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# The Magnitsky saga and the deterioration of the rule of law in Russia

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With growing support from both the European Union and its member states for the adoption of the Magnitsky Law,<sup>1</sup> it is the appropriate time to reflect upon the meaning of the Magnitsky case and the general deterioration of the rule of law in Russia.

Sergei Magnitsky, a legal icon in the crusade against corruption in Russia, was arrested and jailed in 2008. He was charged with tax evasion after uncovering a web of corruption that allegedly involved Russian tax officials and police officers. After being tortured and deprived of medical

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The Sergei Magnitsky Rule of Law Accountability Act of 2012, 22 U.S.C. § 5811, was approved by the US Congress in November–December 2012 and was signed into law by President Barack Obama on 14 December 2012, see <[http://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112\\_208.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112_208.pdf)> at 1502-1509. This law introduces targeted sanctions - freezing of assets and travel bans - on Russian officials deemed to have committed “gross violations of human rights” and, in particular, those Russian officials suspected of being responsible for the prison death of the lawyer Sergei Magnitsky in 2009. On 12 April 2012, the Magnitsky Sanctions Listings was published by the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury, see <<http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130412.aspx>> accessed 19 April 2013. For proposals to adopt “Magnitsky Bills” gaining momentum at the European level see <<http://russian-untouchables.com/eng/parliaments/>> accessed 5 April 2013.

treatment, he died of pancreatitis in a Moscow detention centre. He was 37 years old. Magnitsky has since been put on trial posthumously in Russia.<sup>2</sup> This posthumous criminal prosecution is not only unprecedented in Russian legal history, but also in the world. The grounds for its legality are not only dubious, but represent a striking and dramatic violation of human rights and also exemplify the progressive erosion of the rule of law in Russia.<sup>3</sup> Moreover, posthumous trials are banned under international law insofar as they infringe upon the right to a defence and to a fair trial, as enshrined in, inter alia, Article 14 of the International Covenant on Civil and Political Rights<sup>4</sup> and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>5</sup>

Russia immoderately describes itself as a democratic country upholding the rule of law. Despite reports of grave human rights abuses and repressive legislative moves against fundamental rights, the Russian government rhetorically continues to emphasise its commitment to adhere to the rule of law.

In his message to the Russian Federal Assembly in December 2012, President Putin claimed that, “Russia has no other political choice than democracy,” and that, “though Russia shares universal democratic principles, the Russian democracy is the power of the Russian people”.<sup>6</sup> President Putin further claimed that: “[A]ny attempts of the state to control people’s beliefs and views are signs of totalitarianism and we say ‘no’ to this. Bans and restrictions is [sic] not our method”.<sup>7</sup> As early as April 2013,<sup>8</sup> President Putin reiterated the Kremlin’s commitment to democracy.

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2 “Q&A: The Magnitsky Affair,” (19 March 2013) <<http://www.bbc.co.uk/news/world-europe-20626960>> accessed 5 April 2013.

3 Institute for Modern Russia, “Sergei Magnitsky Will Be Convicted Posthumously,” (4 April 2013), <<http://imrussia.org/en/rule-of-law/428-sergey-magnitsky-will-be-convicted-posthumously>> accessed 23 April 2013. Amnesty International, “Kafkaesque trial denies justice even after death,” (24 January 2013) <[www.amnesty.org/en/for-media/press-releases/kafkaesque-trial-denies-justice-even-after-death-2013-01-24](http://www.amnesty.org/en/for-media/press-releases/kafkaesque-trial-denies-justice-even-after-death-2013-01-24)> accessed 23 April 2013.

4 International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

5 The European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, E.T.S. No. 5 [hereinafter ECHR].

6 The Voice of Russia, “Democracy is Russia’s only choice—Putin,” (12 December 2012), <[http://english.ruvr.ru/2012\\_12\\_12/Democracy-is-Russia-s-only-choice-Putin/](http://english.ruvr.ru/2012_12_12/Democracy-is-Russia-s-only-choice-Putin/)> accessed 10 April 2013.

