Norwegian
Helsinki Committee

Policy Brief:

Establishing a European Magnitsky Commission[x]

Oslo 16 November 2021

This paper outlines a proposal to establish a non-governmental European Magnitsky Commission (EMC), constituted by 5-7 respected and renowned persons with high integrity and pertinent competence in international human rights and international criminal law. The Commission should be supported by a secretariat of legal experts and persons with strong competence in human rights and international criminal law fact-work.

Even though the EMC will be a non-governmental body, it should seek recognition and support from democratic states that have enacted or are in the process of enacting Magnitsky legislation. In particular, it should seek endorsement and support from the European Parliament to ensure that the EU Council takes notice of its submissions and recommendations.

The EMC may have three main goals, namely to:

1. Submit particularly important cases of gross violations of international human rights, core international crimes or significant corruption (within the mandates of the different legislations) for Magnitsky sanctions by the EU and countries with Magnitsky legislation.[1]
2. Promote criteria based Magnitsky legislation and policies, coordination among states that list persons for Magnitsky sanctions, harmonisation of legislations to include

[x] The Policy Brief was drafted by Gunnar M. Ekeløve-Slydal, Deputy Secretary General, Norwegian Helsinki Commission.

[1] At this time, in addition to the EU, the following countries have enacted versions of Magnitsky legislation: Canada, Estonia, Gibraltar, Jersey, Kosovo, Latvia, Lithuania, Norway, the United Kingdom, and the United States. Movement for Magnitsky legislation has taken place in a number of parliaments, including in Australia, Japan, Moldova, and Ukraine.

both human rights violations and significant corruption and monitor enforcement of sanctions.

3. Educate the public about the specificities of Magnitsky conduct (*i.e.,* crimes that fall under the scope of Magnitsky laws) and why democratic states need to fight impunity for such conduct by targeted sanctions.

In the following, the main ideas of this proposal will be presented. The purpose of the paper is to create interest and support for *the idea of setting up the EMC, and in developing Magnitsky sanctions further into a coordinated and powerful tool to deter and address human rights violations and significant corruption in line with international law and help restore support for democratic principles*. [2]

As such, there may be aspects of the proposal that will be changed due to valuable input during discussions of its main tenets. This proposal is intended as a starting point for finding the best ways to establish and mandate the proposed commission or other measures to advance application of Magnitsky sanctions.

The Norwegian Helsinki Committee (NHC) has been co-operating with the global Magnitsky movement, led by American-British financier Bill Browder, during the last 10 years. It is convinced that the introduction of Magnitsky sanctions by the US, the EU, and numerous other democratic states represents important progress in fighting impunity for gross violations of human rights and significant corruption, as well as restoring respect for the dignity and rights of fellow human beings wherever they are living. Magnitsky sanctions may deter human rights and corruption crimes and ensure that democratic countries avoid enabling such crimes by providing safe havens for criminals, their families, and their ill-gotten gains.

An important aspect, often neglected in discussions about sanctions as a tool to further human rights, is that they can contribute to strengthening the impact of the human rights work of international organizations such as the UN, the Council of Europe, and other

[2] Cf. Geoffrey Robertson, *Bad People and How to Be Rid of Them. A Plan B for Human Rights*, Biteback Publishing, 2021 (page 9), "Newspaper columns are full of Cassandra voices predicting the demise of liberal democracy, but insofar as a fightback is necessary, the defence of human rights is a good place to start". Cf. also European Parliament resolution of 8 July 2021, "EU global human rights sanctions regime (EU Magnitsky Act)", which points to a range a measures needed to strengthen, broaden, and coordinate EU Magnitsky sanctions, in line with proposals presented in this document (https://bit.ly/371HHDA)

regional organizations with a human right and/or anti-corruption mandate. Such organizations often document human rights and corruption crimes that fall under the scope of Magnitsky laws ('Magnitsky conduct'). When proposing sanctions, the EMC may refer to such documentation and target those who were responsible for the documented crimes.[3]

The EMC may contribute to consensus on who should be targeted by Magnitsky sanctions and engage Parliaments, political parties and movements, professionals, as well as ordinary people in new ways to defend human rights where they are most disregarded.

It can foster an understanding that human rights belong to everyone and if they are trampled on, this should concern each one of us.

