freezing cell with open windows at the height of Russian winter. He was denied heat and hot water. He was refused medical care. His prison cell was dark, overcrowded and infested with rats.

At the time of his arrest, Sergei was a robust young man; in detention he grew emaciated, dropping forty pounds and developing painful pancreatitis and gallstones. And all the while, his captors continued trying to break him into signing a false confession.

But despite the physical and psychological pain he endured, Sergei Magnitsky refused to be coerced into implicating himself and me, his client, in a fictitious crime. He stood up for justice while suffering through the most unimaginable, inhumane treatment until his physical state was completely broken down by his captors. But his spirit was unshakeable. He died on November 16, 2009, having spent his final hours in pain, vomiting, being handcuffed by eight prison guards, beaten by a rubber baton and writhing in agony. He never signed a false confession nor did he withdraw his testimony against the corrupt officials who kept him hostage for 12 months without trial.

The Wall Street Journal described Sergei's death as a "slow-motion assassination." Russian human rights activists called it a premeditated murder. He was only 37 years old. He left behind a wife and two young children, who buried a wasted body marked by bloodied wounds, a painful reminder of the torture of his last hours.

What sets apart Sergei's story from the shocking multitudes like it in Russia today is the uniquely clear mind and spirit with which Sergei Magnitsky diligently catalogued every abuse inflicted upon him while he was in police custody. During the 358 days of his detention he filed 450 official complaints. And although the authorities never acted on any of them, we were able to obtain the copies of his detailed diary. Indeed, it reads like a modern-day Gulag Archipelago, as Sergei describes in granular detail the mistreatment and abuse meted out to him by his sadistic captors.

A small subset of these documents was released in the first week after his death. The Russian newspaper, *Novaya Gazeta*, published them under the headline "Sergei's Prison Diaries." It was especially disturbing for the Russian people, as the language and details within this document echoed with eerie similarity the repressive horrors of Stalinism and the Great Purge. One week after Sergei Magnitsky's death, public outrage at the scandal swelled with such vehemence that President Medvedev – who has propagated his presidency as a fight against "legal nihilism" – announced that he would launch an investigation into Magnitsky's death. But the so-called investigation was narrowly focused on "medical negligence" and ignored the most substantial evidence around the actual crimes: namely, the illegality of Sergei Magnitsky's arrest; the involvement of officers in his persecution who had a clear conflict of interest; the torture he was subjected to in custody; and the denial of any legal rectification despite ample and undeniable evidence that his natural human rights, his freedom and his life were unjustly and illegally taken away while he was in pre-trial detention.

Moreover, the official investigation ignored the massive financial fraud perpetrated by Russian officials that Sergei had uncovered and for which he was arrested, tortured, and killed.

Meanwhile, eighteen months since his death, Russian government officials, law enforcement agents and cabinet ministers conceal from prosecution and vehemently protect the corrupt officials who carried out the theft of \$230 million from the Russian people, the torture and murder of Sergei Magnitsky. Several key events that took place after Sergei's death undeniably point to an organized institutional cover-up at the most senior levels of the Russian government.

First, the Russian Prosecutor's Office denied the Magnitsky family's request for an independent pathologist to attend the official state autopsy on the grounds that all experts are independent. When the family requested permission to conduct an independent autopsy, this request was also denied. In fact, Sergei Magnitsky's family was not even allowed to see his

body until it reached the burial site. At the burial site, the family discovered bruises, abrasions and broken fingers. The family request to open a murder inquiry was ignored by the Russian authorities.

On November 25th, nine days after Sergei died, which according to Russian tradition is a special day of mourning for the deceased, the Interior Ministry held a press conference. In breach of the principle of the presumption of innocence, Interior Ministry officials speaking at the press conference posthumously declared Sergei Magnitsky guilty of crimes for which he was never tried or convicted. Had he lived to see a fair and open trial, these accusations would have immediately fallen apart under public scrutiny.

