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Committee on Legal Affairs and Human Rights

Sergei Magnitsky and beyond – fighting impunity by targeted sanctions

Report*

Rapporteur: Donald ANDERSON, United Kingdom, Socialists, Democrats and Greens Group

A. Draft resolution

1. The Assembly reaffirms its commitment to the fight against impunity of perpetrators of serious human rights violations and against corruption as a threat to the rule of law.

2. It recalls its Resolution 1966 (2014) on "Refusing the impunity of the killers of Sergei Magnitsky", urging the competent Russian authorities to fully investigate the circumstances and background of the death in pre-trial detention of Sergei Magnitsky and to hold the perpetrators to account. Mr Magnitsky had denounced a large-scale fraud against the Russian State budget by criminals benefitting from the collusion of corrupt officials. Resolution 1966, adopted in January 2014, envisaged targeted sanctions, such as visa bans and asset freezes, against the individuals involved in this crime and its cover-up, as a means of last resort.

3. At the end of 2014, the Committee on Legal Affairs and Human Rights took the view that the Russian Federation had not made any progress in the implementation of the Assembly's resolution. Instead of holding to account the perpetrators of the crimes committed against Mr. Magnitsky and disclosed by him, the Russian authorities harassed Mr Magnitsky's mother, his widow and his former client, Mr William Browder. In January 2015, the Assembly's President therefore transmitted Resolution 1966 (2014) to all national delegations for follow-up by the competent authorities.

4. Since then, the Russian authorities have still not made any progress in prosecuting the perpetrators and beneficiaries of the crime against Sergei Magnitsky, despite his family's active engagement in the proceedings. All criminal cases against the officials involved in Mr Magnitsky's ill-treatment and killing were closed; some of these officials were publicly commended by senior representatives of the State, and others received promotions.

5. The Assembly further notes that Mr Magnitsky's former client, Mr William Browder, who is leading a world-wide campaign against impunity, continues to be harassed and persecuted by the Russian authorities, among other things by repeated attempts to abuse Interpol's Red Notice and Diffusion procedures.

6. Meanwhile, several member and observer states (including Estonia, Latvia, Lithuania, the United Kingdom, Canada and the United States of America), have adopted legislative and other instruments to enable their governments to impose targeted sanctions on perpetrators and beneficiaries of serious human rights violations.

7. The Assembly welcomes the fact that the most recent such instruments (United States, Canada, United Kingdom) are not limited to persons from particular countries, or found to be involved in particular crimes, such as the killing of Sergei Magnitsky. They potentially cover any and all perpetrators of serious human rights violations enjoying impunity in their own countries, whichever they may be.

* Draft resolution adopted unanimously by the committee on 10 September 2018.

8. The United Kingdom's Criminal Finances Act 2017 defines "gross human rights abuse or violation" as cruel, inhuman or degrading treatment or punishment of a person who has sought to expose illegal activity carried out by a public official or a person acting in an official capacity, or to defend or promote human rights and fundamental freedoms; when such treatment carried out by a public official or a person acting in an official capacity or at the instigation or with the consent of such an official." Similar definitions are included in the United States and Canadian Magnitsky Acts.

9. The Assembly considers targeted ("smart") sanctions against individuals as preferable to general economic or other sanctions against entire countries.

9.1. Targeted sanctions send a clear message to individual perpetrators of serious human rights violations that they are not welcome in the countries adopting the sanctions and that these countries will not allow them to use their financial institutions to aid and abet their reprehensible actions or enjoy the proceeds of their crimes.

9.2. General sanctions, by contrast, hurt mostly ordinary people but least of all the ruling elites who are responsible for the actions that gave rise to the sanctions.

10. The Assembly also recalls its Resolution 1597 (2008) on "UN Security Council and EU anti-terrorism blacklists" and insists that the requirements of procedural fairness and transparency laid down in this resolution shall also apply to those accused of serious human rights violations other than terrorism.

11. The Assembly therefore calls on all member States of the Council of Europe, the European Union and States having observer or any other cooperative status with the Council of Europe to

11.1. consider enacting legislation or other legal instruments enabling their government, under the general supervision of parliament, to impose targeted sanctions such as visa bans and account freezes on individuals reasonably believed to be personally responsible for serious human rights violations for which they enjoy impunity on political or corrupt grounds;

11.2 ensure that such legislation or legal instrument lays down a fair and transparent procedure for the imposition of targeted sanctions as indicated in respect of terrorist offences in Resolution 1597 (2008), in particular by making sure that :

11.2.1. targeted persons are informed of the imposition of sanctions and of the full and specific reasons for their imposition, and that they are given the opportunity to respond within a reasonable time to the case made in support of the sanctions ;

11.2.2. the instance taking the decision on imposing sanctions is independent of that collecting information and proposing to include a person in the sanctions list ;

11.2.3. the initial decision to impose sanctions may be challenged before a court of law or an appeals body that enjoys sufficient independence and decision-making powers, including the power to de-list a targeted person and to provide him or her with adequate compensation in case of erroneous sanctions ;

11.3. to cooperate with one another in identifying appropriate target persons, including the use of relevant EU mechanisms and by sharing information on persons included in sanctions lists and the grounds for their reasonable belief that these persons are responsible for serious human rights violations and benefit from impunity on political or corrupt grounds;

11.4. to make use of the vast pool of information and evidence on serious human rights violations whose perpetrators enjoy impunity collected and documented by local, national and international non-governmental human rights organisations, and, amongst others, the "Natalya Estemirova Documentation Centre" in Oslo (Norway);

11.5. to refrain from cooperating with any politically-motivated prosecutions relating to the Magnitsky affair such as the ones focussing on his former client, Mr William Browder.

