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*The Membership of the Russian Federation in the Council
of Europe: A Case Study of Human Rights Backlash*

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“Without exaggeration, Russia is a country of legal nihilism...no other European country can boast
of such a level of disregard for law”

Dmitry Medvedev, “Krasnoyarsk speech”, February 15th, 2008.

Introduction

The aftermath of the Second World War witnessed an enthusiastic and unprecedented drive to establish international institutions and dispute-resolution bodies. This movement was fueled by a pervasive optimism that the dark era of war had finally ended and that the path to democratization was not only desirable but inevitable. In this spirit of hopeful renewal, the Council of Europe (CoE) was founded in 1949 with a resolute focus on upholding democracy, the rule of law, and human rights. Initially, the Council of Europe functioned as a multilateral institution predominantly for Western Europe. However, transformative events in the early 1990s, such as the collapse of the Soviet Union (USSR), paved the way for its expansion into Eastern Europe. In a historic move, the Russian Federation was invited to join the Council on February 28th, 1996. Yet, the initial optimism surrounding Russia's democratization journey gradually faded. Instead, growing concerns emerged about the erosion of liberal values, the resurgence of sovereignty-focused ideologies, and the rise of anti-democratic measures that sought to undermine human rights protection the Country.

This study aims to scrutinize the process of human rights backlash in the Russian Federation by closely examining its intricate membership in the Council of Europe. To set the stage, two key clarifications are essential. Firstly, the term "backlash" has been intentionally selected to vividly capture the notion of a sweeping repudiation of democratic values and human rights protection by the State. Secondly, Russia's engagement with the Council of Europe serves as a compelling case for this analysis, as it vividly illustrates the State's journey from an initial thrust towards internationalization post-Soviet Union dissolution to a stark rejection of the democratic standards supported by the Organization. To achieve this goal, the study is organized into four chapters, each focusing on a distinct aspect of Russia's journey within the Council of Europe. The first chapter is dedicated to exploring Russia's admission process to the Council. Beginning with an overview of the Organization, it scrutinizes the statutory provisions pertinent to admission. The chapter then delves into the peculiarities of Russia's admission journey, starting with the shift in Russia's stance following the fall of the USSR. This shift prompted its quest for membership and was accompanied by significant legal reforms introduced by the 1993 Constitution, which fundamentally redefined the relationship between international and national law in the Russian legal system. The chapter proceeds to evaluate the admission process through the reports of the Committees of the Parliamentary Assembly of the Council of Europe (PACE), assessing Russia's progress in aligning with the Council's standards. Conclusively, it provides a review of Russia's adherence to its initial membership commitments, offering a critical assessment of its compliance.

The second chapter delves into Russia's engagement with the European Convention on Human Rights (ECHR), the Council of Europe's principal human rights instrument, which the State ratified on May 5th, 1998. In particular, the chapter explores the major challenges that have compromised the efficacy of the European Court of Human Rights (ECtHR), the institution charged with enforcing the ECHR. Key among these challenges are the staggering caseload and the persistent failure to implement the Court's judgments, issues that Russia played a pivotal role in exacerbating due to its substantial number of applications. The chapter uncovers the underlying causes of Russians' applications, identifying rooted structural problems within Russia. It culminates with a critical evaluation of the Brighton Declaration, a significant reform initiative aimed at mitigating the Court's operational challenges and scrutinizes its specific impact on alleviating Russia's persistent difficulties.

The third chapter focuses on the relationship between the Russian Constitutional Court (RCC) and the European Court of Human Rights, tracing the RCC's journey from initial cooperation to blatant defiance of the ECtHR's authority. Special attention is given to three landmark cases that disrupted this relationship, *Markin v. Russia*, *Yukos v. Russia*, and *Anchugov and Gladkov v. Russia*, along with the subsequent legal measures taken by Russia to strengthen the RCC's authority vis-à-vis the Strasbourg Court. Notably, in December 2015, the Constitutional Court's law was amended to empower the RCC with the ability to assess the constitutionality of international decisions. The chapter then delves into the RCC's first exercises of this newfound power and the 2020 constitutional amendments that further reinforced this authority.

The final chapter offers an in-depth analysis of the process through which Russia's membership in the Council of Europe was terminated. After examining the statutory provisions related to the termination of membership, it meticulously outlines the steps leading to Russia's exit and its immediate financial and legal repercussions. Particular emphasis is placed on the state of human rights protection in Russia post-expulsion, with a specific focus on the issues of the death penalty and political pluralism. The chapter concludes by summarizing the lessons learned from Russia's complex 26-year membership in the Council of Europe, which may provide valuable insights for any future considerations of readmission.

Timeline

- May 7th, 1992: Russia applies to join the Council of Europe.
- December 25th, 1993: The Russian Constitution enters into force.
- December 11th, 1994: The first Chechen conflict outbreaks.
- February 2nd, 1995: PACE suspends Russia's admission process.
- September 27th, 1995: PACE resumes Russia's admission process.
- January 25th, 1995: PACE Opinion No. 193.
- February 28th, 1996: Russia is admitted to the Council of Europe.
- May 5th, 1998: Russia ratifies the European Convention on Human Rights.
- June 21st, 2001: ECtHR's judgment in the *Burdov v. Russia* case.
- March 22nd, 2012: ECtHR's judgment in the *Markin v. Russia* case.
- April 20th, 2012: The Brighton Declaration is adopted.
- December 9th, 2013: ECtHR's judgment in the *Anchugov and Gladkov v. Russia* case.
- July 31st, 2014: ECtHR's just satisfaction judgment in the *Yukos v. Russia* case.
- March 18th, 2014: Russia annexes Crimea.
- April 10th, 2014: Russia's voting rights in the PACE are suspended.
- July 14th, 2015: RCC's judgment No. 21-P/2015.
- December 14th, 2015: Federal Constitutional Law No. 7-FKZ.
- April 19th, 2015: RCC's judgment No. 12-P/2016.
- February 22nd, 2017: RCC's judgment No. 1-P/2017.
- July 1st, 2020: The Russian Constitution is amended.
- February 24th, 2022: Russia invades Ukraine.
- February 25th, 2022: Russia's rights of representation in the Council of Europe are suspended.
- March 15th, 2022: Russia declares its withdrawal from the Council of Europe.
- March 15th, 2022: PACE Opinion No. 300.
- March 16th, 2022: Russia is excluded from the Council of Europe.
- September 16th, 2022: Russia ceases to be a party to the European Convention on Human Rights.

Literature Review

The existing literature on Russia's membership in the Council of Europe has revealed a significant gap. Previous academic studies predominantly focused on the early years of Russia's involvement in the Organization, emphasizing domestic reforms prompted by its initial commitments. Some works extended their analysis to approximately 2015, particularly examining the conflicts between the Russian Constitutional Court and the Strasbourg Court, yet they did not address Russia's expulsion in 2022. Other studies exclusively analyzed the expulsion process, neglecting the earlier stages of Russia's membership. Furthermore, several publications concentrated only on specific aspects of Russia's membership, such as the implementation of ECtHR's judgments, violations of specific ECHR rights, the admission process, or Russia's interactions with other Council of Europe's Members. To address these gaps, this study aims to provide a comprehensive, detailed, and punctual analysis of the most significant and controversial aspects of Russia's membership in the Council of Europe. This approach seeks to offer new insights and a more complete understanding of the interplay between Russia's legal framework and international law, evaluate the State's engagement with international organizations, and assess the impact this has on human rights protection in the Country. The study encompasses both a legal analysis and a critical evaluation of the key aspects of Russia's membership. It delves into the structure of the Council of Europe, examining its various organs, the processes of admission, withdrawal, suspension, and expulsion, as well as the operation of the ECHR system. Primary sources were particularly instrumental in this investigation. These included the Statute of the Council of Europe and the Rules of Procedure of its organs such as the Parliamentary Assembly, the Committee of Ministers (CM), and the European Court of Human Rights. Additionally, the study extensively used the text of the European Convention on Human Rights and its attached Protocols in various linguistic versions, which were significant to understand the diverse and sometimes conflicting interpretations of the provisions. The analysis also heavily relied on the judgments and press releases of the Strasbourg Court, as well as the statements from prominent figures within the CoE's institutions, particularly regarding the processes of Russia's admission to and subsequent expulsion from the Council. Equally significant were the acts adopted by the various institutions, including the Venice Commission's opinions, the Committee of Ministers' resolutions, and the PACE Committees' reports. The legal framework was further enriched by other international norms, such as the 1969 Vienna Convention on the Law of Treaties.

To gain a comprehensive understanding of the organization and functioning of Russia's legal system, the study extensively referenced the 1993 Russian Constitution, Russian civil and penal codes, federal laws, and the judgments and resolutions of the Russian Constitutional Court.

Regarding the critical evaluation of Russia's membership in the Council of Europe, the publications of several authors have been extremely valuable for this study. Notably, Gennady M. Danilenko's work captured the significance of the new Russian Constitution of 1993. His publication, "The New Russian Constitution and International Law", was fundamental in analyzing the legal, political, and cultural implications of adopting the 1993 Constitution. He skillfully highlighted how it marked a complete departure from Communist dictatorship, laying the foundation for the potential establishment of a democratic Russia.

Pamela A. Jordan's work, "Russia's Accession to the Council of Europe and Compliance with European Human Rights Norms", was crucial in understanding the reasons behind the Member States' decision to admit the Russian Federation to the Council of Europe in 1996. Her analysis addressed the extent to which Russia met its entrance criteria and its overall approach toward the Organization. Jordan accurately examined the controversies surrounding human rights violations by Russian forces against civilians in Chechnya, which led Russia to breach vital norms embodied in the ECHR, the Council's key human rights instrument.

To better understand Russia's judiciary and legal system in light of the ECHR system, several works have been instrumental. René Provost's "Teetering on the Edge of Legal Nihilism: Russia and the Evolving European Human Rights Regime" and Peter Krug's "Departure from the Centralized Model: The Russian Supreme Court and Constitutional Control of Legislation" have provided significant insights. Additionally, Alexei Trochev's "All Appeals Lead to Strasbourg? Unpacking the Impact of the European Court of Human Rights on Russia" has been particularly relevant. Trochev explored how Russian government officials and judges interacted with the ECtHR, arguing that the Russian legal system's adherence to ECHR's principles represented a complex balance, with authorities grappling with the issue of legal autonomy to limit the incorporation of European human rights standards into Russian governance.

Also noteworthy is the work by Maria Issaeva, Irina Sergeeva, and Maria Suchkova, "Enforcement of the Judgments of the European Court of Human Rights in Russia: Recent Developments and Current Challenges". The authors analyzed the various challenges Russia faced regarding the execution of the Strasbourg Court's decisions, encompassing both individual and general measures, and highlighting the Country's achievements in this respect.

Furthermore, this study was enriched by the publication of Laurence R. Helfer. Criticizing the Brighton Declaration's failure to adequately reform the ECtHR system, Helfer, in "The Burdens and Benefits of Brighton", proposed an innovative solution. He advocated for the adoption of a new Protocol that included explicit and obligatory commitments to more firmly integrate the European Convention and the ECtHR's decisions into national legal systems.

In relation to Russia's departure from the Council of Europe, it is important to highlight the analysis of Andrew Drzemczewski and Rick Lawson. In their work, "Exclusion of the Russian Federation from the Council of Europe and the ECHR: An Overview", the authors documented the decision-making process leading to Russia's exclusion from the Organization in chronological order, with a particular focus on the repercussions for the ECHR control mechanism. Additionally, Philip Leach's "A Time of Reckoning? Russia and the Council of Europe" was invaluable. Leach skillfully examined some of the primary consequences of Russia's termination of membership, from the financial impacts to its status as a Party to the European Convention.

Regarding the lessons that can be learnt from Russia's membership in the Council, the work of Klaus Brummer was extremely helpful. In "The Council of Europe, Russia, and the Future of European Cooperation: Any Lessons to Be Learned from the Past?" Brummer reviewed crucial aspects of Russia's participation, including the accession process, the Council's subsequent monitoring activities, and the use of sanctions, drawing important conclusions on the implications for future European cooperation.

In addition to the significant works previously mentioned, some authors were crucial to this study. Among them, Jeffrey Kahn stands out. In his publication "The Rule of Law under Pressure: Russia and the European Human Rights System", Kahn masterfully explored the origins and consequences of the decision to accept Russia's application for membership in the Council of Europe. Furthermore, in "Russia's 'Dictatorship of Law' and the European Court of Human Rights", he evaluated the effect of the ECHR on Russia's law and politics. Drawing on interviews, court statistics, and his experience training Russian human rights lawyers, Kahn charted the rapid growth of interest in the Strasbourg process within Russia. Additionally, his article "The Relationship between the European Court of Human Rights and the Constitutional Court of the Russian Federation: Conflicting Conceptions of Sovereignty in Strasbourg and St. Petersburg" was pivotal in examining the relationship between the ECtHR and the Russian Constitutional Court. By analyzing the 2015 Federal Constitutional Law No. 7-FKZ and its applications, Kahn raised both theoretical and practical questions about the ECHR as a living instrument subject to the evolving interpretations of the Strasbourg Court.

The research of William Pomeranz was also essential. In "Supervisory Review and the Finality of Judgments under Russian Law", he meticulously examined the institution of civil and criminal supervisory review (*nadzor*) and its alignment with internationally recognized legal principles such as *res judicata* and the right to a fair trial. Furthermore, in "Uneasy Partners: Russia and the European Court of Human Rights", Pomeranz detailed the initial phase of the conflict between the Russian Constitutional Court and the Strasbourg Court, highlighting the implications of the ECtHR's judgment in *Markin v. Russia*.

Furthermore, a pivotal author was Lauri Mälksoo. In “Russia’s Constitutional Court Defies the European Court of Human Rights”, he provided a detailed analysis of the 2015 conflict between the Russian Constitutional Court and the ECtHR. He critically examined the “landmark” RCC’s judgment No. 21-P/2015, drawing on publications by its Chairman, Valery Zorkin, which highlighted the key political and legal ideas expressed by the Court. Mälksoo also considered whether the judgment of the Russian Constitutional Court was an outlier among Council of Europe’s Members or not as unique as it might appear. Moreover, he discussed the future of Russia’s engagement in the ECHR system following the RCC’s clash with the Strasbourg Court. In “International Law and the 2020 Amendments to the Russian Constitution”, Mälksoo further explored this issue by discussing the international legal implications of the 2020 constitutional amendments in Russia, which gave the Russian Constitution priority over decisions made by international courts and treaty bodies.

Additionally, Rachel M. Fleig Goldstein’s study “The Russian Constitutional Court versus the European Court of Human Rights” was significant. The author provided an extensive overview of Russia’s participation in the Council of Europe and examined the State’s interactions with the Strasbourg Court. Her research highlighted that although Russian non-compliance with the ECtHR was not unprecedented, the RCC’s 2015 legal stance against ECtHR judgments posed a substantial threat to the ECHR system. Goldstein proposed various strategies for the Council of Europe to respond to Russia’s actions, including both using existing mechanisms to pressure Russia to fulfill its treaty obligations and promoting a dialogue-based approach.

Finally, Konstantinos Magliveras’s analysis of Russia’s expulsion from the Council of Europe is noteworthy. His works, “The Question of Expelling Recalcitrant Member States” and “Legal and Procedural Issues Arising from the Expulsion of the Russian Federation from the Council of Europe” were crucial in understanding the complexities of Russia’s expulsion process. Magliveras’ insights were especially relevant regarding the application of Article 8 of the CoE’s Statute by the Committee of Ministers and the interpretation of Article 58 of the CoE’s Statute by the European Court of Human Rights.

Chapter 1. Russia's path to the Council of Europe

This chapter is dedicated to exploring the complex admission process of the Russian Federation to the Council of Europe. To achieve this objective, it is structured in three main sections. The first section provides an overview of the Council of Europe, focusing on three key aspects deemed significant for this study: the historical development of the Organization, its core values and objectives, and its main institutional bodies. In particular, understanding the Council's values is indispensable, as they form the foundational criteria for State membership. The second section delves into the specific procedures for admission to the Council of Europe, examining the pertinent statutory provisions. Special attention is given to the prerequisites outlined in Articles 3 and 4, as well as to the crucial roles played by the Committee of Ministers and the Parliamentary Assembly in the process. This discussion sets the stage for a deeper understanding of Russia's unique journey toward membership. The final section unfolds the complexities of Russia's admission process. This analysis begins by considering the shift in the Russian stance following the Soviet Union's dissolution, which catalyzed its request for membership. It then explores the significant legal reforms introduced with the 1993 Constitution, which redefined the interplay between international law and national law in the Russian legal system. This section also offers a critical examination of the admission process, viewed through the lens of the Parliamentary Assembly Committees' reports, to gauge the Country's advancement towards meeting the Council's standards. In conclusion, the section reviews Russia's compliance with its initial membership commitments, setting the groundwork for the more extensive discussion that will be carried out in the subsequent chapters.

1. The Council of Europe: an overview

1.1. History

For centuries, the idea of a world organized around the principles of peace seemed utopian¹. Yet, the 20th century marked a significant progress toward establishing organizations dedicated to fostering peace through legal frameworks. Particularly after 1943, as the likelihood of the Axis powers' defeat increased, discussions about shaping a peaceful European order flourished across the continent². The unanimous goal behind these discussions and proposals was to ensure peace amid a landscape

¹ Castel de Saint-Pierre texte Charles-Irénée (1658-1743). Auteur du, "Projet Pour Rendre La Paix Perpétuelle En Europe. Tome I [-II]. Tome 1," Gallica, 1713, <https://gallica.bnf.fr/ark:/12148/bpt6k86492n/fl.item>; Immanuel Kant, *Perpetual Peace* (1795; repr., Createspace Independent Publishing Platform, 2016).

² Stefanie Schmahl and Marten Breuer, *The Council of Europe: Its Law and Policies* (Oxford, United Kingdom: Oxford University Press, 2017), 3.

dominated by sovereign States³. Winston Churchill, the United Kingdom's former Prime Minister, significantly contributed to this dialogue with a speech delivered on September 19th, 1946, at the University of Zurich⁴. He reflected on the brutality of the war, the devastation of the continent, and the looming threat that tyranny “may still return”⁵. Churchill made a compelling case for Europe's salvation, suggesting that it could only be achieved by building “a kind of United States of Europe”⁶. His proposal was influential, as it swiftly propelled the concept of European unity to a matter of political urgency.

The term “Council of Europe”⁷, as Churchill coined in his address, was further elaborated at The Hague Congress, started on May 7th, 1948. This event gathered over a hundred delegates from eighteen European Nations, signaling a widespread desire for the creation of an entity dedicated to political cooperation and the enhancement of democracy⁸. Following the Congress, leaders from ten Countries converged in London to finalize the establishment of this novel European organization⁹. On May 5th, 1949, after extensive negotiations, the representatives of Belgium, Denmark, France, Ireland, Italy, Luxembourg, Norway, the Netherlands, the United Kingdom and Sweden signed the Treaty of London, effectively establishing the Statute of the Council of Europe, now headquartered in Strasbourg, France¹⁰.

In recent years, the Council has expanded to include 47 Member States. Yet, on March 16th, 2022, the Committee of Ministers adopted Resolution CM/Res(2022)2, leading to the expulsion of the Russian Federation following its invasion of Ukraine¹¹.

³ Ibid, 4-5.

⁴ Council of Europe, “Winston Churchill, Speech Delivered at the University of Zurich, 19 September 1946.,” Council of Europe, November 21, 2005, http://www.cvce.eu/obj/address_given_by_winston_churchill_zurich_19_september_1946-en-7dc5a4cc-4453-%204c2a-b130-b534b7d76ebd.html.

⁵ Ibid.

⁶ Council of Europe, cit supra note 4.

⁷ Council of Europe, cit supra note 4.

⁸ Council of Europe, cit supra note 4.

⁹ Birte Wassenberg, *History of the Council of Europe* (Council of Europe, 2013).

¹⁰ Council of Europe, “Archives Historiques Du Conseil de l'Europe - Historical Archives of the Council of Europe, Strasbourg. Conference for the Establishment of a Council of Europe, 0120.,” Historical archives of the Council of Europe, October 20, 2012, http://www.cvce.eu/obj/conference_on_the_establishment_of_a_council_of_europe_statements_by_representatives_of_the_signatory_states_london_5_may_1949-en-d790e659-8731-42d1-93d4-f77ed1f05ba1.html.

¹¹ Council of Europe, “Statement by Committee of Ministers President on the Anniversary of the Expulsion of the Russian Federation from the Council of Europe,” Council of Europe, March 16, 2023, <https://www.coe.int/en/web/portal/-/statement-by-committee-of-ministers-president-on-the-anniversary-of-the-expulsion-of-the-russian-federation-from-the-council-of-europe>.

1.2. Values

Article 1 of the Statute of the Council of Europe outlines its mission to foster unity among its Members, with the aim of preserving and advancing the ideals and principles they share and promoting their socioeconomic development¹². The Organization and the instruments adopted under its auspices uphold three foundational pillars: human rights, democracy, and the rule of law¹³.

A landmark achievement of the Council was the adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which was signed in Rome on November 4th, 1950, and came into force on September 3rd, 1953¹⁴. This seminal instrument inspired the adoption of subsequent regional human rights treaties, including the 1969 American Convention on Human Rights, the 1981 African Charter in Human and Peoples' Rights, and the 2004 Arab Charter on Human Rights, which, despite being influenced by distinct historical contexts compared to the ECHR, shares its foundational spirit¹⁵. The European Convention has been expanded over the years through the introduction of sixteen Additional Protocols, the last of which (Protocol No. 16) entered into force on August 1st, 2018¹⁶. These Protocols not only expanded the range of protected rights¹⁷ but also reformed the Convention's enforcement mechanism. With the adoption of Protocol No. 11, the enforcement system evolved from a tripartite structure involving the European Commission of Human Rights, the Committee of Ministers, and the European Court of Human Rights to a unified Court. This Protocol also universalized the right of individual petition, which was initially provided only by an optional clause, making it available against any Member State¹⁸.

In addition to the ECHR, the European Commission for Democracy through Law, known as the Venice Commission, is crucial in promoting the core values of the Council¹⁹. Founded in 1990, this advisory body on constitutional matters assists Member States in aligning their legal and institutional

¹² The Statute of the Council of Europe, 1949, Article 1(1).

¹³ The Statute of the Council of Europe, 1949, Article 3.

¹⁴ ECHR, "European Convention on Human Rights - ECHR Official Texts - ECHR - ECHR / CEDH," ECHR, accessed February 24, 2024, <https://www.echr.coe.int/european-convention-on-human-rights#:~:text=The%20Convention%20for%20the%20Protection>.

¹⁵ Natalino Ronzitti, *Diritto Internazionale*, Sixth Edition (Torino: G. Giappichelli, 2019), 328; see also Presidenza Consiglio dei Ministri - dipartimento affari giuridici e legislativi, "Il Sistema di Tutela dei Diritti Umani Istituito dalla Convenzione per la Salvaguardia dei Diritti dell'uomo e delle Libertà Fondamentali," accessed February 24, 2024, <https://presidenza.governo.it/DAGL/novita/contenzioso/IL%20SISTEMA%20DI%20TUTELA%20DEI%20DIRITTI%20UMANI%20-%20PCM-DAP.pdf>.

¹⁶ Presidenza Consiglio dei Ministri, "Il Sistema di Tutela dei Diritti Umani", 3-4.

¹⁷ Ibid.

¹⁸ Presidenza Consiglio dei Ministri, cit supra note 16; Protocol No. 11 to the European Convention on Human Rights, 1994, Article 34.

¹⁹ Regione del Veneto, "Venice Commission - Regione Del Veneto," Veneto.it, 2018, <https://www.regione.veneto.it/web/relazioni-internazionali/commissione-di-venezia1#:~:text=Established%20in%201990%2C%20the%20European>.

frameworks with European standards²⁰. While democracy and human rights have traditionally been focal points, the emphasis on the rule of law within the activities of the Venice Commission emerged more prominently only in recent years. It was not until 2011 that the Commission passed a report delineating the fundamental aspects of the rule of law²¹. This development led to the adoption of the Rule of Law Checklist, a tool for evaluating the adherence to this pillar based on its five essential elements: legality, legal certainty, prevention of power abuses, equality, and access to justice²².

1.3. Institutions

The Council of Europe is structured around three main organs: The Committee of Ministers, the Parliamentary Assembly and the Secretary General²³. Functioning as the Council's primary decision-making entity, the Committee of Ministers includes the foreign ministers from all Member States. This body addresses various matters, including European integration and the promotion of the Council's core values, monitoring Member States' compliance with their obligations²⁴. The Parliamentary Assembly, constituted by parliamentarians from each Member State selected by their respective national legislatures, acts as a "secondary layer of representation"²⁵. It stands as the most extensive international parliamentary assembly globally, playing a crucial role in overseeing States' adherence to their commitments²⁶. Finally, the Secretary General, elected by the Parliamentary Assembly for a term of five years, leads and represents the Council, overseeing the work program and the budget²⁷.

Although the Council of Europe lacks legislative authority, issuing only non-binding recommendations, the Parliamentary Assembly can pass general resolutions and suggestions directed at the Committee of Ministers which, in turn, may issue its recommendations and resolutions to the Member States²⁸.

Additional key institutions are the Congress of Local and Regional Authorities, the Commissioner of Human Rights and the Conference of INGOs²⁹. Established in 1994, the Congress aims to bolster

²⁰ Ibid.

²¹ Council of Europe, "Rule of Law," www.venice.coe.int, accessed February 24, 2024, https://www.venice.coe.int/WebForms/pages/?p=02_Rule_of_law&lang=EN.

²² Council of Europe, "Rule of Law Checklist, Adopted by the Venice Commission at Its 106th Plenary Session," www.venice.coe.int, March 2016, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)007-e).

²³ Natalino Ronzitti, cit supra note 15.

²⁴ Natalino Ronzitti, cit supra note 15.

²⁵ Natalino Ronzitti, cit supra note 15.

²⁶ Natalino Ronzitti, cit supra note 15.

²⁷ Council of Europe, "Institutions - Telling the CoE's Story," Telling the CoE's story, accessed February 24, 2024, <https://www.coe.int/it/web/coe-story/institutions>.

²⁸ Natalino Ronzitti, cit supra note 15.

²⁹ Council of Europe, cit supra note 27.

local and regional democracy across the Member States. Through its two chambers and three committees, it brings together more than 600 elected officials, representing over 150,000 local and regional authorities³⁰. The Commissioner of Human Rights, elected by the PACE for a six-year term since 1999, independently highlights and addresses human rights violations³¹. The Conference of INGOs, giving NGOs a “participatory status” in the CoE, serves as an essential bridge between the political sphere and civil society³².

Crucial in the Council’s framework is the European Court of Human Rights, responsible for enforcing the European Convention on Human Rights. Since its establishment in 1959, it has issued over 10,000 judgments on alleged breaches of the Convention³³. The Court possesses both judicial and advisory competences. Regarding its judicial power, it handles State³⁴ and individual applications³⁵, whereas it cannot initiate cases *motu proprio*³⁶. Since August 1st, 2018, the Court expanded its power to include advisory functions under Protocol 16 to the ECHR, that allows the highest domestic courts of States Parties to the Protocol to seek guidance to on interpreting the Convention and its protocols³⁷. Such questions must arise from cases that pending before the domestic courts³⁸.

The composition of the Court mirrors the number of the signatories to the European Convention, with each State Party entitled to one judge, who serves for nine years without the possibility of renewal³⁹. The judges are then appointed by the Assembly, which chooses from a pool of candidates nominated by the Member States. Despite being associated with specific Countries, the judges hear cases in a personal and individual capacity, ensuring they do not act as representatives of the State⁴⁰.

Judicial proceedings within the Court are organized into four specific formations: a single judge, Committee of three judges, a Chamber of seven judges (reducible to five for a limited period), and

³⁰ Council of Europe, “A European Assembly of Local and Regional Elected Representatives – Congress of Local and Regional Authorities” Congress of Local and Regional Authorities, accessed February 24, 2024, <https://www.coe.int/it/web/congress/overview>.

³¹ Council of Europe, “Thematic Work - Commissioner for Human Rights,” Commissioner for Human Rights, accessed February 24, 2024, <https://www.coe.int/en/web/commissioner/thematic-work>.

³² Conference of INGOs of the Council of Europe, “A Word from the President on the Occasion of the 40th Anniversary of the Conference of INGOs of the Council of Europe,” web.archive.org, December 13, 2017, 1, <https://web.archive.org/web/20171213204412/https://rm.coe.int/16806ecbd2>.

³³ International Justice Resource Center, “European Court of Human Rights,” International Justice Resource Center, July 10, 2014, <https://ijrcenter.org/european-court-of-human-rights/#:~:text=The%20Court%20has%20jurisdiction%20to>.

³⁴ European Convention on Human Rights, 1950, Article 33.

³⁵ European Convention on Human Rights, 1950, Article 34.

³⁶ International Justice Resource Center, cit supra note 33.

³⁷ Protocol No. 16 to the European Convention on Human Rights, 2013, Article 1(1); see also International Justice Resource Center, “European Court of Human Rights to Implement Advisory Jurisdiction,” International Justice Resource Center, April 24, 2018, <https://ijrcenter.org/2018/04/24/european-court-of-human-rights-to-implement-advisory-jurisdiction/#gsc.tab=0>.

³⁸ Protocol No. 16 to the European Convention on Human Rights, 2013, Article 1(2).

³⁹ ECHR, “Composition of the ECHR - Judges, Sections, Grand Chamber - ECHR - ECHR / CEDH,” ECHR, accessed February 24, 2024, <https://www.echr.coe.int/composition-of-the-court>.

⁴⁰ Ibid.

the Grand Chamber of seventeen judges⁴¹. Additionally, the Court can convene in a plenary session, though such gatherings are dedicated only to administrative responsibilities, excluding judicial functions⁴².

2. Admission to the Council of Europe

Article 2 of the Statute of the Council of Europe stipulates that “the Members of the Council of Europe are the Parties to this Statute”⁴³.

Initially comprising ten founding States, the Council’s membership swiftly expanded. During the negotiation process in London, the representatives from Greece and Turkey expressed a keen interest in membership; thus, one of the inaugural actions of the Committee of Ministers in its first session of August 8th, 1949, was to invite these Nations to join⁴⁴. Consequently, both were able to engage in the Council’s activities from August 1949, although Turkey formalized its membership by ratifying the Statute only in 1950⁴⁵. That same year saw Iceland joining the Council, while the Federal Republic of Germany and the Saar were granted Associate Membership⁴⁶. Austria became a Member in 1956, following the end of its post-war occupation status⁴⁷. In the 1960s the Council welcomed three new Members: Cyprus and Malta, after gaining independence in 1961 and 1965, respectively, and Switzerland, which joined in 1963⁴⁸. Portugal and Spain entered in the late 1970s, after transitioning from authoritarian governments. The inclusion of Liechtenstein in 1978 marked the Council’s openness to microstates⁴⁹. The year 1989 witnessed Finland’s accession, prompted by the shifting political landscape in the Soviet Union and the diminishing East-West tensions⁵⁰.

