

# SVENSKA DAGBLADET

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Bill Browder. Foto: Tomas Oneborg

## Interview with Bill Browder about the need for a Global Magnitsky Act

In November 2009, 37-year-old Russian tax lawyer Sergei Magnitsky was jailed and brutally killed after exposing a massive tax fraud scheme committed against his employer, the British investment company Hermitage Capital Management, by Russian authorities and the Russian mob. **Susanne Berger** and **Björn Tunbäck** interview businessman William Browder about his tireless campaign to bring Magnitsky's murderers to justice and his hope that a global expansion of the so-called Magnitsky Act will provide human rights advocates with important new tools in their fight to hold human right violators accountable.

**Edit. note:** In 2015, **Mats Johansson**, Director of the *Stockholm Free World Forum* and founder of the popular political blog *Säkerhetsrådet* (*Security Council, Svenska Dagbladet*) invited the international businessman Bill Browder to Sweden to address Members of Parliament and to seek endorsement for a Swedish Magnitsky Act. Johansson was to renew his call for a global extension of the law at an international conference in Stockholm on 14. September (*The Raoul Wallenberg International Roundtable*). However, Johansson died suddenly at his home this past June. The [interview](#) with Bill Browder was originally published in *Svenska Dagbladet* and is dedicated to his memory.

Since the publication of this article, the Canadian Parliament, in a rare unanimous vote, passed a Global Magnitsky Act, joining the U.S., the U.K. and Estonia as countries that have adopted similar legislation.

**Q: We are wondering if you could explain to us how exactly the mechanism of the Magnitsky List works: Who nominates the entries on the list and who decides whose name is added to the list? What are the fundamental criteria for this decision?**

**A:** The President/U.S. State Department come up with lists of people to be sanctioned, working closely with the U.S. Treasury Department, especially OFAC's [Office of Foreign Assets Control] lawyers and 'targeters.' In doing so, they consider information provided by relevant Congressional committees responsible for international human rights, such as the U.S. Helsinki Commission, as well as other countries and international non-governmental organizations, including those in Russia, which monitor human rights abuses of the Russian government. All names on the list must be supported by comprehensive evidence linking them to the act that they are being nominated for, and this evidence must be strong enough to potentially stand up in court. Experts at the State Department vet each nominated person, with help from lawyers at the Department of Justice. Once the names have passed through this vigorous vetting process, the State Department submits the list of names for the Treasury Department to enact.

The fundamental criteria is the level of their involvement in Sergei's case – his detention, abuse, death, and the subsequent cover-up, including the \$230 million fraud and the criminal conspiracy connected to it, and the level of evidence which demonstrates this involvement. It is also open to people who benefited financially from those crimes, as well as other Russian human rights abusers – again, as long as there is concrete evidence to support the allegations.

**Q: The official proceedings for filing a human rights complaint via international entities, such as the African Union's Commission on Human and People's Rights, or the U.N. Human Rights Commission in Geneva, take months and often years to conclude. How long does this nomination process for the Magnitsky List take, on average, from proposal of names to inclusion on the list?**

**A:** It depends – when names were initially nominated for inclusion after the Magnitsky Act was passed, it was only a few months before some of those names were included on the first Magnitsky list, issued in April 2013. Others have taken much longer. The strength of the evidence against them is a factor. The process was intended to be open-ended, so there is no schedule by which more names must be added.

However, at the end of the year the State Department and the Treasury have to produce a report to Congress, laying out who was added to (or removed from) the list that year, and if no one was added, why that is the case.

The process can be expedited by a provision in the Act which states that the President/State Department has 120 days to respond to a request from a ranking member of an appropriate Congressional Committee as to whether someone will be added to the list or not. This “Congressional trigger,” was used in May 2014, where Senators Robert Menendez, Bob Corker, John McCain and Ben Carden compelled the administration to make a final decision on whether or not to sanction Dmitry Klyuev [a Russian ex-convict who masterminded the tax fraud scheme against Hermitage Capital, uncovered by Sergei Magnitsky] and Alexander Bastrykin [Russia's former First Deputy Prosecutor General and current Chairman of the Investigative Committee of the Russian Federation, the country's main investigation authority], resulting in both Klyuev and Bastrykin being sanctioned.