12. Further, the Assembly encourages its member parliamentarians:

12.1. To follow the precedent set by fellow parliamentarians in a number of those countries which have already taken action in this field by seeking to persuade their governments to adopt similar proposals and, where appropriate themselves to take legislative initiatives.

12.2. To maintain close liaison with the Assembly on any such initiatives they propose or have taken and to seek relevant advice and assistance from the Assembly if needed.

B. Draft explanatory report by Lord Anderson, Rapporteur

1. Introduction

1. The motion underlying the current report[1] is intended as a follow-up to Assembly Resolution 1966 (2014) on "Refusing impunity for the killers of Sergei Magnitsky" (Rapporteur: Andreas Gross, Switzerland/SOC).[2]

2. The Assembly was appalled by the death in pre-trial detention, in 2009, of the Russian tax and accountancy expert, Sergei Magnitsky. Mr Magnitsky had carried out investigations into a massive tax re-imbursement fraud against the Russian State budget perpetrated by the abuse of investment vessels captured from Mr Magnitsky's client, Mr William Browder, by criminals benefiting from the collusion of corrupt police and tax officials. After the complaints he had prepared were entrusted for investigation to the very officials whom he had accused of complicity in the suspected fraud, Mr Magnitsky was himself detained for alleged tax evasion. When he refused to change his testimony, he faced increasingly harsh conditions of detention despite his declining health, including acute pancreatitis for which he was refused necessary surgery. Mr Magnitsky finally died in terrible circumstances in pre-trial detention after he was beaten with rubber batons, which were used to "pacify" him when he screamed in agony. The Assembly was further appalled that none of the officials responsible for Mr Magnitsky's death have been punished. On the contrary, some enjoyed promotions and public praise by senior representatives of the State, whilst Mr Magnitsky himself was prosecuted posthumously, something which may properly be considered as the ultimate absurdity.

3. Based on a detailed analysis of these events, the Assembly urged the competent Russian authorities to investigate fully the circumstances and background of Mr Magnitsky's death, and the possible criminal responsibility of all officials involved. The circumstances considered by the Assembly included contradictory testimony by prison officials and other witnesses, the existence of two contradictory versions of the official provisional "death report", and the origin of the extreme wealth newly displayed by certain retired Interior Ministry and tax officials. The Assembly particularly highlighted purchases of property in Dubai by a number of officials involved. The Assembly considered that targeted sanctions against the individuals involved – such as visa bans and asset freezes – should be imposed as a means of last resort.

4. In Resolution 1966 (2014), which was adopted by an overwhelming majority, the Parliamentary Assembly reiterated its strong support for the fight against impunity and against corruption, seen as threats to the rule of law. The Assembly also resolved to closely follow the implementation of the concrete proposals it had addressed to the Russian authorities in order to ensure that the perpetrators and beneficiaries of the crime against Sergei Magnitsky be held to account. It further resolved that

> "if, within a reasonable period of time, the competent authorities have failed to make any or any adequate response to this resolution, the Assembly should recommend to member States of the Council of Europe to follow as a last resort the example of the United States in adopting targeted sanctions against individuals (including visa bans and freezing of accounts), having first given those named individuals the opportunity to make appropriate representations in their defence."

5. As explained in detail in the addendum to the report prepared by Andreas Gross (SOC/Switzerland), the competent Russian authorities' response to the Assembly's recommendations was indeed quite inadequate. This was confirmed by the Committee of Legal Affairs and Human Rights at its meetings on 29 September and 10 December 2014. The Committee took the view that the Russian Federation had not made any progress in the implementation of the Assembly's resolution and asked the President to follow up this matter with national parliaments. Instead of holding to account the perpetrators of the crimes committed against Mr Magnitsky and those disclosed by him, the Russian authorities harassed Mr Magnitsky's mother, his widow and his former client, Mr William Browder. On 6 January 2015, the then President of the Assembly, Ms Anne Brasseur, transmitted Resolution 1966 (2014) and related documents to all Heads of national delegations and requested them to take the matter up with the relevant national authorities.

6. Subsequently, several member States of the Council of Europe and countries having observer status (Estonia, Latvia, Lithuania, the United Kingdom, as well as Canada and the United States of America have adopted legislation or other legal instruments to enable their governments to impose targeted sanctions against perpetrators or beneficiaries of serious human rights violations such as the killing of Sergei Magnitsky. In the motion for a resolution underlying the present report, the Assembly was invited to examine

[1] Doc. 14440 dated 15 November 2017.
[2] Doc. 13356 dated 18 November 2013 and addendum to the report dated 27 January 2014.

these initiatives and to encourage other member and observer States to follow suit as appropriate.[3] It is noteworthy that what began in the United States in 2012 as the possibility to impose sanctions on persons responsible for a crime against one individual, Sergei Magnitsky, was broadened in 2016 into the possibility to impose sanctions (freezing of assets and visa bans) against any and all serious violators of human rights who enjoy impunity on political or corrupt grounds.[4]

7. Mr Magnitsky's former client continues to be persecuted by the Russian authorities to this day, among other things by repeated attempts to abuse Interpol's Red Notice procedure.[5] So far, all these attempts have been unsuccessful. Mr Browder is campaigning world-wide for the enactment of "Magnitsky laws" providing for targeted sanctions (e.g. travel bans, asset freezes) against officials responsible for the death of Mr Magnitsky and those who benefited from the crime he had denounced. The scope of these laws has been widened in several countries to cover all individuals who are personally responsible for serious human rights violations and who benefit from de facto impunity in their own countries.

