



## 2015 Human Dimension Implementation Meeting Working session 7 (24 September 2015).

# Norway and other democratic countries should establish global Magnitsky mechanisms

A Norwegian Helsinki Committee **Policy Paper**

No. 2-2015

Norway and other democratic countries should establish mechanisms to freeze the assets of persons who commit gross violations of human rights with impunity and prohibit their entry into the country – the victims of these violations being human rights defenders or whistle-blowers. The mechanisms may resemble the current US Magnitsky legislation, however without being limited to Russian citizens. They should include strong safeguards in order to ensure fair treatment. The US Congress is currently debating a Global Magnitsky Human Rights Accountability Act, which will broadly function along the same lines as the mechanisms proposed here. Norway should seek to influence other democratic countries to establish similar mechanisms. If a large number of democratic states establish such mechanisms, it would represent an important breakthrough in the fight against impunity for gross human rights violations.

Norway aims to promote respect for human rights, rule of law and democracy in its foreign policies. In White Paper 10 (2014-2015), *Opportunities for All: Human Rights in Norway's Foreign Policy and Development Cooperation*, the Norwegian government states that it is “concerned by the fact that human rights are coming under increasing pressure worldwide. Human rights are the foundation of freedom, justice and peace in the world.” (Page 7).<sup>1</sup> The White Paper points out that one of the main challenges is that many states violate rule of law principles, the right to life and the prohibition against torture. It also points to the often-difficult situation of human rights defenders.

Along with widespread corruption and tax crimes, these are issues central to the so-called Magnitsky case. The case has become a symbol of how corruption and abuse of power leads to violations of human rights. The way Russian authorities treated Sergei Magnitsky shows that whistle-blowers risk strong, even lethal, reactions when they inform the public about extensive crimes committed by government officials.<sup>2</sup>

Magnitsky was a renowned tax law expert, who uncovered the largest tax fraud in Russian history. A network of public officials, police and criminals defrauded the state of 230 million US dollars using companies they had stolen from Hermitage Capital Management, an international investment fund founded and led by businessperson Bill Browder. They succeeded in getting Magnitsky arrested on 24 November 2008. After almost a year in various detention centres, he died on 16 November 2009 because of torture and lack of treatment for serious illnesses.

Russian authorities have completely failed to bring any of those responsible for the tax fraud Magnitsky uncovered, or those who tortured and killed him, to justice. The *Justice for Sergei Magnitsky Campaign* has therefore focused on promoting prosecutions and targeted sanctions in Western countries against those involved. The campaign succeeded in December 2012 in getting US authorities to introduce legislation, which prohibits entry and freezes assets of persons who were responsible for the tax fraud and the human rights abuses against Magnitsky.<sup>3</sup> The legislation also targets officials who were not involved in the Magnitsky case, but committed gross violations of human rights against other whistle-blowers or human rights defenders.

The Magnitsky case is unique in that it has gained widespread international attention. However, we find the problems it encompasses in a large number of similar cases; both in Russia and in other countries where corruption, embezzlement and abuse of power takes place extensively.

The *Justice for Sergei Magnitsky Campaign* shows how democratic states can adopt individualized remedies, such as entry ban and freezing of assets, to combat impunity for those who commit such abuses, applying extremely brutal methods in order to silence human rights defenders or whistle-blowers.

In connection with the Ukraine conflict, which started with Russia's takeover of Crimea in February 2014, the EU and the United States adopted such measures against Ukrainian and Russian citizens who played particularly important roles in the international law violations that were committed during the conflict. Norway has introduced similar sanctions.

The EU has previously introduced visa bans and freezing of assets in a variety of other situations; including against Belarusian citizens who are responsible for serious human rights violations, repression of democratic opposition, or who are closely related to the Lukashenko regime.<sup>4</sup> Norway has also acceded to these restrictions against Belarusian citizens.<sup>5</sup>

It follows from the Norwegian Immigration Act Chapter 14 that Norwegian authorities can refuse a visa based on fundamental national interests or foreign policy considerations. Addressing serious violations of human rights may be an example of such considerations.

When it comes to freezing of assets, this is currently based on regulations to prevent financing of terrorism and the proliferation of weapons of mass destruction. These are measures to follow up on resolutions of the UN Security Council, inter alia to target Al-Qaeda, the Taliban, North Korea and Iran.

These measures show how a regulation to freeze the assets of persons who have committed serious violations of human rights can be formulated and implemented.

The EU emphasizes that such sanctions are part of comprehensive policy approaches. A statement on EU sanctions policies underlines that:

Sanctions are one of the EU's tools to promote the objectives of the Common Foreign and Security Policy (CFSP): peace, democracy and the respect for the rule of law, human rights and international law. They are always part of a comprehensive policy approach involving political dialogue and complementary efforts. EU sanctions are not punitive, but designed to bring about a change in policy or activity by the target country, entities or individuals. Measures are therefore always targeted at such policies or activities, the means to conduct them and those responsible for them. At the same time, the EU makes every effort to minimise adverse consequences for the civilian population or for legitimate activities.<sup>6</sup>

In this Policy Paper, the Norwegian Helsinki Committee proposes that Norway, co-ordinated with and/or in co-operation with other democratic states, establishes a mechanism to target persons (including entities) who are guilty of gross human rights violations against human rights defenders or whistle-blowers who expose illegal activities carried out by government officials. The mechanism should be able to include any government official or persons acting on behalf of a government official. The mechanism may not include Norwegian persons or persons who are subject to prosecution in accordance with international standards.

If Norway, other democratic states in Europe and democratic states in other parts of the world establish similar global Magnitsky mechanisms, it would have a substantial impact on strengthening respect for human rights worldwide.

### **Need for measures that target individuals**

Norway already has a comprehensive set of instruments in its human rights policies. There is, however, still a need for new measures that target persons who exploit their position.

One of the key aims in current policies is to support the further development of comprehensive and effective international human rights protection mechanisms in the frameworks of the UN, the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE) and other international organizations. The White Paper 10 (2014-2015) includes a rethink of how Norway can help to strengthen the human rights protection provided by these international organizations.

However, the existing system of international protection essentially hold states, not persons, accountable. The European Court of Human Rights is considered to be the most far-reaching example of such international protection since its decisions are legally binding. However, the Court can only find *states*, which are party to the European Convention on Human Rights, guilty of violations.

Effective implementation of judgments, preventing similar violations from occurring, may imply that the states themselves conduct criminal investigations or other types of responses against persons. Unfortunately, a large number of states currently neglect their obligations to do so.

Bilaterally, dialogue and cooperation with civil society organizations and with various governments on projects to strengthen national human rights protection measures are among the most important instruments of Norway's human rights policies. Norway also requires progress in good governance, democracy and respect for human rights in order to provide development aid.

Norway exercises *universal jurisdiction* in selected cases where the perpetrator has ties to Norway. This applies in cases of core international crimes, i.e. war crimes, crimes against humanity or genocide. So far, Norwegian courts have heard cases of such crimes committed in Rwanda and Bosnia and Herzegovina, while Norwegian prosecutors have investigated a large number of cases from a range of other countries.