One month after his burial, Alexei Anichin, the Russian Deputy Interior Minister and head of the Interior Ministry's Investigative Committee, held another press conference to pronounce Sergei posthumously "guilty" of the crime that had been used to justify his detention.

Anichin denied having had any knowledge of Sergei's deteriorating state of health in pre-trial detention, despite the fact that Sergei had filed over twenty requests calling attention to his deteriorating condition, including several requests filed with the Interior Ministry's Investigative Committee, and despite the fact that all of these requests were formally rejected. Anichin claimed that he had reviewed 111 of Sergei's complaints and "not a single complaint contained anything to do with the health or conditions of detention."

In June of 2010, Oleg Logunov, the head of the legal department in the General Prosecutor's Office (who at the time of Sergei's detention was deputy head of the Interior Ministry's Investigative Committee) gave an interview to a local Moscow radio station in which he claimed that he was not aware of Magnitsky's medical condition and that Magnitsky had never filed any complaints about his health. Echoing the Investigative Committee's December rhetoric, he pronounced Magnitsky "guilty."

One month later, Anichin told the Echo of Moscow radio station that he and his officers had "suffered most" from Sergei Magnitsky's death.

In September of 2010, Alexander Bastrykin, chairman of the Russian Investigative Committee, and the most senior Russian official in charge of the on-going official inquiry into the negligence in Magnitsky case, dismissed any notion that officials had been involved in his death, though it seems inconceivable that a year after Sergei perished behind bars – and with ample evidence that his requests for medical care were repeatedly and systematically denied while he was in pre-trial custody – high-ranking officials with direct knowledge of the case would continue to deny the facts.

Moreover, Russian authorities have summarily continued to reject all petitions from Magnitsky's family, his colleagues, independent human rights activists and journalists seeking to open a real probe into the crimes and cover-up.

On December 28, 2009, the Moscow Public Oversight Commission (MPOC), which is mandated by Russian law to monitor human rights compliance in detention centers, concluded following a five week independent investigation that Sergei Magnitsky had been subjected to torturous conditions while in custody, that physical and psychological pressure had been exerted upon him, and that his right to life had been violated by the Russian state.

After conducting a series of interviews with detention center officials, the MPOC also found substantial discrepancies and contradictions in the accounts of detention center officials, and concluded that it indicated a cover-up of what had happened to Sergei Magnitsky on his last day. The MPOC sent its conclusions to the General Prosecutor's Office, the Investigative Committee, the Ministry of Justice, the Federal Penitentiary Authority, and the Presidential Administration. To date, they have not received any official response to their findings.

In March of 2010, Ludmila Alexeeva, Chairwoman of the Moscow Helsinki Group, an independent Russian human rights organisation, petitioned for the opening of an investigation into Sergei's false arrest, torture and murder while in custody. She named police officers and submitted evidence gathered by the MPOC and Sergei's family, as well the official complaints Sergei Magnitsky had filed while in detention.

In June of 2010, the Russian Investigative Committee rejected her petition. They claimed to have questioned the police officers involved and found no sign of criminal wrongdoing. The public responded with a massive outcry, demanding that the criminals responsible for Sergei's murder be brought to justice. The Investigative Committee made vague promises to reevaluate Alexeeva's petition, but no inquiry has been opened to date.

In July of 2010, Jamison Firestone, Sergei Magnitsky's boss at the law firm Firestone Duncan in Moscow, submitted evidence to the Russian Investigative Committee that several government officials involved in the detention and torture of Sergei Magnitsky had acquired massive and irregular wealth following the theft of the \$230 million, which Sergei had uncovered. In particular, Lt. Col. Artem Kuznetsov and his family acquired assets worth \$3 million, which would amount to 467 years of his official police salary, and Major Pavel Karpov, acquired \$1.3 million, an amount equal to 202 years of his official Interior Ministry salary.

All of Firestone's complaints and petitions for an investigation were denied or ignored.

During 2010, Russian anti-corruption activist Alexei Navalny also filed a series of petitions asking authorities to investigate the circumstances around Magnitsky's arrest, including the involvement of the Federal Security Service and the alleged payment of \$6 million to organize his detention. His petitions have all been rejected.