**Q: How exactly does the enforcement of this list work, i.e. who imposes visa or travel bans? Who decides when to take other steps, including the freezing of foreign assets of persons on the list?**

**A:** The U.S. Secretary of State imposes the travel bans, whereas OFAC is responsible for freezing the assets in the United States. If someone is on the Magnitsky list, they will be subject to both the visa bans and asset freezes (if they have assets in the U.S. to freeze).

**Q: Can individuals who are included on the list protest the decision? If so, how does this appeal or review process function? Do some people stay on the list indefinitely?**

**A:** People on the list can appeal the decision, but they'd have to show that the evidence against them was wrong, and provide enough evidence in their favor to warrant their removal from the list. They go through such a thorough vetting before being included on the list that this is highly unlikely. However, there is a provision in the Act which allows for removal from the list if someone can show that there is credible information which demonstrates that they did not commit the acts for which they are on the list; if they have already been prosecuted for these acts; or if they can demonstrate that they have sufficiently changed their behavior, paid appropriate consequences for the acts they committed, and are credibly committed to not engaging in the types of activities outlined in the Act.

**Q: What have been the effects of the Magnitsky Act in the U.S. How many persons have been included on the list so far? Have any of them have been formally sanctioned, i.e. have visa and travel bans been enacted or enforced? Have any personal assets been frozen?**

**A:** So far there are 44 people on the list, 35 of who were directly involved in Sergei's case. They are all formally sanctioned by OFAC and they cannot get U.S. visas. As far as we are aware, they haven't had U.S. assets frozen because they had no U.S. assets to begin with.

However, their ability to use their money is significantly impeded – if you are on an OFAC sanctions list, no reputable bank anywhere in the world will open an account for you. So even though they may not have financial assets frozen in the states, they will still be facing financial consequences as a result of their inclusion on the Magnitsky List.

There have been assets frozen in the U.S. connected to Magnitsky, but this is separate from the Magnitsky list. In 2013 the government used civil forfeiture proceedings to freeze \$14 million of Manhattan property assets belonging to Denis Katsyv, a Russian businessman and shareholder in Cyprus based Prevezon Holdings Ltd., because the money used to purchase those assets was traced by the US authorities back to the \$230 million stolen from the Russian government.

[*ed.*: In May 2017, Prevezon settled the case, incurring a \$5.9 million fine imposed by the U.S. Department of Justice. Katsyv's lawyer in the case was Natalia Veselnitskaya who met with members of then-candidate Donald J. Trump's presidential campaign in the summer of 2016, including Donald Trump Jr.; a meeting that has now led the U.S. Special Prosecutor - who was appointed earlier this year to examine possible collusion between the Trump campaign and Russian officials - to look closely at these contacts.]

**Q: What have been the real life consequences of the Magnitsky Act for the individuals who were implicated in Mr. Magnitsky's death?**

**A:** The consequences for the people involved who are already on the Magnitsky list are clear – they can no longer travel to the States, and because they are on an OFAC sanctions list, they can't open bank accounts with any reputable bank in most places around the world. These people committed this heinous crime for money, and restricting their ability to move or use this money has been extremely debilitating for them. They also won't pass a Know-Your-Customer check, meaning that they aren't able to do business with most reputable companies.

**Q: Why do you feel the enforcement of the Magnitsky Act will be more effective than, for example, enforcement of sanctions imposed by the U.N. and the European Union?**

**A:** Magnitsky sanctions are so effective because they punish the select few who are responsible for corruption and human rights abuses, while sparing the ordinary citizens who often are the victims of these crimes. Ironically, wide sweeping sanctions against a country, such as trade sanctions, adversely affect the economy of the country and therefore often end up punishing the less affluent people who had nothing to do with the crimes that were committed. The corrupt government officials committing human rights abuses have enough ill-gotten wealth that they don't necessarily feel the consequences of these broad sanctions. However, personal sanctions, which target people's wallets, are directly felt by those responsible for human rights abuse and corruption, and therefore they are much more effective, both as a punishment and a deterrent.