By the early 1990s, the Council had grown to include 23 Countries, all committed to democracy, the rule of law, and human rights protection⁵¹. In the following years the Members more than doubled, including 18 Nations that were transitioning from communist rule or emerging from the dissolution

⁴¹ European Convention on Human Rights, 1950, Article 26(1).

⁴² Natalino Ronzitti, cit supra note 15, 337.

⁴³ The Statute of the Council of Europe, 1949, Article 2.

⁴⁴ Gerard J. Mangone, “The Council of Europe: Its Structure, Functions, and Achievements. By A. H. Robertson. (New York: Frederick A. Praeger, Inc.1957. Pp. Xiii, 252. \$7.75.)” *American Political Science Review* 51, no. 3 (September 1, 1957), 18, <https://doi.org/10.2307/1951880>.

⁴⁵ Eckart Klein, “Membership and Observer Status”, in *The Council of Europe: Its Law and Policies*, edited by Stefanie Schmahl and Marten Breuer (Oxford: Oxford University Press, 2017), 42, <https://opil.ouplaw.com/display/10.1093/law/9780199672523.001.0001/law-9780199672523-chapter-3#>.

⁴⁶ The Statute of the Council of Europe, 1949, Article 5.

⁴⁷ CVCE, “State Treaty for the Re-Establishment of an Independent and Democratic Austria (Vienna, 15 May 1955),” May 15, 1955, https://www.cvce.eu/content/publication/1999/3/2/5c586461-7528-4a74-92c3-d3eba73c2d7d/publishable_en.pdf.

⁴⁸ Birte Wassenberg, cit supra note 9, 173.

⁴⁹ Eckart Klein, cit supra note 45.

⁵⁰ Eckart Klein, cit supra note 45.

⁵¹ Eckart Klein, cit supra note 45.

of the Soviet Union, Czechoslovakia, and Yugoslavia⁵². During the early-21st century five more States joined, with Montenegro being the last addition in 2007⁵³. Nowadays, Belarus, Kosovo and Russia, recently expelled, are not Members.

2.1. Membership requirements

Eligibility for membership in the Council of Europe requires candidates to meet a set of strict criteria. According to Article 3 of the Statute:

“[e]very member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council as specified in Chapter I.”⁵⁴

This clause compels States seeking entry to demonstrate a concrete commitment to the core values of the Organization: rule of law, human rights, and the principles of a pluralistic democracy.

The adherence to the rule of law seldom presented an obstacle to accession before the 1990s; however, for many States aspiring to membership thereafter, this has emerged as a significant challenge⁵⁵. Regarding human rights, it is now customary that an application for membership must explicitly affirm the State’s willingness to undertake the obligations arising from the European Convention on Human Rights. Upon accession, the State is expected to have signed the Convention, with a pledge towards prompt ratification⁵⁶. Additionally, new Members are often required to commit to the provisions of Protocols Nos. 1, 2, 4, and 7 of the Convention, which enshrine further rights⁵⁷. Since 1983, Candidates are also expected to ratify Protocol 6, which advocates for the abolition of the death penalty in time of peace⁵⁸.

The protection of minorities forms an integral aspect of the human rights requirement. Although effort to attach a dedicated Protocol on this issue to the Convention did not materialize, the European Court

⁵² Eckart Klein, cit supra note 45.

⁵³ Eckart Klein, cit supra note 45.

⁵⁴ The Statute of the Council of Europe, 1949, Article 3.

⁵⁵ Eckart Klein, cit supra note 46.

⁵⁶ Jean-François Flauss, “Les Conditions d’Admission Des Pays d’Europe Centrale et Orientale Sein Du Conseil de L’Europe,” *European Journal of International Law*, 1994, 404 <http://www.ejil.org/article.php?article=1250&issue=63>.

⁵⁷ Vladimir Djerić, “Admission to Membership of the Council of Europe and Legal Significance of Commitments Entered into by New Member States,” *Max-Planck-Institut Für Ausländisches Öffentliches Recht Und Völkerrecht*, January 1, 2000, 611, https://www.zaoerv.de/60_2000/60_2000_1_a_605_630.pdf.

⁵⁸ Pamela A. Jordan, “Russia’s Accession to the Council of Europe and Compliance with European Human Rights Norms: [1],” *Demokratizatsiya* 11, no. 2 (2003), 282, <https://www.proquest.com/scholarly-journals/russias-accession-council-europe-compliance-with/docview/237204254/se-2>.

of Human Rights has interpreted Article 8 ECHR to safeguard the right of individuals to preserve their personal identity, including their minority origin⁵⁹. Furthermore, the PACE's Recommendation 1201 (1993) consolidates its stance on the imperative of the protection of minorities, making it a consistent element of the examinations preceding the accession⁶⁰.

While Article 3 does not overtly mandate the establishment of a pluralistic democracy, such requirement is implicitly inferred from the indispensable respect for the rule of law and human rights, tenets that underpin the essence of an authentic democracy⁶¹. This principle, although not accentuated in the deliberations pre-1990s, received heightened attention during the evaluations of States transitioning from communist regimes⁶². Indeed, these Countries had to overcome surmounting challenges such as conducting free elections, creating a viable democratic party system and developing a civil society able to promote the democratic spirit. The Council's attention has equally been directed towards ensuring the diffusion of democratic principles at the regional and local levels⁶³.

Article 4 introduces an additional requirement, specifying that only an "European State" is eligible for membership⁶⁴. The designation implies a geographical boundary, thereby excluding Countries outside of Europe, regardless of their alignment with the Council's principles and values. Nevertheless, Turkey's early membership illustrates the Council's flexible approach to interpreting the term "European", also indicating that religious affiliations, such as Christianity, are not used to define this word for the purpose of accession⁶⁵.

In the context of the admission of Eastern European States, the Council has adopted a further criterion: the peaceful resolution of conflicts. This mirrors the United Nations' standard, where only "peace-loving" Nations are considered for admission⁶⁶.

Furthermore, Article 4 incorporates a subjective requirement, complementing the objective conditions outlined in Article 3. It posits that only States perceived as "able and willing to fulfil the provision of Article 3" may be invited to join the Council⁶⁷. Typically, an application for membership is taken as *prima facie* evidence of a State's "willingness" to comply. However, in evaluating the application of

⁵⁹ Christoph Grabenwarter, *European Convention on Human Rights* (Bloomsbury Publishing, 2014).

⁶⁰ Parliamentary Assembly of the Council of Europe, Recommendation 1201 (1993) on an Additional Protocol on the Rights of Minorities to the European Convention on Human Rights, adopted on 1 February 1993, 22nd Sitting; see Doc. 6742, report of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr. Worms; and Doc. 6749, opinion of the Political Affairs Committee, Rapporteur: Mr. de Puig. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15235>.

⁶¹ Eckart Klein, cit supra note 45, 47.

⁶² Eckart Klein, cit supra note 45, 47.

⁶³ European Charter of Local Self-Government, 1985.

⁶⁴ The Statute of the Council of Europe, 1949, Articles 4-5.

⁶⁵ Eckart Klein, cit supra note 45, 45.

⁶⁶ Charter of the United Nations, 1945, Article 4(1).

⁶⁷ The Statute of the Council of Europe, 1949, Article 4.

Serbia and Montenegro, the Committee of Ministers identified a “lack of seriousness and credibility”, leading to the suspension of the membership negotiations⁶⁸. The Committee indicated that a “[a] radical change of policy by Belgrade would be needed before the application can be considered”⁶⁹.

2.2. The admission procedure

Article 4 of the Statute clarifies that membership is contingent upon an invitation from the Committee of Ministers⁷⁰. This discretionary power has led to the development of an intricate procedure for admission, particularly during the Council’s expansion toward Eastern Europe in the early 1990s. Although the Statute explicitly assigns a role in the admission procedure only to the Committee, the Parliamentary Assembly, during its first session, recommended the CM to exercise this prerogative only after having obtained its approval⁷¹. This recommendation crystallized into practice, and, during its eight session, the Committee formalized the procedure with Resolution (51)30. The latter, in the section “Admission of new Members” reads:

“The Committee decided that, before inviting a State to become a Member or an Associate Member of the Council of Europe, in accordance with the provisions of Articles 4 and 5 of the Statute, or inviting a Member of the Council to withdraw, in accordance with the provisions of Article 8, the Committee would, in conformity with established practice, first consult the Consultative Assembly”⁷².

The resolution, while not granting co-decision powers, underscored the Assembly’s influential role⁷³. In fact, despite not legally binding the Committee to adhere to the PACE’s opinions, it has become a cornerstone of political practice, making it almost inconceivable for the CM to extend membership invitations contrary to the Assembly’s viewpoints⁷⁴. This dynamic has become particularly noteworthy during periods of significant enlargement, such as in Eastern Europe⁷⁵.

The admission process is initiated when a State expresses interest in joining the Council, prompting the Committee to seek the Assembly’s opinion as per Article 23(a) of the Statute⁷⁶. The Committee

⁶⁸ Vladimir Djerić, cit supra note 57, 608.

⁶⁹ Vladimir Djerić, cit supra note 57, 608.

⁷⁰ The Statute of the Council of Europe, 1949, Article 4.

⁷¹ Eckart Klein, cit supra note 45, 55.

⁷² Council of Europe, Committee of Ministers, Resolution (51) 30, May 3, 1951.

⁷³ Eckart Klein, cit supra note 45, 55.

⁷⁴ Florence Benoît-Rohmer and Heinrich Klebes, *Council of Europe Law: Towards a Pan-European Legal Area* (Editorial: Strasbourg: Council of Europe Publishing, 2005), 39.

⁷⁵ Vladimir Djerić, cit supra note 57, 609.

⁷⁶ The Statute of the Council of Europe, 1949, Article 23(a).

may also present its preliminary evaluation, highlighting areas requiring closer examination⁷⁷. This strategy not only recommends improvements for the applicant but also directs the Assembly towards key areas for an in-depth evaluation⁷⁸.

Following the Committee's solicitation for an opinion, the Assembly initiates a thorough and detailed examination to ascertain whether the candidate aligns with the Council's admission requirements. Initially, the Office of the Assembly commissions "eminent lawyers" to draft a comprehensive report assessing the compliance of the candidate's legal system with the Council's core principles⁷⁹. This report, enriched through visits and discussions in the State, is presented to and published by the Assembly, laying the groundwork for the future analysis. Subsequently, three Committees of the Assembly⁸⁰ designate three rapporteurs charged with drafting the Assembly's opinion. This activity entails the compilation of detailed reports predicated on visits to the State and discussions with relevant stakeholders including members of the government and the parliament, as well as judicial figures, political factions, minority groups, NGOs, and trade unions⁸¹. During this process, the rapporteurs advocate for legal and political adjustments to meet the Council's statutory obligations⁸². Finally, the rapporteurs present to the plenary of the Assembly a final report, containing a proposal of opinion, that is discussed and adopted⁸³. Should the assessment endorse the admission of the candidate, the document includes the commitments agreed upon by the candidate during the negotiations, as well as the progress made thus far. Frequently, it outlines additional reforms expected to be carried out after joining⁸⁴. Moreover, the opinion includes a proposal for the number of seats to be allocated to the new Member in the Assembly⁸⁵.

Upon the Assembly's favorable opinion, the Committee of Ministers includes the issue of admission in the agenda of its forthcoming session. A decision requires a two-thirds majority from all the representatives entitled to sit on the Committee⁸⁶. Following a positive verdict, the Secretary General formally notifies the State, detailing the allocation of the seats in the Assembly, the expected financial contributions, and reiterating the commitments affirmed during the negotiations, thereby emphasizing

⁷⁷ Jean-François Flauss, *cit supra* note 56.

⁷⁸ Eckart Klein, *cit supra* note 45, 57.

⁷⁹ Eckart Klein, *cit supra* note 45, 58.

⁸⁰ Vladimir Djerić, *cit supra* note 57, 609; the Political Affairs Committee, the Committee of Legal Affairs and Human Rights, the Committee for Relations with European Non-Member States.

⁸¹ Vladimir Djerić, *cit supra* note 57, 609.

⁸² Vladimir Djerić, *cit supra* note 57, 609-610.

⁸³ Eckart Klein, *cit supra* note 45, 57.

⁸⁴ Eckart Klein, *cit supra* note 45, 58.

⁸⁵ Eckart Klein, *cit supra* note 45, 58.

⁸⁶ The Statute of the Council of Europe, 1949, Article 20(c).

the significance of these commitments⁸⁷. The membership is officially conferred upon the deposit with the Secretary General of the instrument of ratification to the Statute⁸⁸.

2.3. Post-admission monitoring procedures

Following the Council's expansion in Eastern Europe during the 1990s, the incomplete adherence to all the pre-admission conditions necessitated the creation of a robust monitoring framework, to ensure that new Members progressively aligned with the CoE's standards. To this end, through Order No 508 (1995) the Parliamentary Assembly mandated Political Affairs Committee and the Committee on Legal Affairs and Human Rights to monitor closely "the honoring of obligations and commitments in all Member States concerned"⁸⁹. Subsequently, the Assembly established a dedicated body, the Monitoring Committee, through the Resolution 1115 (1997), later amended by Resolution 1936 (2013)⁹⁰.

The Monitoring Committee⁹¹ categorizes its oversight activities into three procedures. The first one is the regular monitoring procedure, that is carried out by rapporteurs who conduct visits to the State and engage in discussions with the political authorities to compile reports⁹². These documents, initially reviewed privately, are consequently shared with the government of the State concerned before being presented to the Assembly for discussion and adoption. This report clarifies whether the monitoring procedure can be considered completed, having the State met its commitments⁹³. The second category is the post-monitoring dialogue. Introduced in 1997, this procedure serves as a follow-up of the regular monitoring, allowing the Assembly to reinstate monitoring should further collaborative efforts be deemed necessary⁹⁴. As part of this procedure, the Monitoring Committee is

⁸⁷ Vladimir Djerić, *cit supra* note 57, 623.

⁸⁸ The Statute of the Council of Europe, 1949, Articles Art 4 and 42(c).

⁸⁹ Parliamentary Assembly of the Council of Europe, Order No. 508, April 26, 1995, 12th Sitting, para 17; see Doc. 7277, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr. Columberg; Doc. 7292, opinion of the Committee on Relations with European Non-Member Countries, rapporteur: Mr. Seitlinger; and Doc. 7294, opinion of the Committee on Rules of Procedure, rapporteur: Lord Finsberg; the specific reference to 'obligations' in the title emphasizes that the statutory duties incumbent upon all members are also encompassed within the scope of the monitoring process, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=13711&lang=en>.

⁹⁰ Parliamentary Assembly of the Council of Europe, Resolution 1115, January 29, 1997, 5th Sitting; see Doc. 7722, report by the Committee on Rules of Procedure, rapporteur: Mrs. Lentz-Cornette, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16526&lang=en>.

⁹¹ Eckart Klein, *cit supra* note 45, 60; the Monitoring Committee consists of 85 members of the Assembly, along with the chairpersons of the Committee on Political Affairs and Democracy and the Committee on Legal Affairs and Human Rights. Membership candidates are proposed by the Assembly's political groups and officially appointed by the Bureau, applying the "D'Hondt principle".

⁹² PACE Order No 508 (1995), *cit supra* note 483, para 11.

⁹³ Eckart Klein, *cit supra* note 45, 61.

⁹⁴ Parliamentary Assembly of the Council of Europe, "Progress Report of the Bureau of the Assembly (28 January - 3 April 2000)," Doc. 8689, April 3, 2000, rapporteur: Mr. László Surján (Hungary, EPP/CD), para 6, <https://books.google.it/books?id=UvMN0c4s3GMC&pg=RA18-PP7&lpg=RA18-PP7&dq=Parliamentary+Assembly+of+the+Council+of+Europe.+%22Progress+Report+of+the+Bureau+of+the+Asse>

tasked with submitting a report to the Assembly on each Country under scrutiny at least once every three years. This report must assess whether the post-monitoring dialogue should be terminated. Ultimately, it is up to the Assembly to make a final determination on the matter⁹⁵. Finally, Resolution 1515 (2006) introduced a mechanism for periodic reports on States not currently under the monitoring or post-monitoring dialogue⁹⁶, addressing perceived imbalances in the application of monitoring standards across older or Western Europe Member States and fostering a more equitable oversight process⁹⁷.

The Committee of Ministers also conducts its monitoring activities, which were initiated by the 1993 Vienna Declaration of the Heads of State and Government, and the subsequent CM's 1994 Declaration on compliance with commitments accepted by Member States⁹⁸. Currently, the Committee employs three distinct methodologies: the procedure in application of the 1994 Declaration, the thematic monitoring and a specific post-accession evaluation⁹⁹. The 1994 Declaration allows for Member States, the Secretary General or the Parliamentary Assembly to raise concerns regarding the implementation of commitments related to democracy, the protection of human rights and the rule of law to the Committee's attention¹⁰⁰. Should the CM determine the necessity for targeted action, it may request the Secretary General to undertake various activities within its statutory competences, including gathering data, issuing recommendations, communicating findings to the PACE or take any other decision within its statutory competences¹⁰¹. The thematic monitoring, unlike the Assembly's "Country-to-Country approach", assesses the commitment to obligations across all Member States within precise thematic areas. Specifically, it covers eight "themes": freedom of expression and information, functioning and protection of democratic institutions, functioning of the judicial system, local democracy, capital punishment, police and security forces effectiveness of judicial remedies and non-discrimination, with emphasis on the fight

[mbly+\(28+January+-+3+April+2000\).%22%C2%A0&source=bl&ots=TgAxvXGhIM&sig=ACfU3U2C1oI4dKRtTRY_hQdBc5S8Idi6dw&hl=fr&sa=X&ved=2ahUKewiDq8vL2siEAxURgv0HHcCiAW8Q6AF6BAgIEAM#v=onepage&q=Parliamentary%20Assembly%20of%20the%20Council%20of%20Europe.%20%22Progress%20Report%20of%20the%20Bureau%20of%20the%20Assembly%20\(28%20January%20-%203%20April%202000\).%22%C2%A0&f=false.](https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17467&lang=en)

⁹⁵ Eckart Klein, cit supra note 45, 62.

⁹⁶ Parliamentary Assembly of the Council of Europe, Resolution 1515, June 29, 2006, 22nd Sitting; see Doc. 10960, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Mr. Frunda, para 10, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17467&lang=en>.

⁹⁷ Eckart Klein, cit supra note 45, 63.

⁹⁸ Committee of Ministers of the Council of Europe, Declaration on Compliance with Commitments Accepted by Member States of the Council of Europe, November 10, 1994, 95th Session, <https://rm.coe.int/native/090000168053661f>.

⁹⁹ Eckart Klein, cit supra note 45, 63-64.

¹⁰⁰ Declaration on compliance with commitments accepted by MS, cit supra note 98, para 1.

¹⁰¹ Eckart Klein, cit supra note 45, 64.

against racism¹⁰². Finally, acknowledging the particular challenges faced by some States after joining the Council, such as Armenia, Azerbaijan and Georgia, the Committee has adapted its monitoring mechanisms to address these unique contexts. In these cases, the Committee established an *ad hoc* Monitoring Group comprising delegated from various Member States, initiated a specific monitoring process under the direction of the Rapporteur Group for Democratic Stability, or engaged independent specialists to conduct analyses and compile confidential assessments concerning the conditions of the individuals involved¹⁰³.

2.4. The consequences of membership

Upon joining the Council of Europe, the States gain full entitlement to the rights and are subject to all the obligations as outlined in the Statute.

A fundamental right of the Member States is their active participation in the Council's activities and representations in its key bodies – the Committee of Ministers and the Parliamentary Assembly¹⁰⁴. Rights may also stem from the Rules of Procedure established by these organs¹⁰⁵. For instance, Rule 14 of the CM's Rules of Procedure grants any representative the right to address the Consultative Assembly personally after obtaining approval for a speaking date from the Assembly's President¹⁰⁶. Furthermore, the PACE outlines in its Rule of Procedure the voting rights of the Standing Committee members¹⁰⁷ and the speaking rights of the Assembly's members when called upon by the President¹⁰⁸. Rights may derive from other legal instruments of the Council, such as conventions and agreements¹⁰⁹.

At the core of the membership obligations lies the adherence to Article 3 of the Statute, underlined by Article 8¹¹⁰. Moreover, the financial commitments of Members are crucial for the Organization's operations¹¹¹, with the Statute explicitly allowing for sanctions in case of noncompliance¹¹². Obligations may also emerge from conventions, such as the 1949 General Agreement on Privileges

¹⁰² Committee of Ministers of the Council of Europe, Ministers' Deputies, Notes on the Agenda, CM/Notes/800/2.4 (restricted), June 18, 2002, 800th Meeting, June 20, 2002, "Political questions: 2.4 Compliance with commitments by member states of the Council of Europe – Declaration of the Committee of Ministers of 10 November 1994: vademecum", <https://rm.coe.int/09000016805e2289>.

¹⁰³ Eckart Klein, cit supra note 45, 64.

¹⁰⁴ The Statute of the Council of Europe, 1949, Articles 10-14-26.

¹⁰⁵ Eckart Klein, cit supra note 45, 53.

¹⁰⁶ Rules of Procedure of the Council of Europe's Committee of Ministers, 1951, Rule 14.

¹⁰⁷ Rules of Procedure of the Parliamentary Assembly of the Council of Europe, 1999, Rule 17.8.

¹⁰⁸ Rules of Procedure of the Parliamentary Assembly of the Council of Europe, 1999, Rule 35.1.

¹⁰⁹ The Statute of the Council of Europe, 1949, Article 15 (a).

¹¹⁰ The Statute of the Council of Europe, 1949, Article 8.

¹¹¹ The Statute of the Council of Europe, 1949, Article 38.

¹¹² The Statute of the Council of Europe, 1949, Article 9.

and Immunities of the Council¹¹³ and the 1949 Special Agreement relating to the Seat of the Council, which specifically binds France as the host Country¹¹⁴.

The Statute prohibits Members from imposing limitations on their obligations via reservations, thereby preserving the uniform application of its provisions and safeguarding the integrity of the treaty's legal framework¹¹⁵. Furthermore, it does not provide Members with a legal mechanism to challenge the Organization's decisions or actions¹¹⁶. This explains the necessary existence of Article 7, which allows for withdrawal¹¹⁷. According to the provision, a Member State wishing to withdraw must send an official notification to the Secretary General, leading to the termination of its membership by the end of the year¹¹⁸. The procedures for both withdrawal and expulsion, specified in Article 8 of the Statute, will be thoroughly explored in the following chapters.

In light of the accession of several post-communist State, where the adherence to admission criteria was somewhat flexible, these Countries were required to undertake specific commitments to address areas needing further improvement¹¹⁹. An example includes addressing media freedom issues in Croatia, as highlighted in various experts' reports¹²⁰. While debate persists on whether such commitments constitute legal obligations, their legal relevance cannot be disregarded¹²¹.

3. Russia's journey toward membership

In the late 1980s, Mikhail Gorbachev, the last leader of the Soviet Union, began the process of altering fundamental aspects of the USSR's domestic and foreign policy¹²². He sought to internalize international legal norms so that international law would have a direct effect on domestic law¹²³.

¹¹³ General Agreement on Privileges and Immunities of the Council of Europe, 1949. For instance, Article 11 states that "a member [...] is under a duty to waive the immunity of its representative in any case where, in the opinion of the member, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded".

¹¹⁴ Special Agreement relating to the Seat of the Council of Europe, 1949. According to Article 3 "French police or officials shall not enter the said buildings and premises in the exercise of their duties except with the consent of, and in the conditions agreed by, the Secretary General".

¹¹⁵ Eckart Klein, *cit supra* note 45, 53.

¹¹⁶ The Statute of the Council of Europe, 1949, Articles 8-9.

¹¹⁷ The Statute of the Council of Europe, 1949, Article 7.

¹¹⁸ *Ibid.* Besides Russia, Greece is the only Member State to have exited the Council, on December 12th, 1969, to preempt a possible expulsion over human rights concerns, only to return on November 28, 1974, after the fall of the military junta.

¹¹⁹ Vladimir Djerić, *cit supra* note 57, 612.

¹²⁰ Vladimir Djerić, *cit supra* note 57, 612-613.

¹²¹ Vladimir Djerić, *cit supra* note 57, 616-618. Scholars have noted that the legal consequences of commitments vary significantly due to differences in the States' acceptance methods, the specific language used in these acceptances, and the wording of the commitments themselves. Another challenge is that public declarations of acceptance are scattered across various Council of Europe documents, making them hard to access. Nevertheless, during its monitoring processes, the Parliamentary Assembly of the Council of Europe has consistently treated these obligations as duties that Member States are expected to honor.

¹²² George Ginsburgs, "From Soviet to Russian International Law: Studies in Continuity and Change," *brill.com* (Brill Nijhoff, 1998), 7-9, <https://brill.com/display/title/10461?language=en>.

¹²³ *Ibid.*

Gorbachev based his domestic and foreign policy on the belief that to be a legitimate State and partner in the eyes of the international community, specifically the West, a State must truly adopt and abide by international legal and human rights norms¹²⁴. Thus, since the breakup of the USSR, Russian leaders continued to promote Russia as a Country that shares the values of the West, citing its commitment to economic cooperation, democracy and the rule of law¹²⁵. During this period, Russia has sought membership and greater participation in international organizations such as the Organization for Security and Co-operation in Europe (OSCE), the International Monetary Fund (IMF), the G-8, the World Trade Organization (WTO), and the Council of Europe¹²⁶.

The Russian Federation filed an application for accession to the Council of Europe on May 7th, 1992, under President Boris Yeltsin, after the Russian Parliament obtained the special guest status from the Parliamentary Assembly in January 1992¹²⁷.

3.1. The 1993 Constitution and international law

Russia's progression towards a more Western-oriented approach was significantly marked by the adoption of the new Constitution, approved by public referendum on December 12th, 1993, and entered into force on December 25th, of the same year¹²⁸. This moment signed a decisive shift in the interplay between international and national law, especially in light of the Soviet Union's legacy. Under the Soviet regime, international law was largely marginalized in the domestic legal system, as it could not be invoked before, and enforced by, the domestic courts¹²⁹. Although the 1977 Constitution declared that the USSR's relationships with other Nations should be grounded on the "fulfillment in good faith of obligations arising from the generally recognized principles and rules of international law, and from international treaties signed by the USSR"¹³⁰, this clause did not result in the substantial integration of international norms into the Soviet law¹³¹. This stance underlined a strict dualistic approach, where international obligations were only given effect in the national legal system if they were explicitly incorporated in the domestic legislation¹³².

¹²⁴ George Ginsburgs, cit supra note 122.

¹²⁵ Andrei P. Tsygankov, *Russia's Foreign Policy: Change and Continuity in National Identity* (2006; repr., Lanham, Md.: Rowman & Littlefield Publishers, 2010), 68-71.

¹²⁶ Ibid.

¹²⁷ Jean-Pierre Massias, "Russia and the Council of Europe: Ten Years Wasted?", *www.ifri.org* (Russie.Nei.Visions, January 2007), 5, <https://www.ifri.org/en/publications/notes-de-lifri/russieneivisions/russia-and-council-europe-ten-years-wasted>.

¹²⁸ Gennady M. Danilenko, "The New Russian Constitution and International Law," *The American Journal of International Law* 88, no. 3 (July 1994), 451, <https://doi.org/10.2307/2203713>.

¹²⁹ Ibid, 458.

¹³⁰ Constitution (Fundamental Law) of the Union of Soviet Socialist Republics, 1977, Article 29.

¹³¹ Gennady M. Danilenko, cit supra note 128, 458.

¹³² Gennady M. Danilenko, cit supra note 128, 458.

In the process of Russia's "internationalization", it became apparent to policymakers that its full integration in the global community necessitated a firm commitment to internationally recognized norms, especially those pertaining to human rights. Thus, the 1993 Constitution explicitly acknowledged the role of international law in the Russian legal system. Specifically, Article 15(4) maintains:

"Generally recognized principles and norms of international law as well as international agreements of the Russian Federation shall be a constituent part of its legal system. If an international agreement of the Russian Federation establishes rules which differ from those stipulated by law, the rules of the international agreement shall apply"¹³³.

This provision is regarded not as an "ordinary" constitutional norm, but as a fundamental principle underpinning the Russian constitutional system¹³⁴. Anatoly Kovler, a former Russian judge at the European Court of Human Rights, highlighted it as "the heart of the most central chapter" of the Constitution¹³⁵. Article 15(4) unequivocally asserts that international legal norms, encompassing both treaty law and universally recognized principles of customary international law, form an integral component of the Russian legal system. Moreover, this provision expands its scope beyond the current binding international obligations to encompass future principles and norms that Russia may adopt through international treaties¹³⁶. This foresight allows Russian enforcement agencies to adapt to and incorporate evolving interpretations of treaty obligations as outlined by competent international bodies, recognizing the dynamic and evolutionary nature of international law¹³⁷. Importantly, the Article does not make a distinction between self-executing and non-self-executing international principles and norms¹³⁸. This indicates that all forms of international law, regardless of their direct applicability, are deemed enforceable within the domestic jurisdiction, affording individuals the capacity to invoke them before any domestic tribunal.

¹³³ Constitution of the Russian Federation, 1993, Article 15(4).

¹³⁴ Valerii Ivanovich Kuznetsov and Bakhtiiar Raisovich Tuzmukhamedov, *International Law* (2001; repr., Eleven International Publishing, 2009).

¹³⁵ Anatoly I. Kovler, "Russia: European Convention on Human Rights in Russia: Fifteen Years After," in *The Impact of the ECHR on Democratic Change in Central and Eastern Europe*, edited by Uliia Motoc and Ineta Ziemele, (Cambridge: Cambridge University Press, 2016), 353, <https://www.cairn.info/revue-l-europe-en-formation-2014-4-page-116.htm>.

¹³⁶ Gennady M. Danilenko, *cit supra* note 128, 465.

¹³⁷ Gennady M. Danilenko, *cit supra* note 128, 465.

¹³⁸ Gennady M. Danilenko, *cit supra* note 128, 465. Self-executing provisions of international law are those rules detailed enough to furnish a remedy in specific instances, whereas non self-executing provisions require the implementation of national laws to become functional and enforceable. By not differentiating between these types, Article 15(4) potentially suggests that individuals can invoke any international law norm within the domestic legal system before any national administrative body or tribunal.