Alexei Navalny also filed a petition asking authorities to investigate the abundance of evidence that suggests officers Kuznetsov and Karpov, along with their families, profited from the theft of \$230 million from the Russian treasury uncovered by Sergei Magnitsky. That petition was also rejected.

The result of all of these efforts to bring the criminals to justice resulted in further cover-up of the crimes. The officials in question, meanwhile, have been promoted and honored with state medals.

It has become clear that justice will not be served inside Russia without pressure from the outside. Given the involvement of the most senior government officials in the persecution of Sergei Magnitsky and in the cover-up after his death, it is inconceivable that an investigation by Russian authorities alone could produce a fair and unbiased investigation free from the interference of the highest ranking officials complicit in the mistreatment and torture of Sergei Magnitsky. The only chance we have to impose measured consequences on those who committed these crimes is to appeal to countries where the rule of law serves to protect ordinary citizens.

Ladies and Gentlemen, I come before you today as one of those ordinary citizens. I am neither politician nor lawmaker: my only agenda is to ensure that the criminals who killed Sergei Magnitsky – and who continue to roam free, spending their ill-gotten gains – are brought to justice in a fair and open trial, by which they will surely be found guilty.

My team and I have helped to introduce legislation in parliaments around the world that would impose visa and economic sanctions on the Russian officials involved in the Magnitsky case. At the time of this testimony, the legislation is being considered in the United States and Canada. On December 16th, 2010, the European Parliament passed a resolution to allow EU member states to effectively do the same.

It is a short-term measure whose aim is not to punish the horrendous crimes at hand, but to send a message that state-sponsored corruption will not be tolerated by free civilizations who respect and honor democratic governance.

We are emboldened in this call for measured justice by the strong voices of prominent Russian human rights activists and former Soviet dissidents who see the Magnitsky case as clear evidence of the impunity. They have independently appealed to the EU leadership to enact these sanctions to show that human rights are not empty words for the EU, as they are for Russian officials, and to specifically impose sanctions on the 60 Russian officials identified by the US Helsinki Commission for their specific involvement in the false arrest, torture and death of Magnitsky and the embezzlement of \$230 million that he had uncovered.

It is evident from the immediate reaction of Russian officials that these visa and asset sanctions initiatives have already been highly effective. The Russian parliament may have ignored the news that an innocent lawyer had been tortured and killed in pre-trial detention, or the fact that a quarter of a billion dollars had been stolen from the Russian treasury, but as soon as it was understood that government officials might be barred from vacationing at their European villas or accessing their EU bank accounts, Russian lawmakers held an emergency session of the Duma to consider how to block this legislation.

A special team of Russian Parliamentarians even traveled to Strasbourg to aggressively lobby the European Parliament (EP) against the moves. However, as history now shows, the Russian Parliamentarian's attempts to pressure the European Parliament in burying the traces of their crimes was completely futile.

Since the beginning of this year, I have visited individual EU member states, speaking to public officials and administrators about implementing the EP resolution. Today, I testify before you in hope that the Dutch Parliament will join this initiative.

Ignoring what happened would certainly make it easier to do business with Russia, but I believe that in addition to the moral imperative associated with the Magnitsky case, there is an important business imperative to consider as well. Russia remains a country ruled by lawlessness, where Western companies are in real and constant danger of having their assets expropriated and their employees harassed, arrested and killed. Likewise, if the corruption is to be stopped from seeping beyond Russia's borders, it is vital that action be taken to strip state-sponsored abusers of basic human rights and freedoms of their impunity.

So I call upon you to act. I call upon you to take the necessary steps to create real consequences to those specific officials in Russia who reign free in their corrupt ways and in full contempt of the rule of law, human dignity and life itself. Your action will not be in vain, for surely there is no better message of hope for the thousands of innocent prisoners of conscience in the world who continue to suffer in silence. I call upon you to give them a prospect of justice.