8. As announced in my introductory memorandum discussed at the meetings of the Committee on Legal Affairs and Human Rights in April 2018 in Strasbourg and in May 2018 in Reykjavik, I shall first provide a brief update on the follow-up by the Russian authorities to the Magnitsky case since the adoption of Resolution 1966 (2014), including the disinformation campaign directed against the Assembly's 2014 report and progress made by law enforcement bodies in different countries in following the "money trail" of the stolen tax money, which amounts to approximately USD 230 million.

9. Secondly, I shall examine the "Magnitsky laws" that have already been adopted in several countries. After briefly recalling the advantages of targeted versus general sanctions, I should like to focus on common features of these laws regarding criteria and procedures for the identification of persons to be subjected to targeted sanctions, on the difficulties which parliaments faced in adopting these laws, and how they managed to overcome them.

10. Last but not least, I shall take a closer look at the "defence rights" required in view of the Assembly's well-established record for upholding the right of persons included in sanctions lists for alleged wrongdoings. This point was already mentioned in Resolution 1966 (2014) and must not be neglected, as a matter of the Assembly's credibility as a defender of human rights. The Assembly laid down relevant requirements in Resolution 1597 (2008) on "UN Security Council and EU anti-terrorism blacklists", and we must ensure that these safeguards also apply to those accused of serious human rights violations other than terrorism.

11. Based on this work, I have developed concrete proposals for further action, summed up in the draft resolution addressed to all member and observer States and to members of the Assembly taking on board best practices and lessons learnt. The aim of this report is thus to encourage members of the Assembly to examine the response of Parliamentarians in other countries who have legislated for sanctions against those who commit serious human rights abuses; and, at the same time, to adapt and adopt such laws or other legal instruments as appropriate in their own Parliaments. Thus our recommendations are not intended to be prescriptive. After all, fellow Parliamentarians are the experts on the procedures and legislative opportunities in their own countries; *in most if not all countries the lead has been taken by parliamentarians urging successfully their sometimes hesitant governments to take action.*

2. New developments concerning the Magnitsky case since December 2014

2.1. Follow-up by the Russian authorities: disinformation instead of accountability

12. In December 2014, the lawyer for Ms Magnitskaya filed a complaint before the Investigations Department of the Russian Investigative Committee raising the failure to conduct thorough, full and comprehensive investigations into the death of her husband, including failure to question officials named as suspects, loss of evidence, refusal of independent post mortem examinations and failure to examine

[3] The motion was transmitted to the Committee on Legal Affairs and Human Rights for report on 24 November 2017 (reference no. 4345); Lord Donald Anderson (United Kingdom/SOC) was elected as Rapporteur at the Committee's meeting on 12 December 2017.

[4] The UK Criminal Finances Act 2017 defines "gross human rights abuse or violation" as "cruel, inhuman or degrading treatment or punishment of a person who has sought to expose illegal activity carried out by a public official or a person acting in an official capacity, or to defend or promote human rights and fundamental freedoms; when such treatment carried out by a public official or a person acting in an official capacity or at the instigation or with the consent of such an official." Similar definitions are laid down in the US and Canadian Magnitsky Acts.

[5] See "Abusive use of the Interpol system: the need for more stringent safeguards", doc. 14277 dated 29 March 2017, rapporteur: Bernd Fabritius (Germany/EPP), paragraph 54.

possible conflict of interest issues. The complaint was rejected by the Head of the Investigations Department, Mr. Tshukin.

13. In January 2015, the Magnitsky family's lawyer filed an application to investigate and prosecute Mr Tagiev, the head of the Matrosskaya Tishina detention centre (where Mr Magnitsky died), for providing false information during the investigation into Mr Magnitsky's death by stating in a letter dated 16 March 2011 that no CCTV recordings existed for the areas where Mr Magnitsky spent his last hours and was found dead. This was contrary to evidence held in the criminal case file, including photos of CCTV cameras in the areas in question, testimony of prison staff, and records of the equipment of the detention centre with CCTV cameras including their location. But the applications were refused by the Preobrazhensky Diestrict Court and the Moscow City Court in June 2015.

14. In February 2015, the Magnitsky family's lawyer filed a complaint against the decree to terminate the investigation into Mr Magnitsky's death, citing in particular the lack of investigation of the use of rubber batons and handcuffs. The complaint was rejected in February 2015 on the ground that "data about the possible use of a rubber baton was checked and did not find confirmation" – despite the fact that the official forensic medical report contains conclusions that the injuries on Mr Magnitsky's body were consistent with the use of a hard blunt object such as a rubber baton. Interestingly, the use of rubber batons was already documented in the Assembly's 2014 report by Andreas Gross, on the basis of a copy of a prison administration document on the use of "special means" to "pacify" Mr Magnitsky. In the version of this document of which Mr Gross had obtained a copy from the "Public Oversight Committee" (the official Russian National Protection Mechanism under the UN anti-torture Convention), which had taken copies of relevant documents before any cover-up could be organised, the "special means" whose use was reported in this document included handcuffs and batons. In a later "version" of the otherwise identical document, only handcuffs were mentioned in the bracketed text detailing the "special means" used.