7 The Voice of Russia, “Putin: Russia, world to deal with global upheavals,” (12 December 2012), <[http://english.ruvr.ru/2012\\_12\\_12/Putin-Russia-world-to-deal-with-global-upheavals/](http://english.ruvr.ru/2012_12_12/Putin-Russia-world-to-deal-with-global-upheavals/)> accessed 10 April 2013.

8 “Putin: Russia committed to democracy,” (5 April 2013), <[http://www.upi.com/Top\\_News/World-News/2013/04/05/Putin-Russia-committed-to-democracy/UPI-70781365197215/](http://www.upi.com/Top_News/World-News/2013/04/05/Putin-Russia-committed-to-democracy/UPI-70781365197215/)> accessed 10 April 2013. “It is obvious that we have made a decisive choice for democracy and we cannot imagine any other way of development,” President Putin said to the German ARD channel, see “Russia made decisive choice for democracy—Putin,” (5 April 2013), <[http://english.ruvr.ru/2013\\_04\\_05/Russia-made-decisive-choice-for-democracy-Putin/](http://english.ruvr.ru/2013_04_05/Russia-made-decisive-choice-for-democracy-Putin/)> accessed 5 April 2013.

Russian Prime Minister Dmitry Medvedev characterises Russia as a “young democracy” and claims that: “Russia shares with Europe approaches for development of the political system - protection of human rights and freedom, protection of constitutional freedoms”.<sup>9</sup>

The Russian Foreign Ministry’s Special Representative for Human Rights, Democracy and the Rule of Law Konstantin Dolgov, said in an official statement in December 2012 that: “[T]he Russian Federation pays utmost attention to the promotion of human rights. Fundamental human rights norms and standards are guaranteed by the Constitution of our country. Russia is a party to basic international agreements and conventions on human rights.”<sup>10</sup>

These statements might be viewed as aspirational goals and be seen as representing Russia as a state ruled by the law - containing a sufficiently adequate institutional framework. However, it would be remarkably naïve to think that this constitutes a democratic, rule of law state. The failure of the government to uphold an array of fundamental legal principles signifies a very different picture, where Russia falls dramatically short of embracing a system based on the rule of law.

Although the post-Soviet Constitution, which entered into force in 1993, “contains formal components of the rule of law concept,”<sup>11</sup> the Russian state’s dramatic failure to recognise, observe and protect the supreme rights and freedom of its citizens<sup>12</sup> shows Russia’s systematic disrespect for the rule of law.

Russia represents an “illiberal democracy”, a term first coined by Fareed Zakaria<sup>13</sup> to highlight the tendency of democratically elected governments

9 “Russia’s democracy still very young - Dmitry Medvedev,” (21 March 2013), <[http://indian.ruvr.ru/2013\\_03\\_21/Russias-democracy-Medvedev/](http://indian.ruvr.ru/2013_03_21/Russias-democracy-Medvedev/)> accessed 10 April 2013.

10 Statement by Konstantin Dolgov, Russian Foreign Ministry’s Special Representative for Human Rights, Democracy and the Rule of Law, at PACE International Conference “Human Rights and Foreign Policy,” (Turin, 13 December 2012), <[http://www.mid.ru/bdomp/brp\\_4.nsf/c78a48070f128a7b43256999005bcb3/9c5be98ca1c5c9bc44257ad700245952/OpenDocument](http://www.mid.ru/bdomp/brp_4.nsf/c78a48070f128a7b43256999005bcb3/9c5be98ca1c5c9bc44257ad700245952/OpenDocument)> accessed 10 April 2013.

11 “The [Russian] Constitution contains formal components of the rule of law concept: primacy of the law and hierarchy of norms, direct applicability of the Constitution, separation of powers, equality in law, judicial review and judicial independence etc.,” “Pravovoe gosudarstvo: the Rule of Law in Russia,” <<http://wikis.fu-berlin.de/display/SBprojectrol/Russia>>, accessed 12 April 2013. See also “Pravovoe gosudarstvo: the Rule of Law in Russia,” <http://wikis.fu-berlin.de/display/SBprojectrol/Russia>, accessed 9 April 2013.