Furthermore, Article 15(4) elevates the status of treaty obligations above that of conflicting national legislation within the national framework. As a result, any domestic law that conflicts with treaty commitments is inapplicable when such contradiction arises. The provision mandates that national tribunals prioritize the application of treaty norms over domestic laws, regardless of whether these are antecedent or posterior, and irrespective of whether they originate from federal or regional authorities¹³⁹. However, the Article does not extend such status to the generally recognized principles of international law, and the supremacy of international treaties does not supersede the Russian Constitution itself¹⁴⁰.

Within Chapter 2, dedicated to Rights and Freedoms of Man and Citizen, the Russian Constitution delineates an extensive array of civil, political, economic, social and cultural rights, which are fundamentally aligned with global human rights standards. Article 17 asserts the recognition and guarantee of rights and freedoms in Russia “according to the universally recognized principles and norms of international law...”¹⁴¹. Additionally, the Constitution protects ethnic minority rights, adhering to “the generally recognized principles and norms of international law and international treaties of the Russian Federation”¹⁴². Article 55(1) further stipulates that the enumeration of rights and freedoms within the Constitution “shall not be interpreted as a rejection or derogation of other universally recognized human rights and freedoms”¹⁴³. Moreover, a specific provision within the Chapter empowers every individual with the right to appeal to international human rights bodies, contingent upon the exhaustion of all national legal remedies available¹⁴⁴.

3.2. Russia’s admission process

Despite Russia’s strides towards integrating with international norms, the period following its application for membership witnessed concerning regressions. This backslide was exemplified by the outbreak of the Chechen conflict on December 11th, 1994, which significantly tarnished Russia’s international reputation. In response, the Parliamentary Assembly issued Resolution 1055 (1995), denouncing the Russian military’s use of force as indiscriminate and disproportionate, particularly against the civilians¹⁴⁵. This action was highlighted as contravening the 1949 Geneva Conventions,

¹³⁹ Gennady M. Danilenko, cit supra note 128, 465.

¹⁴⁰ Gennady M. Danilenko, cit supra note 128, 465.

¹⁴¹ Constitution of the Russian Federation, 1993, Article 17(1).

¹⁴² Constitution of the Russian Federation, 1993, Article 69.

¹⁴³ Constitution of the Russian Federation, 1993, Article 55.

¹⁴⁴ Constitution of the Russian Federation, 1993, Article 46 (3).

¹⁴⁵ Parliamentary Assembly of the Council of Europe, “Resolution 1055”, Assembly debate on 2 February 1995 (7th Sitting), Doc. 7230, report of the Political Affairs Committee, rapporteur: Mr. Muehleemann; and Doc. 7231, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr. Bindig, adopted on 2 February 1995 (7th Sitting), paras 2-3, <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16466&lang=en>.

their 1977 Second Protocol, and the OSCE Code of Conduct on Political-Military Aspects of Security¹⁴⁶. It also represented a stark violation of the fundamental human rights principles endorsed by the Council of Europe; principles Russia committed to uphold by seeking membership”¹⁴⁷.

On February 2nd, 1995, the Assembly decided to halt Russia’s accession process, urging the Russian government to cease military operations in Chechnya and pursue a peaceful resolution to the conflict¹⁴⁸. The interruption of the admission process allowed the Committee on Legal Affairs and Human Rights, the Political Affairs Committee and the Committee on Relations with European Non-Member Countries to closely monitor the situation, providing periodic updates to the Assembly. The peace agreement reached on July 30th, 1995, despite its fragility, alongside observable enhancements in Russia’s constitutional and legislative framework for human rights protection, were interpreted by the Committees as indicative of a significant policy shift, aligning more closely with the prerequisites set out in Resolution 1055. Consequently, on September 27th, 1995, through Resolution 1065, the PACE opted to resume the evaluative process concerning Russia’s membership request¹⁴⁹.

The observations made by Rudolf Bindig, serving as the rapporteur for the Committee on Legal Affairs and Human Rights, in his January 19th, 1996, Opinion¹⁵⁰, highlighted significant concerns about Russia’s compliance with Article 3 of the Statute. Bindig pointed out that Russia had not yet achieved full adherence to the rule of law, not only due to the absence of reforms in critical legal sectors such as criminal law, criminal procedure, and the enforcement of judgments, but also because of an unchanged legal culture reminiscent of the Soviet era, where laws were often bypassed for more “convenient” solutions to problems”¹⁵¹. Additionally, the report drew attention to the judiciary’s structural weaknesses, with particular emphasis on the fact that the Russian President had the right to appoint judges¹⁵². This concentration of powers raised significant concerns about the independence of the judiciary, further exacerbated by the influence of threats and bribery from organized crime on court decisions, challenges that the State struggled to manage effectively¹⁵³.

¹⁴⁶ Ibid.

¹⁴⁷ PACE Res 1995 (1055), cit supra note 145.

¹⁴⁸ PACE Res 1995 (1055), cit supra note 145, para 4

¹⁴⁹ Parliamentary Assembly of the Council of Europe, “Resolution 1065”, Assembly debate on 26 September 1995 (27th Sitting), Doc. 7372, report of the Political Affairs Committee, rapporteur: Mr. Muehleman; and Doc. 7384, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr. Bindig, adopted on 26 September 1995 (27th Sitting), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16476>.

¹⁵⁰ Rudolf Bindig, “Opinion on Russia’s Application for Membership of the Council of Europe,” Doc. 7463, Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, January 18, 1996, <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=7397&lang=enL>.

¹⁵¹ Ibid.

¹⁵² Rudolf Bindig, cit supra note 150; with the exclusion of the judges of the Constitutional Court, the Supreme Court and the High Arbitration Court, whose appointments were made by the Council of the Federation, mostly upon the proposal of the President.

¹⁵³ Rudolf Bindig, cit supra note 150.

The field of criminal law and procedure also faced scrutiny. Specifically, the Presidential Decree No.1226 on Immediate Measures for the Protection of the Population Against Banditry and other Manifestations of Organized Crime was critiqued for allowing up to 30 days of preliminary detention based on evidence of involvement in organized crime¹⁵⁴. This practice was considered at odds with both Article 5, paragraphs 3 and 4, of the ECHR¹⁵⁵, and the Russian Constitution itself, which, in Article 22, mandates that:

- “1. Everyone shall have the right to freedom and personal immunity.
2. Arrest, detention and remanding in custody shall be allowed only by court decision. Without the court’s decision a person may be detained for a term more than 48 hours”¹⁵⁶.

Moreover, the persistence of the death penalty for at least 28 *corpus delicti*, amid crimes against the State, terrorist acts, banditry and inciting disorder, underscored the grave risk of executing innocent individuals¹⁵⁷. Alongside this, the issue of overcrowded pre-trial detention centers raised significant concerns, as it constituted inhuman or degrading treatments or punishments, in violation of Article 3 of the European Convention¹⁵⁸. This distressing scenario has reportedly led to detainees making false confessions to escape the dire conditions within these centers, preferring the relatively better ones found in prisons or penal colonies¹⁵⁹. Such actions infringed upon the principle of *nemo tenetur seipsum prodere*, a fundamental right enshrined in Article 14 paragraph 3 (g) of the International Covenant on Civil and Political Rights¹⁶⁰. Further exacerbating this situation was the observation that many individuals were detained for minor offenses, for which they might otherwise have been released on bail in several other Member States. The unnecessary detention for such trivial crimes contributed strongly to the issue of overcrowding, placing undue pressure on the criminal justice system and leading to prolonged and often illegal periods of pre-trial detention¹⁶¹. This not only violated the principles of proportionality and fairness in the administration of justice, but also inflicted unnecessary suffering on the detainees.

¹⁵⁴ Rudolf Bindig, cit supra note 150, para 4.

¹⁵⁵ European Convention on Human Rights, 1950, Article 5 (paras 3-4) reads: “3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful”.

¹⁵⁶ Constitution of the Russian Federation, 1993, Article 22.

¹⁵⁷ Rudolf Bindig, cit supra note 150, para 4 (b).

¹⁵⁸ European Convention on Human Rights, 1950, Article 3.

¹⁵⁹ Rudolf Bindig, cit supra note 150, para 4 (c).

¹⁶⁰ International Covenant on Civil and Political Rights, 1966, Article 14(3).

¹⁶¹ Rudolf Bindig, cit supra note 150, para 4 (c).

Complexities were also identified in the protection of human rights and fundamental freedoms. Not only did the conflict in Chechnya emerge as a stark violation of international humanitarian law, but Russia was also found guilty of having violated the freedom of expression, assembly, movement and religion¹⁶². For instance, despite Article 29 of the Russian Constitution explicitly prohibiting censorship of the media¹⁶³, journalists and publishers encountered multiple obstacles, ranging from financial difficulties to physical threats and political suppression¹⁶⁴. This problem caused implications for the media landscape, where numerous publications exhibited a strong politicization¹⁶⁵. Additionally, the report criticized the State Duma's unanimous endorsement of the CIS Convention on Human Rights, signaling Russia's inclinations towards policies that diverged from international law, particularly in times of crisis¹⁶⁶. This inclination raised concerns about the compatibility of the CIS Convention with the provisions of the ECHR, given that the former did not afford as comprehensive a set of rights as the latter.

In light of these findings, the Committee on Legal Affairs and Human Rights reasoned that the Russian Federation fell short of meeting the prerequisites for membership as stipulated in Article 3 and 4 of the Statute¹⁶⁷. Nonetheless, the Committee raised a question on whether Russia's accession to the Council could inherently help "to create conditions in conformity with Council of Europe standards, on the one hand through the commitments to be entered into by Russia upon accession and the subsequent monitoring procedure, and on the other hand, as a result of the mandatory judgments of the European Court of Human Rights"¹⁶⁸.

3.3. PACE Opinion No. 193

In its January 25th, 1996, Opinion No.193, the Parliamentary Assembly highlighted several deficiencies of the Russian Federation, as identified by the Committee on Legal Affairs and Human Rights and the Political Affairs Committee¹⁶⁹. Despite these challenges, the PACE recognized the ongoing political, legal and economic reforms, noting commitments to continued progress by the President of the Federation, the Prime Minister, and the Presidents of the Duma and of the Council

¹⁶² Rudolf Bindig, cit supra note 150, para 5 (a, d, e, f, g).

¹⁶³ Constitution of the Russian Federation, 1993, Article 29.

¹⁶⁴ Rudolf Bindig, cit supra note 150, para 7.

¹⁶⁵ Rudolf Bindig, cit supra note 150, para 7.

¹⁶⁶ Rudolf Bindig, cit supra note 150, para 7.

¹⁶⁷ Rudolf Bindig, cit supra note 150, para 8.

¹⁶⁸ Rudolf Bindig, cit supra note 150, para 8.

¹⁶⁹ Parliamentary Assembly of the Council of Europe, "Opinion 193", adopted January 25, 1996, during the Assembly debate at the 6th and 7th Sittings, report of the Political Affairs Committee (Doc. 7443, rapporteur: Mr. Muehleemann) and opinion of the Committee on Legal Affairs and Human Rights (Doc. 7463, rapporteur: Mr. Bindig), <https://pace.coe.int/en/files/13932/html>.

of the Federation¹⁷⁰. Specifically, the opinion enumerated twelve commitments as prerequisites for membership. Russia committed itself to a broad spectrum of cooperation and assistance initiatives, pledging to engage in a constructive “political dialogue” with the Committee of Ministers and to participate actively in various conventions of the Council, such as the European Culture Convention¹⁷¹. Moreover, the State undertook to reform and enact comprehensive federal legislation, aligning with the principle and standards set forth by the Council. This legislative renovation encompassed the introduction of new codes for criminal and civil justice, as well as laws governing the prison system’s operation and administration¹⁷². In addition, Russia committed to revising its legal framework governing the Procurator’s Office and the Office of the Commissioner of Human Rights, as well as the laws protecting national minorities and those safeguarding the freedoms of assembly and religion¹⁷³. Furthermore, the Federation assured to enhance the status of the legal profession (*advokatura*) through the federal legislation and to address and prosecute human rights abuses in Chechnya¹⁷⁴. It also committed to guarantee effective freedom of movement in its territory, to improve the conditions of criminal detention, to transfer the prison administration to the Ministry of Justice, and to repatriate ethnic Russians from the Baltic region¹⁷⁵.

Beyond these assurances, the Opinion also detailed twenty-five commitments that Russian officials agreed to fulfill. Among these were the signing of the European Convention on Human Rights upon accession and the ratification of the Convention along with its Protocols Nos. 1, 2, 4, 6, 7 and 11 within one year¹⁷⁶. Additional assurances included the ratification of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Framework Convention for the Protection of Minorities, the European Charter of Local Self-Government and the European Charter for Regional or Minority Languages, all within one year from the accession¹⁷⁷. Noteworthy was Russia’s commitment to resolve both international and internal disputes through peaceful means, firmly renouncing any form of threat or use of force against neighboring States, and to settle unresolved international border disputes in accordance with international law and existing treaties¹⁷⁸.

These extensive commitments and assurances formed the basis of the Assembly’s conclusion that “Russia – in the sense of Article 4 of the Statute – is clearly willing and will be able in the near future

¹⁷⁰ Ibid, paras 5-6.

¹⁷¹ PACE opinion 193 (1996), cit supra note 169, paras 7.1-7.3.

¹⁷² PACE opinion 193 (1996), cit supra note 169, para 7.4

¹⁷³ PACE opinion 193 (1996), cit supra note 169, para 7.5

¹⁷⁴ PACE opinion 193 (1996), cit supra note 169, paras 7.6-7.12.

¹⁷⁵ PACE opinion 193 (1996), cit supra note 169, paras 7.6-7.12.

¹⁷⁶ PACE opinion 193 (1996), cit supra note 169, paras 10-10.2; Protocol No. 6 concerns the abolition of the death penalty during peacetime, for which Russia also agreed to institute a moratorium on executions from the day of accession.

¹⁷⁷ PACE opinion 193 (1996), cit supra note 169, paras 10.3-10.5.

¹⁷⁸ PACE opinion 193 (1996), cit supra note 169, para 10.8

to fulfil the provisions for membership of the Council of Europe as set forth in Article 3¹⁷⁹. Hence, Russia was invited to join the CoE, with the optimism that membership would serve as a catalyst for the State to undertake the necessary reforms to align with the Organization's standards¹⁸⁰.

Following the PACE's positive opinion and the Committee of Ministers' subsequent decision, the Russian Federation was officially admitted to the Council of Europe on February 28th, 1996. This decision, however, sparked considerable debate, with critiques centered on the potential risks of integrating Russia in the Council, an organization tasked with upholding human rights, democracy, and the rule of law, when its adherence to these principles was notably lacking¹⁸¹. Despite these concerns, the acceptance of Russia's application was driven by a twofold rationale: firstly, the belief that excluding such relevant State was counterproductive, as "integration is better than isolation; cooperation is better than confrontation"¹⁸²; secondly, acknowledging that Russia had not fully met all the requirements by the time of the accession, the Council emphasized an approach "*fortiter in re, suaviter in modo*"¹⁸³, advocating for a gradual fulfillment of the obligations.

3.4. Russia's compliance with entrance requirements

Since Russia's accession, the PACE Monitoring Committee on the Honoring of Obligations and Commitments has released numerous reports. Moreover, the Assembly has adopted various resolutions concerning the State's record of compliance.

In its 1998 evaluation, the Committee observed that, although occasionally slow, the legislative process in Russia was making relative progress¹⁸⁴. A significant step was the enactment of a new Code of Criminal Procedure on December 18th, 2001¹⁸⁵. The latter removed the possibility for investigative authorities to conduct arrests, searches, or seizures without judicial approval, mandating that individuals arrested must appear before a judge within forty-eight hours¹⁸⁶. Russia also advanced

¹⁷⁹ PACE opinion 193 (1996), cit supra note 169, para 7.

¹⁸⁰ Pamela A. Jordan, cit supra note 58, 286.

¹⁸¹ PACE opinion 193 (1996), cit supra note 169; quoted from the Italian delegate, Mr. Caputo.

¹⁸² Ernst Mühlemann, "Russia's Request for Membership of the Council of Europe", report by the Political Affairs Committee, Doc. 7443, January 2, 1996, Parliamentary Assembly of the Council of Europe, para 7, <https://pace.coe.int/en/files/7032>.

¹⁸³ Treccani, "Fortiter in Re, Suaviter in Modo", accessed February 25, 2024, <https://www.treccani.it/vocabolario/fortiter-in-re-suaviter-in-modo/>; resolute in execution, but gentle in manner.

¹⁸⁴ Rudolf Bindig and Ernst Muehlemann, "Honouring of Obligations and Commitments by the Russian Federation", information report, Doc. 8127, June 2, 1998, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Parliamentary Assembly of the Council of Europe, <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=8566&lang=EN>.

¹⁸⁵ Angelika Nußberger, "The Reception Process in Russia and Ukraine", in *A Europe of Rights: The Impact of the ECHR on National Legal Systems*, edited by Helen Keller and Alec Stone-Sweet (Oxford: Oxford University Press, 2008), 609-610, <https://doi.org/10.1093/acprof:oso/9780199535262.001.0001>.

¹⁸⁶ Ibid.

other judicial reforms, such as establishing an Investigative Committee responsible for preliminary investigations and separating it from the Prosecutor's Office. Moreover, reforms in the penitentiary system contributed to a reduction in the number of individuals held in pre-trial detention¹⁸⁷. Another way through which Russia met its commitments was by strengthening individual rights protections, notably through the ratification of the ECHR and the provision for individual petitions¹⁸⁸. Indeed, the Strasbourg Court awarded compensatory damages to Russian citizens, offering a level of justice previously unattainable in the national system¹⁸⁹. This underscored how the European Convention reinforced the primacy of international law in Russia, aligning with the Constitution's Article 15(4). Nonetheless, the 1998 report also highlighted the failure to investigate or prosecute several grave human rights violations by military forces during the Chechen conflict¹⁹⁰.

The PACE Resolution 1277 of March 2002 provided a mixed review¹⁹¹. This lauded Russia for fulfilling various commitments made since 1998, such as ratifying critical conventions and protocols¹⁹², reforming the judicial system, adopting a law on the *advokatura*, transferring the prison system management to the Ministry of Justice, and beginning prosecutions of human rights violators in Chechnya¹⁹³. Despite these advancements, the report criticized Russia's inability to politically resolve the Chechen conflict and ratify Protocol 6 of the ECHR, signed in April 1997¹⁹⁴. Subsequently, in April 2002, the PACE passed a resolution urging the Russian authorities to address these specific issues¹⁹⁵. Particularly, the human rights violations in Chechnya posed a significant challenge, affecting the relations with other European Countries and breaching essential provisions of the ECHR, including Article 2, which safeguards the right to life, Article 3, which prohibits torture, and Article 14, which forbids discrimination¹⁹⁶.

In 2005, a detailed report by Commissioner Gil-Robles, following a visit to Russia, identified additional pressing issues. These included instances of xenophobia and racism, the violations of soldiers' rights associated with physical and psychological abuse, human trafficking and the health

¹⁸⁷ Rachel M. Fleig Goldstein, "The Russian Constitutional Court versus the European Court of Human Rights: How the Strasbourg Court Should Respond to Russia's Refusal to Execute ECtHR Judgments," *Columbia Journal of Transnational Law* 56, no. 1 (2017), 195, <https://dialnet.unirioja.es/servlet/articulo?codigo=6277052>.

¹⁸⁸ Alexei Trochev, "All Appeals Lead to Strasbourg? Unpacking the Impact of the European Court of Human Rights on Russia," Ssrn.com, June 18, 2009, 148-149, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1421342.

¹⁸⁹ *Ibid*.

¹⁹⁰ Rudolf Bindig and Ernst Muehleman, *cit supra* note 184.

¹⁹¹ Parliamentary Assembly of the Council of Europe, "Resolution 1277", Assembly debate on 23 April 2002 (10th Sitting) (see Doc. 9396, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, rapporteurs: Mr. Atkinson and Mr. Bindig), adopted on 23 April 2002 (11th Sitting).

¹⁹² *Ibid*; such as the Framework Convention for the Protection of National Minorities, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment, and ten of the thirteen protocols of the ECHR.

¹⁹³ Pamela A. Jordan, *cit supra* note 58, 287.

¹⁹⁴ Pamela A. Jordan, *cit supra* note 58, 287.

¹⁹⁵ PACE Resolution 1277, *cit supra* note 185.

¹⁹⁶ Pamela A. Jordan, *cit supra* note 58, 289.

consequences of the Chernobyl disaster. Nevertheless, he conveyed an optimistic view, stating that “the fledgling Russian democracy is still, of course, far from perfect, but its existence and its successes cannot be denied”¹⁹⁷.

Overtime, however, evaluations of Russia’s performance grew increasingly critical. Commissioner Hammarberg’s 2011 assessment revealed troubling instances of abductions, disappearances and maltreatment of detainees, alongside impunity and challenges faced by human rights advocates¹⁹⁸. In 2012, Commissioner Muižnieks emphasized the need to strengthen the judiciary’s independence and impartiality and to amend the legislation on NGOs¹⁹⁹. He later advocated for addressing human rights violations in Crimea following Russia’s annexation of the territory²⁰⁰.

4. Conclusion

This chapter provided a comprehensive analysis of the Russian Federation’s accession to the Council of Europe. Initially, it explored the Council’s history, its foundational principles and the main institutional bodies. Consequently, it examined the specific admission criteria detailed in the Statute, essential for understanding Russia’s peculiar path towards membership. The discussion then delved into the intricacies of Russia’s accession process, evaluating its conformity with the membership requirements, assessing the State’s democratic progress, and identifying the persisting challenges. This examination not only contextualized Russia’s engagement in the Council but also laid the groundwork for subsequent chapters to further explore its complex membership dynamics.

To conclude, the accession of the Russian Federation to the Council of Europe underscored an aspiration by its leadership for deeper political and economic integration with Europe. Yet, the fulfillment of Russia’s obligations and commitments has been partial, with democratic practices deteriorating since the initial assessment and culminating in the expulsion. The study conducted by

¹⁹⁷ Gil-Robles, Alvaro. “Report on the Visits to the Russian Federation, 15-30 July 2004 and 19-29 September 2004”, April 20, 2005, Office of the Commissioner for Human Rights, Council of Europe, <https://rm.coe.int/16806db7be>.

¹⁹⁸ Thomas Hammarberg, “Report by the Commissioner for Human Rights of the Council of Europe Following his Visit to the Russian Federation from 12 to 21 May 2011” (Strasbourg: Council of Europe, September 6, 2011), <https://rm.coe.int/16806db791>.

¹⁹⁹ Nils Muižnieks, “Report Following his Visit to the Russian Federation from 3 to 12 April 2013,” Council of Europe, Commissioner for Human Rights, 12 November 2013, <https://rm.coe.int/16806db6f2>.

²⁰⁰ Nils Muižnieks, “Report Following His Mission in Kyiv, Moscow and Crimea from 7 to 12 September 2014”, Council of Europe, Commissioner for Human Rights, 27 October 2014, [https://rm.coe.int/ref/CommDH\(2014\)19](https://rm.coe.int/ref/CommDH(2014)19); see also Council of Europe, “In Crimea Serious Human Rights Violations and Attacks on Minorities and Journalists Require Urgent Action - Commissioner for Human Rights” Commissioner for Human Rights, October 27, 2014, <https://www.coe.int/en/web/commissioner/-/in-crimea-serious-%20human-rights-violations-and-attacks-on-minorities-and-journalists-require-urgent-action>.

Freedom House over two decades illustrates this downturn, with the Country's freedom rating worsening from a "partially free" status at 4.5²⁰¹ in 1999²⁰² to a more troubling 6.0 in 2017²⁰³.

The year 2015 marked a major shift in Russia's approach to its international obligations, due to the substantial amendment of the law of the Constitutional Court: the latter was granted the authority to evaluate the enforceability of the Strasbourg Court's decisions within the Russian legal framework²⁰⁴.

The final thoughts of this chapter draw upon Professor Jeffery Kahn's insights on the short-term and long-term impacts of Russia's membership to the Council of Europe. Kahn suggested that, in the short term, Russia's membership could be seen as beneficial, given the progressive adoption of legislation aimed at meeting the Council's standards²⁰⁵. However, from a long-term perspective, the scenario became less favorable: by 2016, Russia was implicated in a significant portion of the ECtHR's judgments, accounting for nearly a quarter of all cases, with the majority finding violations of the Convention²⁰⁶. In particular, the annexation of Crimea, challenging the territorial sovereignty of another Member State, led to the suspension of the voting rights of the Russian delegation in the Parliamentary Assembly²⁰⁷, culminating in its expulsion after the 2022 aggression to Ukraine. These issues will be expanded upon in the forthcoming chapters.

²⁰¹ With 1 being the best and 7 being the worst.

²⁰² Freedom House, *Freedom in the World 1999 – Russia* (1999), <https://www.refworld.org/reference/annualreport/freehou/1999/en/70597>.

²⁰³ Freedom House, *Freedom in the World 2015: The Annual Survey of Political Rights and Civil Liberties* (2015), https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_2015_complete_book.pdf.

²⁰⁴ European Commission for Democracy Through Law (Venice Commission), "Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation of 14 December 2015," Opinion No. 832/2015, CDL-REF (2016)006 (Strasbourg: Venice Commission, 20 January 2016); Article 1(1) amending Article 3, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)006-e).

²⁰⁵ Jeffrey Kahn, "The Rule of Law under Pressure: Russia and the European Human Rights System," *Review of Central and East European Law* 44, no. 3 (September 5, 2019), 283, <https://doi.org/10.1163/15730352-04403005>.

²⁰⁶ European Court of Human Rights, "Annual Report 2016," Council of Europe, https://www.echr.coe.int/documents/d/echr/annual_report_2016_eng; By 2016, Russia accounted for 228 of the 993 judgments handed down by the Court. Among these 228 cases involving Russia, the Court identified violations in 222 instances, with the issues primarily concerning Articles 5 and 6.

²⁰⁷ Jeffrey Kahn, *cit supra* note 205, 286.

Chapter 2. Russia and the European Convention on Human Rights

On May 5th, 1998, the European Convention on Human Rights was ratified by the Russian Federation, marking the Country's commitment to adhere to the principal human rights instrument within the Council of Europe. Since this crucial moment, various sectors in Russia, including the judiciary branch, political figures and the population, have raised concerns about the authority and the effectiveness of the European Court of Human rights. Nonetheless, Russia has substantially contributed to the Court's significant caseload, by generating a significant number of claims alleging violations of the Convention and showing a reluctance to execute the Court's judgments. Initially, many applications filed by Russian citizens were dismissed as inadmissible. However, the situation began to shift significantly following *Burdov v. Russia*²⁰⁸, the first case not only declared admissible but also resulted in a judgment favoring the applicant. This led to growing discontent within Russia, further intensified by the 2005 judgment in *Ilaşcu v. Moldova and Russia*²⁰⁹, which prompted the Russian Ministry of Foreign Affairs to question the Court's impartiality and accuse it of political bias²¹⁰. This friction culminated in Russia's prolonged refusal to ratify Protocol No. 14 to the ECHR, a stance that many scholars interpreted as emblematic of the State's broader ambivalence regarding its European identity²¹¹.

This chapter delves into Russia's intricate engagement in the ECHR system. It first evaluates the perspectives held by the State's judiciary, executive branches, and its citizens towards the Convention and the Strasbourg Court, examining both the areas of resistance and acceptance. The chapter further explores the principal challenges that have led to the Court's inefficiencies, underlining Russia's significant contribution to these problems due to its large number of applications. It then identifies the key drivers of these applications, highlighting the Country's structural problems. The chapter concludes by evaluating the effectiveness of the Brighton Declaration in mitigating the Court's operational challenges and their specific repercussions on addressing Russia's limitations.

²⁰⁸ European Court of Human Rights, *Burdov v. Russia*, no. 59498/00, judgement of 4 September 2002, accessed April 2, 2024, <https://hudoc.echr.coe.int/fre?i=001-60449>.

²⁰⁹ European Court of Human Rights, *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgement of 8 July 2004, accessed April 2, 2024, <https://hudoc.echr.coe.int/fre?i=001-61886>.

²¹⁰ René Provost, "Teetering on the Edge of Legal Nihilism: Russia and the Evolving European Human Rights Regime," *Human Rights Quarterly* 37, no. 2 (2015), 2, <https://www.jstor.org/stable/24518321>. The Ministry expressed "bewilderment . . . at the inconsistency, contradictoriness, subjectivity and clear political engagement of the Strasbourg Court".

²¹¹ Angelika Nussberger, "Russia and European Human-Rights Law: Progress, Tensions and Perspectives: Foreword," Brill, January 1, 2014, 37, https://doi.org/10.1163/9789004203310_002.

1. Russian attitudes towards the European Convention on Human Rights

1.1. The attitude of the judiciary

The Russian judiciary system is expansive and multifaced, encompassing over 15,000 judges and 2,500 courts spread throughout its regions, often operating with minimal connections to a centralized judicial authority²¹². The system is divided into three distinct sectors: the general courts, which operate under the Russian Supreme Court (RSC) and deal with criminal, civil and administrative cases²¹³; the *Arbitrazh* courts, that are overseen by a chamber of the RSC and handle commercial disputes²¹⁴; the Constitutional Court, which reviews the constitutionality of laws and treaties and resolves jurisdictional disputes²¹⁵.

Despite the formal independence of the judiciary system from the legislative and executive branches²¹⁶, its *de facto* role as a governmental instrument has not been completely abandoned²¹⁷. The executive maintains its influence over judicial activities, subtly guiding decisions without overtly exerting political pressure. Indeed, evidence suggests that cases with strong political implications are still skewed to benefit the interests of the government²¹⁸. This trend became particularly evident during Vladimir Putin's first presidency, as he introduced the so-called "dictatorship of law"²¹⁹. A stark instance of this approach was Mikhail Khodorkovsky's prolonged detention in violation of criminal procedural guarantees, a case that underscored the judiciary's willingness to compromise

²¹² Peter Krug, "Departure from the Centralized Model: The Russian Supreme Court and Constitutional Control of Legislation", HeinOnline (Virginia Journal of International Law, 1997), 729, <https://heinonline.org/HOL/P?h=hein.journals/vajint37&i=735>.

²¹³ Provost, cit supra note 210, 7.

²¹⁴ Supreme Court of the Russian Federation, "Overview of the Judicial System of the Russian Federation," Supreme Court of the Russian Federation, accessed April 2, 2024, https://vsrf.ru/en/judicial_system/overview/. Until 2014, the *Arbitrazh* courts operated under the authority of the Supreme Court of Arbitration, while from that year on a major reform saw the abolition of the Supreme Court of Arbitration, replaced by a chamber within the Supreme Court.