In line with this development, the Norwegian Helsinki Committee has applied to Norway's National Authority for Prosecution of Organized and Other Serious Crime to investigate those who tortured and killed Sergei Magnitsky.<sup>7</sup> The Committee argues that Norway should exercise universal jurisdiction in this case inter alia because both Norway and Russia are party to the UN Convention against Torture, Norway has relevant legislation and the case is of great international concern.<sup>8</sup>

Norway has been a major contributor to the international tribunals prosecuting international crimes, such as the UN tribunals for Rwanda and the former Yugoslavia, and the International Criminal Court (ICC).

Regarding the use of sanctions, the main principle of Norwegian policies is to loyally implement the decisions of the UN Security Council. The same applies to sanctions adopted by the EU. Such sanctions may target widespread or systematic human rights violations, and they may include refusal of visas, entry bans and freezing of assets.<sup>9</sup>

When it comes to recognizing the important role of human rights defenders and the need to protect them, Norway has played an important role in the UN. The UN General Assembly adopted the Declaration on Human Rights Defenders in 1998 after significant Norwegian efforts.<sup>10</sup> Norway has subsequently played an important role in the UN Human Rights Council, leading to the adoption of resolutions that have deepened and strengthened the recognition of the vital role of human rights defenders.<sup>11</sup> Norway has also developed a guide for its foreign service on support for human rights defenders.<sup>12</sup>

Norwegian authorities recognize the important role whistle-blowers play, especially in the workplace, and that they need legal protection.<sup>13</sup> Whistle-blowers are persons who uncover and notify relevant authorities or the public about "censurable conditions" in companies, organizations or public institutions. Exposing corruption, fraud and embezzlement are at the core of the definition of a whistle-blower.<sup>14</sup>

In many countries, whistle-blowers enjoy legal protections. Yet there are also numerous examples, also in democratic states, of them being treated badly.<sup>15</sup> The Magnitsky case illustrates the high risk a whistle-blower runs in a country with authoritarian rule, even though he has the law on his side. In general, to inform the public of official wrongdoing is associated with personal risks,

especially when governments, government institutions or individual officials have much to lose if information about illegal activities is exposed.

Both human rights defenders and whistle-blowers play important roles on the local, the national and the international level in promoting human rights. It is precisely because of this role that they are vulnerable. Authoritarian regimes devote substantial resources to undermine and obstruct their work, not least if they participate in international cooperation.

As the Norwegian government acknowledges in White Paper 10 (2014-2015), international criticism of human rights violations by such regimes often has little or no impact (see inter alia the description of recent developments in Russia on page 91-92). Despite States having committed themselves to respect human rights and protect human rights defenders, developments point in the wrong direction. In Europe, this problem is particularly severe in the Russian Federation, Belarus and Azerbaijan. However, the climate for independent civil society in general and human rights organizations in particular is also worsening in several other countries. Turkey may be one example, and the EU member state Hungary another. It is still far from easy to be a human rights defender in some of the former Yugoslav republics, like Bosnia-Herzegovina, Kosovo and Serbia.

The heart of the problem may be the fact that the financial gains from wrongdoing are threatened only by the exposure provided by human rights reporting. The officials who conduct the crimes may already control the police and the judiciary. Independent media, human rights defenders and whistle-blowers therefore constitute the only threat to their sovereign position above the law. Indeed, exposure of widespread corruption may undermine the legitimacy of an authoritarian regime to such an extent that it fears losing power. This may to a large extent explain the worsening climate for independent human rights reporting in many authoritarian states.<sup>16</sup> Judgments in the European Court of Human Rights or criticism by other international human rights bodies do not fully solve this problem. These bodies hold the state responsible for abuses while the persons who perform them go free. Governments pay compensation, victims can get reparation, but the system of abusive officials remaining above the law persists.

There is therefore a need for measures that make individual officials accountable and increase the costs of wrongdoing. Although officials know that they face no consequences at home when brutally bringing people to silence, visible and “costly” reactions from other states could have a preventive effect.

Abuses often take place because officials are being exposed as corrupt or complicit in other forms of economic crime. In many cases, relevant authorities fail to investigate corruption and impunity prevails for the perpetrators. The whistle-blower however falls victim to harsh sanctions or extrajudicial attacks.

In a globalized world, such abuses have great significance for other states. Money from fraud or embezzlement may be invested in Western countries, a Western company may be the employer of the whistle-blower and the human rights defender may work closely with international human rights organizations. To conclude that the abuses do not concern democratic states or touch upon their interests is clearly not an option.

The Norwegian Helsinki Committee has its own experiences with close colleagues being killed or tortured because they exposed serious human rights violations. This happened with the renowned Russian journalist Anna Politkovskaya, who was shot in Moscow in 2006. Another example is the human rights defender Natalya Estemirova, heading the human rights centre Memorial's work in North Caucasus. She was killed in Chechnya in 2009 while investigating sensitive cases of human rights violations. Her investigation pointed to the notoriously brutal Chechen President, Ramzan Kadyrov, and his security forces as responsible for the violations. Two of the colleagues of Estemirova are currently working with the Norwegian Helsinki Committee.

One of them, Akhmed Gisayev, defeated the Russian Federation in a torture case at the European Court of Human Rights.<sup>17</sup> Russian authorities compensated Gisayev, but those who ordered and committed the crimes against him have not been prosecuted. To get them included in the US Magnitsky list has therefore become a new goal of the Norwegian Helsinki Committee, which has provided extensive documentation in the case to US authorities.

The US Magnitsky list also became relevant in another case in which the Committee has been involved. Umar Israilov, a former bodyguard of Kadyrov, was killed in Vienna on 13 January 2009. He had extensive knowledge about torture and killings by Kadyrov and his men. Both Umar and his father, Ali Israilov, who lives in Norway, were potential "dangerous" witnesses in cases against Russia in the European Court of Human Rights.

An Austrian court found three men guilty of the murder of Umar Israilov. According to the Austrian verdict, the crime was committed on behalf of a "foreign power", i.e. the then Chechen president Ramzan Kadyrov, a high official in the Russian Federation. However, the person who allegedly fired the lethal shots, Lecha Bogatirov, remains at large since Austrian police were unable to catch him. Kadyrov later promoted him. For the relatives of Israilov, however, it is still a small consolation that Bogatirov is now on the US Magnitsky list.<sup>18</sup>

Although such cases represent serious human rights violations, they will often not pass the threshold of core international crimes. Criminal investigation outside the country where the crimes have taken place (exercise of universal jurisdiction) may therefore be out of reach. At the same time, only very few such cases can be prioritized for criminal investigation due to limited resources and other considerations. There is therefore a need for less costly, but visible and effective measures to combat impunity and confront serious abuse.

A global Magnitsky mechanism includes such measures by denying visas and freezing assets. It is well documented that a large proportion of the money derived from corruption and fraud in authoritarian countries is placed in banks or in property and businesses in Western countries. The rich and corrupt ruling class in authoritarian countries send their children to high quality schools in the West. Denial of visas and freezing of assets is therefore a precise and targeted measure.