**Q: President Putin and the Russian government have reacted very strongly to U.S. sanctions and especially to the Magnitsky Legislation. One indication is the just mentioned alleged attempt last summer by the Kremlin to lobby the Presidential Campaign of Donald Trump to help repeal the Magnitsky Act. Even more serious, it appears that earlier this year, Vladimir Kara-Murza, a leading opponent of President Putin, suffered a second attempt on his life in the past two years, mainly because he has been an outspoken proponent of the Magnitsky Act. Why do you think this particular legislation has hit such a nerve with the Russian leadership?**

**A:** I think it has hit such a nerve because it is so effective, and it threatens to dismantle Putin's entire criminal network. Because corruption is so endemic in Russia, no one with money in Russia actually keeps it there. They send it to Western banks, just as they like to travel to the West and send their kids to school in the West. Being on the Magnitsky list essentially prevents them from doing this – and this is a life altering consequence. Furthermore, by limiting the ability of these people to move their money, the legislation is putting holes in the entire money laundering network that all of these people – from low level government officials to Putin himself – rely on to move around and store their ill-gotten gains.

The excessive Russian government reaction to the Magnitsky list is evidence of how the legislation creates a real problem for these people. We've also seen that it is an effective deterrent to future human rights abusers. For example, we heard that in Russian prisons, prison officers were far more reluctant to carry out orders which could be considered human rights abuse, for fear of being included on the Magnitsky list.

**Q: What makes you so optimistic that the provisions of a global Magnitsky Act will be truly effective? What happens, for example, when, as in the case of Eritrea, leading government figures and even heads of states are the ones actively committing human rights violations? Do you think countries like the U.S. will be willing to include them on the Magnitsky List?**

**A:** I am optimistic that a Global Magnitsky Act will be truly effective for the exact same reasons that the U.S. Magnitsky Act has been and continues to be effective. Targeted, individual sanctions are the new technology for fighting human rights abuse – they are like the new cancer drugs which attack only the cancer, rather than the entire body. It's like having an iPad, when all we had before was the typewriter.

Whether heads of states will be added to the list is a decision that countries will have to make. Whereas this could be tricky for acting heads of state, I don't see why former heads of states who have committed human rights abuses will be exempt.

**Q: Are you worried about possible exemptions being granted, or rather too many exemptions being granted to certain individuals? One example would be persons included on the E.U. sanctions list, like the current Director of the Russian Foreign Intelligence Service (SVR) and former Chairman of the Russian Duma, Sergei Naryshkin, who regularly traveled to Paris and**

**New York where he enjoyed immunity while attending meetings held by international organizations like UNESCO or the U.N..**

**A:** There is always a risk that legislation such as this can be neutralized by exemptions for those most complicit in the crimes. However, even with exemptions such as the ones that you mention, these individuals are still facing some sort of consequence, even if it is limited for foreign policy reasons. A limited consequence is far better than no consequence at all.

**Q: You are clearly counting on a cumulative effect of a global Magnitsky Act. Do you think that it will discourage people from human rights abuses and protect human rights defenders? If so, how?**

**A:** Yes, for the same reasons as the U.S. Magnitsky Act is so effective. When people are threatened with a tangible consequence which affects them directly, they are far more likely to change their behavior. This could be a minor change – maybe someone won't come into work on a day that they know they will be ordered to carry out an act which could constitute human rights abuse, or just plainly refuse to carry out an order. But even these small actions at a grassroots level will continue to reverberate and have an impact further up the command chain. Furthermore, in most situations, people are involved in corruption or human rights abuses for their own financial gain. The cumulative effect of a Global Magnitsky Act will essentially paralyze these people financially, removing the incentive for committing the crimes in the first place.

**Q: You have described in a number of interviews how, at first, U.S. lawmakers were not exactly eager to enact the proposed Magnitsky legislation. The U.S. government has generally not been supportive of any mechanism that implies potential consequences for its own citizens, i.e. the International Criminal Court. What arguments changed their minds?**

**A:** The original Magnitsky Act was met with opposition from the Obama administration because they were attempting to “reset” relations with Putin at the time. As part of this reset, they wanted to repeal the Jackson-Vanik Act in order to renormalize trade relations with Russia. The Jackson-Vanik Act restricted trade with Russia because of the country's poor human rights record, and by the time they wanted to repeal it, the human rights situation in Russia had hardly improved.

So the timing was perfect for implementing a Magnitsky Act in its place, which allowed the U.S. to renormalize trade relations with Russia, while still holding them account for corruption and human rights abuse. I believe this was one of the main reasons that the Act was passed in 2012.