12 In particular, Article 2 of the Russian Constitution stipulates that: “Man, his rights and freedoms are the supreme value. The recognition, observance and protection of the rights and freedoms of man and citizen shall be the obligation of the State.”

13 Fareed Zakaria, *The Rise of Illiberal Democracy*, 76 *Foreign Aff.* 22 (1997).

to centralise their powers and encroach “on the powers and rights of other elements in society”.<sup>14</sup> This centralisation illustrates the tension between democracy - a political system predicated upon free and fair election - and constitutional liberalism, which “refers to the tradition, deep in Western history, that seeks to protect an individual’s autonomy and dignity against coercion, whatever the source - state, church, or society”.<sup>15</sup> In this context, “illiberal democracy” is a concept opposed to “liberal democracy - a political system marked not only by free and fair elections, but also by the rule of law, a separation of powers, and the protection of basic liberties of speech, assembly, religion, and property”.<sup>16</sup>

The reason that the Russian system fails to embrace a more robust interpretation of the rule of law is that the Russian government is wedded to a formal definition of the rule of law.<sup>17</sup> However, for the rule of law to have any meaning, it must contain a substantive element that comprehends protection of fundamental human rights and adherence to international law.<sup>18</sup> From this perspective, these fundamental rights, from which derogation is never permissible, constitute an essential component of the rule of law. States that fail to protect non-derogable rights, even when provided with sets of rules and institutions, cannot be said to adhere the rule of law. For me, freedom of thought, conscience and religion, the right to non-discrimination, the right to a fair trial, the right not to be tortured or treated in an inhuman or degrading way and the right not to be punished disproportionately are just a few of the rights that should be regarded as fundamental to the rule of law.<sup>19</sup>

Over the past years, Russia has been marked by an authoritarian political climate. Although Russia bears international obligations related to human rights, in accordance with its international commitments<sup>20</sup> and as a member of the Council of Europe,<sup>21</sup> fundamental human rights have been severely and

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14 *Id.*, at 30.

15 “It is liberal because it draws on the philosophical strain, beginning with the Greeks, that emphasises individual liberty. It is constitutional because it rests on the tradition, beginning with the Romans, of the rule of law,” *id.*, at 26.

16 *Id.*, at 22.

17 Formal definitions of the rule of law emphasise the importance of the superiority and predictability of law and the separation of power, see Friedrich A. Hayek, “The Origins of the Rule of Law,” in *The Constitution Of Liberty* 162, 165–66 (1960).

18 See previous, Mark Ellis, *Toward a Common Ground Definition of the Rule of Law Incorporating Substantive Principle of Justice*, 72 *U. Pitt. L. Rev.* 191 (2010–2011), at 9.

19 *Id.*, at 14–17.

20 University of Minnesota, Human Rights Library, “Ratification of International Human Rights Treaties - The Russian Federation,” <<http://www1.umn.edu/humanrts/research/ratification-russia.html>> accessed 10 April 2013.

21 Russian Federation became a member of the Council of Europe on 28 February 1996, <<http://hub.coe.int/country/russian-federation>> accessed 10 April 2013.

systematically breached and curbed.

The conviction of the girls from Pussy Riot, Nadezhda Tolokonnikova, Maria Alyokhina, and Yekaterina Samutsevich,<sup>22</sup> on charges of “hate-motivated hooliganism” – for a performance denouncing the close connection between the Russian Orthodox Church and President Putin – and their disproportionate sentencing to two years in jail<sup>23</sup> in March 2012, is only one instance among many of Russia’s widespread disrespect for freedom of expression.