A global Magnitsky mechanism represents an important tool for states that want to take their responsibility to promote and protect human rights seriously. If a large number of countries were to introduce similar schemes, it would mean increased protection of human rights defenders and whistle-blowers.

Such a mechanism in democratic states will put considerable pressure on the states concerned to prosecute corrupt officials who commit human rights abuses in order to conceal their crimes.

Before we describe in more detail how such a mechanism could be established in Norway, we present the main features of the US Magnitsky Act. Although it has some shortcomings, it will work well as a model for Magnitsky legislation in other states.

## The US Magnitsky Act

According to *The Russia and Moldova Jackson Vanik repeals and Sergei Magnitsky Rule of Law Accountability Act* of 2012, those who were implicated in the Magnitsky case shall be prohibited visas or entry to the US and their assets shall be frozen.<sup>19</sup> Other Russian persons who have committed similar offenses against whistle-blowers (persons who “expose illegal activity carried out by officials of the Government of the Russian Federation”) or human rights defenders can also be included on the so-called Magnitsky list.<sup>20</sup>

The Act takes as a starting point that Russia has ratified a range of international human rights conventions, including the UN Convention against Torture. Protection of human rights, especially in a country “that has incurred obligations to protect human rights under an international agreement to which it is a party, is not left exclusively to the internal affairs of that country”. Other countries have a right to engage.

It places considerable emphasis on the relationship between combating corruption and protecting human rights. “Systemic corruption erodes trust and confidence in democratic institutions, the rule of law, and human rights protections. This is the case when public officials are allowed to abuse their authority with impunity for political or financial gains in collusion with private entities.” (Sec. 402 (5)).

The Act refers to bribery in Russia being very widespread, and that the total sum is amounting to hundreds of billions of dollars. It outlines Magnitsky’s disclosure of tax fraud in the order of 230 million US dollars. Authorities responded to this disclosure by imprisoning and torturing him. The detention was politically motivated, which is also demonstrated by the impunity of government officials he testified against (Sec. 402 (10)).

There have been public inquiries in Russia, which have concluded that Magnitsky was a victim of extensive abuse, but without leading to those who were responsible being prosecuted (Sec. 402 (11)).

An important premise for the Act is that:

Sergei Magnitsky’s experience, while particularly illustrative of the negative effects of official corruption on the rights of an individual citizen, appears to be emblematic of a broader pattern of disregard for the numerous domestic and international human rights commitments of the Russian Federation and impunity for those who violate basic human rights and freedoms. (Sec. 402 (12))

The Act refers to other cases where the judiciary has been “politicized” (as in the Khodorkovsky and Lebedev cases) and to tragic and unsolved killings of human rights defenders and whistle-

blowers. The United States must continue to support the efforts of the Russian people to establish democracy with respect for human rights. The Russian government's suppression of criticism and political opposition is of far-reaching significance for the American people.

The list of sanctioned persons may include persons who (1) are responsible for the detention, abuse or death of Magnitsky; (2) participated in efforts to conceal the legal liability for the detention, abuse or death of Magnitsky; (3) financially benefitted from the detention, abuse or death of Magnitsky; or (4) were involved in the criminal conspiracy uncovered by Magnitsky.

In addition to Magnitsky-related culprits, persons responsible for gross violations against human rights defenders and whistle-blowers are also eligible. To this group belong persons responsible for extrajudicial killings, torture or other gross violations of internationally recognized human rights, committed against persons who expose illegal activity carried out by government officials. The victims may also include human rights defenders seeking to “obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, expression, association, and assembly, and the rights to a fair trial and democratic elections, in Russia”.

Also persons acting "as an agent of" one of these groups of responsible persons may be eligible (Sec. 404 (a)).

When it comes to the meaning of the term “gross violations of human rights”, the Norwegian Helsinki Committee has received information that the definition in section 502B (d) of The Foreign Assistance Act (FAA) applies as a “working standard for what constitutes gross violations of human rights”. This provision states:

The term “gross violations of internationally recognized human rights” includes torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person. Extrajudicial killing is included under this standard as is politically motivated rape.<sup>21</sup>

According to the Act, the President is required to prepare and update the list of persons falling within the aforementioned groups, and inform relevant committees in the Congress.<sup>22</sup> The first version of the list should be presented within 120 days after the adoption of the Act (Sec. 404 (a) and (b)). The list should be unclassified, but a classified annex may contain names of people who due to national security concerns cannot be published (Sec. 404 (c)).

In preparing the list, the President may receive information from the Chairperson and Ranking Members of relevant committees in Congress, from other states and from non-governmental organizations, including organizations in Russia that monitor human rights violations.

The Act contains provisions that regulate removal of people from the list (Sec. 404 (4)). A person can be removed from the list if:

- 1) Credible information exists that he or she did not participate in the activity that led to the entry on the list;



- 2) The person has been prosecuted for the activity that led to inclusion on the list; or
- 3) The person has changed his or her behaviour in a credible manner and committed him or herself not to engage in the activities that led to being listed.

The persons on the list cannot be granted a visa or get entry into the United States. However, the Secretary of State may make exceptions if the denial of entry is contrary to the US agreement with the UN of 26 June 1947, other relevant international obligations or interests of national security. Before granting such a waiver, the Secretary of State must notify and justify them to the relevant committees in Congress (Sec. 405).

All property belonging to a person on the list shall be frozen. The President shall exercise all means of power to achieve this, as defined in *The International Emergency Economic Powers Act*, so far as is necessary "to freeze and prohibit all transactions in all property and interests in property of a person who is on the list". The President may determine to exclude persons from this measure based on national security interests (Sec. 406 (ab)).

Persons, who violate section 406 of the Act, shall be subject to penalties as set forth in the International Emergency Economic Powers Act (Sec. 406 (c)).

Finally, the Act imposes annual reporting requirements on the Secretary of State and the Secretary of the Treasury. They must report to Congress on the actions taken to carry out the Act, including the number of persons added to or removed from the list and the reasons for adding or removing them. If few or no persons have been added to the list, this should be explained (Sec. 407).

Importantly, the Act places a duty on the executive branch to encourage the governments of other countries to impose similar sanctions (Sec. 407(2)).

