

## **Political use of the judiciary must end:**

### **Magnitsky case in Russia and cases in Western Kazakhstan illustrates wider problem**

NHC addresses the 2012 Human Dimension Implementation Meeting of the OSCE

Dear moderator,

Despite participating states of the OSCE having a fundamental commitment to respect the independence of the judiciary, political use of detentions, prosecutions and court decisions remains a serious issue in many of the states. This undermines the respect for the judiciary and the overall thrust in the governance of the state. It also has severe economic consequences as investors are skeptical of investing in a market where their rights might be violated by business actors who are able to unduly influence court decisions.

While there are many cases that illustrate the point, there are few as telling as the Magnitsky case.

Sergei Magnitsky was a tax lawyer and auditor who worked for the Moscow legal and audit firm, Firestone Duncan. He discovered that senior Interior Ministry officers had stolen the investment companies of his client, the Hermitage Fund, and then went on to rob the Russian treasury of 5.4 billion rubles (\$230 million).

Russian Interior Ministry officers then arrested him and created torturous and ultimately deadly conditions for Magnitsky in pre-trial detention, in an attempt to get him to change his testimony implicating them in theft and corruption related crimes. As a result, Magnitsky died on 16 November 2009.

The treatment of Magnitsky and the efforts of covering-up massive crimes have stirred strong reactions from around the world. In Oslo later this week, on Thursday 27 September, the Norwegian Helsinki Committee arranges a hearing on the Magnitsky case in Oslo, urging Norwegian authorities to follow up on the recent resolution of the European Parliament Foreign Affairs Committee to “establish a common EU list of officials responsible for the death of Sergei Magnitsky, for the subsequent judicial cover-up and for the ongoing and sustained harassment of his mother and widow” and “impose and implement an EU-wide visa ban on these officials and to freeze any financial assets they or their immediate family may hold inside the European Union.”

As is well known, there are similar initiatives in the US congress. Both the OSCE and the Council of Europe parliamentary assemblies are also asking for strong remedies to address the Magnitsky case as well as the Khodorkovsky case, often spoken about as two emblematic cases illustrating “legal nihilism” in the Russian Federation.

Dear Moderator, we believe that such targeted sanctions against named individuals involved in serious human rights violations, political use of the judiciary and abuse of power is an effective way for participating states to address these very serious problems. Norway and other participating states outside the EU should follow-up.

As underlined by the MEP Kristiina Ojuland, "These targeted sanctions ... put real pressure on Russian authorities to start taking criticism on human rights seriously. These sanctions are not directed against the Russian people, but are against corruption and human rights violators."

Elsewhere in the Commonwealth of Independent States (CIS), trials that would appear to have a political rather than a criminal backdrop are ongoing. One such case involves Kazakhstani opposition leader Vladimir Kozlov, opposition activist Serik Sapargali and oil worker Akzhanat Aminov, all of whom are currently on trial in Aktau in Western Kazakhstan.

The three may face long prison terms on poorly defined charges of inciting social enmity or discord among striking oil-workers ahead of the tragic events in Zhanaozen in December 2011.

While observers have noted a number of procedural irregularities during the ongoing trial, the main concern is not with the mere formalities of the trial. Rather, in the aftermath of the Zhanaozen events, the issue has been with the overarching tendency to seek the roots of the tragedy among the country's political opposition.

Dear Moderator, we join others in the international human rights community in warning against a development where the justice system may be used to silence political actors. This is particularly important at a time when Kazakhstan should be making significant progress in ensuring political pluralism. We encourage OSCE participating states to follow this ongoing trial and its eventual verdict, which is expected in the near future.