[3] For similar reflections, see Gunnar M. Ekeløve-Slydal, "Time for Europe to enact Magnitsky type legislation", in: Elena Servettaz (ed.), *Why Europe Needs a Magnitsky Law: Should the EU follow the US?* 2013, page 282 (https://bit.ly/3oSYP6x) and Norwegian Helsinki Committee, *Norway and other democratic states should establish global Magnitsky mechanisms*, Policy Paper 2-2015, pages 11-13. (https://bit.ly/3vnN8Y8)

Vocabulary

The proposal rests on a set of key concepts, which include the name 'Magnitsky'. The name refers to Sergei Magnitsky (1972-2009), a Russian tax-law expert who acted as a lawyer and consultant on tax related issues. He worked for Hermitage Capital Management, an investment firm owned by British-American businessman Bill Browder, and "uncovered a massive fraud committed by Russian government officials that involved the theft of US $230 million of state taxes. Mr Magnitsky testified against the officials involved and was subsequently arrested by them, imprisoned, systematically tortured and killed in Russian police custody on November 16, 2009… the Russian authorities covered up his murder, exonerated all the officials involved … [and] put Sergei Magnitsky on trial three years after they killed him".[4]

Due to Browder's successful campaigning, the name 'Magnitsky' has come to denote both certain types of human rights and financial crimes ('Magnitsky conduct') as well as remedies to address impunity for such crimes ('Magnitsky sanctions') by first the US and then by a range of other countries and the EU.

The remedies in question, 'Magnitsky sanctions', are targeted restrictive measures that "differ from older sanction regimes in that they are expressly created to sanction individuals who are responsible for human right abuses and serious corruption within their own countries."[5] These sanctions take the form of *travel bans* that restrict a sanctioned person from entering a country, the *freezing or seizure of financial assets* held by that person within a sanctioning country, as well as other measures that exclude the person from benefitting from financial services and business within the sanctioning state.[6]

'Magnitsky legislation' may be defined as legislation or regulation that enables jurisdictions to impose such sanctions towards an individual or a legal entity that is responsible for human rights abuses and/or significant corruption.[7] As of today, in some countries

[4] Quoted from The Parliament of the Commonwealth of Australia, Joint Standing Committee on Foreign Affairs, Defence, and Trade, *Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement?* Canberra, December 2020, page 4 (https://bit.ly/3aUcuEu).
[5] *Op. Cit*., page 36. Not all countries nor the EU include the name 'Magnitsky' in the title of the legislation. The main point here is to single out a new type of legislation, which applies targeted sanction to address impunity for gross violations of human rights and/or significant corruption.
[6] *Ibid.*
[7] *Op. Cit*., page 3

Magnitsky legislation only enables imposing travel/entry ban *or* asset freeze.[8] The most recent examples of Magnitsky legislation, in the EU and in Norway, however, include a range of restrictive measures, as does the Parliamentary proposal for Magnitsky legislation in Australia. This may become the norm for future legislation.

The Norwegian sanction law enables the government to impose restrictive measures – as part of cooperative efforts with like-minded states or international organizations – to maintain peace and security or ensure respect for democracy and the rule of law, human rights, or international law in general. Its measures even include an open-ended provision, which might include future developments in the field (paragraph e)). The template of restrictions include:[9]

> a) Prohibition of or restrictions on trade, services and economic or financial transactions.
>
> b) Prohibition or restrictions on scientific, technological, and cultural cooperation.
>
> c) Financial sanctions against natural or legal persons.
>
> d) Travel restrictions.
>
> e) Other measures aimed at maintaining peace and security or ensuring respect for democracy and the rule of law, human rights, or international law in general.

The 7 December 2020 EU Magnitsky regulation enables the EU to target "individuals, entities and bodies – including state and non-state actors – responsible for, involved in or associated with serious human rights violations and abuses worldwide, no matter where they occurred".[10] The sanctions include travel bans (applying to individuals) and freezing of funds

[8] Magnitsky legislation in Estonia, Latvia and Lithuania only provides for entry ban. For an overview of legislation as of 30 October 2018, see Committee on Human Rights and Legal Affairs of the Parliamentary Assembly of the Council of Europe (PACE), "Sergei Magnitsky and beyond – fighting impunity by targeted sanctions", pages 13-14 (https://bit.ly/3nMEpM7). US and Canadian legislation provide for both travel/entry ban and asset freeze. While earlier UK legislation only provided for "the confiscation (civil recovery) of illegal assets held by human rights abusers" (ibid.), the 2020 *Global Human Rights Sanctions Regulations* includes both entry ban, asset freeze and making funds or resources available for a designated person. (https://bit.ly/3vJhmo0) For explanations, see: https://bit.ly/3tkDqnt). For an overview of Magnitsky legislations, see also Wikipedia, "Magnitsky legislation" (https://bit.ly/3eUmxea) and Robertson, *Op. Cit*., Chapter 5 (pages 104-135).