## Reactions to the US Magnitsky Act

Russian authorities reacted very strongly against the Act. The so-called Dima Yakovlev Act, signed by President Vladimir Putin on 28 December 2012, was a direct rebuttal. It establishes a list of US citizens who are denied access to Russia because they have committed human rights violations against Russian citizens. Russian organizations are not allowed to receive support from US citizens or organizations, and American parents can no longer adopt children from Russia.<sup>23</sup>

After the US law was adopted, the Magnitsky campaign concentrated on promoting similar legislation or schemes in European countries. A number of resolutions in national parliaments and parliamentary assemblies of international organizations have stated that such legislation should be adopted.<sup>24</sup>

The campaign has also published a separate book with 53 different articles, which argues for European Magnitsky legislation.<sup>25</sup> From Norway there are two contributions, written by former Parliamentarian for the Conservative Party, Peter Gitmark,<sup>26</sup> and by Gunnar M. Ekelove-Slydal, Deputy Secretary General of the Norwegian Helsinki Committee.<sup>27</sup>

Bill Browder, the head of the Magnitsky campaign, has given one of the best justifications for this type of legislation and described its potential impact on human rights work:

In my opinion, this is the new technology for dealing with human rights abusers throughout the world. It is like the iPad for human rights advocacy. The reason is that the world has become very globalized in the past twenty years, and people who commit human rights abuses in their countries increasingly do it for economic gain. It used to be that the only tool human rights advocates and activists had was to be heard through the voice of a Western government condemning an atrocity. What we found was that, if autocrats and dictators want to commit human rights abuses, they do not care what the U.S. government or the European Union says. But if they are not able to travel... if their bank accounts are getting frozen, these are personal consequences that make them very scared. It raises a question, every time there is a choice, these new consequences effect the motivation to carry out potential abuses.<sup>28</sup>

### Categories of abuses to be included

There are good reasons to have a high threshold for the seriousness of abuses which should be included. The main purpose of establishing the mechanism must be to target persons in public positions who obtain improper financial gain, and commit, give orders to or contribute to very serious human rights violations in order to silence whistle-blowers or human rights defenders documenting the illegal actions they have committed.

There must be a requirement that the person behind the abuses is working for the government at national, regional or local level. Private persons who commit abuses could be included when acting on behalf of an official.

The human rights violations in question are actions, which often have as their direct objective to force or threaten to silence, ultimately to kill or inflict death.

The US legislation hit precisely when it included integrity violations and freedom violations such as:

- Torture or cruel, inhuman or degrading treatment or punishment;
- Prolonged detention without charges or trial;
- Causing involuntary disappearance of persons by the abduction and clandestine detention of those persons;
- Any other flagrant violation of the right to life, liberty or the security of person;
- Extrajudicial killing;
- Politically motivated rape.

It may be prudent to add an open provision that makes it possible to include other types of violations that are as severe as those mentioned. Such a provision could for example read: “other particularly serious and offensive human rights violations.”

The US legislation, as well as the draft Global Magnitsky Human Rights Accountability Act currently discussed in Congress, includes government officials behind widespread corruption.<sup>29</sup> It can, however, be argued that it is *the combination* of corruption and human rights violations that should be targeted.

If severe corruption is included, the list of sanctioned individuals may become very long. It is also less clear that corruption as such is an international matter on a level with serious human rights violations. Money laundering is in any way sanctioned by other legislation.

### How to administer the mechanism?

The Council on Ethics for the Government Pension Fund Global, which has five members and is an independent body appointed by the Ministry of Finance, presents a possible model in Norway for how decisions are made about who should be denied a visa or entry and get their assets frozen. The council's task is to evaluate whether or not the fund's investment in specified companies is consistent with its ethical guidelines.

The Norwegian State Bank (NBIM) manages the fund and makes decisions to exclude companies from the fund's portfolio based on advice from the council. The council makes its recommendations public on its website.<sup>30</sup>

The council's guidelines include "gross or systematic violations of human rights such as murder, torture, detention, forced labour, the worst forms of child labour".<sup>31</sup>

A similar independent body, a *Magnitsky Human Rights Council*, could receive documentation about persons who should be denied entry and have their assets frozen. The Government, Members of Parliament and non-governmental human rights organizations may be eligible to provide such documentation. The council could also be allowed to take its own initiatives to investigate whether persons should be targeted.

The council must make an independent assessment of whether the documentation submitted is sufficient to cause a person to be included on the list. Formally, it will make a recommendation, while the Government should take the final decision.

The Ministry of Foreign Affairs and the Ministry of Finance may appoint the five members of the council.

### Adoption of the mechanism

The Parliament may adopt the mechanism in the form of a law.

Alternatively, the Government may decide to establish the mechanism and design guidelines for it in the form of a regulation.

It is, however, important that the mechanism get broad political support. It may have costs in terms of foreign state representatives protesting against it. They may describe it as interference in internal affairs and establish countermeasures like those that Russia established against the US Magnitsky Act.

The need for broad and robust support for the mechanism may be an argument in favour of adopting a law.

Regarding measures to deny visas or entry and freezing assets, there are as mentioned relevant practices and regulations one can build on.

According to the Immigration Act Chapter 14, special rules exist for cases involving fundamental national interests or foreign policy considerations (§§ 126-138); the Directorate of Immigration (UDI) and The Norwegian Immigration Appeals Board (UNE) shall take these into account when making decisions on visas or residence permits. UDI and UNE are authorized to take such decisions, unless the Ministry of Justice has decided differently, based on an assessment by the Ministry of Foreign Affairs. If Norway has joined travel restrictions adopted by the UN Security Council or by the EU, UDI and UNE are not obliged to consult with the Ministry of Foreign Affairs. A strong argument may be made that a global Magnitsky mechanism would fall under “foreign policy considerations”, meaning that statutory authority already exists.

When it comes to freezing of assets this has inter alia been practiced to prevent financing of terrorism, which is a criminal offense under Norwegian law (Penal Code § 147b). To “freeze” assets means to prevent a person (or entity) having factual or legal control over the assets. It might involve blocking access to a bank account or managed funds, or failing to carry out payment transfers.<sup>32</sup>

UN Security Council Resolution 1267 (1999) and several subsequent resolutions require all states to freeze assets linked to the Taliban or Al-Qaeda. These obligations have been carried out by Norway in regulations of 22 December 1999 no. 1374 on sanctions against Al Qaeda and regulations of 8 November 2013 No. 1294 on sanctions against the Taliban.

According to these regulations, money and assets owned or controlled by an individual or entity included in the UN Sanctions Committee list should be frozen. It is forbidden to provide money to persons or entities on the list.

There are also regulations on sanctions against North Korea (Regulations 15 December 2006) and against Iran (Regulations 9 February 2007). These regulations also implement sanctions adopted by the UN Security Council.

The regulations stipulate an obligation for everyone, including financial institutions and payment companies, to freeze current assets. Violation of this obligation is punishable by law 7 June 1968 No. 4 (implementation of binding decisions of the United Nations Security Council § 2).

## **The role of global Magnitsky mechanisms versus existing international protection of human rights**

Treaty bodies may decide whether states have violated one or several treaty provisions in cases presented to them by individual or state complaints. Only exceptionally – as in a few of the so-called Chechen judgments of the European Court of Human Rights – are persons named as being responsible for the violations.

In any case, a judgment or “view” of a treaty body holds the state as the sole responsible for treaty violations. In executing a judgment, however, a state is not only under a responsibility to pay compensation to victims. As a result of the reform process of the European Court of Human Rights, there is now much more focus on the obligation of states to execute judgments in a timely and comprehensive way.

In order to execute a judgment, states should both initiate *individual* and *general* measures. *Individual* measures should be designed to honour the fundamental obligation to ensure as far as possible *restitution in integrum*, i.e. restoration of the victim to the situation which would have prevailed had no violation been sustained. This could entail awarding a sum of money, opening of criminal proceedings, implementation of non-enforced national judicial decisions, etc. *General* measures must be taken to prevent further violations similar to those found and/or put an end to continuing violations. Identifying the source of a violation is an important part of this endeavour.<sup>33</sup>

The Magnitsky case may serve as an illustration of how complex this might be. In this case, some of those who were responsible for human rights violations were investigators, officials in Russia's security police (FSB) and judges. These persons had the opportunity to use extensive government resources (remand prisons, riot police etc.) to conduct violations.