The “Internet Censorship” law was adopted in November 2012. The law purportedly focuses on websites related to drugs, suicide and child pornography. However, the vagueness of the law, coupled with the unfettered power of Russian authorities to block in the absence of a court order – any kind of allegedly illegal website, render it open to political manipulation and broader internet censorship.<sup>24</sup>

Another legislative offensive against the freedom of expression is the re-criminalisation of libel. After its de-criminalisation under the Presidency of Dmitry Medvedev in 2011<sup>25</sup>, defamation was re-criminalised by a bill signed into law by President Putin in July 2012.<sup>26</sup> Although it does not provide for prison terms, the law does provide harsh fines and forced correctional labour

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22 Members of the group Pussy Riot, a Russian feminist punk-rock collective based in Moscow. See, Human Rights Watch, “Russia: Band Members’ Conviction a Blow to Free Expression,” (17 August 2012) <<http://www.hrw.org/news/2012/08/17/russia-band-members-conviction-blow-free-expression>> accessed 5 April 2013. Note that on 10 October 2012, a Moscow court released on probation Yekaterina Samutsevich, see “Pussy Riot member released on probation, sentence upheld for 2 others,” (10 October 2012), <<http://rt.com/news/russy-riot-verdict-release-099/>> accessed 23 April 2013. On 26 April 2013, Nadezhda Tolokonnikova’s parole appeal was rejected by a district court in Mordovia, see “Member of Russia feminist rock group denied parole,” (27 April 2013), <<http://jurist.org/paperchase/2013/04/member-of-russia-feminist-rock-group-denied-parole.php>> accessed 29 April 2013.

23 Nadezhda Tolokonnikova is serving her sentence at a prison colony in Mordovia, see The Guardian, “Jailed Pussy Riot member Nadezhda Tolokonnikova to continue activism,” (8 April 2013) <<http://www.guardian.co.uk/music/2013/apr/08/jailed-pussy-riot-nadya-tolokonnikova>> accessed 23 April 2013. Maria Alyokhina is serving her sentence at a penal colony in the Perm region town of Berezniki, see The St. Petersburg Times, “Pussy Riot Rocker Faces Prison Transfer,” (4 April 2013), <<http://www.sptimes.ru/story/37157>> accessed 23 April 2013.

24 The Economist, “If you can’t suppress them, squeeze them,” (21 July 2012), <<http://www.economist.com/node/21559362>> accessed 8 April 2013.

25 Organization for Security and Co-operation in Europe, “OSCE media representative welcomes Russia’s landmark legislation to decriminalise defamation and protect safety of journalists,” (17 November 2011), <<http://www.osce.org/fom/85154>> accessed 23 April 2013.

26 Human Rights Watch, “Russia: Criminal Libel Law a Blow to Free Expression,” (16 July 2012), <<http://www.hrw.org/news/2012/07/16/russia-criminal-libel-law-blow-free-expression>> accessed 8 April 2013. The International Bar Association observes that civil law would be more appropriate to regulate defamation, being that criminal law is generally concerned with acts that “have an impact on society as a whole, whereas civil law is primarily concerned with disputes between private parties,” see International Bar Association, “Prosperity versus Individual Rights? Human Rights, Democracy and the Rule of Law in Singapore,” (July 2008), at 26 <[http://www.int-bar.org/images/downloads/07\\_2008\\_July\\_Report\\_Singapore-Prosperity\\_versus\\_individual\\_rights.pdf](http://www.int-bar.org/images/downloads/07_2008_July_Report_Singapore-Prosperity_versus_individual_rights.pdf)> accessed on 11 April 2013.

for a period of up to 12 weeks.<sup>27</sup> Not surprisingly, Reporters Without Borders ranked Russia 148 out of 179 countries in their Press Freedom Index for 2013.<sup>28</sup>

Repressive laws on individuals and civil society have also been adopted. Twenty years after the Soviet-era's anti-gay law was abrogated,<sup>29</sup> the Russian government is now pressing for reviving an anti-gay law. For me, the right to non-discrimination on the ground of sexual orientation, although not included in Article 2 of the International Covenant on Civil and Political Rights (ICCPR),<sup>30</sup> comes within the purview of that norm and is central to human rights.<sup>31</sup> Russian legislators' backing for the adoption of an anti-gay propaganda law outlawing the "promotion" of homosexuality among minors and making it an offence under Russia's Code of Administrative Law Violations,<sup>32</sup> shows once again Russia's disrespect for fundamental human rights that are part of the fabric of the rule of law.