[9] Norway's sanction law came into effect on 16 April 2021. It authorizes the Government to decide that Norway becomes part of wider international efforts to sanction individuals or entities for violations of human rights and some other conduct that violates international law. (https://bit.ly/3gRHr09)

[10] European Commission, «Commission publishes guidance on key provisions of EU Global Human Rights Sanctions Regime", Brussels, 18 December 2020. (https://bit.ly/2Rs55p4)

(applying to both individuals and entities). In addition, EU persons and entities are prohibited from making funds available to those listed.[11]

While there seems to be a trend in recent Magnitsky legislations to include as restrictive measures both entry ban, asset freeze, and prohibition of economic or financial dealings with listed persons, a similar trend does not exist to expand the definition of 'Magnitsky conduct'*, i.e*., conduct that fulfil criteria to be sanctioned by Magnitsky sanctions.[12] Both the EU and Norway's legislation fail specifically to include 'significant corruption", while older legislation in the US (2016) and Canada (2017) include both qualified violations of human rights and corruption as grounds for being sanctioned.[13]

There are also differences when it comes to *qualifying* human rights violations to be included, like the application of the term 'gross violations of internationally recognized human rights' in the 2016 US Magnitsky legislation.[14] The EU Magnitsky legislation includes genocide, crimes against humanity and other 'serious human rights violations or abuses'. Torture, slavery and enforced disappearances are covered, as well as trafficking in human beings and abuses of free speech, the rights of religion and of peaceful assembly if they are widespread, systematic or "otherwise of serious concern as regards the objectives of the EU common foreign and security policy".[15]

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[11] Ibid. See also Council Regulation (EU) 2020/1998 and Council Implementing Regulation (EU) 2021/478 of 22 March 2021 implementing Regulation (EU) 2020/1998. (https://bit.ly/3b54wsp)

[12] The Parliament of the Commonwealth of Australia, *Op. Cit*., page xxi (Recommendation 6). See also Geoffrey Robertson*, A Bill for an Act to provide for the taking of restrictive measures against foreign persons complicit in grave human rights abuses or in serious corruption*, Section 9, in: *Op. Cit*., Appendix D, page. 7. Importantly, and in line with the original US definition, Robertson include "harm or threats of harm (whether physical, financial or other harm, including to family, friends or business associates) to persons that attempt to or expose Magnitsky conduct, or who obtain, exercise, defend or promote internationally recognised human rights and fundamental freedoms." Cf. 2012 US Sergei Magnitsky Rule of Law Accountability Act, Sec. 404(a)(2). (https://bit.ly/2RmnRPc)

[13] For an overview, see the Parliament of the Commonwealth of Australia, *Op. Cit*., pages 46-48. The generalized phrases included in the Norwegian law – "to maintain peace and security or ensure respect for democracy and the rule of law, human rights, or international law in general" – may be interpreted to include corruption or elements of corruption (violations of rule of law, international law in general). Professor Anne Peters has presented strong arguments that corruption can be framed as "a potential human rights violation" and possible be seen as a "human rights violation that can be invoked in an individual complaint procedure". In any case, "the human rights perspective can usefully complement the criminal law approach to corruption and thereby contribute to the fulfilment of the development goals of Agenda 2030." Anne Peters, "Corruption as a violation of International Human Rights", European Journal of International Law (2018), Vol. 29 No. 4., 1251-1287. (https://bit.ly/3p8za9Y)

[14] 2016 Global Magnitsky Human Rights Accountability Act, Sec. 3(a)1. (https://bit.ly/2RsBLix)

[15] European Commission, *Op. Cit*.

While denoting large-scale corruption as 'Magnitsky corruption' would be possible, the author of this paper is not aware of any example of such language. We therefore stick to the commonly used term of 'significant', 'serious' or 'grand' corruption. A few words will be sufficient to explain what it comprises.