²¹⁵ Ibid.

²¹⁶ Constitution of the Russian Federation, 1993, Article 120.

²¹⁷ International Commission of Jurists, "The State of the Judiciary in Russia – Report of the ICJ Research Mission on Judicial Reform to the Russian Federation," *International Commission of Jurists*, June 2010, 27, <https://www.icj.org/wp-content/uploads/2012/05/Russia-indejudiciary-report-2010.pdf>.

²¹⁸ Ibid. In cases related to the freedoms of speech and assembly, the judiciary's ability to rule in favor of activists is extremely constrained. Particularly, justices of the peace are far less likely than federal judges to decide in favor of these individuals. The prevailing instruction for such cases is that unauthorized public activities must be sanctioned.

²¹⁹ Ekaterina Mikhailovskaya, "Putin Speaking. Address of the Acting President to the Citizens of Russia," [www.panorama.ru](http://www.panorama.ru/works/patr/bp/6eng.html), accessed April 2, 2024, <http://www.panorama.ru/works/patr/bp/6eng.html>; see also Jeffrey Kahn, "Russia's 'Dictatorship of Law' and the European Court of Human Rights," *Ssrn.com*, 2016, 2, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1011825. The term "Dictatorship of Law" was coined by Vladimir Putin in 2000.

legal integrity to accommodate the Kremlin's preferences²²⁰. Academics argue that judges effectively function as extensions of the State machinery, showing little motivation to challenge the *status quo*²²¹. The attitudes of individual judges towards the ECHR system varied significantly. While some judges endorsed the ECHR, their support often did not translate into action²²². Many others either misapplied or overlooked the ECtHR's decisions, failed to understand them, or disregarded legal arguments based on the ECtHR caselaw²²³. Conversely, over time the involvement in international discussions with other CoE's Members improved, as well as the accessibility to the Court's decisions in Russia²²⁴. Despite these positive signs, the relationship between the judiciary and executive branches remained a major challenge.

1.2. The attitude of the executive

The Russian government has increasingly shown animosity towards the ECHR system, as the wave of ECtHR's judgments against Russia has led to a heightened international scrutiny and criticism of its human rights records, challenging President Putin's narrative of having restored law and order in the Country²²⁵. This resulted in the officials' attempts to discourage Russians from filing applications to the Strasbourg Court, labeling them as "anti-Russian" and "public enemies"²²⁶. Furthermore, in March 2007, President Putin reorganized the office of the Russian Representative to the ECtHR, reducing its authority by placing it under the Minister of Justice²²⁷. This move was perceived as risky, as the Minister of Justice could be dismissed at any moment by the President, thus lacking a long-term incentive to develop this office²²⁸. Moreover, the Russian authorities demonstrated reluctance in implementing the reforms mandated by the ECtHR, particularly those that could diminish their power or influence. This led the PACE to identify Russia as "one of the least cooperative [Member] States"²²⁹.

²²⁰ Provost, *cit supra* note 210, 9.

²²¹ Alexei Trochev, "All Appeals Lead to Strasbourg? Unpacking the Impact of the European Court of Human Rights on Russia," *Ssrn.com*, June 18, 2009, 156, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1421342.

²²² *Ibid*, 157.

²²³ Trochev, *cit supra* note 221, 157.

²²⁴ Trochev, *cit supra* note 221, 166.

²²⁵ Provost, *cit supra* note 210, 33.

²²⁶ Trochev, *cit supra* note 221, 146.

²²⁷ Trochev, *cit supra* note 221, 151. Originally housed in the Russian President's administration, this office was led by Pavel Laptev from November 1999 to March 2007. Laptev dedicated several years to establishing formal interactions between his office and other executive agencies, which was crucial for the effective enforcement of the ECtHR's decisions.

²²⁸ Trochev, *cit supra* note 221, 151.

²²⁹ Claire Bigg, "Russia | Seeking Redress in Strasbourg," *Radio Free Europe/Radio Liberty*, April 8, 2008, sec. Russia, <https://www.rferl.org/a/1065415.html>.

1.3. The public opinion

Research on public opinion shows that, following Russia's adoption of the ECHR, the population had minimal knowledge of its system and functioning²³⁰. Given the public disillusionment after the collapse of the Soviet Union, a pivotal utopian project of the 20th century, it is unsurprising that Russians were reticent to embrace new ideals swiftly, including those related to human rights and democracy²³¹. Surveys indicate a pronounced skepticism among Russians towards democracy, more so than in other Eastern European Nations. In 2009, for instance, 55% of Russian respondents viewed the autocratic leadership as more effective than the democratic governance²³². According to Ellen Carnaghan, ordinary Russians exhibited characteristics of "imperfect democrats": while they valued individual freedoms, they were skeptical towards democratic institutions²³³. In particular, research shows a notable dissatisfaction among Russians with their Country's judiciary system, with many viewing it as corrupt and untrustworthy²³⁴.

As Russians' trust in the judiciary system declined, their awareness and willingness to resort to the ECtHR gradually increased²³⁵. Scholars argue that the pressures on domestic courts to conceal the government abuses rather investigate them fueled people's inclination to submit complaints to the Strasbourg Court, significantly accounting to the rise in applications²³⁶. Indeed, between 1996 and 2004, the proportion of Russians willing to challenge the government's actions domestically decreased from 41% to a mere 1%²³⁷. Conversely, by 2008, 61% of Russians were aware of their ability to bring complaints to the ECtHR, with 29% indicating to be prepared to do so, and 68% agreed with the necessity of the Court's existence²³⁸.

Therefore, while the Russian population increasingly demonstrated trust in the ECHR system and willingness to submit applications to the ECtHR, reflecting an increasing sensitivity to human rights

²³⁰ Theodore P. Gerber and Sarah E. Mendelson, "Russian Public Opinion on Human Rights and the War in Chechnya," *Post-Soviet Affairs* 18, no. 4 (January 2002): 271–305, <https://doi.org/10.2747/1060-586x.18.4.271>; James L Gibson, "Russian Attitudes towards the Rule of Law: An Analysis of Survey Data," *Oxford University Press EBooks*, February 20, 2003, 77–91, <https://doi.org/10.1093/acprof:oso/9780199259366.003.0005>; Arthur H. Miller, Vicki L. Hesli, and William M. Reisinger, "Conceptions of Democracy among Mass and Elite in Post-Soviet Societies," *British Journal of Political Science* 27, no. 2 (1997): 157–90, <https://www.jstor.org/stable/194136>.

²³¹ Lauri Mälksoo, "Concluding Observations. Russia and European Human-Rights Law: Margins of the Margin of Appreciation," *Review of Central and East European Law*, January 1, 2012, 360, https://www.academia.edu/82184635/Concluding_Observations_Russia_and_European_Human_Rights_Law_Margins_of_the_Margin_of_Appreciation?f ri=534.

²³² *Ibid.*

²³³ Ellen Carnaghan, "Thinking about Democracy: Interviews with Russian Citizens," *Slavic Review* 60, no. 2 (2001), 336, <https://doi.org/10.2307/2697274>.

²³⁴ Mälksoo, *cit supra* note 231, 361.

²³⁵ Provost, *cit supra* note 210, 29.

²³⁶ Trochev, *cit supra* note 221, 148.

²³⁷ Trochev, *cit supra* note 221, 148.

²³⁸ Trochev, *cit supra* note 221, 148.

issues, the situation differed for the judiciary and executive branches. These remained deeply interconnected, with the judiciary reliant on the executive, which, in turn, was reluctant to fully comply with the Convention's standards and the Court's authority.

2. Persistent problems of the ECHR system

Following the Council of Europe's expansion in the 1990s, the European Convention on Human Rights began safeguarding over 800 million individuals across a vast territory. This growth not only increased the number of protected individuals, but also introduced a wider array of legal issues, diverse cultural contexts, a broader spectrum of national capabilities, and varying levels of commitment to the ECHR project. Consequently, since the creation of the European Court of Human Rights in 1959, over 90% of its judgments have been issued after this expansion²³⁹. Yet, the Court has struggled to evolve adequately to reflect the increased *espace juridique* of the Convention, leading to significant challenges. These include an excessive number of applications²⁴⁰, a concentration of cases from specific Countries, issues regarding the enforcement of judgments, and many repetitive cases.

2.1. Caseload, clone cases and national concentration of applications

Between 1999 and 2011, there was a dramatic 767% increase in the number of cases presented to the ECtHR²⁴¹. Despite the fact that many of these applications were ultimately deemed inadmissible, each one still required processing. This rise substantially diverted the Court's attention, diminishing the time available for the evaluation of critical issues and the development of relevant jurisprudence. Notably, Russia was a major contributor to this annual case volume, yet no Russian case was declared admissible until 2001²⁴². Prior to this, most of the complains were deemed inadmissible *ratione personae*, as they regarded violations from the Soviet period involving deceased family members, *ratione materiae*, since they concerned pensions, housing or banking issues, or *ratione temporis*, as they related to violations that occurred before Russia ratified the Convention²⁴³. However, on June

²³⁹ European Court of Human Rights, "50 Years of Activity: The European Court of Human Rights - Some Facts and Figures," European Court of Human Rights, 2009, http://www.echr.coe.int/Documents/Facts_Figures_1959_2009_ENG.pdf.

²⁴⁰ European Court of Human Rights, "Pending Applications Allocated to a Judicial Formation 31/12/2013," December 31, 2013, http://www.echr.coe.int/Documents/Stats_pending_month_2013_BIL.pdf. As of December 2013, the total number of pending applications stood at 99,900.

²⁴¹ European Court of Human Rights, "Annual Report 2011 of the European Court of Human Rights, Council of Europe," European Court of Human Rights, 2012, http://www.echr.coe.int/Documents/Annual_report_2011_ENG.pdf.

²⁴² Jeffrey Kahn, "Russian Compliance with Articles Five and Six of the European Convention of Human Rights as a Barometer of Legal Reform and Human Rights in Russia," University of Michigan Journal of Law Reform 35, no. 3 (May 1, 2002), 682, <https://repository.law.umich.edu/mjlr/vol35/iss3/6/>.

²⁴³ Ibid, 683.

21st, 2001, the Court recognized a Russian case, *Burdov v. Russia*, as admissible, ultimately deciding in favor of the applicant²⁴⁴.

A substantial portion of the ECtHR's caseload consisted of repetitive or "clone" cases, a category of cases that concerns the same factual background and leads to identical findings on the merits²⁴⁵. These are problematic because they drain the Court's resources, which could be better used if national courts adhered to its jurisprudence²⁴⁶. Moreover, they signal a failure at the national level to fully implement the ECHR²⁴⁷, compromising the Court's efficiency and ability to focus on issues that raise new or more significant features of the Convention²⁴⁸. One of the major problems leading to clone cases is the non-enforcement of domestic judicial decisions, a challenge that has significantly impacted Russia²⁴⁹.

Protocol No. 14 to the ECHR introduced reforms aimed at alleviating the Court's caseload, allowing single judges to dismiss inadmissible applications and establishing the pilot judgment procedure to manage repetitive cases efficiently without a formal finding for each one²⁵⁰. Additionally, it empowered three-judges committees to decide on the merits of cases already subject of "well-established" jurisprudence²⁵¹, a task that previously required seven-judge panels. However, the mere technical rationalization appeared insufficient to fully tackle these challenges. Russia's reluctance to ratify Protocol No. 14 until 2010, when an agreement was reached ensuring a Russian judge's participation in panels or committees deliberating on cases against the Country, highlighted this inadequacy²⁵². While Protocol No.14 succeeded in reducing the backlog of cases to 59,800 by 2019, a considerable volume of applications was left unexamined²⁵³. This situation has been characterized as a "structural denial of justice" for several applicants with legitimate claims that could not be processed²⁵⁴.

²⁴⁴ *Burdov v. Russia*, cit supra note 208.

²⁴⁵ Edith Wagner, "Repetitive Cases: European Court of Human Rights (ECtHR)," Oxford Public International Law (Max Planck Encyclopedias of International Law, August 2019), para 3, <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3696.013.3696/law-mpeipro-e3696#>.

²⁴⁶ Ed Bates, *The Evolution of the European Convention on Human Rights : From Its Inception to the Creation of a Permanent Court of Human Rights* (Oxford: Oxford University Press, 2010), 486, <https://academic.oup.com/book/32634/chapter/270520435>.

²⁴⁷ Ibid.

²⁴⁸ Bates, cit supra note 246.

²⁴⁹ Provost, cit supra note 210, 38.

²⁵⁰ Bill Bowring, "The Russian Federation, Protocol No. 14 (and 14bis), and the Battle for the Soul of the ECHR," Ssrn.com, 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2085582.

²⁵¹ Protocol No. 14 to the European Convention on Human Rights, 2004, Article 8.

²⁵² Antoine Buyse, "Russian Duma Has Accepted Protocol 14 Today," ECHR Blog, January 15, 2010, <http://echrblog.blogspot.ca/2010/01/russian-will-ratify-protocol-14-today.html>.

²⁵³ Paul Mahoney, "The European Court of Human Rights and Its Ever-Growing Caseload: Preserving the Mission of the Court While Ensuring the Viability of the Individual Petition System," Edward Elgar Publishing EBooks, June 28, 2013, 18–26, <https://doi.org/10.4337/9781782546122.00011>.

²⁵⁴ Ibid.

Alongside the aforementioned factors, the concentration of applications from a small group of Member States introduced another layer of complexity. Over time, the primary contributors of cases to the Court have varied, but these consistently included Russia, Ukraine, Turkey and Italy²⁵⁵. This concentration not only strained the Court's resources, but also granted these States significant influence in negotiations regarding possible reforms to the ECHR system. Notably, Russia's contribution of nearly a quarter of all pending cases underscored its significant role in the discussions around the adoption of Protocol No. 14²⁵⁶.

2.2. Delays or non-execution of judgments

According to Article 46(1) of the ECHR, States Parties commit to "abide by the final judgments of the Court in any case to which they are parties"²⁵⁷. The Court's finding that a State breached the Convention imposes an obligation for it to provide reparation²⁵⁸. Typically, the judgment entails three types of responsibility: the obligation to compensate the victim ("just satisfaction")²⁵⁹; the obligation to implement specific measures to restore the affected party as much as possible to the prior condition ("*restitutio in integrum*")²⁶⁰; the obligation to adopt general measures to cease the violation and prevent further similar infractions²⁶¹.

Article 46(2) designates the Committee of Ministers with the responsibility of monitoring the implementation of the Court's judgments²⁶², making it a pivotal player in this process²⁶³. While States

²⁵⁵ Pending Applications Allocated to a Judicial Formation 31/12/2013, cit supra note 33; European Court of Human Rights, "Pending Applications Allocated to a Judicial Formation 31/12/2014," *European Court of Human Rights*, 2014, https://www.echr.coe.int/documents/d/echr/stats_pending_month_2014_bil; European Court of Human Rights, "Pending Applications Allocated to a Judicial Formation 31/12/2015," 2015, https://www.echr.coe.int/documents/d/echr/Stats_pending_2015_BIL.

²⁵⁶ Provost, cit supra note 210, 40.

²⁵⁷ European Convention on Human Rights, 1950, Article 46(1).

²⁵⁸ Georg Ress, "The Effect of Decisions and Judgments of the European Court of Human Rights in the Domestic Legal Order," *Texas International Law Journal*, April 1, 2005, 359, <https://www.semanticscholar.org/paper/The-Effect-of-Decisions-and-Judgments-of-the-Court-Ress/74c28a840f89547c6b0da71e5c417afe4b477e29>.

²⁵⁹ European Convention on Human Rights, 1950, Article 41. "If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."; European Court of Human Rights, "The ECHR in 50 Questions," European Court of Human Rights, 2014, Question 42: What is just satisfaction?, http://www.echr.coe.int/Documents/50Questions_ENG.pdf.

²⁶⁰ European Court of Human Rights, *Akdivar and Others v. Turkey*, no. 21893/93, judgement of 16 September 1996, accessed April 2, 2024, para 47, <https://hudoc.echr.coe.int/fre?i=001-58062>.

²⁶¹ European Court of Human Rights, *Broniowski v. Poland*, no. 31443/96, judgement of 22 June 2004, accessed April 2, 2024, para 193, <https://hudoc.echr.coe.int/fre?i=001-61828>.

²⁶² European Convention on Human Rights, 1950, Article 46(2).

²⁶³ Stichting Justice Initiative, "Execution of Judgments under the European Convention on Human Rights," Stichting Justice Initiative, accessed April 2, 2024, <https://www.srji.org/en/implementation/execution-of-judgments-under-the-european-convention-on-human-rights/>. Four times a year, during its Human Rights ("DH") Meetings, the Committee of Ministers assesses States' compliance to the ECtHR's decisions, with the Department for the Execution of Judgments of the Council of Europe Secretariat offering key assistance. Additionally, other Council of Europe bodies, such as the

generally fulfill their obligations to compensate victims promptly, ensuring the implementation of general measures to achieve full adherence to the judgment poses greater challenges²⁶⁴. These measures, potentially involving political debate and significant legislative changes²⁶⁵, hinge on the political will of the concerned State and on the collective pressure exerted by the other States through the CM and the PACE²⁶⁶.

Russia has been identified as one of the leading States failing to implement the ECtHR's judgments, not only affecting the rights of the individuals under its jurisdiction, but also undermining the effective functioning of the ECHR system²⁶⁷. Despite the State's somewhat acceptable adherence to monetary awards, as noted by Yulia Lapitskaya "Russia's payments mask the ways the Russian government has ignored or even actively undermined the goals of the European Convention"²⁶⁸. Furthermore, the State has failed to address several systemic issues highlighted by the Court, including carrying out legislative reforms, conducting thorough investigations, and holding officials accountable for their actions²⁶⁹. A 2010 PACE's report identified Russia among the Countries with substantial challenges in implementing the Court's decisions²⁷⁰.

The impact of the refusals and delays has proven to be particularly problematic not only at the systemic level but also at the individual one. For instance, Mr. Burdov found it necessary to submit another application to the ECtHR, protesting the consistent disregard by Russian officials to implement the domestic judgments in his favor promptly, even after the Strasbourg Court had identified a breach in his case²⁷¹.

There were numerous domestic challenges in enforcing ECtHR judgments in Russia, including a limited judicial power, the political hostility to the Court, institutional inefficiencies, bureaucratic hurdles, and a lack of resources. The complexity of the Russian judicial procedure presented another significant obstacle, with distinct procedural codes for criminal, civil and commercial issues each specifying unique criteria for reopening cases²⁷². For instance, the Criminal Procedure Code allowed

Parliamentary Assembly's Committee on Legal Affairs and Human Rights, alongside the Human Rights Commissioner's Office, contribute by monitoring and enhancing awareness of state compliance efforts.

²⁶⁴ Ibid.

²⁶⁵ Stichting Justice Initiative, cit supra note 263.

²⁶⁶ Stichting Justice Initiative, cit supra note 263.

²⁶⁷ Maria Issaeva, Irina Sergeeva, and Maria Suchkova, "Enforcement of the Judgments of the European Court of Human Rights in Russia: Recent Developments and Current Challenges," Ssrn.com, 2011, 70, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2060238.

²⁶⁸ Julia Lapitskaya, "ECHR, Russia, and Chechnya: Two Is Not a Company and Three Is Definitely a Crowd", 2010, 490, <https://nyujilp.org/wp-content/uploads/2013/02/43.2-Lapitskaya.pdf>.

²⁶⁹ Provost, cit supra note 210, 19, see also Claire Bigg, cit supra note 31.

²⁷⁰ Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, rapporteur: Mr Christos Pourgourides, "Implementation of Judgments of the European Court of Human Rights," Doc. 12455, December 20, 2010, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12589&lang=en>.

²⁷¹ European Court of Human Rights, *Burdov v. Russia* (No. 2), no. 33509/04, judgement of 4 May 2008, accessed April 2, 2024, <https://hudoc.echr.coe.int/eng?i=001-90671>.

²⁷² Maria Issaeva, Irina Sergeeva, and Maria Suchkova, cit supra note 267, 71.

for cases to be reopened if the ECtHR identified a violation²⁷³, a provision absent from the Civil Procedure Code. The structure of the Duma presented an additional challenge: considering human rights as a multifaceted issue intersecting various domains of law, it lacked a specialized committee dedicated to human rights monitoring²⁷⁴.

3. Underlying reasons for Russian appeals to the ECtHR

In 2014, out of the 1,604 judgments finding violations of the European Conventions by Russia, around half (655) related to the right to a fair trial under Article 6²⁷⁵. Additionally, 501 judgments pertained to the protection of property under Article 1 of Protocol No. 1, and 368 involved the right to an effective remedy under Article 13²⁷⁶. Notably, Russia surpassed Turkey in having the highest number of judgments against it for violations of the right to life (Article 2) with 244 cases, and for the prohibition of torture (Article 3) with 503 cases²⁷⁷. This section explores the core problems of Russia's legal system that have resulted in its significant representation in the ECtHR's caseload.

3.1. Delays or non-execution of domestic rulings

In Russia, there have been frequent instances where domestic courts' decisions mandating the State to pay certain amounts to claimants were either not enforced or delayed²⁷⁸. The case of *Burdov v. Russia*²⁷⁹ is particularly noteworthy in this regard. Mr. Burdov, who was involved in emergency operations following the Chernobyl nuclear disaster, suffered extensive exposure to radioactive emissions and, according to domestic law, was entitled to government assistance²⁸⁰. Despite favorable court decisions in 1997 and 1999 ordering payment, along with penalties for delays, the enforcement was blocked by the Social Security Service due to a lack of funds²⁸¹. This financial deficit was confirmed by various government agencies, including the Regional Department of Justice. Following further legal proceedings, the claimant eventually received his overdue compensation in March 2001,

²⁷³ Criminal Procedure Code of the Russian Federation, 2001, Article 413 subsection 4(2).

²⁷⁴ Maria Issaeva, Irina Sergeeva, and Maria Suchkova, cit supra note 267, 75.

²⁷⁵ European Court of Human Rights, "Annual Report 2014 of the European Court of Human Rights, Council of Europe," European Court of Human Rights, March 2015, 177, https://www.echr.coe.int/documents/d/echr/annual_report_2014_eng. Violations of Article 6 also represent the most occurring breaches of the ECHR.

²⁷⁶ Ibid.

²⁷⁷ Annual Report 2014, cit supra note 68.

²⁷⁸ European Commission for the Efficiency of Justice (CEPEJ), "Examination of Problems Related to the Execution of Decisions by National Civil Courts against the State and Its Entities in the Russian Federation," Council of Europe, 2005, para 11, <https://rm.coe.int/1680747d7a>.

²⁷⁹ *Burdov v. Russia*, cit supra note 208.

²⁸⁰ *Burdov v. Russia*, cit supra note 208, paras 7- 23.

²⁸¹ *Burdov v. Russia*, cit supra note 208, paras 7- 23.

nearly a decade after the initial ruling²⁸². In his application to the ECtHR, Mr. Burdov raised concerns about the failure to receive the benefits granted to him due to the injuries sustained during his employment. The ECtHR determined that Russia had violated Article 6(1) on the right to a fair trial by subjecting him to a four-year delay following his appeal to a domestic court²⁸³. Additionally, it found a breach of Article 1 of Protocol No. 1 concerning the right to property, by depriving him of the income that he reasonably anticipated²⁸⁴.

Following the 2002 *Burdov* decision, the State implemented some positive steps. In 2005, citing *Burdov*, the Constitutional Court invalidated part of the federal budget for not mandating authorities to compensate for procedural delays within a specified timeframe²⁸⁵. Moreover, in 2007, also citing *Burdov*, the Supreme Court determined that the courts' acceptance of procedural delays contravened both the Russian Constitution and the ECHR, urging the Duma to enact legislative reforms on the right to fair trial within a reasonable period²⁸⁶.

Despite the favorable ruling from the ECtHR, Mr. Burdov was still not fully compensated for the amount owed to him. Consequently, he brought his case back before the Court, leading to the 2009 judgment of *Burdov v. Russia (No.2)*²⁸⁷. This case was selected as a pilot decision regarding Russia's non-compliance with the ECtHR, representing the first pilot judgment concerning Russia²⁸⁸. In addition to identifying violations of Article 6(1) and Article 1, Protocol No. 1, the Court in *Burdov (No. 2)* also recognized a breach of Article 13, the right to an effective remedy, despite this aspect not being raised by the applicant²⁸⁹. Furthermore, the Court departed from its previous position by instructing Russia to remedy the situation within a strict deadline²⁹⁰.

Following *Burdov (No.2)*, a draft law was submitted by the Supreme Court and registered with the Duma to compensate individuals who had not received settlements from the courts' judgments²⁹¹. However, in examining the draft, the Duma Committee on Constitutional Legislation and

²⁸² *Burdov v. Russia*, cit supra note 208, paras 7- 23.

²⁸³ *Burdov v. Russia*, cit supra note 208, para 37. "By failing for years to take the necessary measures to comply with the final judicial decisions in the present case, the Russian authorities deprived the provisions of Article 6 § 1 of all useful effect".

²⁸⁴ Ibid.

²⁸⁵ P. Leach, H. Hardman, and S. Stephenson, "Can the European Court's Pilot Judgment Procedure Help Resolve Systemic Human Rights Violations? Burdov and the Failure to Implement Domestic Court Decisions in Russia," *Human Rights Law Review* 10, no. 2 (May 12, 2010), 352, <https://doi.org/10.1093/hrlr/ngq011>

²⁸⁶ Ibid.

²⁸⁷ *Burdov v. Russia (No. 2)*, cit supra note 271.

²⁸⁸ Provost, cit supra note 210, 22.

²⁸⁹ *Burdov v. Russia (No. 2)*, cit supra note 271, para 117.

²⁹⁰ *Burdov v. Russia (No. 2)*, cit supra note 271."[The Court unanimously] holds that the respondent State must set up, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, an effective domestic remedy or combination of such remedies which secures adequate and sufficient redress for non-enforcement or delayed enforcement of domestic judgments in line with the Convention principles as established in the Court's case-law".

²⁹¹ Leach, Hardman & Stephenson, cit supra note 285, 356.

Government Structures concluded that such legislation was “unnecessary”²⁹². The Committee expressed concerns that the proposed new procedure could further prolong court proceedings, violating Article 46(3) of the Russian Constitution²⁹³, and might further restrict individuals’ access to the ECtHR, breaching Article 34 of the ECHR²⁹⁴. Additionally, the Committee criticized the absence of specified time limits in the draft law and the uncertainty on whether unsuccessful applicants must appeal to the final Court of Appeal to exhaust domestic remedies²⁹⁵.

Although Russia’s imperfect response to *Burdov (No.2)*, in its Interim Resolution on the case in December 2009, the Committee of Ministers acknowledged “with satisfaction the Russian authorities’ prompt and constructive response to the Court’s pilot judgment and to the Committee of Ministers’ Interim Resolution”²⁹⁶. Despite this progress, in 2014 another pilot judgment, *Gerasimov v. Russia*, revealed that there were still systemic problems to the enforcement of court decisions in the Country²⁹⁷.

3.2. *Nadzor*: the supervisory review of judicial decisions

In accordance with Article 320 of the 1964 Code of Civil procedure of the Russian Soviet Republic, government officials possessed the discretionary power to challenge final judgments if they suspected a misapplication of the law²⁹⁸. These objections could be filed years after the issuance of the decision and without involving the actual parties to the dispute²⁹⁹. This institution, the *nadzor*, has no equivalent in Western legal systems and conflicts with the principle of *res judicata* and the right to fair trial.

²⁹² Leach, Hardman & Stephenson, cit supra note 285, 356.

²⁹³ Constitution of the Russian Federation, 1993, Article 46(3). “In conformity with the international treaties of the Russian Federation, everyone shall have the right to turn to interstate organs concerned with the protection of human rights and liberties when all the means of legal protection available within the state have been exhausted”.

²⁹⁴ Leach, Hardman & Stephenson, cit supra note 285, 356.

²⁹⁵ Leach, Hardman & Stephenson, cit supra note 285, 356.

²⁹⁶ Committee of Ministers of the Council of Europe, “Interim Resolution CM/ResDH(2009)158: Execution of the pilot judgment of the European Court of Human Rights in the case *Burdov No. 2* against the Russian Federation relative to the failure or serious delay in abiding by final domestic judicial decisions delivered against the state and its entities as well as the absence of an effective remedy (Application No. 33509/04, judgment of 15/01/2009, final on 04/05/2009)”, adopted by the Committee of Ministers on December 3, 2009, at the 1072nd meeting of the Ministers’ Deputies, accessed April 2, 2024, at <https://rm.coe.int/168059ddb0>, 91-92.

²⁹⁷ European Court of Human Right, *Gerasimov and Others v. Russia*, Applications nos. 29920/05, 3553/06, 18876/10, 61186/10, 21176/11, 36112/11, 36426/11, 40841/11, 45381/11, 55929/11, 60822/11, judgment of October 1, 2014, accessed April 3, 2024 <https://hudoc.echr.coe.int/eng/?i=001-145212>.

²⁹⁸ Provost, cit supra note 210, 24.

²⁹⁹ Peter B Maggs et al., *Law and Legal System of the Russian Federation* (Huntington: New York, 2015), 62.

The ECtHR consistently urged Russia to refrain from this practice³⁰⁰. In *Ryabykh v. Russia*³⁰¹, the primary case addressing *nadzor*, the Court determined that the principle of supervisory review violated the right to legal certainty as implied by Article 6(1) of the ECHR³⁰². Emphasizing the importance of *res judicata*, the Court asserted that “no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case”³⁰³. Furthermore, the Court observed that a litigant’s rights would be rendered ineffective if a State’s legal system allowed a higher court to annul a definitive and binding judgment upon application by a State official³⁰⁴. However, while dismissing those cases in which the supervisory review merely served as an “appeal in disguise”, the ECtHR made a specific provision for Russia, permitting *nadzor* only if was “made necessary by circumstances of a substantial and compelling character”³⁰⁵.

Substantial changes to the civil supervisory review process were implemented in 2002 through the adoption of a new Civil Procedure Code³⁰⁶. These reforms aimed at limiting the most concerning aspects of this practice by instituting a one-year timeframe for filing the *nadzor* requests³⁰⁷. Additionally, the 2002 Code departed from its Soviet predecessor by allowing both the involved parties and individuals who were not part of the initial proceeding to initiate legal action, provided they could demonstrate how their legal rights were infringed by the final decision³⁰⁸. Despite these significant procedural adjustments, the Council of Europe continued to question Russia’s rationale for maintaining the civil supervisory review. On February 8th, 2006, the Committee of Ministers issued a resolution wherein it acknowledged that, despite some enhancements, the *nadzor* remained a significant source of instability within the Russian legal framework³⁰⁹. The Committee raised objections to the practice of overturning binding legal decisions for any material or procedural violation of the Russian law, rather than reserving such actions for exceptional circumstances as previously urged by the ECtHR³¹⁰. Consequently, the Committee adopted a series of

³⁰⁰ William Pomeranz, “Supervisory Review and the Finality of Judgments under Russian Law,” *Review of Central and East European Law* 34, no. 1 (2009), 19, <https://doi.org/10.1163/157303509x406214>.