A judgment by the European Court of Human Rights, finding Russia guilty of violating one or several of Magnitsky's human rights, would in effect oblige the state to deal *comprehensively* with the issues raised in the case. Authorities should inter alia investigate the related criminal offenses (torture etc.) and prosecute those responsible. Those found guilty should be sentenced to prison terms and to pay compensation.<sup>34</sup>

However, Russia as well as several other member countries of the Council of Europe, do not execute judgments in this way. They fail to prosecute the criminal offenses inherent in a human rights case or to address the root causes of the violations. They may pay compensation to victims, but those responsible for inherent criminal offenses go free.

Global Magnitsky mechanisms could to a certain degree remedy the problem of states failing to fully execute judgments. They will at least initiate some negative reactions against culprits who should have been prosecuted.

In countries outside Europe, the international protection is even weaker. Decisions of the UN treaty bodies are not legally binding. However, a similar argument holds that global Magnitsky mechanisms could complement “views” of treaty bodies by sanctioning persons involved in human rights violations.

Another weakness of the international human rights protection system is that only a fraction of the cases are dealt with. The reason for this is that many victims do not know about the possibility of complaining to international bodies. In addition, even if they know about this possibility they

are faced with a substantial burden since they have to exhaust all domestic remedies in order for their case to be deemed admissible by an international body.

In addition, they might choose not to apply for international protection due to personal security issues. Treaty bodies also have limited capacity, resulting in long delays in getting final decisions in a case.

In summing up, global Magnitsky mechanisms would complement the existing international human rights protection in two fundamental ways:

- More cases would be addressed, and
- The mechanisms would make *persons* with a well-documented responsibility for the human rights violations in a case accountable. In a case where a treaty body has found a state party guilty of gross violations of human rights, global Magnitsky mechanisms could follow-up on that finding by including the responsible persons in global Magnitsky lists. That would to a certain degree remedy the failure of the state to fully execute the judgment or “view” of the treaty body.

In this way, global Magnitsky mechanisms could build on international criticism and findings by international human rights bodies and give them more weight.

Global Magnitsky mechanisms will have a rather limited scope of application. They will only address a subset of very serious human rights violations against a limited group of potential victims, leaving other human rights violations to other broader measures. They would strengthen protection only of the most vocal human rights pioneers in a society, so to say. By doing that, however, it could be argued that the mechanisms would at the same time strengthen the effect of the broader based and broader targeted international human rights protection mechanisms.

Increasing the protection of human rights defenders is important from the perspective of ensuring solid documentation of the human rights situation in a state. Without this information, the ability of the UN, the Council of Europe and other international human rights protection mechanisms to provide protection would over time be undermined.

If authoritarian regimes are left alone in efforts to obstruct independent reporting on human rights violations it would result in a substantial setback for the capacity of the international organizations to respond to these violations. Without human rights defenders working at the local and national level, many issues would remain unknown to the international bodies.

The strong reactions against the US Magnitsky Act, and against the prospect of similar legislation in Europe, from Russia's President and other Russian officials suggests that such measures hurt and may have a preventive effect. Russian human rights organizations have argued this, and believe they can document an effect *inter alia* in the form of better treatment of detainees.

## The Strength of Limited Scope and Flexibility

By focussing on abuses committed against human rights defenders and whistle-blowers, the mechanism will increase the protection of individuals that Norway has a strong engagement with. White Paper 10 (2014-2015) foreshadows increased efforts to get national authorities to recognize and respect the important role of such individuals.

The limitation to these individuals is, however, not unproblematic. The Norwegian Helsinki committee, along with many other human rights organisations, knows of cases in Russia of gross human rights violations where the victim is not a human rights defender or whistle-blower. These cases cannot be presented for inclusion in the US Magnitsky list.

However, even though the limited scope creates frustrations, it should nevertheless be kept. It prevents the list of sanctioned persons from becoming “too long”. A very high number of cases would make the scheme difficult to manage and hard to “sell”.

Another question that might arise is whether heads of state, members of government or other senior government representatives should have immunity from being listed.

One argument would be that in situations where the Norwegian Government actively supports a peace process, listing one or more of the parties' main players could undermine Norway's ability to facilitate a peace process. There are also numerous other diplomatic contexts in which it is conceivable that the listing of prominent representatives of a state may have negative side effects.

There are, however, very strong arguments against immunity for dignitaries. To accept such immunity would undermine the main principle the mechanism rests on, namely that no government official is above the law and the requirement to respect human rights.

The regulations of the mechanism could nevertheless contain a provision for exceptions, such as the US Magnitsky Act does. The waiver could be expressed in general terms, pointing to national security interests and relevant international obligations.

The mechanism could both include provisions, based on certain criteria, to not publish that a person is listed, as well as provisions, based on weighty considerations, that a person should not be listed even though the criteria are fulfilled.

Such considerations should include the prospects of criminal prosecution, either by a national or an international jurisdiction. If travel restrictions imposed by global Magnitsky mechanisms resulted in diminished prospects of criminal prosecution, that would constitute a strong case for exception.

Continuation of such exceptions should be evaluated regularly; at least once a year.

The objective of the mechanism is to provide increased protection for the bravest defenders of human rights and those who dare openly to go against officials who commit serious economically motivated offenses. Unfortunately, retaliation against whistle-blowers is sometimes orchestrated from very high places. No one should therefore have blanket immunity. At the same time, the mechanism should be governed by certain flexibility in order to take into account other weighty

considerations.

### Previous initiatives in Norway

A number of Norwegian politicians have engaged in the Magnitsky case. On 17 April 2013, the Parliamentary Groups of the Progress Party, the Conservative Party, the Christian Democrats, and the Liberal Party sent a letter to then Minister of Foreign Affairs Espen Barth Eide.<sup>35</sup> The letter explained the Magnitsky case and argued that such crimes “[must] never pay off”. It referred to initiatives in a number of national parliaments, including the US Congress, to freeze foreign assets and deny visas to persons who were accomplices in the case. The letter also referred to resolutions in the Parliamentary Assembly of the Council of Europe (PACE), the OSCE and the European Parliament.

In the letter, the Parliamentary Groups ask the Ministry of Foreign Affairs to consider “freezing any assets in Norway and denying access to the kingdom” for those who were “complicit in the imprisonment, torture and murder of Sergei Magnitsky.”

The letter underlines that Norway should implement such measures in anticipation of a “final judgment after a trial conducted in accordance with recognized principles of due process”, and that the Norwegian measures must also be in accordance with principles of due process. There should be an opportunity of appeal for those who are affected.

In his reply of 8 May 2013, then Foreign Minister Barth Eide underlined that he “agreed that the Magnitsky case has become of symbolic significance as an expression of the negative developments we are now seeing with increased pressure on human rights, civil society and political opposition in Russia.”<sup>36</sup>

On the question of Norwegian sanctions, he refers to established principles of Norwegian sanction policies, which state that sanctions should be based on binding decisions made by the UN Security Council. Barth Eide therefore concludes that “unilateral actions against individual countries or individuals have no tradition in Norway, and in our opinion do not have the necessary legitimacy and legal consequence to be effective.”