Furthermore, the November 2012 "Foreign Agents" law represents a dramatic restriction on freedom of association. The law equates foreign-funded NGOs with "foreign agents", which to Russian parlance clearly has a negative connotation.<sup>33</sup> The law requires all foreign-funded NGOs that conduct political activities to register as "foreign agents" with the Ministry of Justice,<sup>34</sup> "to submit detailed reports about their planned activities and to mark any publications they distribute as being created by a 'foreign agent.'"<sup>35</sup>

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27 "The original bill, which was not passed by the legislature in that form, had provided for a five-year term of imprisonment," see "Russian Federation: Defamation is Criminalised Again," (20 August 2012), <[http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205403291\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403291_text)> accessed 30 April 2013.

28 Reporters Without Borders, "World Press Freedom Index 2013," (2013), at 23 <[http://fr.rsf.org/IMG/pdf/classement\\_2013\\_gb-bd.pdf](http://fr.rsf.org/IMG/pdf/classement_2013_gb-bd.pdf)> accessed 10 April 2013.

29 Homosexuality was de-penalised in 1993 after the end of the Stalinist era, see "Russia backs law banning homosexual 'propaganda,'" (21 February 2013), <<http://www.abc.net.au/news/2013-01-26/russia-backs-law-banning-homosexual-propaganda/4485354>> accessed 8 April 2013.

30 See supra footnote 4.

31 This can be inferred from the case *Dudgeon v. United Kingdom*, App. No. 7525/76, EUR. CT. H.R. (1981), <<http://www.unhcr.org/refworld/docid/47fdaf7d.html>>. See previous, Mark Ellis, *Toward a Common Ground Definition of the Rule of Law Incorporating Substantive Principle of Justice*, 72 U. Pitt. L. Rev. 191 (2010-2011), at 15 and 16.

32 Human Rights Watch, "Russia: Reject Homophobic Bill," (10 December 2012), <<http://www.hrw.org/news/2012/12/10/russia-reject-homophobic-bill>> accessed 8 April 2013. On 25 January 2013, the Duma, Russia's lower house of parliament, adopted the first reading of the bill. After facing two more readings in the State Duma and being approved by the upper house (Federation Council), President V. Putin will sign the bill into law, see "Russian MPs back 'gay propaganda' ban amid scuffles," (25 January 2013), <<http://www.bbc.co.uk/news/world-europe-21194710>> accessed 8 April 2013.

33 Human Rights Watch, "Russia: Reject Proposed Changes to Rules on Foreign-Funded NGOs," (13 July 2012), <<http://www.hrw.org/news/2012/07/13/russia-reject-proposed-changes-rules-foreign-funded-ngos>> accessed 8 April 2013.

34 The International Center for Not-for-Profit Law, "NCO Law Monitor: Russia," (20 February 2013), <<http://www.icnl.org/research/monitor/russia.html>> accessed 8 April 2013.

35 Article 19, "Russia: Dangerous new measures on 'foreign agents' come into force controlling political and human rights work," (21 November 2012), <<http://www.unhcr.org/refworld/country,ART19,,RUS,,50af82f12,0.html>> accessed 8 April 2012.

It also authorises “unannounced” inspections of NGOs.<sup>36</sup> Noncompliance with the law can result in fines, suspension or prison.<sup>37</sup>

In June 2012, the Russian Duma adopted, and President Putin signed into law, Federal Law No. 65-FZ (8 June 2012)<sup>38</sup> amending both the Code of Administrative Offences and the 2004 “Law on Assemblies, Meetings, Demonstrations, Marches and Picketing”.<sup>39</sup> Following the implementation of this new draconian bill, the homes of opposition activists and bloggers have been inspected.<sup>40</sup>

Finally, ill-treatment by the police, arbitrary arrests and detention are common practices in Russia.<sup>41</sup> For example, in January 2013, the Council of Europe accused Russian law enforcement officials of unlawful detention and utilising electric shocks, asphyxiation, other ill-treatments and tortures on prisoners in the North Caucasian region.<sup>42</sup>