³⁰¹ European Court of Human Rights, *Ryabykh v. Russia*, Application no. 52854/99, December 3rd, 2003, accessed April 3, 2024, <https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-61261&filename=CASE%20OF%20RYABYKH%20v.%20RUSSIA.pdf&logEvent=False>.

³⁰² *Ibid*, paras 46-50.

³⁰³ *Ryabykh v. Russia*, cit supra note 301, para 52.

³⁰⁴ *Ryabykh v. Russia*, cit supra note 301, para 56.

³⁰⁵ *Ryabykh v. Russia*, cit supra note 301, para 52.

³⁰⁶ Pomeranz, cit supra note 300, 20.

³⁰⁷ Civil Procedure Code of the Russian Federation, 2002, Article 376(2). The time limit was subsequently reduced to six months.

³⁰⁸ Civil Procedure Code of the Russian Federation, 2002, Articles 376(1) and 378(3).

³⁰⁹ *Ibid*.

³¹⁰ Committee of Ministers of the Council of Europe, “Interim Resolution ResDH(2006)1, concerning the violations of the principle of legal certainty through the supervisory review procedure (“*nadzor*”) in civil proceedings in the Russian

recommendations urging the Russian authorities to restrict the use of the supervisory review to cases involving the most severe violations of the law³¹¹. It also urged Russia to implement measures to promote the regular appeals process, enabling the rectification of judicial errors before a judgment became final and enforceable³¹². Finally, the Committee encouraged Russia to introduce procedures aimed at simplifying the *nadzor* process³¹³.

The Russian government agreed to consider the Committee's suggestions and ensure that the revised supervisory review procedures complied with the requirements of the ECHR. However, the Russian Constitutional Court provided a distinct response to these recommendations. Indeed, on February 5th, 2007, it issued a ruling in a series of cases challenging the constitutionality of several provisions related to the *nadzor* process³¹⁴. The Constitutional Court affirmed that the supervisory review served as an additional safeguard for Russia's constitutional rights; nonetheless, it reiterated that the process could only be invoked in cases of "fundamental" breaches of material or procedural rights, as outlined in Article 387 of the Civil Procedure Code³¹⁵. The Court further distinguished the supervisory review process from regular proceedings by highlighting that the *nadzor* only addressed "fundamental" judicial errors infringing upon the rights and freedoms of individuals and citizens³¹⁶. While not specifying the quantity, the Court implicitly acknowledged that such fundamental errors were relatively common, noting that the supervisory review process rectified a "significant number" of judicial mistakes³¹⁷. Therefore, the Court cautioned that "a procedural-legal vacuum" would arise if Russia hastily decided to abolish the *nadzor*³¹⁸. While generally maintaining a respectful tone towards the Strasbourg Court, the Constitutional Court directly contested the ECtHR's stance on the supervisory review process. In particular, it stated that if a request for supervision was approved, then the final court decision would no longer be deemed *res judicata*, inasmuch, technically, all legal appeals would not have been exhausted³¹⁹.

Following the Constitutional Court's ruling, the Russian Supreme Court proposed significant reforms to the civil supervisory review process, including much stricter procedural deadlines for submitting the protests³²⁰. However, it was not until December 2007 that amendments to Article 387 of the 2002

Federation – general measures adopted and outstanding issues", adopted by the Committee of Ministers on February 8, 2006, accessed April 3, 2024 at <https://hudoc.echr.coe.int/eng?i=001-72598>.

³¹¹ ResDH(2006)1, cit supra note 310.

³¹² ResDH(2006)1, cit supra note 310.

³¹³ ResDH(2006)1, cit supra note 310.

³¹⁴ Resolution of the Russian Constitutional Court on how to cancel a judgment that has entered into force, signed February 5, 2007, accessed April 3, 2024 at <https://www.rg.ru/documents/2007/02/14/ks-verdikt-dok.html>

³¹⁵ Ibid, para 3.1. and 4.

³¹⁶ Resolution of the Russian Constitutional Court, cit supra note 314, para 9.2.

³¹⁷ Resolution of the Russian Constitutional Court, cit supra note 314, para 9.2.

³¹⁸ Resolution of the Russian Constitutional Court, cit supra note 314, para 9.2.

³¹⁹ Resolution of the Russian Constitutional Court, cit supra note 314, para 9.3.

³²⁰ Pomeranz, cit supra note 300, 26.

Civil Procedure Code were implemented³²¹. Specifically, the time limit for applying for supervisory review was tightened from one year to six months³²². Additionally, whereas the article previously permitted the supervisory review of certain court decisions that had not been subject to appeal, the 2007 amendment restricted it to cases where an interested party had exhausted all established means of appeal outlined in the Code³²³. Moreover, the amendment largely embraced the Constitutional Court's language on the threshold question of what constituted a "fundamental" breach of material or procedural law. While the revised Article 387 still mandated such a fundamental breach, it required that this violation also influenced the outcome of a case to such an extent that, without rectification, it would have been impossible to restore and safeguard the infringed rights, freedoms, and legal interests³²⁴.

The issue returned to Strasbourg the following year in *Martynets v. Russia*³²⁵, where the Court determined that these reforms were inadequate in addressing the problem. According to the Court, despite the tangible changes introduced, the supervisory review process still could not be considered compatible with the Convention³²⁶. Consequently, a third reform of the Code of Civil Procedure was enacted in December 2010, with the aim of further reducing the reliance on the supervisory review³²⁷.

3.3. Failure to investigate serious human rights violations

During the Second Chechen War, the ECtHR received numerous applications concerning alleged violations committed by the Russian security forces³²⁸. Additionally, a significant number of applications from South Ossetia followed the conflict with Georgia, which also saw Georgia submitting interstate applications against Russia, a rarity in the ECtHR's history³²⁹. A similar trend emerged in 2014 after the events in Ukraine, with Ukraine lodging three interstate applications against

³²¹ Ibid.

³²² Civil Procedure Code of the Russian Federation, 2002, Article 376 (2).

³²³ Pomeranz, cit supra note 300, 26.

³²⁴ Civil Procedure Code of the Russian Federation, 2002, Article 387.

³²⁵ European Court of Human Rights, *Martynets v. Russia*, application no. 29612/09, First Section Decision as to the Admissibility, November 5, 2009, accessed April 3, 2024 at <https://hudoc.echr.coe.int/eng?i=001-95788>.

³²⁶ Pomeranz, cit supra note 300, 25.

³²⁷ Pomeranz, cit supra note 300, 25.

³²⁸ See inter alia European Court of Human Rights, *Imakayeva v. Russia*, Application no. 7615/02, Judgment, February 9, 2007, para 164, accessed April 3, 2024, at <https://hudoc.echr.coe.int/eng?i=001-77932>; European Court of Human Rights, *Luluyev and Others v. Russia*, Application no. 69480/01, Judgment, February 9, 2007, paras 110-112, accessed April 3, 2024 at <https://hudoc.echr.coe.int/eng?i=001-77926>; European Court of Human Rights, *Isigova and Others v. Russia*, Application no. 6844/02, Judgment, December 1, 2008, paras 120-26, accessed April 3, 2024, at <https://hudoc.echr.coe.int/eng?i=001-87227>; European Court of Human Rights, *Vakayeva and Others v. Russia*, Application no. 2220/05, Judgment, October 4, 2010, paras 170 et seq, accessed April 3, 2024 at <https://hudoc.echr.coe.int/eng?i=001-99208>.

³²⁹ European Court of Human Rights, *Georgia v. Russia (II)*, Application no. 38263/08, Judgment, January 21, 2021, accessed April 3, 2024 at <https://hudoc.echr.coe.int/fre?i=001-207757>.

Russia, alongside over 160 individual ones³³⁰. These cases shared a common thread: Russia's failure to cooperate with the ECtHR by withholding the requested documents, contravening Article 38 of the ECHR³³¹, and inadequately investigating instances of killings, forced disappearances, and torture, violating Article 2³³² and 3³³³. Notably, a report by Human Rights Watch concluded that many individuals were seldom held accountable for crimes committed in Chechnya, even in the presence of substantial evidence against them³³⁴.

In some instances, the government explicitly declined to investigate alleged crimes despite directives from the ECtHR³³⁵. Typically, the State has cited Article 161 of its Code of Criminal Procedure, which prohibits compromising the interests of the parties during ongoing investigations, as a rationale for its reluctance to furnish documents³³⁶. However, the Court dismissed this justification, asserting that Russia's application of Article 161 has been inconsistent, and that the parties' privacy could be adequately safeguarded by Rule 33 of the ECtHR³³⁷. In practice, what often hindered investigations in Russia were legal and bureaucratic barriers, including the institutional overlap and a prohibition on disclosing the identities of officers involved in the operations³³⁸.

Even when Russia agreed to initiate internal investigations, it often withheld adequate information. For instance, in the case of *Carter v. Russia*, the ECtHR determined that Russian authorities "did not comply with their obligations under Article 38 of the Convention on account of their unjustified refusal to submit a copy of materials relating to the domestic investigation which they claimed did not establish any State involvement in Mr Litvinenko's death"³³⁹. Not only did the Court find that, in numerous cases, the government's superficial responses to the applicants' complaints violated their right to an effective remedy under Article 13 of the Convention, but it also deemed them to constitute inhuman treatment, contravening Article 3³⁴⁰.

³³⁰ Provost, cit supra note 210, 27. *Ukraine v. Russia I*, Application No. 20958/14 (13 March 2014); *Ukraine v. Russia II*, Application No. 43800/14 (13 June 2014); *Ukraine v. Russia III*, Application No. 49537/14 (11 July 2014).

³³¹ European Convention on Human Rights, 1950, Article 38.

³³² European Convention on Human Rights, 1950, Article 2.

³³³ European Convention on Human Rights, 1950, Article 3.

³³⁴ Human Rights Watch, "'Who Will Tell Me What Happened to My Son?' | Russia's Implementation of European Court of Human Rights Judgments on Chechnya," Human Rights Watch, April 29, 2015, <https://www.hrw.org/report/2009/09/27/who-will-tell-me-what-happened-my-son/russias-implementation-european-court-human>.

³³⁵ Ibid.

³³⁶ Criminal Procedure Code of the Russian Federation, 2001, Article 16.

³³⁷ European Court of Human Rights, "Rules of the European Court of Human Rights," 2024, Rule 33, https://www.echr.coe.int/documents/d/echr/rules_court_eng. Rule 33 stipulates that all documents related to a case, except those in friendly-settlement negotiations or in connection with proceedings under Rule 44F, are public unless restricted for reasons such as morals, public order, or privacy. The Chamber President can limit access if it affects justice. Requests for confidentiality must outline reasons and specify document parts to be private.

³³⁸ Human Rights Watch, cit supra note 127.

³³⁹ European Court of Human Rights, *Carter v. Russia*, Application no. 20914/07, Judgment, February 28, 2022, para 167, accessed April 3, 2024 at <https://hudoc.echr.coe.int/fre?i=001-211972>.

³⁴⁰ See, *inter alia*, *Imakayeva v. Russia*, *Luluyev and Others v. Russia*, *Isigova and Others v. Russia*, cit supra note 120.

4. The Brighton Declaration and the Russian Federation

On April 20th, 2012, during a high-level conference in Brighton, United Kingdom, the representatives of the then-47 Member States of the Council of Europe convened to deliberate on the future of the European Court of Human Rights. They unanimously agreed to the “Brighton Declaration”, a set of reforms aimed at addressing the Court’s growing backlog³⁴¹. The conference, organized under the UK’s leadership of the Committee of Ministers, followed earlier meetings in Interlaken and Izmir, which had similarly focused on the ECtHR’s caseload challenges³⁴².

4.1. Areas of concern

The Brighton Conference and Declaration tackled essential issues related to the domestic application of the European Convention, the interaction between the Strasbourg Court and national authorities, the regulation of the applications to the Court, their processing, the selection of judges, and the enforcement of judgments³⁴³. These aspects were identified by the Council of Europe as the “upstream, midstream, and downstream” factors contributing to the ECtHR’s challenges³⁴⁴.

The Brighton Declaration emphasized the importance of a more effective national implementation of the European Convention, acknowledging the varying degrees of judicial strength, rule of law, and commitment across the Parties. It called for States to undertake specific actions, such as establishing national human rights institutions, assuring the compatibility of national laws and draft bills with the Convention, introducing new legal remedies aligned with the Convention and promoting the consideration of its principles in national courts³⁴⁵. Other recommendations included training officials and legal professionals, raising awareness on the Convention among potential applicants, and making the significant ECtHR jurisprudence and guides available in national languages³⁴⁶.

³⁴¹ Library of Congress, “Council of Europe; European Court of Human Rights: 47 Member States Adopt the Brighton Declaration,” Library of Congress, Washington, D.C. 20540 USA, May 7, 2012, <https://www.loc.gov/item/global-legal-monitor/2012-05-07/council-of-europe-european-court-of-human-rights-47-member-states-adopt-the-brighton-declaration/>.

³⁴² Ibid.

³⁴³ “High Level Conference on the Future of the European Court of Human Rights: Brighton Declaration,” *Netherlands Quarterly of Human Rights* 30, no. 3 (September 2012): 349–62, <https://doi.org/10.1177/016934411203000307>.

³⁴⁴ Committee of Ministers of the Council of Europe, “CM(2006)39-final: Ensuring the continued effectiveness of the European Convention on Human Rights – The implementation of the reform measures adopted by the Committee of Ministers at its 114th Session (12 May 2004)”, Report by the Ministers’ Deputies, 12 May 2006, accessed April 3, 2024, at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168062da14.

³⁴⁵ Brighton Declaration, cit supra note 343, para 9.

³⁴⁶ Brighton Declaration, cit supra note 343, para 9.

Furthermore, the Declaration underlined the importance of the collaboration between the ECtHR and national bodies, emphasizing the principle of subsidiarity³⁴⁷ and the doctrine of the margin of appreciation³⁴⁸. It invited the Committee of Ministers to amend the Preamble to the Convention by the end of 2013 to incorporate these elements³⁴⁹. Moreover, it urged States to authorize their highest court to seek advisory opinions from the ECtHR³⁵⁰.

Notably, the document, while affirming the individual's right to appeal to the ECtHR as a fundamental element of the ECHR system³⁵¹, proposed measures to decrease the Court's caseload. These measures included shortening the time limit to submit an application from six months to four³⁵² and enhancing the strictness of the admissibility criteria³⁵³. Additionally, the Declaration emphasized the importance of applicants receiving proper guidance³⁵⁴ and encouraged the Court to further expand its jurisprudence on to the requirement of the exhaustion of domestic remedies³⁵⁵.

Brighton also sought to address the delays in processing the applications by proposing minor adjustments that aligned with those introduced by Protocol No. 14³⁵⁶. In particular, expanding on the pilot judgment procedure, it invited the Committee of Ministers to create a system where the Court could select and rule on a few representative cases from clusters of applications alleging identical violations by the same State, applying the outcomes to the entire group³⁵⁷. Moreover, it suggested

³⁴⁷ Council of Europe, "Conference on Subsidiarity Principle: National Implementation of the ECHR - Human Rights National Implementation - Www.coe.int," Council of Europe - Human Rights National Implementation, accessed April 3, 2024, <https://www.coe.int/en/web/national-implementation/conference-on-subsidiarity-principle-national-implementation-of-the-echr>. The principle of subsidiarity underscores that the primary duty to apply and effectively implement the Convention rests with the States Parties, particularly their national authorities and courts. These bodies act as the initial protectors of human rights, tasked with the complete application of the Convention as interpreted by the European Court of Human Rights.

³⁴⁸ The Lisbon Network, "The Margin of Appreciation. Introduction", The Lisbon Network, 2023, https://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/echr/paper2_en.asp#:~:text=The%20margin%20of%20appreciation%20gives. The doctrine of the margin of appreciation grants the flexibility necessary to prevent damaging confrontations between the Court and Member States. It allows the Court to strike a balance between the sovereignty of Member States and their commitments under the Convention.

³⁴⁹ Brighton Declaration, cit supra note 343, para 12(b).

³⁵⁰ Brighton Declaration, cit supra note 343, para 12(d). This competence was created by way of optional Protocol No. 16 to the ECHR, a development following the Declaration; see also Council of Europe, "Explanatory Report on the Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms," accessed April 3, 2024, https://www.echr.coe.int/documents/d/echr/protocol_16_explanatory_report_eng.

³⁵¹ Brighton Declaration, cit supra note 343, para 13.

³⁵² European Convention on Human Rights, 1950, Article 35(1); see also Brighton Declaration, cit supra note 343, para 15(a).

³⁵³ Brighton Declaration, cit supra note 343, para 15(d), "[The Conference] affirms that an application should be regarded as manifestly ill-founded within the meaning of Article 35(3)(a), inter alia, to the extent that the Court considers that the application raises a complaint that has been duly considered by a domestic court applying the rights guaranteed by the Convention in light of well-established case law of the Court including on the margin of appreciation as appropriate, unless the Court finds that the application raises a serious question affecting the interpretation or application of the Convention; and encourages the Court to have regard to the need to take a strict and consistent approach in declaring such applications inadmissible, clarifying its case law to this effect as necessary".

³⁵⁴ Brighton Declaration, cit supra note 343, para 15(e).

³⁵⁵ Brighton Declaration, cit supra note 343, para 15(g).

³⁵⁶ Protocol No. 14 introduced the pilot judgment procedure and reduced the number of judges needed for dismissing an application or considering cases aligned with the established jurisprudence.

³⁵⁷ Brighton Declaration, cit supra note 343, para 20(d).

that the CM should deliberate on appointing additional permanent judges by the end of 2013, with varied terms of office or a different set of responsibilities³⁵⁸. Emphasizing the importance of appointing highly qualified judges, it supported the work of an expert advisory panel on judicial nominations³⁵⁹. Additionally, it proposed amending the Convention to restrict the nominations to individuals under the age of sixty-five³⁶⁰.

Finally, regarding the enforcement of judgments, while the Declaration acknowledged the issues of delays and instances of non-compliance in executing the Court's decisions, it mildly pushed for improvements in this area. It recommended the Committee of Ministers to continue its monitoring work³⁶¹, it urged the national authorities to publicly outline their action plans to execute the Court's judgments³⁶², and it called for a more rigorous examination of compliance by national parliaments³⁶³. Following the adoption of the Brighton Declaration, the Committee of Ministers instructed the Steering Committee for Human Rights (CDDH) to draft Protocols Nos 15 and 16 to the ECHR³⁶⁴. Protocol No. 15, that came into force in 2021, introduced a new paragraph to the Preamble of the Convention, emphasizing the principle of subsidiarity and the doctrine of the margin of appreciation³⁶⁵, in order to stress the Parties' fundamental role in protecting the rights enshrined in the Convention through their national systems. Furthermore, the Protocol established sixty-five as the maximum age for nominees for appointment as judges of the ECtHR³⁶⁶ and shortened the time limit for filing an application to the ECtHR from six to four months³⁶⁷. Protocol No. 16, that came into force in 2018³⁶⁸, allowed the highest court of any State Party to seek an advisory opinion from the ECtHR on a case pending before national courts³⁶⁹.

4.2. Unresolved issues

While the Brighton Declaration made some concrete proposals for reform, it overlooked or insufficiently addressed several complex issues, such as the enforcement of judgments, the

³⁵⁸ Brighton Declaration, cit supra note 343, para 20(e).

³⁵⁹ Brighton Declaration, cit supra note 343, para 25(b).

³⁶⁰ Brighton Declaration, cit supra note 343, para 25(f).

³⁶¹ Brighton Declaration, cit supra note 343, para 27.

³⁶² Brighton Declaration, cit supra note 343, para 29(a)(ii).

³⁶³ Brighton Declaration, cit supra note 343, para 29(a)(iii).

³⁶⁴ Provost, cit supra note 210, 48.

³⁶⁵ Protocol No. 15 to the European Convention on Human Rights, 2013, Article 1.

³⁶⁶ Protocol No. 15 to the European Convention on Human Rights, 2013, Article 2.

³⁶⁷ Protocol No. 15 to the European Convention on Human Rights, 2013, Article 3.

³⁶⁸ András Csúri, "Entry into Force of Protocol No. 16 to the ECHR," eucrim.eu, October 20, 2018, <https://eucrim.eu/news/entry-force-protocol-no-16-echr/#:~:text=On%201%20August%202018%2C%20Protocol.>

³⁶⁹ Protocol No. 16 to the European Convention on Human Rights, 2013, Article 1(1).

disproportionate concentration of cases from specific Countries, the right of individual petition, and the domestic application of the Convention. These challenges were especially relevant to Russia.

The Declaration did not introduce significant changes regarding the execution of the ECtHR's decisions, leaving the primary responsibility to the States without altering the oversight role of the Committee of Ministers³⁷⁰. Moreover, the Declaration did not address the national concentration of caseload: while it proposed measures to enhance the local implementation of the Convention, there was no expressed intention to tackle the issue of persistent offenders³⁷¹. Despite the availability of national concentration data and its recognition as a problem, its politically sensitive nature likely deterred its discussion in Brighton, indicating the depth of this issue.

Another issue arose from the changes to the admissibility criteria, as they could potentially reduce the workload of the Court while simultaneously posing a threat to the right of individual petition. The reduction of the application period from six to four months could indeed decrease the number of applications, but it did not necessarily correspond to an increase in the protection of human rights³⁷². This timeframe appeared to be arbitrarily chosen, and there was no indication that individuals who failed to file the application within the four-month window had their rights protected or reaffirmed through other means³⁷³. Notably, leading human rights NGOs argued that the six-month period was essential in many jurisdictions, particularly in cases where there was a documented failure or significant delay in notifying the applicants of final domestic decisions³⁷⁴. Additionally, the effectiveness of shortening the application timeframe hinged on the expectation of a more robust local enforcement of the ECHR, an aspect in which the Declaration lacked depth. Indeed, while it reiterated the subsidiarity principle and promoted the establishment of national human rights commissions, it made no progress towards a binding obligation to establish a national body overseeing the implementation of the Convention³⁷⁵.

4.3. The impact of the Brighton Declaration on Russia

The strategies outlined in the Brighton Declaration and the ensuing protocols did not effectively address the persistent challenges arising from Russia's implementation of the ECHR, making their effects on the State somewhat negligible.

³⁷⁰ Provost, *cit supra* note 210, 47.

³⁷¹ Provost, *cit supra* note 210, 47.

³⁷² Provost, *cit supra* note 210, 48.

³⁷³ Provost, *cit supra* note 210, 48.

³⁷⁴ "Joint NGO Statement the Brighton Declaration Must Strengthen Human Rights Protection in Europe and Preserve the Integrity and Authority of the European Court of Human Rights," 2012, <http://www.statewatch.org/media/documents/news/2012/apr/eu-brighton-declaration.pdf>.

³⁷⁵ Provost, *cit supra* note 210, 48.

Despite being recognized for its extensive record of human rights violations, Russia demonstrated insufficient adherence to the ECtHR's judgments. The Ministry of Justice's office in charge of implementing the Court's decisions faced significant limitations in both resources and authority, significantly hampering its ability to implement structural reforms³⁷⁶. While the Declaration suggested sharing the best practices in the execution of judgments, it did not propose specific solutions for equipping local entities with the necessary means for an effective implementation³⁷⁷. Moreover, the recommendation for parliamentary supervision, despite its positive intent, lacked the detailed framework necessary to efficiently empower parliaments in this context³⁷⁸. Indeed, Russia adopted a "horizontal approach" to human rights protection within the Duma, leading to the absence of a dedicated committee responsible for human rights or the enforcement of the ECtHR's judgments³⁷⁹. Furthermore, Russian scholars questioned the force of the Court's precedents, a debate that was further complicated by the Brighton Declaration³⁸⁰. They argued that although the ECtHR was tasked with ensuring that the Parties fulfilled their obligations, its decision to bind itself to its own judgments, as suggested by the Declaration³⁸¹, did not necessarily require Russia to adhere to the decisions made against it³⁸².

Acknowledging the limitations and the minimal impact of the Brighton Declaration on Russia, Professor Laurence R. Helfer presented an ambitious proposal³⁸³. While the Declaration did detail specific measures to ensure the ECHR's domestic implementation³⁸⁴, these commitments were expressed in a motivational language, suggesting rather than mandating action³⁸⁵. Furthermore, none of them was included in Protocols Nos 15 and 16. This omission resulted in a structural imbalance, as the Protocols provided States with the "benefits" of the reform, such as the ability to dismiss an increased number of applications and a softer review for those evaluated on their merits, without

³⁷⁶ Maria Issaeva, Irina Sergeeva, and Maria Suchkova, *cit supra* note 267, 74.

³⁷⁷ Brighton Declaration, *cit supra* note 343, para 29.

³⁷⁸ Provost, *cit supra* note 210, 52.

³⁷⁹ Provost, *cit supra* note 210, 52.

³⁸⁰ Maria Issaeva, Irina Sergeeva, and Maria Suchkova, *cit supra* note 267, 81-82.

³⁸¹ Brighton Declaration, *cit supra* note 343, para 25(c), "[...] [The Conference] welcomes the Court's long-standing recognition that it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart without cogent reason from precedents laid down in previous cases".

³⁸² Maria Issaeva, Irina Sergeeva, and Maria Suchkova, *cit supra* note 267, 81-82.

³⁸³ Laurence R. Helfer, "The Burdens and Benefits of Brighton," ESIL Reflections, 2012, <https://esil-sedi.eu/wp-content/uploads/2012/06/Helfer-Benefits-and-Burdens-of-Brighton-3June2012-2.pdf>.

³⁸⁴ These measures include establishing independent national human rights institutions, authorizing parliaments to review the compatibility of draft legislation with the Convention, introducing new legal remedies, encouraging courts to take the Convention and ECtHR case law into account, facilitating litigants' ability to raise Convention violations, and training and informing officials at all levels of government about the Convention's requirements.

³⁸⁵ Brighton Declaration, *cit supra* note 343, para 7-9. States "should" take these steps, they will "consider" these measures "so far as relevant" and will "encourage" their adoption.

subjecting them to the corresponding “burdens” of thoroughly applying the Convention and the Court’s jurisprudence within the domestic legal frameworks³⁸⁶.

Professor Helfer, highlighting the inadequacy of these nonbinding measures, proposed the adoption of a new Protocol containing explicit, obligatory commitments to integrate the Convention and the ECtHR’s decisions more firmly into national legal orders³⁸⁷. Moreover, he suggested that the adherence to these commitments should be a prerequisite for the application of the more restrictive admissibility criteria and the more deferential judicial review contemplated by the Declaration³⁸⁸.

To implement this Protocol, he suggested an opt-in model. This approach would present States Parties with a “package deal” treaty incorporating both the responsibilities and the advantages outlined in the Brighton Declaration³⁸⁹. States could either accept this package, subjecting themselves to stricter admissibility rules and a more deferential review, along with a mandatory commitment to integrate the Convention and ECtHR’s judgments into national legislation, or opt out, maintaining the current standards but foregoing the Protocol’s domestic implementation obligations³⁹⁰. This opt-in system would come with a mechanism to ensure compliance from participating States. Professor Helfer suggested establishing a procedure for pre-clearance by a CoE body to verify if a State has implemented necessary measures, or a post-ratification review process³⁹¹. This could involve States submitting reports to demonstrate compliance or the ECtHR assessing adherence, either autonomously or upon complaint by a private party or another State³⁹². Finally, the Protocol would incorporate a clause for suspending certain benefits if a Country fails to meet its obligations³⁹³.

Regardless of the design strategy chosen, Professor Helfer’s proposal underscored the importance of linking the burdens and benefits of the Brighton Declaration within a single legal instrument. Although the idea presented a promising response to the prevailing difficulties, a closer examination reveals some limitations. If Russia, which accounted for a substantial part of the Court’s workload, had decided not to ratify this Protocol, its capacity to reduce complaints from this Nation facing systemic human rights problems might have been limited. Additionally, had the Protocol’s enforcement depended on unanimous ratification, Countries less dedicated to enforcing the Convention, such as Russia, could have weakened its execution or oversight mechanisms, thereby restricting its potential effectiveness.

³⁸⁶ Helfer, *cit supra* note 383, 3.

³⁸⁷ Helfer, *cit supra* note 383, 3.

³⁸⁸ Helfer, *cit supra* note 383, 5.

³⁸⁹ Helfer, *cit supra* note 383, 5-6.

³⁹⁰ Helfer, *cit supra* note 383, 5-6.

³⁹¹ Helfer, *cit supra* note 383, 6.

³⁹² Helfer, *cit supra* note 383, 6.

³⁹³ Helfer, *cit supra* note 383, 6.

5. Conclusion

This chapter offered an examination of the complexities surrounding Russia's involvement in the ECHR system. It analyzed the viewpoints held by Russia's judiciary, executive branches, and its citizens towards the Convention and the Strasbourg Court. Furthermore, it delved into the primary challenges contributing to the Court's inefficiencies, emphasizing Russia's significant role in these issues due to its high number of applications. The chapter also identified the key drivers of these applications, highlighting some systemic flaws of the Russian legal system. It then assessed the effectiveness of the Brighton Declaration, aimed at tackling the Court's operational challenges, and examined its specific impact on Russia. In conclusion, it evaluated Professor Helfer's proposal of integrating the benefits and burdens of the Brighton Declaration into a single Protocol.

Currently, it is speculative to assess whether a Protocol incorporating the obligations of the Brighton Declaration would have significantly changed the relationship between Russia and the ECtHR. However, considering the eventual strain in their relations, it is questionable whether such measures could have fully addressed the issue. This skepticism is further underscored by Russia's 2015 legislative move that allowed its Constitutional Court to determine the applicability of the ECtHR's rulings domestically, highlighting a sovereignty-centric approach to international legal obligations³⁹⁴. To conclude, in answering the contentious question of whether Russia can be regarded as European, it appears that while the State has made progress in aligning with European standards, over time it has increasingly deviated from this regime. This divergence suggests that Russia's connection with Europe may primarily be geographical rather than ideological or legal. The subsequent chapter will delve further into these observations.

³⁹⁴ European Commission for Democracy Through Law (Venice Commission), "Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation of 14 December 2015," Opinion No. 832/2015, CDL-REF (2016)006 (Strasbourg: Venice Commission, 20 January 2016); Article 1(1) amending Article 3, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)006-e).