He underlines that Norway will continue to support clear statements in the OSCE, the Council of Europe and the UN Human Rights Council about the negative development when it comes to human rights in Russia.

In a comment to Barth Eide’s response, the Norwegian Helsinki Committee underlined that “even though Norway would not enact such legislation on its own, it could signal in talks with EU representatives that it supports EU sanctions and would follow-up. European sanctions would contribute to restoring faith in Europe as a driving force for human rights and rule of law; benefitting both Russia, Europe and the global struggle for human rights.”<sup>37</sup>

In a written question to Norway’s current Minister of Foreign Affairs, Børge Brende, of 11 March 2014, Trine Skei Grande, MP and leader of the Liberal Party, challenges him on whether he shares



“former Minister of Foreign Affairs Barth Eide's assessment that it is not appropriate to enact Norwegian sanctions against individual countries or individuals that are not based on binding decisions made by the UN Security Council”.

Skei Grande refers to the aforementioned letter and the response from Barth Eide, and points out that the issue has gained new relevance through a PACE resolution which recommends that Council of Europe Member States impose sanctions “as a last resort”.

In his response, Brende stresses his concern over how the Magnitsky case has been treated in the Russian judiciary. He has taken note of the PACE resolution of 28 January 2014, which states that PACE, under certain circumstances, will recommend that member states adopt targeted measures against individuals associated with the Magnitsky case.

He is fundamentally in agreement with Barth Eide in his understanding of Norwegian sanction policies. However, he believes that Norway can support EU decisions of “restrictive measures against states, entities and individuals” even if they lack UN Security Council backing:

After an assessment in each case, Norwegian authorities could follow up on the EU's restrictive measures, and implement these in Norway. This has happened on numerous occasions, inter alia regarding measures against Syria, where the UN Security Council has not reached agreement on adoption of sanctions. However, unilaterally imposing Norwegian measures lacks any precedence.<sup>38</sup>

A letter dated 27 March 2015 from Ingjerd Schou (MP of the Conservative Party and head of the Norwegian PACE delegation), Trine Skei Grande and Hans Olav Syvertsen (Christian Democrat MP and member of the NATO Parliamentary Assembly) to Foreign Minister Brende follows up on the PACE Resolution.<sup>39</sup>

The letter underlines that there have been no improvements in the way Russian authorities have dealt with the Magnitsky case. It underlines the emblematic character of the case, and the need for better protection of human rights defenders and whistle-blowers. It refers in this context to the discussion of a US Global Magnitsky Human Rights Accountability Bill and the British initiative to include a Magnitsky Amendment to the Serious Crime Bill.

Based on Norway's strong promotional role when it comes to the rights of human rights defenders and whistle-blowers, the letter challenges Foreign Minister Brende to assess the importance of the US Global Magnitsky Human Rights Accountability Act and the British initiative as measures for protecting human rights defenders.

The letter is important for several reasons. For the first time, Norwegian MPs and members of important Parliamentary Assemblies describe the need for a global Magnitsky mechanism and challenge the Norwegian Foreign Minister to assess the importance and need for it.

It also implicitly implies that even if the PACE resolution is not legally binding, the Norwegian government cannot simply ignore it. The letter even challenges the Government to go one step further and assess the need for a *global* Magnitsky mechanism.

## Fair treatment

The exact wording of the PACE resolution of 28 January 2014 is as follows:

The Assembly resolves to follow closely the implementation of the above proposals. It recalls its [Resolution 1597 \(2008\)](#) and [Recommendation 1824 \(2008\)](#) on United Nations Security Council and European Union blacklists. It further resolves 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 (visa bans and freezing of accounts), having first given those named individuals the opportunity to make appropriate representations in their defence.<sup>40</sup>

The resolution raises important questions about the official Norwegian wait-and-see attitude.

How long can the Council of Europe member states wait until they do something? How long is “a reasonable period of time”? In the period from 16 November 2009 (when Magnitsky died) until today, almost six years later, Russian authorities have completely failed to conduct genuine prosecution of any of the accomplices.

On the contrary, two of the main players in the case, investigators Oleg Siltsjenko and Pavel Karpov, who organized the torture of Magnitsky, have subsequently been awarded the title of “best investigator” by Russian authorities.<sup>41</sup>

Another point question that is underlined in the PACE resolution is that a scheme of targeted sanctions must provide affected individuals with the opportunity to defend themselves. The US law provides, as mentioned, the right to appeal. Persons may be removed from the list if they can demonstrate that they are not responsible for the offenses, if they are prosecuted or if they change behaviour and undertake not to repeat crimes.

The point is of paramount importance for the standing and legitimacy of the mechanism: although the mechanism does not provide for responses as radical as imprisonment or fines, the freezing of assets in particular raises serious questions.

It is reasonable to interpret the wording of the PACE resolution as requiring – as a condition for the enactment of sanctions – that the targeted person should have the case presented and be given an opportunity to respond to allegations within a reasonable time. In practice, it may however prove difficult to get in touch with a “suspect”. Another concern would be to avoid a person indefinitely postponing sanctions by asking for more time to respond.

Another question, which should be studied and decided before the mechanism is established, is who should handle complaints: the same body that initially reviewed the documentation in the case (the Magnitsky Human Rights Council), the Government or a separate appeal body?

It should also be mentioned that for persons who have their assets frozen, there would also be an option to take the case to a court in order to prove that the freezing of assets is unwarranted. An important difference from the aforementioned Norwegian initiatives and the international parliamentary resolutions, strengthening the fairness of the mechanism, is the global character of the proposed mechanism. Basic considerations of the equal treatment of otherwise similar cases (from different countries) and the avoidance of the politicization of human rights are among weighty arguments for a global mechanism.

Unfortunately, there are many more victims than Magnitsky in Russia and also in other countries. These are human rights defenders and whistle-blowers that are “doing the right thing” – and are brutally punished for it.

## Conclusions

Norway should establish a global Magnitsky mechanism, imposing visa denial, entry bans and freezing of assets to combat human rights violations against human rights defenders and whistle-blowers.

Faced with increasing human rights problems in authoritarian states, Norway and other democratic countries should establish new and more effective means to promote and protect human rights. The authoritarian states do not change abusive policies simply because they are criticized or found guilty of human rights violations by international human rights bodies.

The Norwegian government has recognized this in White Paper 10 (2014-2015), which states in section 7.2.3 (Criticism and sanctions, page 88) that a refusal of a visa may be a necessary response to human rights violations. The White Paper also states that Norway consistently endorses restrictive measures adopted by the European Union, including freezing of assets and travel restrictions.

The Norwegian Helsinki Committee argues that the Government should not wait for the EU or other states to take action, but actively promote a coordinated response as the White Paper says it should when deemed appropriate (page 88).