The above draconian legislative enactments are supported by the equally scathing showing of Russia in the majority of international measurements of the rule of law. The year 2012 has been called the year in which “the Kremlin

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36 Amnesty International, “Russia: latest ‘foreign agents’ crackdown on human rights NGOs condemned,” (22 March 2013), <[http://www.amnesty.org.uk/news\\_details.asp?NewsID=20692](http://www.amnesty.org.uk/news_details.asp?NewsID=20692)> accessed 8 April 2013. “[...] inspections have included visits to more than 200 Russian groups, as well as foreign organisations, including Amnesty International, Transparency International, and several German political foundations. The office of Human Rights Watch was inspected on March 27,” Human Rights Watch, “Russia: Merkel, Rutte Should Press Putin on Rights,” (4 April 2013), <<http://www.hrw.org/news/2013/04/03/russia-merkel-rutte-should-press-putin-rights>> accessed 10 April 2013.

37 Article 19, “Russia: Dangerous new measures on ‘foreign agents’ come into force controlling political and human rights work,” (21 November 2012), <<http://www.unhcr.org/refworld/country,,ART19,,RUS,,50af82f12,0.html>> accessed 8 April 2013. By way of example, see the closure of the office in Moscow of the United States Agency for International Development (USAID), “Russia expels USAID development agency,” (19 September 2012), <<http://www.bbc.co.uk/news/world-europe-19644897>> accessed 23 April 2013.

38 For the text of Federal Law No. 65-FZ of 8 June 2012, see <<http://www.venice.coe.int/WebForms/documents/?pdf=CDL-REF%282012%29028-e>> accessed 23 April 2013.

39 Human Rights Watch, “Russia: Reject Restrictions on Peaceful Assembly,” (8 June 2012), <<http://www.hrw.org/news/2012/06/08/russia-reject-restrictions-peaceful-assembly>> accessed on 8 April 2013.

40 Article 19, “Russia: Politically motivated searches follow new law restricting freedom of assembly,” (11 June 2012), <<http://www.article19.org/resources.php/resource/3325/en/russia:-politically-motivated-searches-follow-new-law-restricting-freedom-of-assembly>> accessed 8 April 2013.

41 See the recent case of Margarita Charykova, 25, deprived of medical treatment whilst in pre-trial detention and released on 5 April 2013 in severe health conditions, Human Rights Watch, “Russia: Woman in Dire Health Is Freed,” (5 April 2013), <<http://www.hrw.org/news/2013/04/05/russia-woman-dire-health-freed>> accessed 9 April 2013. Also, Human Rights Watch, “Russia: Police Beat, Detained Protesters,” (13 March 2013) <<http://www.hrw.org/news/2012/03/13/russia-police-beat-detained-protesters>> accessed 9 April 2013.

42 Council of Europe: Committee for the Prevention of Torture, Report to the Russian government on the visit to the North Caucasian region of the Russian Federation carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 6 May 2011, 24 January 2013, CPT/Inf (2013) 1, <<http://www.unhcr.org/refworld/docid/510f7b552.html>> accessed 9 April 2013. See “Council of Europe alleges torture in Russia’s North Caucasus,” (24 January 2013), <<http://uk.reuters.com/article/2013/01/24/uk-russia-torture-idUKBRE90N16O20130124>> accessed 9 April 2013: “Its report was released after Russia for the first time authorised the publication of findings gathered by the council’s committee on torture on a 2011 trip to Chechnya, Dagestan and North Ossetia.”

unleashed the worst political crackdown in Russia's post-Soviet history".<sup>43</sup>

According to the World Justice Project (WJP) Rule of Law Index,<sup>44</sup> Russia's 2012 global ranking is 71 out of the 97 most corrupted countries<sup>45</sup>; 92 out of the 97 countries that fail to assure the security of persons and property; 83 out of the 97 countries that fail to protect fundamental rights<sup>46</sup>; 74 out of the 97 countries ranked as closed governments; 65 out of the 97 countries that lack an accessible, affordable, effective, impartial civil justice system; and 78 out of the 97 countries that lack an effective criminal justice system.<sup>47</sup>

The Corruption Perceptions Index (CPI) published by Transparency International - which ranks countries "based on how corrupt a country's public sector is perceived to be" - has ranked Russia<sup>48</sup> a miserable 133 out of 176.