Chapter 3. The Russian Constitutional Court and the European Court of Human Rights

The Russian Constitutional Court has long been considered as the most enlightened among Russian courts. Even before Russia ratified the European Convention on Human Rights in 1998, it frequently referenced the Convention and the decisions of the European Court of Human Rights. Additionally, despite the Kremlin's frustration with certain ECtHR's rulings against Russia, such as in the *Ilașcu and Others v Moldova and Russia* case³⁹⁵, the RCC did not exhibit any reactionary responses. In 2011, however, the relationship between the Russian Constitutional Court and the Strasbourg Court deteriorated significantly due to the ECtHR's contentious ruling in the case of the Russian serviceman Konstantin Markin³⁹⁶. This judgment marked the first instance where the Strasbourg Court effectively overturned a decision by the Russian Constitutional Court, sparking widespread criticism from Russian politicians and legal experts. The situation was further strained by the following ECtHR's decisions in the cases of *Yukos v. Russia*³⁹⁷, and *Anchugov and Gladkov v. Russia*³⁹⁸. As a result, on July 14th, 2015, the Russian Constitutional Court issued a judgment emphasizing the necessity to establish a procedure for reviewing ECtHR's judgments that may conflict with the Russian Constitution. This development led to an amendment in December 2015 to the Constitutional Court's Statute, formally granting it the authority to determine the enforceability of rulings by international bodies in such conflict cases. Subsequently, in 2016 and 2017, the Court ruled that the ECtHR's judgments in the cases of *Anchugov and Gladkov* and *Yukos v. Russia* were not enforceable in Russia. Moreover, in 2020 the Russian Constitution was amended to essentially reassert the practice of the Constitutional Court, further reinforcing its right to object.

Arguably, the RCC's 2015 decision had a clear political intent: to affirm Russia's supremacy over international judicial bodies amidst heightened tensions between the State and the rest of Europe. While other Council of Europe Members also hesitated to cede part of their sovereignty, conflicting with the Strasbourg Court, none of them explicitly denied the *res judicata* effect of its judgments. Therefore, by empowering its Constitutional Court to decide on the enforceability of the ECtHR's

³⁹⁵ European Court of Human Rights, *Ilașcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, accessed 1 May 2024, <https://hudoc.echr.coe.int/fre?i=001-61886>.

³⁹⁶ European Court of Human Rights, *Konstantin Markin v. Russia*, no. 30078/06, Grand Chamber judgment of 22 March 2012), accessed 1 May 2024, <https://hudoc.echr.coe.int/fre?i=001-109868>.

³⁹⁷ European Court of Human Rights, *OAO Neftyanaya Kompaniya YUKOS v. Russia*, no. 14902/04, judgment (just satisfaction) of 31 July 2014, accessed 1 May 2024, <https://hudoc.echr.coe.int/fre?i=001-145730>.

³⁹⁸ European Court of Human Rights, *Anchugov and Gladkov v. Russia*, nos. 11157/04 and 15162/05, judgment of 9 December 2013, accessed 1 May 2024, <https://hudoc.echr.coe.int/eng?i=001-122260>.

decisions, Russia not only breached its international obligations³⁹⁹ but also contradicted its own Constitution⁴⁰⁰.

This chapter examines the evolution of the Russian Constitutional Court's stance towards the authority of the Strasbourg Court, highlighting a shift from initial cooperation to outright defiance. It begins by outlining the harmonious interactions between the RCC and the ECtHR, then delving into the three pivotal cases that disrupted this relationship. A chronological analysis follows, starting with the RCC's 2015 judgment that envisaged its authority to evaluate the constitutionality of international decisions, leading up to the December 2015 amendment that officially granted it this power. The chapter then explores the RCC's first applications of this new authority in the cases of *Anchugov and Gladkov v. Russia* and *Yukos v. Russia* alongside the constitutional amendments of 2020. Additionally, it considers the reactions of Russian academics to the RCC-ECtHR collision, assessing both supportive and critical views. The chapter concludes by evaluating the Council of Europe's response, reviewing the effectiveness of existing mechanisms in compelling Russia to enforce the ECtHR's judgments, and suggesting a dialogue-based approach as an alternative strategy.

1. The RCC's early engagement with the Strasbourg Court

The year 2011 marked a pivotal shift in the relationship between the Russian Constitutional Court and the European Court of Human Rights. Until then, the two institutions had maintained a strong cooperative relationship. In particular, the RCC played a crucial role in integrating the European Convention and the ECtHR's decisions into Russian law. Valery Zorkin, the Chairman of the Constitutional Court since 2003, noted that over fifty of its decisions were influenced by the position of Strasbourg, considerably impacting the Russian legal system⁴⁰¹. Significantly, in 2007 the RCC recognized that individuals under the Russian jurisdiction could leverage the ECtHR's case law in national courts⁴⁰². It expanded the binding nature of Strasbourg's jurisprudence beyond the cases directly involving Russia, establishing that the ECtHR's judgments, alongside the text of the

³⁹⁹ See, e.g., European Convention on Human Rights, 1950, Article 46(1); Vienna Convention on the Law of Treaties, 1969, Article 27. Article 46 (1) ECHR maintains that "the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties". Furthermore, Article 27 VCLT stipulates that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".

⁴⁰⁰ Constitution of the Russian Federation, 1993, Article 15(4). The clause maintains that "universally recognized principles and norms of international law as well as international agreements of the Russian Federation should be an integral part of its legal system. If an international agreement of the Russian Federation establishes rules, which differ from those stipulated by law, then the rules of the international agreement shall be applied".

⁴⁰¹ William Pomeranz, "Uneasy Partners: Russia and the European Court of Human Rights Uneasy Partners: Russia and the European Court of Human Rights," *Human Rights Brief*, 2012, 20, <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1863&context=hrbrief>.

⁴⁰² Constitutional Court of the Russian Federation, Resolution of February 5, 2007 No. 2-P "on the Case of Checking the Constitutionality of Provisions of Articles 16, 20, 112, 336, 376, 377, 380, 381, 382, 383, 387, 388, and 389 of the Civil Procedure Code of the Russian Federation", accessed 1 May 2024, <https://cis-legislation.com/document.fwx?rgn=16483>.

Convention, were fundamental components of the Russian legal framework⁴⁰³. Additionally, in 2009 the RCC issued a landmark decision against the death penalty, allowed by Article 20(2) of the Russian Constitution, declaring it unenforceable despite the Country not having ratified Protocol No. 6 ECHR, which abolished the capital punishment⁴⁰⁴. The Constitutional Court also advocated for substantial reforms in the Russian system of supervisory review (*nadzor*) and for establishing a more transparent appellate process⁴⁰⁵. Moreover, in February 2010, it asserted that the Russian parliament must create a “a mechanism of execution of final judgments of the ECtHR which would allow adequate redress for violations of rights determined by the ECtHR⁴⁰⁶.”

2. Catalysts of change: ECtHR’s rulings that redefined the RCC’s stance

Initially the relationship between the Russian Constitutional Court and the Strasbourg Court was positive, with the ECtHR acting as the initial stimulus and setting precedents for several key rulings of the RCC. Since 2011, however, it deteriorated significantly, with the RCC adopting a more confrontational stance. Three ECtHR’s judgments, *Markin v. Russia*⁴⁰⁷, *OAO Neftyanaya Kompaniya Yukos v. Russia*⁴⁰⁸, and *Anchugov and Gladkov v. Russia*⁴⁰⁹, sparked considerable legal and political backlash in Russia, and formed the basis for the Constitutional Court’s change of approach. In particular, scholars have identified *Markin v. Russia* as the first judgment that significantly altered the dynamic between the two courts. This shift was exacerbated by the *Yukos v. Russia* case, which led a group of Russian deputies to request the RCC to assess the constitutionality of certain legislative provisions concerning the implementation of international law in Russia. Subsequently, on July 14th, 2015, the Constitutional Court prompted the Russian Parliament to enact legislation that increased its powers, enabling it to declare the ECtHR’s rulings in *Anchugov and Gladkov v. Russia* and *Yukos v.*

⁴⁰³ Anton Burkov, “The Use of European Human Rights Law in Russian Courts,” *Cambridge University Press EBooks*, November 16, 2017, 64, <https://doi.org/10.1017/9781108235075.005>.

⁴⁰⁴ Library of Congress, “Russia: Death Penalty Ruled Unconstitutional,” Library of Congress, Washington, D.C. 20540 USA, December 1, 2009, <https://www.loc.gov/item/global-legal-monitor/2009-12-01/russia-death-penalty-ruled-unconstitutional/>. In paragraph 4.3, the RCC maintained that “The fact that Protocol no 6 is still not ratified in the context of the existing legal reality does not preclude recognition of its essential element of the legal regulation of the right to life. In accordance with Article 18 of the Vienna Convention on the Law of Treaties of 23 May 1969, the State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed. Thus, the sentence of death should neither be assigned nor enforced”.

⁴⁰⁵ William Pomeranz, “Supervisory Review and the Finality of Judgments under Russian Law,” *Review of Central and East European Law* 34, no. 1 (2009): 15–36, <https://doi.org/10.1163/157303509x406214>.

⁴⁰⁶ Burkov, cit supra note 403, 65.

⁴⁰⁷ *Markin v. Russia*, cit supra note 396.

⁴⁰⁸ *Yukos v. Russia*, cit supra note 397.

⁴⁰⁹ *Anchugov and Gladkov v. Russia*, cit supra note 398.

Russia as conflicting with the Russian Constitution and thus non-enforceable. These three pivotal ECtHR's decisions will be further examined in the following subsections.

2.1. *Markin v. Russia*

In 2005 Konstantin Markin, a radio intelligence operator in the Russian military and a divorced father of three, requested a three-year parental leave to care for his children, including an infant⁴¹⁰. Although this leave was legally available to servicewomen, a Russian military court ruled that servicemen were only entitled to three months⁴¹¹. After exhausting several appeals⁴¹², the Russian Constitutional Court also denied his request for extended leave⁴¹³, reasoning that his military service implied the acceptance of certain civil rights restrictions⁴¹⁴. Additionally, the court emphasized the special social role of motherhood as outlined in Article 38(1) of the Russian Constitution⁴¹⁵, which mandates the State protection for maternity, childhood, and the family⁴¹⁶. After the Russian Constitutional Court dismissed his claim, Markin took his case to the European Court of Human Rights, arguing that Russia violated Article 14 of the ECHR⁴¹⁷, which protects against discrimination in the enjoyment of the Convention's rights on grounds including sex⁴¹⁸. The ECtHR also considered Article 8, which defends the right to private and family life from any public interference⁴¹⁹, to determine if such a breach had occurred⁴²⁰. In elevating the issue to a matter of civil rights, the Strasbourg Court highlighted the right to parental leave as a question of gender equality, dismissing the RCC's special emphasis on motherhood⁴²¹. While it acknowledged the inherent differences between mothers and fathers, the ECtHR declared that when it came to childcare during parental leave, both genders were "similarly placed"⁴²². Additionally, it refused the Constitutional Court's argument that granting servicemen parental leave would adversely affect the military's operational effectiveness⁴²³. The Court concluded

⁴¹⁰ *Markin v. Russia*, cit supra note 396, para 15.

⁴¹¹ Pomeranz, cit supra note 401, 17.

⁴¹² *Markin v. Russia*, cit supra note 396, paras 15-32.

⁴¹³ *Markin v. Russia*, cit supra note 396, para 34.

⁴¹⁴ *Markin v. Russia*, cit supra note 396, para 34. "By signing a military service contract, a citizen [...] voluntarily chooses a professional activity which entails, firstly, limitations on his civil rights and freedoms inherent in this type of public service, and, secondly, performance of duties to ensure the defense of the country and the security of the State. Accordingly, military personnel undertake to abide by the statutory requirements limiting their rights and freedoms and imposing on them special public obligations".

⁴¹⁵ *Markin v. Russia*, cit supra note 396, para 34.

⁴¹⁶ Constitution of the Russian Federation, 1993, Article 38(1).

⁴¹⁷ *Markin v. Russia*, cit supra note 396, para 152.

⁴¹⁸ European Convention on Human Rights, 1950, Article 14.

⁴¹⁹ European Convention on Human Rights, 1950, Article 8.

⁴²⁰ *Markin v. Russia*, cit supra note 396, para 152.

⁴²¹ Pomeranz, cit supra note 401, 18.

⁴²² *Markin v. Russia*, cit supra note 396, para 132.

⁴²³ *Markin v. Russia*, cit supra note 396, para 101.

that the RCC had not provided adequate justifications for having imposed markedly stricter restrictions on the family lives of servicemen compared to servicewomen⁴²⁴. It therefore urged Russia to implement both general and specific measures to ensure the rights of the petitioner.

Scholars pointed out that the Strasbourg Court issued far more contentious rulings against Russia than *Markin*⁴²⁵. Nonetheless, it was this case that deepened the divide between the two courts as it marked the first occasion on which the ECtHR effectively overturned a decision by the Russian Constitutional Court⁴²⁶. This was perceived as a direct challenge to the integrity of Russia's legal system, unsurprisingly provoking displeasure from Valery Zorkin. He promptly responded with a critical essay titled "The Limits of Compliance"⁴²⁷, where he cautioned against politicizing the ECtHR's actions, arguing that the decision was disrespectful to Russia's legislators and challenged the State's national sovereignty⁴²⁸. He also objected to the decision on legal grounds, citing Article 15(4) of the Russian Constitution. He asserted that while this article incorporated international treaties into Russian law⁴²⁹, it did not elevate them above the Constitution itself⁴³⁰. Thus, he maintained that the Russian Constitutional Court's interpretation of the Constitution could not be overridden by the ECtHR's alternative interpretation of the European Convention⁴³¹. Zorkin's declaration about the primacy of the Russian Constitution over international law was soon echoed by the former Russian President Dmitry Medvedev. He emphasized that Russia would have not relinquished any aspect of its sovereignty that might have allowed an international or foreign court to alter its national legislation⁴³².

2.2. *Yukos v. Russia*

The prolonged dispute between the former shareholders of Yukos oil company and Russia stretched over a decade before the Strasbourg Court⁴³³. In 2004, Yukos shareholders filed a claim against the Russian government before the ECtHR, seeking nearly €38 billion in compensation for the actions of

⁴²⁴ *Markin v. Russia*, cit supra note 396, paras 141-143.

⁴²⁵ Pomeranz, cit supra note 401, 18.

⁴²⁶ Pomeranz, cit supra note 401, 18.

⁴²⁷ Jeffrey Kahn, "The Relationship between the European Court of Human Rights and the Constitutional Court of the Russian Federation: Conflicting Conceptions of Sovereignty in Strasbourg and St Petersburg," *European Journal of International Law* 30, no. 3 (August 2019): 936, <https://doi.org/10.1093/ejil/chz049>.

⁴²⁸ Pomeranz, cit supra note 401, 19.

⁴²⁹ Constitution of the Russian Federation, 1993, Article 15(4).

⁴³⁰ Pomeranz, cit supra note 401, 19.

⁴³¹ Pomeranz, cit supra note 401, 19.

⁴³² Pomeranz, cit supra note 401, 19.

⁴³³ *Yukos v. Russia*, cit supra note 397.

the Russian authorities that led to the company's bankruptcy⁴³⁴. After extensive proceedings regarding the admissibility of the case, which concluded in 2009⁴³⁵, the ECtHR issued its judgment on the merits on September 20th, 2011⁴³⁶. The Court determined that Russia had violated the right to a fair trial under Article 6 ECHR by not allowing Yukos adequate time to prepare its case before national courts⁴³⁷. Additionally, it identified violations of Article 1 of Protocol No. 1 on property protection, particularly concerning the failure of Russian tax authorities to achieve a fair balance in the enforcement proceedings against Yukos due to their inflexible and rapid execution⁴³⁸.

The year 2014 marked a pivotal and complex period for Russia's membership in the Council of Europe, particularly highlighted by the annexation of Crimea on March 18th. This event led the PACE to adopt Resolution 1990⁴³⁹, which resulted in the suspension of the Russian delegation's voting privileges, its representation in the Bureau of the Assembly, the Presidential Committee, and the Standing Committee, as well as its participation rights in the election observation missions⁴⁴⁰. At the same time, the European Union imposed sanctions on Russia, that retaliated with its own measures against Western agricultural imports⁴⁴¹. In the midst of these geopolitical tensions, the ECtHR resolved the just satisfaction issue stemming from its 2011 ruling in the *Yukos* case. The Court decided on a compensation measure, ordering Russia to pay approximately €1.9 billion in pecuniary damages to the former shareholders of Yukos⁴⁴². This amount was noted as an unprecedented pecuniary compensation in the context of human rights litigation⁴⁴³.

⁴³⁴ Iryna Marchuk and Marina Aksenova, "The Tale of Yukos and of the Russian Constitutional Court's Rebellion against the European Court of Human Rights" Associazione italiana dei Costituzionalisti, April 6, 2017, 2, <https://www.osservatorioaic.it/images/rivista/pdf/Marchuck-Aksenova%20Definitivo.pdf>.

⁴³⁵ European Court of Human Rights, *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, judgment of 8 March 2012, para 3, accessed 1 May 2024, <https://hudoc.echr.coe.int/eng/?i=001-106308>.

⁴³⁶ Ibid.

⁴³⁷ *Yukos v. Russia*, cit supra note 435, dispositif, 2 and 7.

⁴³⁸ *Yukos v. Russia*, cit supra note 435, para 551.

⁴³⁹ Parliamentary Assembly of the Council of Europe, "Reconsideration on Substantive Grounds of the Previously Ratified Credentials of the Russian Delegation", Resolution 1990 (2014), 16th Sess., accessed 1 May 2024, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=20882&lang=en>.

⁴⁴⁰ Ibid, see also Rachel M. Fleig-Goldstein, "The Russian Constitutional Court versus the European Court of Human Rights: How the Strasbourg Court Should Respond to Russia's Refusal to Executive ECtHR Judgments", *Columbia Journal of Transnational Law* 56, no. 1 (2017), 202, <https://www.semanticscholar.org/paper/The-Russian-Constitutional-Court-versus-the-Court-Goldstein/b6fed8577a286b0902b5f92686dec82ecbdce854>.

⁴⁴¹ Lauri Mälksoo, "Russia's Constitutional Court Defies the European Court of Human Rights," *European Constitutional Law Review* 12, no. 02 (August 18, 2016), 380, <https://doi.org/10.1017/s1574019616000237>.

⁴⁴² *Yukos v. Russia*, cit supra note 397.

⁴⁴³ Iryna Marchuk and Marina Aksenova, cit supra note 434, 3.

2.3. *Anchugov and Gladkov v. Russia*

The case of *Anchugov and Gladkov v. Russia*⁴⁴⁴ centered on Article 32(3) of the Russian Constitution, which revokes voting rights from “citizens held in places of confinement due to a court sentence”⁴⁴⁵. The applicants, both prisoners, claimed that this ban contravened their freedom of expression (Article 10 ECHR)⁴⁴⁶, their freedom from discrimination (Article 14 ECHR)⁴⁴⁷ and their right to free elections (Article 3, Protocol No.1 ECHR)⁴⁴⁸. The Strasbourg Court concluded that only the right to free elections was breached, dismissing the other claims as either inadmissible or not meriting separate examination⁴⁴⁹.

This case was relatively straightforward for the Court, as its Grand Chamber had previously decided in *Hirst v. UK (no. 2)* that prisoners possess voting rights⁴⁵⁰. Despite a lower-level Russian court’s assertion that the Russian disenfranchisement law adhered to this precedent by emphasizing the proportionality and reasonableness of the measure, the ECtHR disagreed⁴⁵¹. In its arguments, Russia maintained that the case was inadmissible due to the nature of its subject matter, asserting that being the Constitution the supreme legal document in the Country, it should prevail over any other international law provision⁴⁵². Russia, therefore, regarded the constitutional basis of the disenfranchisement clause as a unique aspect⁴⁵³; modifying it, according to Article 135 of the Constitution, would have required the adoption of a new Constitution⁴⁵⁴. In response, the ECtHR ruled that the constitutional foundation of the disenfranchisement clause did not adequately differentiate the case from *Hirst (No. 2)*⁴⁵⁵. The Court then suggested that Russia could fulfill its international obligations by initiating some political process or by interpreting the Russian Constitution in a manner that aligned with the ECHR, thus harmonizing their effects and preventing any conflicts⁴⁵⁶.

⁴⁴⁴ *Anchugov and Gladkov v. Russia*, cit supra note 398.

⁴⁴⁵ Russian Constitution Art.32(3).

⁴⁴⁶ European Convention on Human Rights, 1950, Article, 10.

⁴⁴⁷ European Convention on Human Rights, 1950, Article 14.

⁴⁴⁸ Protocol No. 1 to the European Convention on Human Rights, 1952, Article 3.

⁴⁴⁹ *Anchugov and Gladkov v. Russia*, cit supra note 398, dispositif, paras 2-3.

⁴⁵⁰ ECtHR, *Hirst v. United Kingdom (No. 2)*, Appl. no. 74025/01, Judgment of 6 October 2005.

⁴⁵¹ *Anchugov and Gladkov v. Russia*, cit supra note 398, para 23.

⁴⁵² *Anchugov and Gladkov v. Russia*, cit supra note 398, para 48.

⁴⁵³ As opposed to the UK’s statutory basis to disenfranchise convicts.

⁴⁵⁴ Constitution of the Russian Federation, 1993, Article 135. According to the article, provisions of Chapters 1 (such as Article 32), 2 and 9 of the Constitution of the Russian Federation may not be revised by the Federal Assembly. If a proposal on the review of these provisions is supported by the three fifths of the total number of the members of the Council of the Federation and the deputies of the State Duma, then according to federal constitutional law a Constitutional Assembly shall be convened. The latter shall either confirm the invariability of the Constitution or draft a new Constitution.

⁴⁵⁵ *Anchugov and Gladkov v. Russia*, cit supra note 398, para 108.

⁴⁵⁶ *Anchugov and Gladkov v. Russia*, cit supra note 398, para 111.

3. Russia's shift towards a sovereignty-centric approach

Following these cases, Russia undertook substantial measures to redefine the relationship between its Constitutional Court and the European Court of Human Rights. In 2015, after a request from a group of deputies, the RCC assessed the possibility of not implementing the ECtHR's decisions. Five months later, the Law on the Constitutional Court was amended, empowering the Court to determine the enforceability of decisions from international human rights bodies within Russian territory. The subsequent sections will explore these developments further.

3.1. The RCC's judgment No. 21- P/2015

In 2015, a group of 93 State Duma members submitted a request to the Constitutional Court to evaluate the constitutionality of the 1998 Russian Federal law on Russia's ratification of the ECHR and its Protocols⁴⁵⁷. This request led to the pivotal ruling No. 21-P/2015, where the Constitutional Court examined the constitutionality of several national legal provisions related to international treaties and procedures⁴⁵⁸. While the request to declare the laws unconstitutional was denied, the RCC affirmed the possibility of not enforcing decisions of the Strasbourg Court that conflicted with the Russian Constitution⁴⁵⁹. In particular, it considered the ECtHR's decision in *Anchugov and Gladkov v. Russia* as unconstitutional. This judgment was identified by Lauri Mälksoo as a "landmark" decision, since it opened a new chapter in the discourse around international human rights law and constitutionalism in Russia⁴⁶⁰. In fact, as observed by the European Commission for Democracy through Law (the Venice Commission), nearly all provisions of the subsequent December 2015 law directly stemmed from this judgment⁴⁶¹.

⁴⁵⁷ Natalia Chaeva, "The Russian Constitutional Court and Its Actual Control over the ECtHR Judgement in *Anchugov and Gladkov*," EJIL: Talk!, April 26, 2016, <http://www.ejiltalk.org/the-russian-constitutional-court-and->.

⁴⁵⁸ Fleig-Goldstein, cit supra note 440, 204. Among the provisions examined, there were Article I of the Federal Law "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto", Items 1 and 2 of Article 32 of the Federal Law "On International Treaties of the Russian Federation", and several other sections and items of the Civil Procedure Code, the Arbitration Procedure Code, the Administrative Judicial Proceedings Code, and the Criminal Procedure Code of the Russian Federation.

⁴⁵⁹ Constitutional Court of the Russian Federation, "Resolution of the Constitutional Court of the Russian Federation No. 21-P of July 14, 2015, on the Matter of Verifying the Constitutionality of Provisions of Article 1 of the Federal Law on Ratification of the Convention on Human Rights and Fundamental Freedoms," Российская газета, July 27, 2015, <https://rg.ru/documents/2015/07/27/ks-dok.html>.

⁴⁶⁰ Mälksoo, cit supra note 441, 384.

⁴⁶¹ European Commission for Democracy through Law (Venice Commission), "Final Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation", Opinion no. 832/2015, CDL-AD(2016)016, adopted at the 107th Plenary Session, Venice, 10-11 June 2016, para 59, accessed 1 May 2024, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)016-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)016-e).

In its decision, the Constitutional Court used both international and comparative law arguments. The most controversial aspect was its interpretation of the 1969 Vienna Convention on the Law of Treaties (VCLT), specifically used to address conflicts between the Constitution and treaty norms based on the interpretation of the European Convention⁴⁶². Initially citing the principle of *pacta sunt servanda* enshrined in Article 26 ECHR, which mandates that treaties must be executed in good faith⁴⁶³, the Court then referenced Article 31(1) VCLT, which calls for treaties to be interpreted genuinely in line with their literal meaning and purpose⁴⁶⁴. According to the RCC, had the Strasbourg Court adhered to these principles, it would not have interpreted the ECHR in ways that contradicted the Russian Constitution⁴⁶⁵. Therefore, the Constitutional Court affirmed its right to disregard an ECtHR's decision if it attributed to any provision of the ECHR a meaning that deviated from its original intent, opposing the Convention's purpose and object, or contradicted *jus cogens* norms⁴⁶⁶. In this context, the principles of sovereignty and non-interference in domestic affairs were recognized as *jus cogens* norms; breaches of these could authorize diverging from the established treaty obligations and justify non-compliance⁴⁶⁷.

Furthermore, the RCC referred to Article 46(1) VCLT, which permits invoking internal law as a narrow basis to invalidate consent to a treaty, but only under strict conditions⁴⁶⁸. It stipulates that such basis is limited to a “manifest”⁴⁶⁹ violation of a “rule of its internal law of fundamental importance” concerning treaty-making competence⁴⁷⁰. The Court linked this provision to its previous argument, asserting that it was “undoubtedly manifest” that Russia never intended to consent to “unconditional compliance with decisions from an international body based on interpretations of the treaty that contradict the Russian Constitution”⁴⁷¹. Since this incompatibility emerges on a case-by-case basis, the Constitutional Court indicated that the issue was not about the overall validity or invalidity of the international treaty for Russia but rather about the impossibility of enforcing a norm under an interpretation imposed by an international body when reviewing a specific case⁴⁷².

⁴⁶² Resolution of the Russian Constitutional Court No. 21-P of July 14, 2015, cit supra note 459, para 3.

⁴⁶³ Vienna Convention on the Law of Treaties, 1969, Article 26.

⁴⁶⁴ Vienna Convention on the Law of Treaties, 1969, Article 31(1).

⁴⁶⁵ Kahn, cit supra note 427, 939. This discussion is central to a disagreement that extends beyond just the ECHR to include the judicial reasoning of numerous constitutional courts and interpretive authorities. The ECHR is considered a “living instrument”, implying that its interpretation can and should evolve over time to remain relevant to the changing dynamics of the societies it governs. This principle is well-established and has a lengthy historical background. See, e.g., European Court of Human Rights, *Tyrer v. United Kingdom*, Appl. no. 5856/72, Judgment of 25 April 1978, para. 31, Accessed 1 May 2024, <https://hudoc.echr.coe.int/eng/?i=001-57587>.

⁴⁶⁶ Iryna Marchuk and Marina Aksenova, cit supra note 434, 6. Norms of *jus cogens* include all the peremptory norms of international law.

⁴⁶⁷ Resolution of the Russian Constitutional Court No. 21-P of July 14, 2015, cit supra note 459, para 3.

⁴⁶⁸ Vienna Convention on the Law of Treaties, 1969, Art.46(1).

⁴⁶⁹ Meaning “objectively evident”.

⁴⁷⁰ Resolution of the Russian Constitutional Court No. 21-P of July 14, 2015, cit supra note 459, para 3.

⁴⁷¹ Resolution of the Russian Constitutional Court No. 21-P of July 14, 2015, cit supra note 459, para 3.

⁴⁷² Resolution of the Russian Constitutional Court No. 21-P of July 14, 2015, cit supra note 459, para 3.

In supporting its argument, the Constitutional Court also referenced judicial practices from Germany, Austria, Italy, and the United Kingdom, where ECtHR's rulings were viewed as inconsistent with the national constitutional frameworks⁴⁷³. Specifically, the RCC highlighted Germany's approach in the *Görgülü* case as particularly illustrative, as it established the "principle of priority" of the German Basic Law over the ECHR as interpreted by the Strasbourg Court⁴⁷⁴. Moreover, the RCC cited two opinions from the Italian Constitutional Court. Notably, it mentioned the case of *Maggio and Others v. Italy*, which addressed the application of a pension benefits law affecting Italians working in Switzerland⁴⁷⁵. In its decision, the ECtHR had identified a violation of the right to a fair trial based on the timing and manner of the Italian Parliament's amendments to the pension law, though it did not find a violation of substantive property rights. The Italian CC's decision referenced by the RCC examined the constitutionality of the Italian property law itself⁴⁷⁶, both under Italian constitutional principles and ECHR principles integrated into Italian constitutional law. The Court dismissed the claim and upheld the pension law⁴⁷⁷, an action interpreted by the RCC as indicating a disagreement with the ECtHR's conclusions, thus suggesting a conflict with Italian constitutional law. However, the RCC's interpretation of the case is misleading: the ECtHR focused on the procedural aspects of the law's timing and retroactive application during ongoing litigation, rather than on the law's substance⁴⁷⁸. It ruled that altering the law during active court cases violated the right to a fair trial, dismissing any claims related to the pension calculations under the new law⁴⁷⁹. The Italian Court acknowledged the procedural violation noted in the ECtHR's judgment, leaving no substantive conflict between the decisions⁴⁸⁰.

Alongside this, the RCC referenced the well-known *Hirst (No. 2)* case, noting that the UK Supreme Court found the conclusions and interpretations made by the ECtHR on prisoner voting rights inadmissible within the UK legal framework⁴⁸¹. According to the RCC, the UK Supreme Court reasoned that the ECtHR's judgments did not demand unconditional compliance; typically, they should only be "considered" and followed if they did not conflict with "fundamental substantive and

⁴⁷³ Resolution of the Russian Constitutional Court No. 21-P of July 14, 2015, cit supra note 459, para 4.