While 'corruption' is not defined in the 2003 UN Convention against Corruption nor in any other international treaty, a few national laws include definitions.[16] The 2016 US Global Magnitsky Human Rights Accountability Act, sec. 1263(a)(3) provides sanctions for "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".[17]

The 2005 Norwegian Penal Code, Section 387, provides a definition in line with international usage.[18] According to the law, corruption comprises demanding, receiving or accepting "an offer of an improper advantage in connection with the conduct of a position, an office or performance of an assignment" or giving or offering "any person an improper advantage in connection with the conduct of a position, an office or performance of an assignment."[19]

According to section 388, 'aggravated' corruption includes acts which: a) "was carried out by or toward a public official or any other person by violating the special trust attached to his position, office or assignment", b) "resulted or could have resulted in a considerable financial advantage"; c) carried "a risk of considerable harm of a financial or other nature" and/or d) "false accounting information was recorded or false accounting documentation or false annual accounts were prepared".

'Significant', 'serious' or 'grand' corruption are terms that may apply to such aggravated cases, and where there is an element of "abuse of high-level power that benefits the few at the expense of the many". According to Transparency International, "through grand corruption, vast amounts of public money are systematically siphoned off to the accounts of

[16] The text of the UN Convention against Torture is available at the website of the UN (https://bit.ly/3fVQFHP). The Convention has 187 State Parties (https://bit.ly/3igHMKu).
[17] US Global Magnitsky Human Rights Accountability Act, sec. 1263(a)(3). (https://bit.ly/2TORvxp)
[18] Transparency International (TI) defines corruption as "the abuse of entrusted power for personal gain". (https://bit.ly/3ioRCdg)
[19] An English translation of the 2005 Norwegian Penal Code is available on the website lovdata.no. (https://bit.ly/3fYdVVH)

a few powerful individuals, at the expense of citizens who should actually benefit. Financial institutions and other enablers assist those involved in laundering the proceeds."[20]

There are a few concepts used in relation to implementation of Magnitsky legislation, including 'Magnitsky lists', which refers to official lists of persons and/or entities that have been designated for Magnitsky sanctions.[21]

In this paper, we refer to 'Magnitsky Commissions', which denote any independent governmental, Parliamentary, or non-governmental body, which may submit individuals or entities for Magnitsky sanctions, promote policies, and inform or educate the public.

The term 'European Magnitsky Commission' used in this paper, refers to a proposed Commission based in Europe, with an aim to influence implementation of EU Magnitsky legislation, as well as to promote greater consistency among different jurisdictions concerning Magnitsky legislation and listing.

Finally, there is a developing phenomenon of non-governmental actors forming coalitions or networks of cooperation to share experience and competence in documenting Magnitsky conduct and submitting cases to relevant jurisdictions. Such coalitions may be referred to as 'Magnitsky coalitions'.

The American organization *Human Rights First* plays an instrumental role in educating human rights organizations on how to document Magnitsky conduct and present cases for US Magnitsky sanctions.[22]

Similar initiatives are underway to strengthen input from human rights organizations to the EU concerning Magnitsky sanctions. This will be more complicated than in the US, since cases must be presented to EU Member States or to the EU High Representative of Foreign Affairs and Security Policy. Only Member States and the High Representative can propose cases directly to the European Council, which takes the final decision by unanimous vote whether to approve designated individuals for sanctions.

[20] Transparency International, "Grand Corruption", available at its website. (https://bit.ly/3gtq3gv)
[21] In some cases, individual names or entities are withheld from the official Magnitsky list due to security or other state interest concerns.
[22] For more information, see Human Rights First, «Targeted Human Rights and Anti-Corruption Sanctions (Global Magnitsky)". (https://bit.ly/3ekBw23)

First EMC goal: promoting high quality case selection

The lack of a mechanism for submission of cases at the EU level is one of the motivations for this proposal. However, the proposal has a wider purpose. The EMC should submit cases to and aim to influence not only the EU, but a wider group of states that has enacted Magnitsky legislation to coordinate listings and thereby make sanctions bite harder.

The above-described differences in existing Magnitsky legislation hinder developing the full potential of Magnitsky sanctions. There seems therefore to be a need for systematic and high-profile initiatives to promote harmonisation of legislation with an ultimate aim to ensure that the same persons are listed by different Magnitsky jurisdictions.