The Freedom House<sup>49</sup> classifies Russia as a "consolidated authoritarian regime". By using a numeric scale of one to seven, with seven representing the lowest level of democratic progress, their assessment concluded that: Russia's democracy score in 2012 was 6.18,<sup>50</sup> for national democratic governance 6.50, for electoral process 6.75, for civil society 5.25, for independent media 6.25, for local democratic governance 6.00, and for judicial framework and independence 6.00. These dismal rankings are consistent with the Democracy

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43 Human Rights Watch, "Russia: Worst Crackdown Since Soviet Era," (31 January 2013), <<http://www.hrw.org/news/2013/01/31/russia-worst-crackdown-soviet-era>> accessed 15 April 2013.

44 The World Justice Project Rule of Law Index provides assessments and data of the extent to which countries abide by the rule of law in practice. See Mark David Agrast, Juan Carlos Botero, Joel Martinez, Alejandro Ponce and Christine S. Pratt, The World Justice Project Rule of Law Index, at 132, <[http://worldjusticeproject.org/sites/default/files/WJP\\_Index\\_Report\\_2012.pdf](http://worldjusticeproject.org/sites/default/files/WJP_Index_Report_2012.pdf)> accessed 9 April 2013. For the weakness of the methodology adopted in the Rule of Law Index—the equal weight given to each factor and subfactor incorporated into the Index—see, Mark Ellis, *Toward a Common Ground Definition of the Rule of Law Incorporating Substantive Principle of Justice*, 72 U. Pitt. L. Rev. 191 (2010-2011), at 8.

45 The "corruption" ranking is determined based on the following sub-factors: government officials in the executive branch do not use public office for private gain, government officials in the judicial branch do not use public office for private gain, government officials in the police and the military do not use public office for private gain, government officials in the legislative branch do not use public office for private gain, see <<http://worldjusticeproject.org/country/russia>> accessed 9 April 2013.

46 The "fundamental rights" score is assessed on the basis of the following indices: equal treatment and absence of discrimination, the right to life and security of the person is effectively guaranteed, due process of law and rights of the accused are effectively guaranteed, freedom of opinion and expression is effectively guaranteed, freedom of belief and religion is effectively guaranteed, freedom from arbitrary interference with privacy is effectively guaranteed, freedom of assembly and association is effectively guaranteed, fundamental labour rights are effectively guaranteed, see <<http://worldjusticeproject.org/country/russia>> accessed 9 April 2013.

47 See <<http://worldjusticeproject.org/country/russia>> accessed 9 April 2013.

48 See *Corruption by country*, <<http://www.transparency.org/country#RUS>>, accessed 9 April 2013.

49 In particular, Nations in Transit is a Freedom House's comprehensive, comparative analysis of the progress of democratic change in former Communist states of Europe and Eurasia, see <<http://www.freedomhouse.org/report/nations-transit/2012/russia>> accessed 9 April 2013.

50 "The Democracy Score is an average of ratings for the categories tracked in a given year," <<http://www.freedomhouse.org/report/nations-transit/2012/russia>> accessed 9 April 2013.



index 2011, a report from the Economist Intelligence Unit, that classifies Russia as an authoritarian regime.<sup>51</sup>

The European Court of Human Rights<sup>52</sup> has been overwhelmed with cases against the Russian state. As of January 2013, 21.1 percent of the cases (25,850 out of 122,450) pending before the Court were lodged against Russia.<sup>53</sup> In comparison with the number of claims that have been brought against members of the Council of Europe, this is a disproportionate percentage.<sup>54</sup> In 2012, the Court delivered 134 judgments concerning Russia, 122 of which found Russia in violation of at least one provision of the European Convention on Human Rights.<sup>55</sup>

Russia's alarming state of rule of law has also had practical repercussions on the International Bar Association's involvement with the St. Petersburg International Legal Forum.<sup>56</sup> Despite assurances that the IBA's panels could address human rights, the conveners of the Forum have made it clear that human rights will not be a subject matter for the Forum.