⁴⁷⁴ Kahn, cit supra note 427, 940.

⁴⁷⁵ European Court of Human Rights, *Maggio and Others v. Italy*, nos. 46286/09, 52851/08, 53727/08, 54486/08, and 56001/08, judgment of 31 August 2011, accessed 1 May 2024, <https://hudoc.echr.coe.int/eng?i=001-104945>.

⁴⁷⁶ That was not the fair trial issue decided by the Strasbourg Court.

⁴⁷⁷ Italian Constitutional Court, Judgment No. 264 (2012), para 3, accessed 1 May 2024, https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S2012264_en.pdf.

⁴⁷⁸ *Maggio and Others v. Italy*, cit supra note 475, paras 43-50.

⁴⁷⁹ *Maggio and Others v. Italy*, cit supra note 475, paras 60-64.

⁴⁸⁰ Italian Constitutional Court, Judgment No. 264 (2012), cit supra note 477, para. 5.2. The Court noted that the European Court of Human Rights' position in the *Maggio* case "coincides essentially with the principles asserted by this Court with regard to the prohibition on the retroactivity of the law".

⁴⁸¹ European Court of Human Rights, *Hirst v. United Kingdom (No. 2)*, Appl. no. 74025/01, Judgment of 6 October 2005, accessed 1 May 2024, <https://hudoc.echr.coe.int/eng?i=001-70442>.

procedural norms of national law”⁴⁸². Once again, however, the RCC’s summary of the case was partial and, consequently, inaccurate. It is true that the UK government’s delay in addressing the *Hirst (No. 2)* decision caused significant concern. As the RCC observed, Lord Mance, representing the UK Supreme Court, recognized the limited mandate the Parliament provided under the Human Rights Act for courts to “consider” the ECtHR’s jurisprudence⁴⁸³. Yet, Lord Mance also affirmed that the Supreme Court should adhere to Strasbourg’s case law; a detail the RCC neglected to mention⁴⁸⁴. The RCC’s assessment overlooked a significant distinction between its approach and the UK Supreme Court’s: Lord Mance discussed the exceptional circumstances under which it might be necessary to diverge from the ECtHR’s precedents in theoretical terms. He framed such divergence as part of a “meaningful dialogue between United Kingdom Courts and Strasbourg”, emphasizing judicial deference to the Parliament as the elected legislature to complete its evaluation⁴⁸⁵. In contrast, the RCC’s judgment⁴⁸⁶ did not foster inter-court dialogue or legislative deference but was based on establishing independence rather than maintaining a subordinate relationship with Strasbourg. The RCC’s judgment No. 21-P/2015 sparked significant academic debate, primarily for its “instrumental” use of international and comparative law in vague and imprecise manners. While the Constitutional Court sought to legally justify its stance using Articles 23, 31, and 46 of the VCLT, the interpretation of the Vienna Convention was distinctly erroneous, making the entire international law argument flawed⁴⁸⁷. Specifically, the Court’s interpretation of *jus cogens* was criticized as it mistakenly portrayed it as permitting unrestrained State sovereignty, whereas it actually imposes restrictions, particularly concerning human rights protection⁴⁸⁸. Moreover, the RCC failed to acknowledge that the Strasbourg Court holds the legal authority to interpret the European Convention, and State Parties are obligated to execute its judgments⁴⁸⁹. As a Member of the Council of Europe and a signatory to the ECHR, Russia was obliged to meet the human rights responsibilities derived from the ECtHR’s judgments. Importantly, Article 27 of the Vienna Convention aims to prevent any justification by national courts for the State’s non-compliance with its treaty obligations; the Russian

⁴⁸² Kahn, *cit supra* note 427, 944.

⁴⁸³ Supreme Court of the United Kingdom, judgment R (on the application of Chester) v Secretary of State for Justice; McGeoch v The Lord President of the Council and another, [2013] UKSC 63, 16 October 2013, para 28, accessed 1 May 2024, <https://www.supremecourt.uk/cases/uksc-2012-0151.html>. Lord Mance also noted the requirement that ‘[s]o far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights’; see also UK Human Rights Act, 1998, c. 42, Section 3(1).

⁴⁸⁴ Kahn, *cit supra* note 427, 944.

⁴⁸⁵ UKSC 63, *cit supra* note 483, 34,42.

⁴⁸⁶ And the Federal Constitutional Law no. 7-FKZ influenced by it.

⁴⁸⁷ Chaeva, *cit supra* note 457.

⁴⁸⁸ Marina Aksenova, “Anchugov and Gladkov Is Not Enforceable: The Russian Constitutional Court Opines in Its First ECtHR Implementation Case,” *Opinio Juris*, April 25, 2016, <https://opiniojuris.org/2016/04/25/anchugov-and-gladkov-is-not-enforceable-the-russian-constitutional-court-opines-in-its-first-ecthr-implementation-case/>.

⁴⁸⁹ European Convention on Human Rights, 1950, Article 46(1). The provision establishes an unequivocal legal obligation to comply with the decisions of the ECtHR.

Constitutional Court was not exempt from this principle. Hence, the Russian stance toward Strasbourg's judgments exemplified an "application of international law *à la carte*"⁴⁹⁰.

Additionally, the RCC strived to align its ruling with established practices from "old Europe's" constitutional courts⁴⁹¹, for instance referencing the German *Görgülü* case. However, according to the Venice Commission, the Russian RCC's summary did not accurately reflect the German Constitutional Court's approach, which did not establish a procedure to review the constitutionality of the ECtHR's judgments⁴⁹². The Venice Commission also noted that Germany has consistently implemented decisions by the Strasbourg Court through its institutions, unlike Russia⁴⁹³. Furthermore, the situation between Russia and the UK differed significantly, despite the RCC drawing parallels with the UK's stance on prisoner voting rights. The UK's position regarding *Hirst v. UK (No. 2)* remained largely political, with no legal acts or mechanisms established to solidify the defiance of the ECtHR's judgments. In contrast, the RCC developed a comprehensive constitutional doctrine to reject Strasbourg's decisions it deemed incompatible with the Constitution. The issue of prisoners' voting rights merely served as a pretext for Russian authorities to use the new law empowering the Constitutional Court to oversee the ECtHR's judgments more broadly.

3.2. The Federal Constitutional Law no. 7-FKZ

On December 14th, 2015, the Federal Constitutional Law no. 7-FKZ amended the Statute of the Constitutional Court of the Russian Federation, specifically enhancing its jurisdiction and authority. The law introduced a new category of civil action that the RCC could hear. According to Article 3.2, the Court:

[S]hall upon requests by federal executive body competent to operate in the field of protecting Russia's sovereign interests within the procedure of considering complaints filed against the Russian Federation, which is carried out by the interstate human rights protection institution according to an international covenant to which Russia is a party, resolve the issue of feasibility of the enforcement of the interstate human rights protection institution's decision⁴⁹⁴.

⁴⁹⁰ Chaeva, cit supra note 457.

⁴⁹¹ Mälksoo, cit supra note 441, 389.

⁴⁹² European Commission for Democracy through Law (Venice Commission), "Draft Interim Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation," Opinion No. 832/2015, CDL(2016)008, 26 February 2016, para 88, accessed 1 May 2024, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2016\)008-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2016)008-e).

⁴⁹³ Ibid, para 66.

⁴⁹⁴ European Commission for Democracy through Law (Venice Commission), "Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation of 14 December 2015", Opinion No. 832/2015, CDL-REF(2016)006, 20 January 2016, Article 3.2, accessed 1 May 2024,

Article 104.4 specifies that the RCC can only conclude either conformity or non-conformity with the Russian Constitution regarding an international body's decision⁴⁹⁵; a finding of non-conformity prohibits any enforcement action within Russia based on that decision⁴⁹⁶. Thus, such a ruling conclusively ends any discussion on implementing the international decision, not opening a debate on how to align with it or amend the domestic law for compliance⁴⁹⁷. Furthermore, the amended Article 47.1 allows decisions to be made without a public hearing⁴⁹⁸. Alongside this, Article 105 has been revised to stipulate that only the President or the Government may request the Constitutional Court to clarify constitutional provisions when "discovered contradictions" arise between the Constitution and the international treaty's interpretation given by the interstate body⁴⁹⁹. Thus, such apparent contradictions are identified by government officials in a process that is not adversarial or public.

Even before the draft law was signed by President Vladimir Putin, it garnered the attention of the Parliamentary Assembly of the Council of Europe. Consequently, the PACE's Legal Affairs Committee decided to request an opinion from the Venice Commission⁵⁰⁰. The Commission strongly criticized the law, particularly from an international perspective, noting that Articles 104.4 and 106 contradicted Russia's obligations under the Vienna Convention on the Law of Treaties and Article 46 of the ECHR⁵⁰¹. It described these articles as too extreme, offering a stark choice between non-compliance with the ECtHR's judgments or denial of any conflict with the Russian Constitution⁵⁰². This "black or white alternative" was not sustainable under international law and explicitly violated Article 27 of the Vienna Convention⁵⁰³. Therefore, the Venice Commission asserted that no national legal argument, including those based on constitutional law, could legitimize actions or omissions that contravene international law⁵⁰⁴. It specifically highlighted three pertinent provisions of the ECHR: Article 1, which commits Member States to ensure the rights and freedoms outlined in the

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)006-e). The translation was provided by the RCC.

⁴⁹⁵ Ibid, Article 104.4.

⁴⁹⁶ Venice Commission, Amendments to the Federal Constitutional Law on the RCC, cit supra note 494, Article 104.4(2).

⁴⁹⁷ Kahn, cit supra note 427, 946.

⁴⁹⁸ Venice Commission, Amendments to the Federal Constitutional Law on the RCC, cit supra note 494, Article 47.1

⁴⁹⁹ Venice Commission, Amendments to the Federal Constitutional Law on the RCC, cit supra note 494, Article 105.

⁵⁰⁰ Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, "Synopsis of the Meeting Held in Paris on 8 December 2015," AS/Jur (2015) CB 08, 10 December 2015, <http://www.assembly.coe.int/Committee/JUR/2015/JUR008E.pdf>.

⁵⁰¹ Venice Commission, cit supra note 461, Final Opinion on the Amendments to the Federal Constitutional Law on the RCC, para 31.

⁵⁰² Venice Commission, cit supra note 461, Final Opinion on the Amendments to the Federal Constitutional Law on the RCC, para 32.

⁵⁰³ Vienna Convention on the Law of Treaties, 1969, Article 27. "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46".

⁵⁰⁴ Venice Commission, cit supra note 461, Final Opinion on the Amendments to the Federal Constitutional Law on the RCC, para 84.

Convention to everyone within their jurisdiction⁵⁰⁵; Article 32, which establishes the ECtHR's authority to interpret and apply the Convention and its Protocols⁵⁰⁶; Article 46, which mandates that Parties comply with the ECtHR's final judgments in any cases involving them⁵⁰⁷. The Commission emphasized that by ratifying the ECHR, Russia had recognized the ECtHR's authority not only to apply but also to interpret the Convention⁵⁰⁸. This authority applies to the specific factual and legal circumstances of each case at the time it is decided⁵⁰⁹. This countered Russia's stance that the ECtHR should not extend the ECHR's obligations beyond what Russia considered acceptable upon agreement⁵¹⁰. Therefore, the Commission argued that if the RCC had found implementing an ECtHR's judgment to contravene the Russian Constitution, the only way for Russia to comply with its international obligations would have been to amend its Constitution⁵¹¹.

4. Exercising the right to object

Russia's new law was applied shortly after its introduction. Already over six months before its official enactment, Russia informed the ECtHR's Department for the Execution of Judgments that it could not yet provide details on actions to comply with two judgments⁵¹²: *Anchugov and Gladkov v. Russia* and *Yukos v. Russia*. These cases were specifically selected from the 1,549 then-pending cases monitored by the Committee of Ministers⁵¹³. *Anchugov and Gladkov* was chosen because it reflected a case where the United Kingdom similarly challenged Strasbourg, thereby aligning Russia with another resisting Member. *Yukos* was highly politically sensitive, as the ECtHR had required the State to pay €1.8 billion. Moreover, in 2020, amendments were made to the Russian Constitution to reinforce the established procedures of the Constitutional Court, thus elevating its right to object to a constitutional level.

⁵⁰⁵ European Convention on Human Rights, 1950, Article 1.

⁵⁰⁶ European Convention on Human Rights, 1950, Article 32.

⁵⁰⁷ European Convention on Human Rights, 1950, Article 46(1).

⁵⁰⁸ Venice Commission, cit supra note 461, Final Opinion on the Amendments to the Federal Constitutional Law on the RCC, para 91.

⁵⁰⁹ Venice Commission, cit supra note 461, Final Opinion on the Amendments to the Federal Constitutional Law on the RCC, para 91.

⁵¹⁰ Venice Commission, cit supra note 461, Final Opinion on the Amendments to the Federal Constitutional Law on the RCC, para 120. The Venice Commission was, in fact, unsympathetic to that view, claiming that: “[b]y ratifying the ECHR in 1998, the Russian Federation accepted the supervisory mechanism at a time when the extent of the interpretative activity of the European Court of Human Rights already appeared rather clearly. [...] Therefore, even assuming that in a given judgment the ECtHR had engaged in an evolutive interpretation, the respondent State would nevertheless be bound to execute it in full”.

⁵¹¹ Venice Commission, cit supra note 467, para 120.

⁵¹² Kahn, cit supra note 427, 934; see also Secretariat of the Committee of Ministers of the Council of Europe, “Communication from the Authorities Concerning the Case of *OAO Neftyanaya Kompaniya Yukos against Russian Federation*”, DH-DD(2015)640, 17 June 2015, accessed 1 May 2024, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804a90e7.

⁵¹³ Kahn, cit supra note 427, 934.

4.1. The RCC's judgment No. 12-P/2016

On February 2nd, 2016, the Russian Ministry of Justice appealed the ECtHR's judgment in *Anchugov and Gladkov v. Russia* to the Russian Constitutional Court, requesting a determination on whether the judgment could be enforced under the Russian Constitution. Jeffrey Kahn noted that this appeal was particularly noteworthy because the ECtHR's judgment was unanimous, including the agreement from the Russian judge that Russia had violated the ECHR⁵¹⁴. Thus, by contesting this decision, Russia was challenging Strasbourg on the basis of principle rather than self-interest⁵¹⁵. Additionally, like *Markin v. Russia*, this case concerned a constitutional provision, directly challenging the authority of the RCC.

On April 19th, 2016, the Russian Constitutional Court delivered its judgment, ruling that implementing the ECtHR's *Anchugov and Gladkov* decision was impossible as it conflicted with the Russian Constitution⁵¹⁶. In particular, it disputed the ECtHR's assertion that Russia's disenfranchisement of convicted prisoners was implemented automatically and indiscriminately, neglecting the length of sentences or the severity and nature of the crimes, and lacked a judicial decision that assessed the necessity of disenfranchisement based on individual case circumstances⁵¹⁷. To support its disagreement, the Court also cited official statistics⁵¹⁸. Thus, the RCC argued that its interpretation of Article 32, alongside the established judicial practices, did not conflict with Article 3 of Protocol No. 1 ECHR⁵¹⁹.

The Constitutional Court underscored that the integration of the European Convention with the Russian constitutional order could not occur under conditions of subordination⁵²⁰. It expressed a willingness to seek a lawful compromise to preserve this system, provided it adhered to the Constitution⁵²¹. Moreover, it emphasized that Russia's acceptance of the ECtHR's interpretative authority was conditional upon the terms under which it signed and ratified the Convention⁵²². Although Russia had granted the European Court the authority to determine violations of the ECHR, it was a restricted agreement, based on the principle that Russia could not enter into international treaties that conflicted with its Constitution⁵²³. Therefore, judgments of the Strasbourg Court had to

⁵¹⁴ Kahn, cit supra note 427, 950.

⁵¹⁵ Kahn, cit supra note 427, 950.

⁵¹⁶ European Commission for Democracy through Law (Venice Commission), "Russian Federation Judgment No. 12-II/2016 of 19 April 2016 of the Constitutional Court," Opinion No. 832 / 2016, CDL-REF(2016)03, accessed 1 May 2024, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)033-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)033-e).

⁵¹⁷ Ibid, 18, s. 5.4.

⁵¹⁸ RCC's judgment of 19 April 2016 No. 12-II/2016, cit supra note 516, 17-18, s. 5.3.

⁵¹⁹ RCC's judgment of 19 April 2016 No. 12-II/2016, cit supra note 516, 18, s. 5.4.

⁵²⁰ RCC's judgment of 19 April 2016 No. 12-II/2016, cit supra note 516, 7, s.1.2.

⁵²¹ RCC's judgment of 19 April 2016 No. 12-II/2016, cit supra note 516, 7, s.1.2.

⁵²² RCC's judgment of 19 April 2016 No. 12-II/2016, cit supra note 516, 8, s.4.2.

⁵²³ RCC's judgment of 19 April 2016 No. 12-II/2016, cit supra note 516, 17, s.4.2.

be executed under “the principle of supremacy and supreme legal force” of the Russian Constitution within Russia’s legal system, “international-law acts being an integral part of it”⁵²⁴.

In its conclusion, the Court determined that executing the ECtHR’s judgment was unfeasible. It declared that the execution was only possible insofar it meant ensuring justice, proportionality and a differentiation of application of the restriction of electoral rights, “as this was already the case under the current criminal system”⁵²⁵. The Constitutional Court framed its stance as a constructive contribution to the ECtHR, asserting that its right to object served to enrich the evolving practices of the European Court in the area of voting rights protection⁵²⁶. It emphasized that its decisions aimed to reflect the consensus formed among the States parties to the Convention⁵²⁷.

4.2. The RCC’s judgment No. 1-P/2017

In 2017, the Russian Ministry of Justice requested the Constitutional Court to review the ECtHR’s 2014 judgment regarding just satisfaction in the *Yukos v. Russia* case, citing uncertainties about whether enforcing the decision would contravene the Russian Constitution. The Constitutional Court ruled that Russia could not use State funds to pay the compensation ordered by the ECtHR⁵²⁸.

In its decision, the Constitutional Court closely followed the legal reasoning previously established in its judgments No 21- P/2015⁵²⁹ and No. 12-P/2016⁵³⁰, reaffirming the superiority of the Russian law over the ECHR⁵³¹ and directly challenging the interpretative role of the ECtHR⁵³². This position sharply contrasted with the stance the Russian Supreme Court took in 2003 when it declared that decisions by the ECtHR “are binding for all organs of State power of the Russian Federation, including in that number the courts”⁵³³. Conversely, the RCC declared its right to deviate from the ECHR’s obligations in certain “exceptional cases”, such as *Yukos v. Russia*. The Court argued that it was impossible to enforce the judgment, claiming that Yukos’s operations in the Country “had a law-

⁵²⁴ RCC’s judgment of 19 April 2016 No. 12-II/2016, cit supra note 516, 18, s.4.2.

⁵²⁵ RCC’s judgment of 19 April 2016 No. 12-II/2016, cit supra note 516, 21-22.

⁵²⁶ RCC’s judgment of 19 April 2016 No. 12-II/2016, cit supra note 516, 24, s.4.4.

⁵²⁷ RCC’s judgment of 19 April 2016 No. 12-II/2016, cit supra note 516, 24, s.4.4.

⁵²⁸ Secretariat of the Committee of Ministers of the Council of Europe, “Communication from the Authorities in the Case of *OAO Neftyanaya Kompaniya Yukos v. Russian Federation*,” DH-DD(2017)207, 22 February 2017, accessed 1 May 2024, <https://rm.coe.int/16806f5ff4>.

⁵²⁹ Resolution of the Russian Constitutional Court No. 21-P of July 14, 2015, cit supra note 459.

⁵³⁰ RCC’s judgment of 19 April 2016 No. 12-II/2016, cit supra note 516.

⁵³¹ To support its stance regarding the supremacy of the Russian Constitution over the ECHR in cases of conflict between the two legal instruments, the RCC employed the same interpretation of Articles 31(1) and 46(1) of the VCLT, as previously outlined.

⁵³² As in its 2016 ruling, the RCC asserted that Russia’s ratification of the ECHR in 1998 was predicated on the belief that its provisions aligned with the Country’s constitutional framework. Hence, any subsequent interpretation of the ECHR by the ECtHR that diverged from this understanding exceeded the obligations Russia had initially agreed to uphold.

⁵³³ Kahn, cit supra note 427, 955.

ruining effect, hindering stabilization of constitutional law regime and public legal order”⁵³⁴. Hence, it stated that “the payment of such a huge monetary sum [...] in itself contradicts constitutional principles of equality and justice in tax relations”⁵³⁵.

4.3. The 2020 amendments to the Russian Constitution

On July 1st, 2020, an “all-Russian vote” (*общероссийское голосование*)⁵³⁶ took place in Russia on the constitutional amendments proposed by President Vladimir Putin during his January address to the Federal Assembly. According to official figures, 67.97% of the electorate participated in the vote, with 77.92% in favor of the amendments and 21.2% opposed⁵³⁷. The revisions included key modifications to Articles 79 and 125, which are particularly relevant to the present analysis⁵³⁸. Notably, the amended Article 79 specifies that:

The Russian Federation in conformity with relevant treaties may participate in international associations and delegate to them part of its powers, if this does not limit the rights and freedoms of the individual and the citizen or contradict the fundamentals of the constitutional system of the Russian Federation. Decisions of interstate bodies, adopted on the basis of provisions of international treaties of the Russian Federation, where construed in a manner contrary to the Constitution of the Russian Federation, shall not be subject to enforcement in the Russian Federation⁵³⁹.

This updated provision is an important clarification of Article 15(4), which integrates international law into the Russian legal framework. Article 15(4) states that “if an international treaty or agreement

⁵³⁴ RCC’s judgment of 19 January 2017 No. 1- П /2017, cit supra note 528, 14.

⁵³⁵ RCC’s judgment of 19 January 2017 No. 1- П /2017, cit supra note 528, 15.

⁵³⁶ Johannes Socher, “Farewell to the European Constitutional Tradition,” *Verfassungsblog*, July 2, 2020, <https://verfassungsblog.de/farewell-to-the-european-constitutional-tradition/>. The “all-Russian vote” is best described as a quasi-referendum.

⁵³⁷ Lauri Mälksoo, “International Law and the 2020 Amendments to the Russian Constitution,” *American Journal of International Law* 115, no. 1 (January 1, 2021), 78, <https://doi.org/10.1017/ajil.2020.87>.

⁵³⁸ Paul Kalinichenko and Dimitry Vladimirovich Kochenov, “Amendments to the 1993 Constitution of the Russian Federation Concerning International Law (2020),” *International Legal Materials* 60, no. 2 (March 18, 2021): 341–46, <https://doi.org/10.1017/ilm.2021.10>. Additionally, other modified provisions included: Article 67bis, which affirms Russia’s status as the legal successor of the Soviet Union; Article 69(1), which maintains the protection of the rights of indigenous and extinct peoples under universally recognized principles of international law and Russia’s international commitments; Article 79bis, which strengthens the principles of peaceful coexistence and non-interference within the Russian legal framework; Article 67(2bis), which formalizes the three methods for altering Russian state borders, delimitation, demarcation, and re-demarcation, as previously governed by federal law; and Article 69(3), which mandates the state to safeguard the interests of “compatriots” abroad, raising this duty from a federal law to a constitutional obligation.

⁵³⁹ Constitution of the Russian Federation, 1993, Article 79.

of the Russian Federation established other rules than those envisaged by law, the rules of the international agreement shall be applied”⁵⁴⁰. Within this framework, the revised Article 79 draws a distinct line between the Constitution and other national laws in Russia: when conflicts arise, international treaties still supersede Russian laws that are subordinate to the Constitution. However, the Constitution itself is affirmed as supreme over the norms contained in international treaties as interpreted by international bodies⁵⁴¹. This advancement builds directly on the 2015 Federal Constitutional Law no. 7-FKZ, and its elevation to the constitutional level further solidifies this legal concept, allowing for its more assertive application. In particular, Lauri Mälksoo pointed out that the amendment broadened the authority of the Constitutional Court by establishing the amended Constitution as the benchmark against which the compatibility of ECtHR’s judgments could be assessed⁵⁴².

Another revised provision that extends the approach of Article 79 is Article 125(5.1 б), which delineates the powers of the Constitutional Court. Under this clause, the RCC is tasked with deciding on the enforcement of decisions from interstate treaty bodies that may conflict with the Russian Constitution. Additionally, it addresses “the possibility of implementing decisions of a foreign or international court, foreign or international arbitration court, putting obligations on the Russian Federation, in case such a decision contradicts with the foundations of public legal order of the Russian Federation”⁵⁴³. This article opens up a broader scope for non-implementation of decisions based on international legal obligations, as the requisite contradiction may extend beyond the Constitution to the “foundations of public legal order”.

As it had previously done with the 2015 Federal Constitutional Law no. 7-FKZ, the Venice Commission expressed strong disapproval of this development. In an Opinion released on June 18th, 2020, the Commission stated that the RCC’s authority to definitively declare a decision non-executable was at odds with Russia’s obligations under the ECHR⁵⁴⁴. It also expressed its alarm at the “constitutional entrenchment of such a power”⁵⁴⁵.

⁵⁴⁰ Constitution of the Russian Federation, 1993, Article 15(4).

⁵⁴¹ Constitution of the Russian Federation, 1993, Article 79.

⁵⁴² Lauri Mälksoo, *cit supra* note 537, 87. For instance, the amended Article 72 ж.1 defines marriage explicitly as a union between a man and a woman. This addition is significant given that the ECtHR has repeatedly found Russia in violation of LGBTQ rights. Russia’s definitive position was that, should the Strasbourg Court rule that States are obligated to recognize same-sex marriages, Russia would not adhere to such a decision, as per Article 79 in conjunction to Article 72.

⁵⁴³ Constitution of the Russian Federation, 1993, Article 125(5.1 б)

⁵⁴⁴ European Commission for Democracy Through Law (Venice Commission), “Opinion on the Draft Amendments to the Constitution (as Signed by the President of the Russian Federation on 14 March 2020) Related to the Execution in the Russian Federation of Decisions by the European Court of Human Rights,” adopted June 18, 2020, by a written procedure replacing the 123rd plenary session, CDL-AD(2020)009-e, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)009-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)009-e).

⁵⁴⁵ *Ibid*, para 64.

5. Academic perspectives on the RCC-ECtHR collision

The relation between Russia and the European Court of Human Rights has always been a focal point of discussion among academic scholars, legal experts and media. Initially, there was a significant optimism about Russia embracing European human rights standards, often referred to as the “Strasbourg effect”⁵⁴⁶. However, by 2014, amidst escalating tensions between Russia and other European Countries, sentiments shifted from optimism to strong condemnation of Russia’s actions. Predictably, as a result of Russia’s 2015 legal maneuver, the criticism from European observers intensified. In a 2016 analysis of the RCC’s judgment No 21-P/2015, Lauri Mälksoo pointed out that the non-enforcement of ECtHR’s judgments by any CoE’s Member State signified a breach of international legal obligations, regardless of the constitutional perspective of any national constitutional court⁵⁴⁷. Furthermore, Human Rights Watch criticized the RCC’s expanded powers, arguing that they severely undermined the European human rights system in Russia, effectively eliminating a critical recourse for victims of abuse⁵⁴⁸.

In this context, it is crucial to delve deeper into the response of Russian academics to the sovereignty-centric approach taken by the RCC. Indeed, despite the fact that the Federal Constitutional Law no. 7-FKZ and its subsequent enactments clearly violated Russia’s international obligations, several scholars supported these changes. In analyzing the collision between the RCC and the Strasbourg Court, numerous Russian researchers advocated for moving beyond the “emotional” and often overstated perceptions of this conflict⁵⁴⁹. For instance, Paul Kalinichenko, a law professor at the Diplomatic Academy of the Russian Ministry of Foreign Affairs, commented that such conflicts, while serious, were exceptions⁵⁵⁰. He maintained that the RCC’s approach was balanced and justified, emphasizing its role as the protector of the Russian Constitution⁵⁵¹. Kalinichenko also claimed that it was unrealistic to expect Russia’s consistent non-compliance with Strasbourg, as checking the constitutionality of all the ECtHR’s decisions was impractical. Therefore, realistically, only a few decisions would have undergone this scrutiny⁵⁵². Concurrently, some other scholars even ignored the

⁵⁴⁶ Galina A. Nelaeva, Elena A. Khabarova, and Natalia V. Sidorova, “Russia’s Relations with the European Court of Human Rights in the Aftermath of the Markin Decision: Debating the ‘Backlash,’” *Human Rights Review*, November 30, 2019, 106, <https://doi.org/10.1007/s12142-019-00577-7>. The “Strasbourg effect” is defined as the expectation that by joining the Council of Europe, Russia would have eventually accepted European human rights standards.

⁵⁴⁷ Mälksoo, cit supra note 441, 394.

⁵⁴⁸ Human Rights Watch, “Russia: Constitutional Court Backs Selective Justice | Human Rights Watch,” Human Rights Watch, April 19, 2016, <https://www.hrw.org/news/2016/04/19/russia-constitutional-court-backs-selective-justice>.

⁵⁴⁹ Galina A. Nelaeva et al., cit supra note 546.

⁵⁵⁰ P.A. Kalinichenko, “On conflicts between the ECtHR judgments and the Constitution of Russia in the light of the Russian Constitutional Court’s legal position,” *Актуальные проблемы российского права*, 2016, <https://doi.org/10.17803/1994-1471.2016.63.2.042-048>.

⁵⁵¹ Ibid.

⁵⁵² Kalinichenko, cit supra note 550.

notion of conflict altogether. Notably, Ivan Kleimenov, a professor at the Russian National Research University Higher School of Economics, stated that the RCC's decision No. 12-P/2016 on the enforceability of *Anchugov and Gladkov v. Russia* should not be seen as failing to honor international commitments or as an attempt to provoke a confrontation with the ECtHR⁵⁵³.

While some shared consensual views about the RCC's change of approach, many scholars opposed the idea of Russia refusing to implement the ECtHR's decisions⁵⁵⁴. Experts advocated for the necessity of finding methods to enforce these judgments through constitutional interpretation, by amending acts found incompatible with the European Convention, or by revising existing regulations⁵⁵⁵. Therefore, overall, the influence of Strasbourg on the Russian legal framework was viewed positively by the majority of Russian scholars. For instance, Oksana Makarova, a research fellow at the Institute of Legislation and Comparative Law, posited that the European fair trial standards were crucial for the evolution of Russian criminal justice legislation and stressed the importance of further integrating these principles⁵⁵⁶. Academics also highlighted the importance of the pilot judgment procedure, as it impacted a significant number of individuals, prompting the State to address systemic human rights issues⁵⁵⁷. Generally, the ECtHR's decisions were recognized for driving domestic legal reforms and facilitating a quicker response to specific legal challenges than what could be achieved through the domestic law-making process alone⁵⁵⁸.