The PACE resolution of 28 January 2014 is an important basis for Norway to establish a global Magnitsky mechanism and seek to influence other countries to do the same. It asks all member countries of the Council of Europe to establish Magnitsky mechanisms if Russian authorities fail to investigate those responsible.

There are important practical and legal issues to consider when establishing such a mechanism. The Norwegian Helsinki Committee suggests that it should be managed by a separate, independent body, a Magnitsky Human Rights Council, but that the formal decision to list a person should be taken by the Government.

The mechanism may resemble the US Magnitsky legislation but be aimed at persons who commit gross violations of human rights irrespective of where they live and their citizenship. As members of the US Congress worked to prepare the Magnitsky Act they quickly realized that they should

adopt a global law, but this was not possible in 2012 when the Act was enacted. They realized that they had discovered a new way to combat human rights violations in authoritarian regimes in the 21<sup>st</sup> century. Many of them now support an initiative to expand the existing law into a global one.

It is crucial that the mechanism provides safeguards to ensure fair treatment and legal certainty for those affected, including by offering judicial remedies and the opportunity to present evidence that one is innocent. A list of persons who violated human rights should not be based on flawed procedures in conflict with human rights constraints.

Two Norwegian Foreign Ministers have said that there is no tradition in Norway of establishing such restrictive measures unilaterally. There is, however, a strong tradition of Norway playing a proactive role internationally to strengthen the protection of human rights.

We live in a globalized world where crimes know no boundaries. Norway can be in the lead in establishing a necessary answer: A global Magnitsky mechanism.

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*Gunnar M. Ekelove-Slydal, Deputy Secretary General, drafted this Policy Paper.*

<sup>1</sup> The White Paper is available online: <https://www.regjeringen.no/nb/dokumenter/Meld-St-10-20142015/id2345623/?docId=STM201420150010000DDDEpis&s&Q>. An English summary is available at: <https://www.regjeringen.no/en/dokumenter/meld.-st.-10-2014-2015/id2345623/?docId=STM201420150010000ENGEPI&ch=1&q=>

<sup>2</sup> The Magnitsky case is presented in numerous articles, books and websites. For a comprehensive account, see Bill Browder: *Red Notice: How I Became Putin's No. 1 Enemy* (Transworld Publishers Ltd, 2015).

<sup>3</sup> The website of the Magnitsky Campaign presents comprehensive information on the Magnitsky case, Russian authorities efforts to “blur” the case and the initiatives to target those who were responsible for the abuses: <http://russian-untouchables.com/eng/>

<sup>4</sup> An overview of the EU's restrictive measures (sanctions) is presented at: [http://eeas.europa.eu/cfsp/sanctions/docs/measures\\_en.pdf](http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf)

<sup>5</sup> <https://www.regjeringen.no/nb/aktuelt/eu-med-felles-sanksjoner-mot-hviterussla/id706941/>

<sup>6</sup> *EU Factsheet: restrictive Measures* (29 April 2014):

[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/135804.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/135804.pdf)

<sup>7</sup> For more information on the National Authority, see: <http://www.riksadvokaten.no/no/english/-the-national-authority-for-prosecution/>

<sup>8</sup> For more information on the application, see:

[http://www.nhc.no/no/nyheter/Anmeldelse+av+russiske+tjenestemenn+for+tortur+og+drap+av+Sergei+Magnitskij.b7C\\_wljYZL.ips](http://www.nhc.no/no/nyheter/Anmeldelse+av+russiske+tjenestemenn+for+tortur+og+drap+av+Sergei+Magnitskij.b7C_wljYZL.ips) See also Financial Times' reporting on the application: <http://www.ft.com/cms/s/0/658810ac-ca2d-11e3-8a31-00144feabdc0.html#axzz3NfZgsOCE>

<sup>9</sup> EU sanctions against Russian citizens or economic interests linked to Russia's violations of international law in the conflict with Ukraine are presented at: [http://europa.eu/newsroom/highlights/special-coverage/eu\\_sanctions/index\\_en.htm](http://europa.eu/newsroom/highlights/special-coverage/eu_sanctions/index_en.htm) On entry bans and freezing of assets, see in particular:

[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/135804.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/135804.pdf) Norway's adoption of similar sanctions are presented at: <https://www.regjeringen.no/en/aktuelt/Norway-tightens-restrictive-measures-against-Russia-/id2005821/>

The Norwegian Helsinki Committee provided an overview of Russia's breaches of international law at an early stage in the Ukraine conflict:

[http://www.nhc.no/no/nyheter/Q%26A%3A+breaches+of+international+law+and+human+rights+issues.b7C\\_wljWZN.ips](http://www.nhc.no/no/nyheter/Q%26A%3A+breaches+of+international+law+and+human+rights+issues.b7C_wljWZN.ips)

<sup>10</sup> Information on the Declaration is available at:

<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>

<sup>11</sup> An example is the Human Rights Council 2013 Resolution on the protection of human rights defenders:

[http://www.ishr.ch/sites/default/files/article/files/hrc\\_resolution\\_22-6.pdf](http://www.ishr.ch/sites/default/files/article/files/hrc_resolution_22-6.pdf)

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<sup>12</sup> <https://www.regjeringen.no/contentassets/b7384abb48db487885e216bf53d30a3c/veiledningmrforkjengelskfin.pdf>

<sup>13</sup> See The Norwegian Working Environment Act § 2-4 and § 2-5, available at:

<http://www.arbeidstilsynet.no/binfil/download2.php?tid=92156>

<sup>14</sup> In a series of documents The Council of Europe acknowledged the important role of whistle-blowers, calling on member States to create an appropriate normative, judicial and institutional framework for the protection of whistle-blowers. See: [http://www.coe.int/t/dghl/standardsetting/cdcj/Whistleblowers/protecting\\_whistleblowers\\_en.asp](http://www.coe.int/t/dghl/standardsetting/cdcj/Whistleblowers/protecting_whistleblowers_en.asp) A 23 June Resolution by the Parliamentary Assembly of the Council of Europe (PACE) calls on member and observer states to enact legislation to protect whistle-blowers, “grant asylum, as far as possible under national law, to whistle-blowers threatened by retaliation in their home countries”, and “agree on a binding legal instrument (convention) on whistle-blower protection on the basis of Committee of Ministers Recommendation CM/Rec(2014)7.” It also calls on the US “to allow Mr Edward Snowden to return without fear of criminal prosecution under conditions that would not allow him to raise the public interest defense.” <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21931&lang=en>

<sup>15</sup> The fate of the US IT expert Edward Snowden, who during the summer of 2013 revealed secret documents that US and British security agencies were engaged in extensive illegal surveillance of mobile phone communication and emails, illustrates that a person's status as whistle-blower can be very controversial. Snowden ended with fleeing to Russia because he did not have confidence that US authorities will treat him as a whistle-blower, but solely as an offender. He fears that he will not get fair treatment in the courts and end up with a long prison sentence. There is no doubt, however, that his revelations represented decisive input to debates and policy shifts on how to honour the right to privacy online, cf. the PACE resolution mentioned in the previous endnote.