## Conclusion

The rule of law is an “empty concept” that requires a substantive element that protects fundamental human rights. Systems that are based on “free” elections, and that are characterised by separation of powers, do not always effectively protect human rights. This stems from the tendency of some democratically-elected governments to centralise their powers and restrict human rights.

51 “[...] in Russia a long process of regression culminated in a move from a hybrid to an authoritarian regime in light of the cynical decision by Vladimir Putin to return to the presidency and because of deeply flawed parliamentary elections,” Economist Intelligence Unit, “Democracy index 2011 Democracy under stress,” (2011), at 10 <[http://www.sida.se/Global/About%20Sida/S%C3%A5%20arbetar%20vi/EIU\\_Democracy\\_Index\\_Dec2011.pdf](http://www.sida.se/Global/About%20Sida/S%C3%A5%20arbetar%20vi/EIU_Democracy_Index_Dec2011.pdf)> accessed 10 April 2013.

52 Russia ratified the European Convention on Human Rights in 1998.

53 European Court of Human Rights, Pending Applications Allocated to a Judicial Formation, 31/01/2013, <[http://www.echr.coe.int/NR/rdonlyres/70EB5DB7-1491-4629-AA7C-8BA70A318037/0/Pendingapplications\\_affairespendantes31012013.pdf](http://www.echr.coe.int/NR/rdonlyres/70EB5DB7-1491-4629-AA7C-8BA70A318037/0/Pendingapplications_affairespendantes31012013.pdf)> accessed 10 April 2013.

54 Turkey follows Russia with a percentage of 13.6 % of the cases (16,600 out of 122,450).

55 Russia-Press Country Profile, (updated April 2013), at 1, <[http://www.echr.coe.int/NR/rdonlyres/7CF42EB0-0481-4ACD-9B49-1B92D396D126/0/PCP\\_Russia\\_en.pdf](http://www.echr.coe.int/NR/rdonlyres/7CF42EB0-0481-4ACD-9B49-1B92D396D126/0/PCP_Russia_en.pdf)> accessed 10 April 2013. By way of example, in 2012 117 judgments found Turkey in violation of at least one provision of the ECHR, 70 judgments found Romania in violation of at least one provision of the ECHR, 69 judgments found Ukraine in violation of at least one provision of the ECHR, 58 judgements found Bulgaria in violation of at least one provision of the ECHR, 36 judgments found Italy in violation of at least one provision of the ECHR, 19 judgments found France in violation of at least one provision of the ECHR, 10 judgments found the United Kingdom in violation of at least one provision of the ECHR, see Country Profiles <<http://www.echr.coe.int/ECHR/EN/Header/Press/Information+sheets/Country+profiles/>> accessed 23 April 2013.

56 The Forum was launched in 2011 by the Ministry of Justice and is supported by the President of the Russian Federation. The Forum has become an important “platform for dialogue between politicians, lawyers, economists, and scientists from all major economic and legal systems,” see <<http://www.spblegalforum.com/spilf2013/Satellite?c=Article&cid=1349301827336&mid=1349301827393&mmid=1349301827053&pagename=LF%2FArticle%2FAjArticleTpfContentPage>> accessed 15 April 2013.

Today's Russia is an illustration of how democracy does not always go hand in hand with human rights. Countries that may be formally defined as ruled by the law cannot necessarily be said to be based on the rule of law. Democracy only provides the **foundation** for the protection of human rights. However, the rule of law **requires** the protection of human rights. Unless substantive human rights principles are incorporated into the ethos of a country's legal system, the rule of law becomes an irrelevant and inconsequential concept. This is the lesson still to be learned by Russia.