Since that time, however, the political atmosphere has changed significantly. People are starting to realize that it is not possible to “reset” relations with Putin, and that the corruption and human rights abuses endemic in Russia have the potential to impact other countries on their own soil – take the poisoning of Alexander Litvinenko in the UK, for example.

Action needs to be taken, and countries are starting to realize that individual, targeted sanctions are an effective way to create consequences for individuals who commit human rights abuses, without punishing the innocent citizens of their nation.

**Q: Which other countries have you approached to enact a global Magnitsky Act? Have you had any discussions with Swedish government or parliamentary officials?**

**A:** At the moment, the U.S., Estonia and the U.K. [and Canada, eds] all have their own versions of a Global Magnitsky Act. The European Parliament passed a recommendation in 2014, listing 32 individuals to be sanctioned. 59 members of the Swedish Parliament signed a petition to have Magnitsky sanctions passed in February 2012, but our progress in Sweden since then has been limited.

Europe tends to be far more difficult, because there is so much Russian money and interest in Europe. Governments in Europe are more fearful of Putin and hesitant to do anything which would damage relations with Russia. Whether they would be more amenable to global legislation, rather than Russia specific legislation, remains to be seen.

**Q: We briefly discussed the problem of possible conflicts between "politics" and "the law", when it comes to obtaining justice and accountability for human rights abuses. In 2015, the Swedish Prosecutor-General refused to open a formal investigation against Eritrean government officials, even though he said there was evidence and reasons enough to investigate Crimes against Humanity in the case of Dawit Isaak. After consulting with the Swedish Foreign Ministry, however, the Prosecutor-General concluded that the negotiations to free Dawit Isaak would possibly become more difficult if he were to open a formal criminal investigation. How does the Magnitsky Act sidestep these kind of hurdles and limitations of efforts to bring human rights violators to justice?**

**A:** In terms of situations such as that faced by Sweden with regards to Dawit Isaak, it is always going to be complicated when a country essentially has someone hostage. However, Magnitsky legislation can accommodate these kinds of situations because the President can submit names in a classified annex, if it is for national security reasons and/or can be appropriately justified to the relevant Congressional Committees.

The beauty of Magnitsky legislation is that the punishment is only carried out on home soil. However as I've discussed, this can have a global effect, especially financially.

**Q: Do you see any problems with many different countries creating and administrating their own, individual 'Magnitsky Lists?' What happens if one country lists a person, but another does not? Do you envision some type of coordinating mechanism between countries who enact a global Magnitsky legislation?**

**A:** I don't see any problem with countries creating their own lists – because each list only applies to visas and assets within that particular country. The ramifications of inclusion on a

Magnitsky list tend to be global anyway – banks all over the world will be reluctant to open an account for someone who is sanctioned by a particular country – so it doesn't particularly matter in one country lists a person, but not another. That being said, I can definitely envision a situation, similar to Mutual Legal Assistance requests, where countries that have enacted Magnitsky legislation cooperate and share evidence about individuals to be included on their lists.

**Q: You were in the fortunate position to be able to move your business operations out of Russia, when you ended up in the crosshairs of the Russian government. What do you advise companies and individuals today who cannot afford to simply abandon their investments and sever current Russian business ties or who consider investing in the country?**

**A:** It is a very difficult situation when you are a businessperson who is running a business in a lawless regime. I'm asked over and over by people with investments in Russia what they should do. My advice is always to divest. The situation in Russia is so extreme that no amount of money justifies staying there. People can be arrested, tortured and killed for money and that is a calculation that no businessperson should have to contemplate.

**Q: Looking back - Sergei Magnitsky's death was definitely a watershed moment for you, a true wake-up call. How has his death changed you and your ideas about human rights, including doing business in autocratic countries like Russia and China?**

**A:** The murder of Sergei Magnitsky transformed my life from a hedge fund manager to a human rights activist. I now devote all my time to fighting for justice. For me, fighting for justice is infinitely more satisfying than fighting for money. I don't begrudge people in business, but for me, this life choice makes sense.

To the extent that I'm investing my own money, I now completely avoid lawless countries and only focus on places where the courts work, property rights are respected and the press is free. Life is too short to deal with the vagaries of countries where none of that is certain.

For more information about Sergei Magnitsky, the Magnitsky Act and the work of Bill Browder

[www.billbrowder.com](http://www.billbrowder.com)

<https://www.treasury.gov/resource-center/sanctions/Programs/pages/magnitsky.aspx>