The proposal takes as a starting point, that even though the Magnitsky movement has come a remarkable long way in influencing democratic states to strengthen their toolbox to fight human rights and corruption crimes by sanctions, much remains to be done before the full Magnitsky potential is realised. Further progress depends on influencing more countries to enact Magnitsky legislation, in particular countries where corrupt and brutal persons invest, launder, or store their money. However, the quality of case selection and coordination among states when listing human rights and corrupt criminals are also of crucial importance.

In the words of Australian-British human rights lawyer, Geoffrey Robertson:

> The potential for targeted sanctions to deter abuses of human rights has yet to be realised. Nonetheless, the germ of an idea born from the torture and death of an everyman in a Moscow prison in 2009 has spread far enough to show that, if fully implemented by democratic Parliaments, it may provide a means of repudiating people whose wealth has been accumulated by cruelty and greed. As well as punishing and deterring such behaviour, they constitute a public assertion by 'parliamentary peoples' of the fundamental values to which they subscribe. What the early experiments with Magnitsky laws show is that the idea, extrapolated from the original Russian context, can be effective when embodied in national laws grounded upon precedents adopted from international human rights law. These national laws should now be coordinated for greater effect, and care taken to ensure that they are not exploited by governments as convenient instruments of foreign policy.[23]

[23] Geoffrey Robertson, *Op. Cit*., page 136.

This is why one of the primary tasks of the proposed EMC should be to submit *particularly important cases* of gross violations of human rights, core international crimes or significant corruption (if mandated) for Magnitsky sanctions by the EU, the US, and other countries with Magnitsky legislation.

Criteria that may be applied to single out such cases may include:

1. The Magnitsky conduct to be sanctioned includes particularly serious abuses, such as torture, 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, and politically motivated rape.
2. The violations are part of a wider pattern of abuses.
3. Significant corruption in a case is linked with such human rights violations.
4. There exist indications that Magnitsky sanctions may have beneficial consequences for victims by making the violations known to a wider public and preventing further violations.
5. Sanctions will be effective in that they represent considerable costs for those sanctioned.
6. The cases are well-documented, either by the EMC or in reports by the UN, the Council of Europe, the OSCE or other reputable organisations, including non-governmental human rights organizations.
7. The human rights violations are facilitated, ordered, or performed by professional judges, physicians, police, or others who have a professional duty to uphold human dignity and respect human rights.

Over time, it is important to ensure that case selection is not skewed by avoiding sanctioning persons or entities from countries with a friendly relationship to the EU or other sanctioning states. Case selection should be governed by a goal to ensure that Magnitsky sanctions address very serious human rights violations and corruption which otherwise go unpunished; not by a goal to advance narrow political interests.

Second EMC goal: making criteria and coordination work

If successful in submitting cases – based on solid facts and sound criteria in ways that could be approved by any informed and unbiased observer – the EMC will already be on a good track to fulfil its second proposed purpose: to influence the EU and Magnitsky sanctioning states to apply a criteria-based approach to case selection and to develop policies and mechanisms to coordinate their listings.

There are several aspects to this aim. Firstly, there is a danger of politicization to be guarded against. Magnitsky sanctions should not be used as "a tool … of propagandist support for the government's foreign policy – for example, US government hostility to the Maduro regime in Venezuela or the Sandinista rule in Nicaragua."[24] Individuals and entities should be listed based on clear human rights or corruption grounds. While the burden of proof need not to be as high as in criminal cases ("beyond reasonable doubt"), guilt must be "more likely than not".[25]

Secondly, there should be an accessible avenue for listed persons to challenge the reasons for being listed, *i.a.* to demonstrate that criteria are not met by facts in their cases. The Norwegian sanction act is strong on this aspect, providing both an administrative right of appeal as well as judicial review of legal actions challenging the validity of listings. According to the Norwegian government, "this is to safeguard the right of targeted persons to an effective remedy under Article 13 of the European Convention on Human Rights. Under this special provision it will be possible to appoint a special advocate, as is the case under the Nationality Act and the Immigration Act, to ensure that both sides can be heard while also addressing the need for secrecy in connection with information of importance to national security or relations with a foreign state."[26]