15. In February, March and April 2015, the Magnitsky family's lawyer also filed complaints against the posthumous naming, in the decree closing the investigation into his death, of Sergei Magnitsky as a perpetrator of the USD 230 million fraud that he had denounced, respectively of the laundering of the proceeds from the fraud, and seeking to admit evidence of Mr Magnitsky's innocence. All these applications were rejected in the final instance in May 2015. A similar application (prompted by new posthumous accusations against Sergei Magnitsky in a reply to a mutual legal assistance request from the United States) was refused in January/March 2016.

16. In December 2015, Russian General Prosecutor Chaika publicly accused Mr Magnitsky and Mr Browder of having themselves committed the USD 230 million fraud denounced by them and suggested that Mr Browder was responsible for the deaths of three Russian citizens. In the same month, the Russian Investigative Committee launched an investigation into the deaths of three persons – MM. Korobeinikov, Kurochkin and Gasanov – against Mr Browder. In April 2017, Russian State TV aired a feature accusing Mr Browder and the CIA of murdering Mr Magnitsky, with the Prosecutor General's office and the Investigative Committee announcing an investigation in this sense.

17. In January 2017, Mr Nikolai Gorokhov, lawyer for the Magnitsky family, filed criminal complaints against two investigators for abuse of office and collusion with alleged suspects. He also provided evidence to the American authorities on the laundering of part of the proceeds of the crime denounced by Mr Magnitsky in New York. In March 2017, before the hearings concerning these complaints, Mr Gorokhov fell from the balcony of his (fourth-floor) apartment.[6] He miraculously survived the fall, details of which he cannot remember. But reportedly, unknown persons were seen next to him on the balcony, and he had received several death threats earlier.

18. In July and October 2017, the Russian authorities made two more (the fourth and fifth) requests to Interpol for issuing Red Notices, respectively "Diffusions",[7] requesting Mr Browder's arrest. They were eventually refused as being politically motivated. A sixth attempt by Russia to have Mr Browder arrested just failed in Spain, on 30 May 2018. Mr Browder was briefly detained by Spanish police on the ground of a bilateral request from Russia – ironically, he was in Spain in order to testify before senior Spanish prosecutors on the laundering, in Spain, of part of the proceeds of the crime denounced by Mr Magnitsky –

[6] See NBC news, 7 July 2017, "Lawyer probing Russia corruption says his balcony fall was 'not accident'", https://www.nbcnews.com/news/world/lawyer-probing-russian-corruption-says-his-balcony-fall-was-no-n780416 (interview with Mr Gorokhov).

[7] Similar to (Red or other) Notices, Diffusions are issued for the same purposes as notices but sent directly by a member country or an international entity to the countries of their choice. Diffusions are also recorded in Interpol's police databases.

but released shortly thereafter after the Spanish authorities were informed of the political motivation behind the Russian request.[8]

19. Finally, in December 2017, Mr Browder and his colleague, Mr Cherkasov, were convicted in absentia and sentenced to long prison terms for tax evasion and fraudulent bankruptcy by the Tverskoi District Court in Moscow. In criminal proceedings still on-going in May 2018 it is alleged that Mr Magnitsky and Mr Browder were themselves the perpetrators of the USD 230 million fraud denounced by them, whilst the true perpetrators, the "Klyuev Group", and the tax and police officials involved in the crime and its cover-up are exonerated,[9] despite their unexplained wealth (luxury properties and other assets in Russia, Dubai, Cyprus and elsewhere, as documented in the Assembly's 2014 report.[10] By contrast, the case against the lawyer retained by Hermitage, Mr Khareitdinov, is still continuing, despite the Assembly's specific call to the contrary in Resolution 1966 (2014).[11] Mr Khareitdinov is being prosecuted for use of a "false power of attorney" because he acted on behalf of the true owners of the Hermitage firms also after they were hijacked by the "Kluyev Group".

20. To complete this picture of systematic official obfuscation of the truth and continued harassment of the victims, I should briefly refer to an unusual campaign of disinformation aimed at discrediting the Assembly's 2014 report on the Magnitsky case. A full-length "investigative documentary film" presented in the spring of 2016 by the well-known Russian film-maker Andrei Nekrasov purported to present the "truth" (that is the official Russian line) on the Magnitsky affair. The film was to be aired, *inter alia*, on French and German public television channels. The film-maker used highly unfair methods trying to make the Assembly's Rapporteur and fellow parliamentarians, who had supported the report during the debate in the Assembly appear as ill-informed and incompetent, even accusing one of them (Ms Marieluise Beck, Germany/Greens) to be an agent of the CIA. Thanks to timely interventions by several members and former members of our Committee, including its then Vice-Chairperson, Mr Fabritius, and Mr Gross himself, the airing of this glaring example of "fake news" was prevented at the last moment and a misleading interview by Mr Nekrasov in the "Frankfurter Allgemeine Zeitung" was rectified.