<sup>16</sup> For compelling arguments for Global Magnitsky Sanctions being a necessary and efficient tools to address corruption-linked human rights violations, see inter alia the testimony by **Daniel Calingaert, Executive Vice President of Freedom House, to the 29 April 2015 hearing on a Global Magnitsky Human Rights Accountability Act in the House Committee on Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations: ‘Global Magnitsky Human Rights Accountability Act: A Crucial Tool for U.S. Foreign Policy’, available at:** <https://freedomhouse.org/article/global-magnitsky-human-rights-accountability-act-crucial-tool-us-foreign-policy#.VbizL9CDXeZ>

<sup>17</sup> Case of Gisayev v. Russia 2011.

[http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["gisayev"\],"itemid":\["001-102896"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{)

<sup>18</sup> For more information on the Israilov case, consult Wikipedia: [http://en.wikipedia.org/wiki/Umar\\_Israilov](http://en.wikipedia.org/wiki/Umar_Israilov) and the Human Rights Watch Q&A on the case: <http://www.hrw.org/news/2010/11/12/justice-vienna-and-chechnya>. A part of the Norwegian Helsinki Committee involvement with the case is briefly described in an article in one of the most influential Norwegian daily newspapers, Aftenposten, based on WikiLeaks documents: ‘Ble ikke beskyttet mot leiemordere’ [‘Was not protected against assassins’], <http://www.aftenposten.no/nyheter/uriks/wikileaks/Ble-ikke-beskyttet--mot-leiemordere-5355768.html>

<sup>19</sup> Information on the legislative process and the text of the law is available on:

<https://www.govtrack.us/congress/bills/112/hr6156>

<sup>20</sup> The published part of the list contains, as of 1 August 2015, 34 names. For more information about US sanction programs against individuals, see: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> For an updated version of the Magnitsky list, use search options on the website: <https://sdnsearch.ofac.treas.gov> and select the program ‘MAGNIT’.

<sup>21</sup> The Norwegian Helsinki Committee received this clarification in an e-mail from the US State Department on 25 March 2013.

<sup>22</sup> Relevant committees include the Committee on Armed Services, the Committee on Financial Services, the Committee on Foreign Affairs, the Committee on Homeland Security and the Committee on the Judiciary in the House of Representatives. In the Senate, the following committees are included: the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary.

<sup>23</sup> Federal law of Russian Federation no. 272-FZ of 2012-12-28 ‘On Sanctions for Individuals Violating Fundamental Human Rights and Freedoms of the Citizens of the Russian Federation’, <http://eng.kremlin.ru/acts/4810>

<sup>24</sup> For an overview, see: <http://russian-untouchables.com/eng/parliaments/>

<sup>25</sup> [http://Magnitskijbook.com/?page\\_id=107](http://Magnitskijbook.com/?page_id=107)

<sup>26</sup> <http://Magnitskijbook.com/wp-content/uploads/pdfs/Gitmark.pdf>

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<sup>27</sup> <http://Magnitskijbook.com/wp-content/uploads/pdfs/Ekelove-Slydal.pdf>

<sup>28</sup> <http://www.the-american-interest.com/2013/09/16/the-power-of-the-magnitsky-act/>

<sup>29</sup> The draft US Global Magnitsky Human Rights Accountability Act included, in addition to persons involved in gross violations of human rights, “a government official, or a senior associate of such an official, that is responsible for, or complicit in, ordering, controlling, or otherwise directing, acts of significant corruption, including the expropriation of private or public assets for personal gain, corruption related to government contracts or the extraction of natural resources, bribery, or the facilitation or transfer of the proceeds of corruption to foreign jurisdictions.”

<https://www.congress.gov/113/bills/s1933/BILLS-113s1933rs.pdf> (Sec.3 (a)).

<sup>30</sup> <http://etikkradet.no/en/>

<sup>31</sup> Council on Ethics for the Government Pension Fund Global Guidelines § 3 (1). The Guidelines are available at:

<http://etikkradet.no/mandat/>

<sup>32</sup> Cf. the Parliament’s Research Services Section, ‘Sanctions - visa denial and freezing of bank accounts’, 18 November 2014. The report reproduces inter alia an account of the rules on visa denial made by the Ministry of Justice and a guide on freezing of bank accounts made by the Financial Supervisory Authority of Norway (2013).

<sup>33</sup> Cf. guide for the drafting of action plans and report for the execution of judgments of the European Court of Human rights, available at:

[http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Tables\\_rondes/CONF\\_Bruxelles\\_mars\\_2015/Guide%20for%20the%20drafting%20of%20action%20plans%20and%20reports\\_06.07.2015\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Tables_rondes/CONF_Bruxelles_mars_2015/Guide%20for%20the%20drafting%20of%20action%20plans%20and%20reports_06.07.2015_EN.pdf)

<sup>34</sup> Both Magnitsky himself, his wife, and his mother, have applied to the European Court of Human Rights, claiming that Article 2 (right to life), Article 3 (prohibition of torture), Article 5 § 1 and 5 § 3 (right to liberty and security), and Article 6 (right to a fair trial) of the European Convention on Human Rights have been violated in his case. On 28 November 2014, the Court communicated a set of questions to be answered by Russian authorities in the case. A document stating the facts in the case as well as the Court’s question is available:

<http://hudoc.echr.coe.int/eng#%7B%22documentcollectionid%22:%5B%22COMMUNICATEDCASES%22%22%22itemid%22:%5B%222001-149050%22%22%7D>

<sup>35</sup> The letter is available (in Norwegian only):

[https://www.regjeringen.no/globalassets/upload/ud/vedlegg/menneskerettigheter/brev\\_Magnitskij.pdf](https://www.regjeringen.no/globalassets/upload/ud/vedlegg/menneskerettigheter/brev_Magnitskij.pdf) The letter is signed by Karin Ståhl Woldseth (Progress Party), Peter S. Gitmark (Conservative Party), Hans Olav Syvertsen (Christian Democrat) and Trine Skei Grande (Liberal Party). The quotations from this and other letters referred to in this section have been translated by the Norwegian Helsinki Committee.

<sup>36</sup> The letter is available (in Norwegian only):

<http://www.nhc.no/filestore/Dokumenter/Land/Russland/2013/ResponsefromNorwayFM8May2013.pdf>

<sup>37</sup> The comment is available:

[http://www.nhc.no/no/nyheter/Should+contribute+to+European+Magnitskij+legislation.b7C\\_wlfU29.ips](http://www.nhc.no/no/nyheter/Should+contribute+to+European+Magnitskij+legislation.b7C_wlfU29.ips)

<sup>38</sup> The questions and answers are available (in Norwegian only): <https://www.stortinget.no/no/Saker-og-publikasjoner/Sporsmal/Skriftlige-sporsmal-og-svar/Skriftlig-sporsmal/?qid=59317>

<sup>39</sup> The letter has not been published. The Norwegian Helsinki Committee gained access to it by filing a request by email to [offentlig-journal@stortinget.no](mailto:offentlig-journal@stortinget.no), referring to letter no. 2015/328 Dok. 6.

<sup>40</sup> This is the Resolution’s point 18. The resolution is available: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20409&lang=en>

<sup>41</sup> Bill Browder, *op.cit.*, page 318.