Thirdly, the EMC should advocate for expanding legislations to include significant corruption wherever it is not. Harmonisation of legislation is a prerequisite for reaching the goal of

[24] Robertson, *Op. Cit*., page 140.
[25] "In respect of Maduro and his intelligence chiefs, that proof eventually emerged in a UN Human Rights Council fact-finding report, an example of the kind of credible evidence on which sanctioning decisions should be based." *Ibid*.
[26] «Government proposes new sanctions act», 18 December 2020 (published on the website of the Norwegian government). (https://bit.ly/34ClieE) See also the Parliamentary Assembly of the Council of Europe (PACE), "Sergei Magnitsky and beyond – fighting impunity by targeted sanctions", Resolution 2252, 22 January 2019, Section 13. (https://bit.ly/3gdj3UT)

harmonised Magnitsky lists, which may be one of the most effective ways to strengthen the effects of Magnitsky sanctions. There exist compelling arguments that significant corruption should be included, such as the strong linkage between significant corruption and serious human rights violations in numerous cases. Authoritarianism, corruption, and human rights violations go hand in hand in many of the countries where Magnitsky conduct is most prevalent.[27]

Even if oligarchs and corrupt businessmen often are involved in human rights violations, sometimes they are not. However, corruption per se has pervasive and lasting negative effects on societies, undermining rule of law, equal access to public services, etc., and can be perceived as a human rights violation per se. Proceeds from corruption are often laundered by being invested in Western countries, further undermining the fairness and stability of the international financial system.

Those who benefit from or enable corruption – like family members of the culprits, their business partners or law enforcement who look the other way – may also often not be directly involved in human rights violations. They still form a large part of the problem, which is *kleptocratic and corrupt practices that hinder democratic developments, including by attacking whistle-blowers, journalists, and human rights defenders to silence them*.

To address this entanglement of corrupt practices, undermining of democracy and human rights abuses effectively, corruption per se should be part of the definition of Magnitsky conduct.[28]

There are several other connected issues, which the EMC should address, such as how states can rely on each other's evidence, share intelligence, and cooperate in other ways to make its Magnitsky policies and listings as effective as possible.

[27] For an overview of views, see Anne Peters, *Op. Cit*. See also, Dunja Mijatović, Council of Europe Commissioner for Human Rights, "Corruption undermines human rights and the rule of law", Strasbourg, 19 January 2021. (https://bit.ly/2S1i3L9)

[28] For presentation of this and similar arguments, see: "The European Magnitsky Act must sanction corruption: Online discussion organized by MEP Petras Auštrevičius, MEP Raphaël Glucksmann, and MEP Radosław Sikorski, Thursday 27 May 202.1 (https://bit.ly/2TwgSE7)

Third EMC goal: popularising Magnitsky

Much human rights work today is of technical, legal expert nature. There exist so-called international human rights machineries in the UN and other international organizations, receiving state reports, alternative reports from civil society organizations, or individual complaints. There are experts on all sides of the tables in these proceedings. Expert non-governmental organizations play important roles in documenting abuses and advocating for measures to prevent and address them.

Human rights specialised lawyers bring human rights cases both to international bodies and national courts. The International Criminal Court (ICC) and numerous other international or hybrid courts also bring hope of justice to affected communities and individuals.

Although the outcome of the judicial proceedings does not always satisfy victims or other stakeholders, the judicialization of human rights is mainly positive. It gives human rights teeth and may provide supportive decisions and compensation to victims. The Magnitsky movement may, however, bring back an element that risk being downplayed if human rights experts become too dominant: The importance of popular engagement in support of human rights for everyone.

Experience from human rights work indicates that if a substantial part of the population supports human rights for everyone – not only for one or more sub-groups – this makes a huge difference. Human rights may then become part of the common culture of society, creating inclusive spaces and opportunities for individuals irrespective of their ethnic, cultural, gender, or sexual identity. It may be argued that no society has succeeded in fully achieving this. However, States that score high on political freedoms, equal rights, and rule of law also tend to have active civil societies and citizens who promote an inclusive and non-discriminatory agenda. Human rights are important in courtrooms, but they should also thrive on the streets, in schools, in sports, in public administration, as well as in private businesses.