2.2. The money trail: investigations into proceeds from the crime denounced by Sergei Magnitsky:

21. William Browder and his team stubbornly continued their efforts to follow the trail of the money stolen by the perpetrators of the crime denounced by Sergei Magnitsky, transmitting relevant information obtained from whistleblowers such as Mr. Perepilichny (who died in suspect circumstances in the United Kingdom in November 2012[12]) to the law enforcement bodies of the countries concerned (twelve, so far: Cyprus, France, Estonia, Latvia, Lithuania, Luxembourg, Moldova, the Netherlands, Spain, Switzerland, the United Kingdom and the United States of America. I met with Mr Browder and his team at their premises in London, together with our Rapporteur on the Russian and Azerbaijani "Laundromats", Mart van de Ven (Netherlands/ALDE). The experience gained by Mr Browder's team in pursuing the money trail from the USD 230 million fraud against the Russian budget is highly relevant also for the Council of Europe's on-going fight against large-scale corruption and money-laundering in general. I trust Mr van de Ven will refer to them in his future report, as appropriate, and draw the necessary conclusions. As far as my report is concerned, I welcome the fact that so far, close to 20% of the USD 230 million has already been recovered, despite the highly sophisticated money laundering methods that have been used and the reluctance of several countries to investigate these cases (according to Mr Browder, the reluctant countries include Cyprus, but, more surprisingly perhaps, also Latvia and, for some time, the United Kingdom). One of Mr Browder's team members, referring to inside information, considers that the USD 230 million in question were laundered through a well-established "pipe" controlled by a special department ("Department K") of the FSB. In his view, access to this "pipe" is occasionally granted to ordinary organised criminals, but it is primarily used for "official" purposes, such as funding activities aimed at influencing political developments in certain countries, besides "rewards" for corrupt officials. Given the "red flag" system in place in the Russian Federation regarding outbound capital movements, the laundering of the proceeds of the crime disclosed by Sergei Magnitsky must have been "authorised" by senior officials. While I have not seen sufficient evidence to endorse this thesis, it would go a long way towards explaining why the Russian authorities refuse to provide any assistance - including in

[8] See for example, Guardian, 30 May 2018, "Putin critic Bill Browder released after arrest in Spain", https://www.theguardian.com/world/2018/may/30/putin-critic-bill-browder-arrested-in-spain.

[9] See Gross report (note 2), paragraphs 73-114.

[10] Gross report (note 2), e.g. paragraph 100.

[11] See Resolution 1966 (2014), para. 14.5. The Russian Investigative Committee last refused an application to close the proceedings against Mr Khairetdinov (case no. 360138) in February 2018.

[12] See Gross report (note 2) paragraphs 105-108; see also The Atlantic, January/February 2017, "An Enemy of the Kremlin dies in London", https://www.theatlantic.com/magazine/archive/2017/01/the-poison-flower/508736/, with more recent information on this case. An inquest into the sudden death of Mr Perepilichny was finally opened in the United Kingdom in May 2018 – possibly in response to the Salisbury poisoning affair.

response to official mutual legal assistance requests from fellow law enforcement bodies - to those trying to recuperate the funds that were undisputedly stolen from the Russian budget. As Mr Gross had suspected before, Sergei Magnitsky may well have died because in blowing the whistle on the USD 230 million tax reimbursement fraud, he had tripped over the tip of an iceberg made up of what Mr van de Ven has called "reverse money laundering", or "black-washing" – i.e. diverting legal budgetary funds (subject to a level of budgetary controls) into a massive "parallel budget" used for all kinds of opaque purposes.

22. Among the most noteworthy events in this context after January 2015 are the opening of money laundering investigations in connection with the USD 230 million fraud by the French authorities (May 2015) and the raid, in November 2015, of Hermitage's Cypriot lawyers' office, upon a request by Russia based on the criminal case *against* Mr Browder. By contrast, in June 2016, the Cypriot authorities refused to act on Hermitage's submissions denouncing a fraud against two Cypriot companies owned by Hermitage and money laundering in Cyprus through accounts controlled by Mr Kluyev.[13] Meanwhile, Mr Browder has launched a court case in Cyprus aimed at preventing the Cypriot attorney general's office from cooperating with the Russian general prosecutor's office due to the alleged political motivations of the proceedings. I was recently informed by the lawyer acting on behalf of Mr Browder in Cyprus, Christos Pourgourides[14] that the District Court of Nicosia, on 3 August 2018, refused the interim injunction requested by Mr Pourgourides, arguing that subsequent pecuniary damages can be an adequate remedy. On substance, the judge ruled:

> «……. I find that the applicants/plaintiffs have satisfied the second requirement of section 32 of the Courts of Justice Law, that is that they have a reasonable prospect of success, as they have produced evidence from which it is shown that they have an arguable case relating to the violation of their rights safeguarded by the Constitution and not only this. All the allegations and arguments that have been raised by the defendant, I do not find that they weaken the evidential power of the plaintiff's case to the extent that I can rule that they have no reasonable prospect of success at the trial of the action».

It should be noted that in 2017, the United Kingdom refused similar Russian MLA requests, precisely because of their alleged political motivation.

23. Finally, Hermitage submitted new information regarding the laundering of the USD 230 million to the law enforcement bodies of Latvia (December 2016), the United Kingdom (May 2017), the Netherlands (whose authorities froze assets of a firm owned by the son of a senior Russian government official, Mr Katsyv, in May 2017) and Spain (March 2018).[15] In February 2018, the same firm owned by Mr Katsyv was ordered to pay the U.S. Treasury over USD 6 million as part of a "settlement"[16] in the money-laundering case of US v. Prevezon connected to the USD 230 million fraud. Money laundering investigations related to the proceeds of the crime denounced by Mr Magnitsky are continuing in France, the Netherlands and Switzerland (where, in January 2018, a court confirmed the dismissal of a Swiss police officer alleged to have inappropriately cooperated with Russian officials and private parties in connection with proceedings on the laundering of part of the USD 230 million).

3. "Magnitsky laws" adopted so far: challenges and successes

24. As mentioned above, four member States of the Council of Europe (in chronological order, Estonia, Lithuania, Latvia and the United Kingdom) and two States having observer status with the Organisation (the United States of America) or with the Parliamentary Assembly (Canada) have so far adopted "Magnitsky laws".[17] In 2012, the U.S. "Magnitsky Act" empowered the government to impose targeted sanctions (freezing of assets and visa bans) on persons found responsible for one crime against one individual, Sergei Magnitsky. The scope of this law was broadened by the 2016 "Global Magnitsky Act" to include the possibility of targeted sanctions against *any and all* serious violators of human rights who enjoy impunity on political or corrupt grounds, anywhere in the world. As explained by Senator Raynell Andreychuk in Reykjavik, the Canadian legislation, which was passed on her initiative by unanimous votes in both houses of parliament, also follows the broader, "global" approach.

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[13] Mr Kluyev is one of the key suspects in the crime denounced by Sergei Magnitsky, see Gross report (note 2), paragraphs 89-92.

[14] former Member of the Committee on Legal Affairs and Human Rights (2002-2011), and its Chairperson from January 2010 until November 2011.

[15] Ironically, Mr Browder was in Madrid to testify on this before a senior prosecutor, when he was briefly arrested by Spanish police (see para. 18 above).

[16] Our colleague Boriss Cilevics is currently preparing a report on Out-of-court settlement procedures in criminal justice: advantages and risks (introductory memorandum: AS/Jur 2018/09).

[17] See attached table summing up the main characteristics of these laws.

25. Senator Raynell Andreychuk and colleagues from the Baltic countries, who – also at our Committee meeting in Reykjavik in May 2018 - shared their own parliaments' experiences in achieving the adoption of "Magnitsky legislation" agreed that the passage of the texts in their countries was clearly facilitated by their "global" approach: by not singling out one country in particular, or suspected human rights violators from one country, the movers of these instruments succeeded in deflecting accusations of double standards or inappropriate geopolitical motives. Interestingly, the first group of persons listed after the adoption of the Canadian legislation includes suspected high-ranking military thugs from Venezuela and South Sudan. The reference to the name of Sergei Magnitsky in these laws is no more than a well-deserved tribute to the brave Russian lawyer who lost his life for upholding the truth. I should like to stress that I also favour the global scope of the more recently adopted instruments. Such emphasis is surely wholly in conformity with the very raison d'être of the Council of Europe.

26. Another challenge that must be overcome in order to facilitate the passage of Magnitsky-type instruments is the fear that sanctions regimes often tend to cause harm to the wrong people. This may indeed be true for general sanctions, for example trade embargoes. These often have dire consequences for vulnerable population groups in the countries concerned, but generally not for their leadership. Those in power, whose actions caused the sanctions to be imposed and who have the power to eliminate the grounds for the sanctions, also have the means to offset the consequences of the sanctions for themselves.

27. By contrast, targeted (or "smart") sanctions do not create economic hardship for ordinary people and focus instead on individual accountability of persons who are found to be directly responsible for the impugned actions. What convinced many sanctions sceptics in Canada and elsewhere was Ms Raynell Andreychuk's argument that allowing such individuals to enter our countries, allowing them to make use of our institutions, in particular our banks, in fact amounts to "aiding and abetting" their reprehensible actions or helping them to enjoy the proceeds of their crimes. Surely, this is not something we want to be associated with, let alone profit from financially, for example by collecting banking fees or selling luxury goods to such persons. In the words of British Prime Minister Theresa May,[18] these people are "not welcome" in our countries.

28. Another important lesson learnt from parliaments which successfully adopted "Magnitsky laws" is that such initiatives must be supported from the start across party lines. This was clearly the case in the United Kingdom, as confirmed by my fellow British parliamentarians, who were instrumental in overcoming the government's initial resistance against the "Magnitsky amendments" to the Sanctions Act, and whom I consulted extensively in the preparation of this report. The leaders of this initiative in the UK Parliament were drawn from senior members of the Conservative, Labour, Scottish National, and Liberal Democrat parties.

29. The final challenge that needs to be addressed in order to successfully pass and apply "Magnitsky laws" is the need for appropriate safeguards to avoid wrongful listings. I will address this in the next chapter.

4. Safeguards needed in light of Resolution 1597 (2008)

30. The call for targeted sanctions against human rights violators enjoying impunity in their own countries is meant to promote respect for human rights and must not give rise to new human rights violations. "Smart sanctions" such as travel restrictions and freezing of assets clearly have a direct impact on individual human rights such as freedom of movement and the protection of property. Whilst it is still being debated whether such sanctions have a criminal, administrative or civil character, their imposition must respect certain minimum standards of procedural protection and legal certainty. High standards in procedural and substantive terms must be guaranteed in order to ensure the credibility and effectiveness of sanctions. As far as the Assembly is concerned, Resolution 1597 (2008) on "UN Security Council and European Union blacklists" has laid down appropriate standards based on the European Convention on Human Rights. The Assembly must now require the same standards and safeguards for "Magnitsky laws" targeting other categories of human rights violators than terrorists and their supporters.