The core idea of the Magnitsky movement – that states should address human rights and corruption crimes taking place in another state by denying entry and freezing assets of those who commit such crimes with impunity – plays well with the basic solidarity with victims of human rights violations, which is inherent in popular human rights cultures. There may be

many expert tasks related to Magnitsky legislation, policies, and practices, but the appeal of Magnitsky sanctions is easy to understand for everyone who are engaged in strengthening human rights and democracy. They are put in place to defend the rights of everyone, regardless of where a person lives and her or his identity.

This may also be the reason for the success of the Magnitsky campaign led by Browder primarily in national Parliaments and international Parliamentary Assemblies. Browder often commented that it was hard to convince governments, while members of parliaments were often willing to listen to the story about Sergei Magnitsky and why addressing the crimes committed against him mattered. Parliamentarians were receptive to the idea of Magnitsky sanctions, and the way they mobilise solidarity for victims. They also acknowledged the need of increasing the costs of attacking those who speak up against abuses (whistle-blowers, human rights defenders, journalists, lawyers, etc.) and others who suffered from injustices.

The EMC should prioritize explaining Magnitsky listings in as plain words as possible, making efforts to reach large parts of the population both in the sanctioning state, in the state of the listed person, and internationally. In this way, it will also contribute to explaining in concrete terms why respect for human rights is important both on the societal level as well as for individuals, how much suffering comes from violations of human rights, and why authoritarian states produce much more such suffering than democracies.

It is already a noticeable phenomenon that news about Magnitsky sanctions against named individuals makes major headlines in a number of states, including the state of the sanctioned person. News reports explain why an individual has been subject to sanctions and citizens thereby become aware of the type of behaviour that the sanctions protect against and the values at stake.[29]

In helping to unleash the full potential of Magnitsky sanctions in the ways described above, the EMC may also become an important pro-democracy actor. It may challenge Parliamentarians to form their own national Magnitsky Commissions and in this way anchorage Magnitsky policies in the popular will.

[29] See for example, Deutche Welle, "How Sergei Magnitsky became a symbol of international sanctions - not only against Russia", 16 November 2019. (https://bit.ly/3v3g1I3) and Kloop, “USA added Rayimbek Matraimov to the sanctions list of Magnitsky”, 9 December 2020. (https://bit.ly/3pwetoG)

Next steps

The proposal of establishing a European Magnitsky Commission builds on ideas presented well ahead of EU's adoption of global targeted human rights sanctions. In November 2018, the European Stability Initiative (ESI), the Norwegian Helsinki Committee (NHC) and three Dutch MPs, Pieter Omtzigt, Martijn van Helvert, and Sjoerd Sjoerdsmaalso, proposed establishing a European Human Rights Entry Ban Commission.[30] The main idea was to create a Commission that could apply EU regulations already in place to propose named human rights violators to be subject to EU wide entry bans. The name of persons and the reasons for banning them should be widely publicised to make it hard for any EU member state to obstruct putting the bans in place.

The December 2020 EU regulations on Magnitsky sanctions, recent practice of applying those regulations, as well as new or proposed legislation in several democratic states have created new opportunities. This proposal seeks to profit from them and further strengthen Magnitsky policies and practices.

To develop the proposal further, NHC intends to invite important stakeholders to discuss its main ideas. Consultations and meetings with interested stakeholders will be organized during the autumn of 2021 to develop the proposal further.

We hope that together with the global Magnitsky campaign led by Bill Browder, think tanks, European politicians, and interested human rights organizations we can build support for establishing the EMC and attract states and private foundations to support it.

An important part of the preparatory work will be to draft lists of candidates to be members of the EMC, to decide on procedures for their appointment, as well as drafting the EMC founding documents, and decide on where to register the EMC. If the initial proposal receives support, a task force may be established to take care of the preparatory work.

The EMC will not replace or substitute any existing Magnitsky initiative. It is instead intended to add more weight, competence, and garner more support for efforts of harmonising and

[30] Norwegian Helsinki Committee, "Governments should create a European Human Rights Entry Ban Commission", 20 November 2018. A presentation of the proposal is available at the website of the Norwegian Helsinki Committee (https://bit.ly/3wOZGI3), while the full proposal is available at the website of ESI (https://bit.ly/3yM2KXz).

strengthening the way democratic states sanction those who commit extremely brutal and consequential crimes with impunity.

With a well-functioning European Magnitsky Commission in place, we believe that the chances of realizing the full potential of Magnitsky sanctions will substantially increase.