31. The proposed standards are laid down in paragraph 10.2 of the preliminary draft resolution and its sub-paragraphs. Based on Article 6 ECHR, it is required first and foremost that target persons are informed of the fact of the imposition of sanctions, including their nature, and of the reasons for which they are imposed. Target persons must be given the opportunity to respond to the case made in support of the sanctions. This can be done by written procedure, within a reasonable time frame, for both sides.

[18] Addressing the House of Commons on 14 March 2018, full text available at: https://blogs.spectator.co.uk/2018/03/theresa-mays-russia-response-full-text/

32. The second requirement is that the instance taking the decision on imposing sanctions must be independent of the body collecting and evaluating the information and proposing to include a person in the sanctions list – a consequence of the basic principle of procedural fairness that the investigator and accuser ("prosecutor") must not be identical with the decision-maker ("judge").

33. Last but not least, it must be possible for the targeted person to challenge the initial decision to impose sanctions before an appeals body that enjoys sufficient independence and decision-making powers, including the power to de-list a targeted person and to provide him or her with adequate compensation in case of erroneous sanctions.

34. The distribution of competences and the practical organisation of proceedings must be decided by each country, in light of its own institutional arrangements and operational possibilities. The quality of the decision-making process can be much improved by international cooperation, in particular the sharing of information on possible target persons and of his or her response to the factual allegations made in support of the imposition of sanctions.

35. In this context, it should be noted that impartial and reliable information on the identity of persons found to be responsible for serious human rights violations and benefiting from impunity in their own countries can also be obtained from non-governmental organisations. I draw attention to the excellent work of the "Natalya Estemirova Documentation Centre (NEDC)"[19] based in Oslo/Norway, which pools relevant information on serious human rights violations, witness testimony, documentary evidence and information on investigations carried out (or not) by the competent law enforcement bodies. The NEDC, which brings together researchers from nine leading human rights organisations (including the Norwegian Helsinki Committee, HRC "Memorial", Human Rights Watch and FIDH) has developed and is maintaining a searchable database on human rights violations that have not been properly investigated by the competent authorities. Its creation can indeed be seen as a positive response by civil society to a call the Assembly addressed to the Committee of Ministers in Recommendation 1922 (2010) on "Legal remedies for human rights violation in the North Caucasus region",[20] namely to

> "consider creating, within the Council of Europe and with the collaboration of non-governmental organisations working in this field, a record-keeping system for the witness statements, documents and evidence substantiating human rights violations committed in the region."

5. Conclusions

36. The purpose of this report is to encourage national parliaments to consider passing "Magnitsky laws" providing for targeted sanctions against individuals found personally responsible for serious human rights violations and who enjoy impunity in their own countries, on political or corrupt grounds. The emphasis is on "encourage" – each parliament shall decide for itself on the most appropriate way to fight impunity. In my view, "Global Magnitsky laws" that avoid singling out individual countries whilst paying tribute to the brave lawyer who lost his life for defending the truth are excellent tools in the fight against impunity. Their very existence should also have a dissuasive effect on potential perpetrators of serious human rights violations who feel shielded from being held to account in their own countries, but wish to enjoy the fruits of their misdeeds abroad.

37. This report is based on the understanding that "targeted sanctions" applied to individuals in order to promote accountability for their own actions are preferable to general economic or other sanctions targeting a country as a whole. As explained above, targeted sanctions avoid economic hardship for ordinary people and hold to account only the individuals directly responsible for the impugned actions.

38. It is true that serious human rights violations such as those for which we are advocating the imposition of targeted sanctions are, in most countries, also criminal offences. Holding perpetrators of criminal offenses to account is normally the responsibility of the national law enforcement bodies.[21] But it has become abundantly clear in the Magnitsky case, a case that has been particularly well-documented by this Assembly[22], that not all perpetrators of serious human rights violations are held to account by their own

[19] See for example https://humanrightshouse.org/articles/oslo-the-natalia-estemirova-documentation-centre-established/
[20] Doc. 12276 dated 4 June 2010.
[21] Exceptionally, under narrowly defined conditions, the International Criminal Court (ICC) can also hold to account individuals – perpetrators of crimes against humanity, such as genocide or particularly serious war crimes – all within the limits of the ICC's geographical area of competence.
[22] See Gross report, note 2 above.

countries' competent authorities. Many escape criminal responsibility – be it that the competent authorities are incompetent and overburdened, or that the perpetrators enjoy high-level protection from criminal prosecution, on political or corrupt grounds.

39. In such cases, targeted sanctions, administered in a proper way, with appropriate safeguards as indicated above, can be highly effective: persons responsible for serious human rights violations are made to experience themselves some unpleasant consequences of their actions, such as the inability to obtain visas for travel to desirable foreign countries, or the freezing of their financial assets abroad, which in turn are oftentimes the fruit of the very violations for which they incur the sanctions. Such sanctions must not be confounded with criminal punishments. These would indeed raise jurisdictional issues and would require more elaborate procedures. I concede that targeted sanctions are mainly symbolic, intended to pass a clear message to the persons directly concerned, namely that the international community strongly disapproves of their actions. In the words of British Prime Minister Theresa May, such persons are "not welcome",[23] or, as Canadian Senator Raynell Andreychuk explained to us in Reykjavik, we do not want to "aid and abet" their reprehensible acts by granting them the use of our countries' institutions and helping them enjoy their ill-gotten gains. The angry reactions by the targets of such sanctions and by their protectors in high places observed so far show that this message is indeed well-received.

40. Finally, two observations: firstly, this report and its recommendations are wholly consistent with the very aims and ideals of the Council of Europe as the paramount human rights institution in Europe, namely protection of human rights; and secondly, to be effective in the implementation of these recommendations parliamentarians should indicate to the Assembly proposals they have initiated and any progress made as a result; the Assembly shall provide relevant advice and useful contacts.

[23] See paragraph 27, above.

Appendix

Synoptic table of existing "Magnitsky Laws" (countries, dates, titles and main features of the legislation)

Country	Date	Title	Main features of the legislation
USA	14.12.2012	Sergei Magnitsky Rule of Law Accountability Act	- Asset freezes and visa bans - Applies to human rights violators from Russia only (Magnitsky case, but also notorious North Caucasus killings, disappearances and torture cases as examples) - Publicly names individuals sanctioned - Removal from the list if inclusion was erroneous, if the person has credibly demonstrated a significant change in behaviour or the person has been prosecuted appropriately - Determination of target persons by the President, reporting to the appropriate congressional committees
Estonia	8.12.2016	Amendments to the Law on Amending the Obligation to Leave and Prohibition of Entry Act 262 SE	- Adds to the existing "Law on Obligation to Leave and Prohibition of Entry" a provision to ban for foreigners when there is good reason to believe that they have participated in or contributed to a human rights violation abroad, involving death, serious injury, or other criminal misconduct on political grounds.
USA	23.12.2016	The Global Magnitsky Human Rights Accountability Act	- Asset freezes and visa bans - Applies to human rights violators anywhere in the world and perpetrators of large-scale corruption - Publicly names individuals sanctioned - Determination of target persons by the President, who shall report to the appropriate congressional committees at regular intervals in considerable detail; identification of sanctionable persons by the Secretary of State, who reviews information provided by relevant government departments - Foresees taking into account credible information obtained by other countries and non-governmental organisations monitoring human rights violations - Removal from the list if inclusion was erroneous, if the person has credibly demonstrated a significant change in behavior, if the person has been prosecuted appropriately, or if the termination of the sanctions is in the vital national security interests of the United States.
UK	21.2.2017	"Magnitsky Amendments" to the Criminal Finances Act 2017	- Allows for the confiscation (civil recovery) of illegal assets held by human rights abusers - Defines "gross human rights abuse or violation" as cruel, inhuman or degrading treatment or punishment of a person who has sought to expose illegal activity carried out by a public official or a person acting in an official capacity,

			or to defend or promote human rights and fundamental freedoms; when such treatment carried out by a public official or a person acting in an official capacity or at the instigation or with the consent of such an official. - Applies retrospectively to conduct which occurred, or property that was obtained, before the Act came into force, with a 20-year limitation period.
Canada	19.10.2017	The Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)	- Asset freezes and visa bans - Applies to human rights violators anywhere in the world - Targets persons responsible for, or complicit in extrajudicial killings, torture or other gross violations of internationally recognised human rights committed abroad against individuals who seek to expose illegal activity carried out by public officials or seek to obtain, exercise, defend or promote internationally recognised human rights and freedoms - Prohibits Canadians and Canadian institutions from dealing with targeted individuals; imposes due diligence and disclosure obligations on the former; foresees criminals penalties for sanctions violations - Publicly names individuals sanctioned - Explicitly grants target persons the right to apply to the Foreign Minister for de-listing; the Minister is obliged to reply within 90 days - Specially designated committees of the Senate and the House of Commons may conduct a review of the individuals sanctioned and make appropriate recommendations.
Lithuania	16.11.2017	"Magnitsky Amendments" to the Article 133 of the Law on the Legal Status of Aliens	- Visa bans for participants in large-scale corruption, money laundering or human rights violations, no geographical limitation - Minister for Foreign Affairs to identify target persons, Minister of Interior to implement - Publicly names individuals sanctioned (so far, 49 Russian nationals) - Unanimous adoption, with all MP's present
Latvia	8.2.2018	Parliamentary Resolution "On the proposal to introduce sanctions against the officials connected to the Sergei Magnitsky case"	- Invites the Government to ban the entry of 49 Russians involved in the death of Sergei Magnitsky or who benefited from the USD 230 million fraud disclosed by him or were found responsible for atrocities in the North Caucasus; implemented by the Foreign Minister on 22 February 2018 - Explicit reference to PACE and EP resolutions calling on member states to impose targeted sanctions against the individuals connected to the Sergey Magnitsky case
UK	1.5.2018 (House of Commons) 21.5.2018 (House of Lords)	"Magnitsky Amendments" to the Sanctions and Anti-Money Laundering Act 2018 (SAML)	- SAML widens the scope of sanctions beyond those foreseen in the 2017 Act, including visa bans - Magnitsky Amendments reproduces the definitions of "gross human rights abuse or violation" as for the 2017 Act - SAML grants the UK Government own sanctions powers post-"Brexit"

			- SAML lays down detailed implementation and reporting rules (implementation by the Home and Foreign Offices, regular reporting to Parliament) - SAML lays down procedures for administrative and judicial review of sanctions, including a periodic review of existing sanctions by the administration itself