It is noteworthy that no Russian scholar supported the idea of Russia withdrawing from the Council of Europe. Those who were favorable to the Strasbourg Court considered withdrawal as harmful to the rights of Russian citizens, while critics of the ECHR system viewed it as harmful to Russia's international reputation⁵⁵⁹. Many commentators stressed the need of establishing a robust dialogue, which could potentially resolve future conflicts between the Russian law and the ECtHR's rulings⁵⁶⁰.

⁵⁵³ Ivan Kleimenov, "Judgment of the Constitutional Court of the Russian Federation No 12-P/2016: Refusal to Execute Judgments of ECHR or the Search for Compromise between Russian and International Law?," *Questions of International Law*, October 31, 2016, 22 <http://www.qil-qdi.org/judgment-constitutional-court-russian-federation-no-12-p2016-refusal-execute-judgments-echr-search-compromise-russian-international-law/>.

⁵⁵⁴ Galina A. Nelaeva et al., cit supra note 546.

⁵⁵⁵ K. M. Khudoley, "Refusal to implement the decisions of the international judiciary on protection of the citizens' rights and freedoms," *Perm University Herald. Juridical Sciences*, 2017, <http://www.jurvestnik.psu.ru/index.php/en/issue-04-38-2017?id=2427>.

⁵⁵⁶ Galina A. Nelaeva et al., cit supra note 546, 106.

⁵⁵⁷ Galina A. Nelaeva et al., cit supra note 546, 106.

⁵⁵⁸ Galina A. Nelaeva et al., cit supra note 546, 106.

⁵⁵⁹ Galina A. Nelaeva et al., cit supra note 546, 106.

⁵⁶⁰ Galina A. Nelaeva et al., cit supra note 546, 106.

6. Strategies and responses to the Russian defiance

While Russia's non-compliance with the European Convention was not unprecedented, its 2015 legal maneuver against the ECtHR marked a significant escalation, posing a serious challenge to the ECHR system. This move threatened not only Russia's future adherence to the Court's decisions but also raised concerns about the compliance of other Member States, some of which had already expressed objections to the Court's rulings⁵⁶¹. Therefore, Russia's new stance necessitated the Council of Europe to devise strategies to effectively enforce the Strasbourg's decisions, balancing political pressures through other Member States⁵⁶² and reformulations of the ECtHR's judgments⁵⁶³. These strategies, however, required careful management: on the one hand, excessive political pressure could have potentially pushed Russia further from European integration, possibly leading to its withdrawal; on the other one, rephrasing the ECtHR's decisions to avoid conflicts with the Russian Constitution could have undermined the Court's authority, essentially transferring the judicial supremacy to the Russian Constitutional Court⁵⁶⁴.

The Council responded to Russia's maneuvers by leveraging all the available mechanisms, including the Parliamentary Assembly, the Venice Commission, the Committee of Ministers, the Steering Committee for Human Rights (CDDH), and the pilot judgment procedure. The PACE closely monitored Russia's adherence to the ECHR through legal reforms since 1998⁵⁶⁵. Notably, it suspended Russia's voting rights in 2000 due to the Chechen conflict⁵⁶⁶ and again post-Crimea annexation⁵⁶⁷. Likewise, the Venice Commission reacted strongly to the 2015 amendments to the RCC's law and the 2020 constitutional amendments, condemning these changes and suggesting that the only resolution to the alleged conflicts between ECtHR's decisions and the Russian Constitution would be to amend the latter⁵⁶⁸. However, other CoE's mechanisms did not demonstrate similar effectiveness. Following the 2015 amendment to the RCC's law, the CDDH prepared a report on the

⁵⁶¹ Philip Leach and Alice Donald, "Russia Defies Strasbourg: Is Contagion Spreading?," EJIL: Talk!, December 19, 2015, <https://www.ejiltalk.org/russia-defies-strasbourg->. Specific mention can be drawn to the United Kingdom, whose stance could have influenced the Russian legislature. Indeed, Russia's actions indicated that "[t]hese are undoubtedly troubled times for the European human rights system", and that the implementation of the new Russian law not only undermined the rights of Russian nationals but was "cataclysmic, too, for European human rights protection as a whole".

⁵⁶² Fleig-Goldstein, cit supra note 440, 212.

⁵⁶³ Fleig-Goldstein, cit supra note 440, 212.

⁵⁶⁴ Fleig-Goldstein, cit supra note 440, 212.

⁵⁶⁵ Jane Henderson, *The Constitution of the Russian Federation a Contextual Analysis* (2011; repr., London: Bloomsbury Publishing Plc, 2022).

⁵⁶⁶ Parliamentary Assembly of the Council of Europe, "Conflict in the Chechen Republic: Recent Developments (follow-up to Recommendations 1444 (2000) and 1456 (2000) of the Parliamentary Assembly)," Resolution 1227 (2000), accessed 1 May 2024, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16837&lang=en>.

⁵⁶⁷ Parliamentary Assembly of the Council of Europe, "Citing Crimea, PACE Suspends Voting Rights of Russian Delegation and Excludes It from Leading Bodies," Coe.int, April 10, 2014, <https://pace.coe.int/en/news/4982>.

⁵⁶⁸ Venice Commission, cit supra note 461, Final Opinion on the Amendments to the Federal Constitutional Law on the RCC, para 23.

long-term future of the ECHR system⁵⁶⁹. This document highlighted significant challenges such as the national implementation of the Convention, the authority of the ECtHR, and the execution and supervision of its judgments⁵⁷⁰. It emphasized that the ECtHR should act within the framework of international law as established by the 1969 VCLT⁵⁷¹, underlining that the Strasbourg Court had the ultimate authority to interpret and apply the ECHR⁵⁷². The report stressed the ECtHR's role in defining "autonomous concepts" in the Convention, independent from national law interpretations⁵⁷³. However, it presupposed a level of cooperation from Member States, including their judicial, legislative, and civil sectors⁵⁷⁴, which was overly optimistic in Russia's case due to its increasing hostility towards the ECtHR across all government branches and the weakened status of its civil society and human rights organizations⁵⁷⁵.

Another mechanism that showed ineffectiveness in Russia was the pilot judgment procedure⁵⁷⁶, as the ECtHR's judgments that conflicted with the Russian Constitution were deemed domestically unenforceable. This prompted scholars to propose reforming the mechanism to better address the challenges posed by Russia's change of approach⁵⁷⁷.

Given the shortcomings of numerous CoE's strategies in addressing Russia's non-compliance with Strasbourg, several scholars proposed a dialogue-based approach, emphasizing two key aspects: dialogue with Russia and dialogue with other Member States. First of all, this strategy encouraged developing inter-judicial dialogue through trans-judicial networks between the Russian Constitutional Court and Strasbourg, aiming to prevent the issue of "parallel monologues"⁵⁷⁸. The idea was to craft mechanisms that allowed adherence to the ECtHR's decisions without deeply intruding upon the Russian legal system in cases of conflicts⁵⁷⁹. Proposals included enhancing cooperation between the RCC and the ECtHR before the solution of the Grand Chamber was reached,

⁵⁶⁹ Steering Committee for Human Rights, "The Longer-Term Future of the System of the European Convention on Human Rights", 11 December 2015, accessed 1 May 2024, <https://rm.coe.int/the-longer-term-future-of-the-system-of-the-european-convention-on-hum/1680695ad4>.

⁵⁷⁰ *Ibid*, paras 3-4.

⁵⁷¹ CDDH's report of 11 December 2015, *cit supra* note 569, para 14.

⁵⁷² CDDH's report of 11 December 2015, *cit supra* note 569, para 14.

⁵⁷³ CDDH's report of 11 December 2015, *cit supra* note 569, para 14.

⁵⁷⁴ CDDH's report of 11 December 2015, *cit supra* note 569, para 20. "[E]ffective national implementation may presuppose the effective involvement of an interaction between a wide range of actors (members of the government, parliamentarians, and the judiciary as well as national human rights institutions, civil society and representatives of the legal professions) to ensure that legislation and other measures and their application in practice, comply fully with the Convention standards".

⁵⁷⁵ Human Rights Watch, "Briefing on Shrinking Space for Civil Society in Russia," Human Rights Watch, February 24, 2017, <https://www.hrw.org/news/2017/02/24/briefing-shrinking-space-civil-society-russia>.

⁵⁷⁶ Council of Europe, "Country Profile: Russia," October 2017, 16, accessed 1 May 2024, <https://perma.cc/C6NB-VLTP>. A case decided as a pilot judgment is not only intended to facilitate the effective implementation by the respondent State of the individual and general measures necessary to comply with the decision. In fact, it also induces the State to revolve large numbers of individual cases arising from the same structural problem at the domestic level.

⁵⁷⁷ Fleig-Goldstein, *cit supra* note 440, 216.

⁵⁷⁸ Galina A. Nelaeva et al., *cit supra* note 546, 106.

⁵⁷⁹ Galina A. Nelaeva et al., *cit supra* note 546, 107.

as well as improving communications between the Russian representatives and the Committee of Ministers during the enforcement process⁵⁸⁰. The dialogue-based strategy also aimed at securing cooperation and support from other Member States in order to prevent further defiance in executing judgments. Indeed, Russia referred to the actions of other Members as a justification for the RCC's stance, arguing that it was simply following the examples set by States like Italy, Germany, and the UK. In light of this, scholars claimed that to maintain the effectiveness of the ECHR system, all State Parties must uphold human rights, international law, the values and principles of the ECHR, and, crucially, support the authority of the ECtHR. Without this collective support, there was a significant risk that the ECtHR could not effectively influence States' behavior⁵⁸¹.

7. Conclusion

This chapter examined the transformation in the stance of the Russian Constitutional Court toward the European Court of Human Rights from an initially supportive position to a rejection of its authority. It began by reviewing the early, positive interactions between the two Courts. The analysis then shifted to the three pivotal cases that significantly strained this relationship. Subsequently, it detailed the RCC's change of approach, starting with its July 2015 judgment envisioning its power to decide on the constitutionality of international rulings, followed by the December 2015 amendment that formally instituted this competence. It additionally explored the application of this new authority by the RCC in its decisions concerning the ECtHR's judgments in *Anchugov and Gladkov v. Russia* and *Yukos v. Russia*, and it reviewed the 2020 constitutional amendments that further strengthened this power. The chapter also evaluated the response of Russian scholars to these developments, noting both support and opposition. Finally, it assessed the Council of Europe's reaction to these events, highlighting the inefficacy of existing mechanisms to compel Russia's adherence to the ECtHR's decisions, and proposed a dialogue-based strategy as a more effective alternative.

Member States of the Council of Europe generally view the alignment of their national laws with international obligations as both feasible and advantageous. Conversely, Russia challenged this perspective by asserting that its judicial system risked subordination to Strasbourg, a stance deeply at odds with the Council's principles. In fact, former Strasbourg Court President Guido Raimondi warned that refusal to implement the ECtHR's judgments could lead to expulsion from the Council⁵⁸². This is not surprising, as disregarding the ECtHR's authority would make the legal commitments of Member States fragile and easily overlooked. Currently, it is clear that a robust dialogue with Russia

⁵⁸⁰ Galina A. Nelaeva et al., cit supra note 546, 106.

⁵⁸¹ Fleig-Goldstein, cit supra note 440, 218.

⁵⁸² Chaeva, cit supra note 457.

was not ultimately established; it may have been too late, and the relationship between Russia and the ECHR system was perhaps too strained to maintain. More plausibly, Russia had already chosen to retreat from the process of international integration that Gorbachev had initiated in the 1990s. After 2017, the trend of non-compliance with Strasbourg and the failure to implement the ECHR domestically persisted, culminating in the 2022 invasion of Ukraine. While the majority of Russian scholars cautioned against withdrawing from the Council of Europe, they did not foresee that by persisting in its actions, Russia was severing ties in ways that became untenable within the ECHR framework. In conclusion, even though Russia was expelled from the Council of Europe for its invasion of Ukraine, which starkly contravened the Council's core values, the right of object granted to the Constitutional Court in 2015 was already indicative of a looming separation. This competence had begun to undermine one of the fundamental principles of the European Convention on Human Rights: the recognized authority of the European Court of Human Rights.

Chapter 4. Russia's departure from the Council of Europe

On February 24th, 2022, Russia launched a massive invasion of Ukraine, marking the most significant attack on a European Nation since World War II. This conflict resulted in hundreds of thousands of military casualties and tens of thousands of civilian deaths in Ukraine⁵⁸³. Amid the flood of alarming reports about war crimes perpetrated by Russian forces against Ukrainian civilians, the Council of Europe took decisive action. On March 15th, the Parliamentary Assembly unanimously passed an Opinion stating that the Russian Federation should no longer be considered a Member of the Organization, recommending that the Committee of Ministers initiate the expulsion process as outlined in Article 8 of the CoE's Statute. The PACE declared that Russia's actions represented a serious violation of Article 3, undermining the commitments it made upon joining the Council, which included resolving international and domestic disputes through peaceful means and renouncing any use of force against neighboring States. In an extraordinary session on March 16th, the Committee of Ministers resolved that Russia's membership would be terminated immediately. This decision followed Russia's preemptive move to withdraw from the Council of Europe and denounce the European Convention on Human Rights a day earlier, aiming to sidestep a formal expulsion. Nevertheless, the Russian announcement was disregarded, and the Committee proceeded with the expulsion procedure. This marked the first instance of a Member State being expelled from the Council, and its consequences have been complex and far-reaching.

This concluding chapter delves into the process through which Russian membership in the Council of Europe was terminated. It begins by examining the statutory provisions concerning the termination of CoE membership, covering both voluntary withdrawal and expulsion. This is followed by a detailed chronological account of the steps leading to Russia's departure. The chapter then assesses the primary consequences of Russia's removal from the Council, including financial implications and changes to its status in the European Court of Human Rights. Special attention is given to the state of domestic human rights protection in Russia following its exit from the Convention, with a specific focus on the issues of the death penalty and political pluralism as case studies. The chapter concludes by summarizing some lessons learned from Russia's complex 26-year membership in the Council of Europe, which may inform considerations for any potential re-admission in the future.

⁵⁸³ Samuel Ramani, *Putin's War on Ukraine* (Hurst Publishers, 2023).

1. Termination of membership in the Council of Europe

Most international agreements include a denunciation clause that allows State Parties to end their commitments. Similarly, many treaties afford State Parties the right to respond to breaches of the treaty by other Parties. The Statute of the Council of Europe is no exception. Article 7 allows for the voluntary withdrawal of Members, while Articles 8 and 9 provide the legal foundation for imposing sanctions on any Member that violates the treaty, which, in the case of Article 8, can lead to the termination of membership. Despite these articles, the bodies of the Council, especially the Parliamentary Assembly, have established additional mechanisms to address non-compliance with treaty obligations or specific commitments made by Members as a condition of admission to the Organization.

1.1. Voluntary withdrawal

Under Article 7 of the Statute, any Member can exit the Council of Europe. The process requires that the Member's intention to withdraw be officially communicated to the Secretary General, who must then forward this notification to the Committee of Ministers⁵⁸⁴. If the notice is submitted in the first nine months of the financial year, the withdrawal becomes effective at the end of that year. Conversely, if the notification arrives in the last three months of the financial year, the withdrawal takes effect at the end of the subsequent financial year. The Committee of Ministers is tasked with determining the legal and financial implications of the withdrawal, which the Secretary General must then communicate to the Member withdrawing⁵⁸⁵. Although Article 7 outlines this procedure, as highlighted by Article 8, the Committee of Ministers may request the Member to exercise its right to withdraw, which remains a voluntary decision by the State involved.

When a withdrawal becomes effective, membership ends. Consequently, all rights and obligations associated with membership are terminated, except for those that remain to be completed⁵⁸⁶. Additionally, the termination of membership impacts the status as a State Party to the treaties that necessitate membership in the Council of Europe, such as the European Convention on Human Rights⁵⁸⁷.

Up until 2022, Greece was the only Country that had ever declared its withdrawal from the Council of Europe. Following the military coup by the Colonels on April 21st, 1967, Greece came under

⁵⁸⁴ Ibid; See also Rules of Procedure of the Council of Europe's Committee of Ministers, 1951, Article 28.

⁵⁸⁵ Rules of Procedure of the Council of Europe's Committee of Ministers, 1951, Article 28.

⁵⁸⁶ For instance, financial obligations that had already become due during the period of membership but had not yet been paid.

⁵⁸⁷ European Convention on Human Rights, 1950, Article 59(1).

increasing scrutiny from the Assembly due to the military regime's clear violations of the fundamental principles enshrined in the Statute⁵⁸⁸. In January 1969, the Assembly urged the CM to "take appropriate action within a specified period, in accordance with Articles 3, 7, and 8 of the Statute of the Council of Europe"⁵⁸⁹. On December 12th, 1969, as the Committee was prepared to act on PACE's recommendation, the Greek Foreign Minister declared Greece's withdrawal from the Council of Europe. Consequently, the Committee decided not to proceed with discussions on suspension⁵⁹⁰. Since the official notice of withdrawal was provided in December 1969, the withdrawal could only become effective at the end of the subsequent year, keeping Greece formally in the Council until then, although practical cooperation had effectively ceased. After the fall of the military regime and the restoration of democracy through free elections on November 17th, 1974, Greece was able to rejoin the Organization through the standard procedures on November 28th, 1974⁵⁹¹.

1.2. Expulsion

In the Statute of the CoE, Article 8 sets forth the procedure for addressing Members that fail to adhere to their duties and obligations. The provision states:

Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine⁵⁹².

⁵⁸⁸ Commission of the European Communities, *The Greek Case: Report of the Commission: Application No. 3321/67-Denmark V. Greece; Application No. 3322/67-Norway V. Greece; Application No. 3323/67-Sweden V. Greece; Application No. 3344/67-Netherlands V. Greece*, vol. 1, 2nd ed., 1970. https://books.google.it/books/about/The_Greek_Case.html?id=GeYXAAAAYAAJ&redir_esc=y.

⁵⁸⁹ Parliamentary Assembly, "Recommendation 547," debate on 30 January 1969 (25th and 26th Sittings), Assembly debate on 30 January 1969 (25th and 26th Sittings) (see Doc. 2525, report of the Political Affairs Committee), text adopted by the Assembly on 30 January 1969 (26th Sitting), <https://pace.coe.int/en/files/14583/html>.

⁵⁹⁰ Committee of Ministers, "Resolution (69) 51", adopted on 12 December 1969, <https://rm.coe.int/09000016804faa01>.

⁵⁹¹ Parliamentary Assembly, "Opinion 69," readmission of Greece to the Council of Europe, adopted by the Standing Committee on behalf of the Assembly on 27 November 1974, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=13808&lang=en>; Committee of Ministers, "Resolution (74) 34," adopted on 28 November 1974, <https://rm.coe.int/native/0900001680535d1b>.

⁵⁹² The Statute of the Council of Europe, 1949, Article 8.

The wording of the Statute avoids the term “expulsion”, opting instead for the more neutral phrase “ceasing to be a member”⁵⁹³. This choice of language shares significant similarities with clauses found in the founding treaties of international organizations that were established before the Council of Europe⁵⁹⁴.

Article 8 of the Statute permits the Council of Europe to take action only in cases where a Member has “seriously violated” Article 3. This requires that all Members commit to the principle of the rule of law, ensure that all individuals within their jurisdiction are afforded human rights and fundamental freedoms, and cooperate “sincerely and effectively”⁵⁹⁵ to achieve the objectives set out in Chapter I of the Statute⁵⁹⁶. It is argued that Article 3 does not apply extraterritorially: the rule of law and human rights protection are required only for the population within the Member States. Thus, there are no obligations towards any other individual or group under the jurisdiction of another Member⁵⁹⁷. However, the duty of sincere cooperation extends to all Members and to the CoE itself⁵⁹⁸. The relevance of the Article 3’s non-extraterritorial nature is significant in this discussion as the Committee of Ministers cited Article 8 in response to Russia’s actions against Ukraine, alleging a violation of Article 3. This poses the question of whether, if by “violation” the CM referred to the infringement of the human rights of those in Ukraine by Russia, such extraterritorial applicability is embedded in Article 3⁵⁹⁹. Conversely, the Russian aggression could also be viewed as a serious violation of the duty of sincere cooperation, since the use of force against another Member State clearly contradicts international law, disrupts unity among the Members, undermines the core ideals and principles that form the CoE’s common heritage, and inevitably leads to economic and social decline⁶⁰⁰.

The application of Article 8 involves only the Committee of Ministers. Nonetheless, similar to the admission process, Resolution (51)30 establishes that the Parliamentary Assembly be consulted about

⁵⁹³ Interestingly, among the founding treaties of major international organizations established in the second half of the 1940s, including the United Nations, the Organization of Economic Cooperation in Europe, the League of Arab States, the Organization of American States, and the Council of Europe, only Article 6 of the UN Charter mentions “expulsion”.

⁵⁹⁴ Covenant of the League of Nations, 1920, Article 16(4); Charter of the League of Arab States, 1945, Article XVIII(2); Convention for European Economic Cooperation, 1948, Article 26.

⁵⁹⁵ The so-called duty of “sincere cooperation”.

⁵⁹⁶ The Statute of the Council of Europe, 1949, Article 3; The Statute of the Council of Europe, 1949, Article 1. Chapter I consists of only Article 1, which states that the purpose of the Organization is to promote greater unity among its Members to protect the ideals and principles that constitute their common heritage and to support their economic and social development.

⁵⁹⁷ Konstantinos D. Magliveras, “Legal and Procedural Issues Arising from the Expulsion of the Russian Federation from the Council of Europe,” *Mezinárodní a Srovnávací Právní Revue/International and Comparative Law Review* 23, no. 1 (August 1, 2023), 99, <https://doi.org/10.2478/iclr-2023-0005>.

⁵⁹⁸ *Ibid.*

⁵⁹⁹ Magliveras, *cit supra* note 597.

⁶⁰⁰ Magliveras, *cit supra* note 597, 100.

the expulsion procedure as well⁶⁰¹. Despite PACE's opinion, the Committee is tasked with deciding whether the Member in question has seriously violated Article 3. If such violation is confirmed, the Committee is not obligated to apply Article 8, but rather possesses the discretion to do so⁶⁰².

The framework of Article 8 suggests that expulsion from the Council involves a four-step process: firstly, the suspension of the rights of representation; secondly, the issuance of a withdrawal request to the Member State; thirdly, the CM's evaluation of the State's response to this request; finally, the Committee's decision to expel the Member State. The initial phase can be seen as a cautionary measure: with its rights of representation suspended, the Member cannot take part in the meetings of the bodies or affect their decisions. It seems that the authors of the Statute intended this first step to provide the non-compliant State with a chance to correct its course and return to compliance⁶⁰³.

When evaluating Article 8, it is also pertinent to consider Article 9, which states that "the Committee of Ministers may suspend the right of representation on the Committee and on the Consultative Assembly of a member which has failed to fulfil its financial obligation during such period as the obligation remains unfulfilled"⁶⁰⁴. Although both articles serve punitive functions, a notable distinction is that Article 9 specifically suspends "the right of representation" in both the CM and the PACE, whereas Article 8 simply refers to the suspension of "its rights of representation" without specifying whether this includes the Committee, the PACE, or other bodies. The French version of the Statute adds further complexity, using only the singular form "*droit*"⁶⁰⁵. A logical interpretation of these provisions might invoke the principle of proportionality⁶⁰⁶: given that a "serious violation" of Article 3 is more severe than non-payment of dues, it follows that if under Article 9 representation is suspended in both the CM and the PACE, then a suspension under Article 8 should also encompass both organs⁶⁰⁷. Additionally, the Parliamentary Assembly has assumed control over suspending representation rights within its own body. For this purpose, it uses the procedure of assessing the ratification of the credentials of a national delegation, as outlined in Rules 8 and 9 of its Rules of Procedure⁶⁰⁸.

⁶⁰¹ Council of Europe, Committee of Ministers, Resolution (51) 30, May 3rd, 1951, <https://rm.coe.int/revision-of-the-statute/168074f0c5>.

⁶⁰² The Statute of the Council of Europe, 1949, Article 8. The Article empowers the CM to act but does not obligate it ("[...] may be suspended"); Magliveras, cit supra note 597, 101. The fact that Article 8 had never been applied before the case with the Russian Federation might have led Members to reasonably expect that these powers would remain unused.

⁶⁰³ Magliveras, cit supra note 597, 102.

⁶⁰⁴ The Statute of the Council of Europe, 1949, Article 9.

⁶⁰⁵ The Statute of the Council of Europe, 1949, Articles 8-9. "Article 8 [...] de son droit de représentation [...]" and "Article 9 [...] son droit de représentation au Comité et à l'Assemblée Consultative [...]"

⁶⁰⁶ Thomas Cottier et al., "The Principle of Proportionality in International Law the Principle of Proportionality in International Law," 2012, https://www.wti.org/media/filer_public/9f/1b/9f1bd3cf-dafd-4e14-b07d-8934a0c66b8f/proportionality_final_29102012_with_nccr_coversheet.pdf. The sanction must relate directly to the infraction committed.

⁶⁰⁷ Magliveras, cit supra note 597, 103.

⁶⁰⁸ Rules of Procedure of the Council of Europe's Parliamentary Assembly, 1999, Articles 8-9.

Article 8 does not involve the allegedly recalcitrant Member. According to Article 26 of the CM's Rules of Procedure, the Member is merely informed about the decision to suspend its rights of representation⁶⁰⁹. Consequently, it is not given a chance to present its side or counter the charges, even though the right to reply is generally recognized as applicable in the context of membership in international organizations⁶¹⁰, especially in cases where the State is accused of breaching core principles. Additionally, the suspended Member has no right to appeal the decision or to pursue judicial review of it, as the Statute does not include a provision for dispute resolution concerning its enforcement⁶¹¹.

2. Termination of Russia's membership in the Council of Europe

Between the night of February 23rd and 24th, 2022, Russia invaded Ukraine, which has been a Member of the Council of Europe since November 9th, 1995⁶¹². The repercussions of this attack reached far beyond the immediate human suffering, leading to what has been described as a “tectonic shift in European history”⁶¹³. The global response to Russia's clear violation of international law included widespread condemnation. On March 2nd, 2022, the United Nations General Assembly (UNGA) passed a resolution condemning Russia's invasion, calling for the complete withdrawal of Russian troops and the reversal of its recognition of the self-proclaimed People's Republics of Donetsk and Luhansk⁶¹⁴. In subsequent months, the UNGA also suspended Russia's rights of membership in the United Nations Human Rights Council⁶¹⁵ and demanded a reversal of its “attempted illegal annexation” of four Ukrainian regions⁶¹⁶. Simultaneously, the International Court of Justice issued an

⁶⁰⁹ Rules of Procedure of the Council of Europe's Committee of Ministers, 1951, Article 26.

⁶¹⁰ Rules of Procedure of the United Nations General Assembly, 2008, Articles 73-115.

⁶¹¹ Konstantinos Magliveras, “The Question of Expelling Recalcitrant Member States – the Termination of the Russian Federation's Membership in the Council of Europe,” *Völkerrechtsblog: International law & international legal thought*, March 5, 2022, <https://voelkerrechtsblog.org/the-question-of-expelling-recalcitrant-member-states/>.

⁶¹² Council of Europe, “Ukraine – Member State - Portal,” Council of Europe, accessed May 12, 2024, <https://www.coe.int/en/web/portal/ukraine#:~:text=Ukraine%20joined%20the%20Council%20of%20Europe%20on%2009%20November%201995.>

⁶¹³ Council of the European Union, “Versailles Declaration,” Informal Meeting of the Heads of State or Government, 10-11 March 2022, accessed May 12, 2024, <https://www.consilium.europa.eu/media/54773/20220311-versailles-declaration-en.pdf>.

⁶¹⁴ United Nations General Assembly, “Resolution ES-11/1: Aggression against Ukraine,” Eleventh Emergency Special Session, Agenda item 5, including the letter dated 28 February 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council (S/2014/136), adopted on 2 March 2022, <https://documents.un.org/doc/undoc/gen/n22/293/36/pdf/n2229336.pdf?token=CjGpxJsK12ThD2n2m8&fe=true>.

⁶¹⁵ United Nations General Assembly, “Resolution ES-11/3: Suspension of the Rights of Membership of the Russian Federation in the Human Rights Council,” Eleventh Emergency Special Session, Agenda item 5, including the letter dated 28 February 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council (S/2014/136), adopted on 7 April 2022, https://digitallibrary.un.org/record/3967950/files/A_RES_ES-11_3-EN.pdf.

⁶¹⁶ Lauri Mälksoo, “Resolution ES-11/4 Territorial Integrity of Ukraine: Defending the Principles of the Charter of the United Nations (U.N.G.A.),” *International Legal Materials*, March 27, 2023, 1–4, <https://doi.org/10.1017/ilm.2023.9>.

interim order for Russia to cease its military activities⁶¹⁷. The European Union enacted sanctions against Russia, provided Ukraine with macro-financial support, allocated funds to assist the Ukrainian military, offered protection to the masses fleeing the conflict, and banned several media outlets perpetuating propaganda in favor of Russia's military actions⁶¹⁸. In this context, while the Council of Europe had previously addressed Russia's aggression towards Ukraine in 2014, the invasion in 2022 represented a significant intensification of the conflict. This escalation ultimately led to the historic decision on March 16th, 2022, to expel the Russian Federation from the Organization. The following subsections will explore the events leading up to this decision.

2.1. February 24th-25th, 2022

Despite Russia's repeated denials of plans to invade Ukraine, tensions were palpably increasing in the weeks leading up to the invasion. The Council of Europe's leadership was fully engaged with the situation⁶¹⁹. When Russia officially recognized the People's Republics of Donetsk and Luhansk on February 21st, Secretary General Marija Pejčinović Burić immediately responded⁶²⁰, noting that this action was a breach of international law and directly violated the Minsk agreements⁶²¹. She was supported by the former PACE President, Senator Tiny Kox of the Netherlands, and the then-current Chair of the CM, former Italian Minister for Foreign Affairs and International Cooperation, Luigi Di Maio⁶²². Despite their unified plea for Russia to refrain from further escalation, their warnings were ignored. Russia launched its invasion of Ukraine in the early morning of February 24th. Within hours, PACE President Kox declared that the invasion was a severe violation of the Council of Europe's foundational principles and values, necessitating a strong and united response from the

⁶¹⁷ International Court of Justice, "Order of 16 March 2022, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)," <https://www.icj-cij.org/sites/default/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>.

⁶¹⁸ Andrew Drzemczewski and Rick Lawson, "Exclusion of the Russian Federation from the Council of Europe and the ECHR: An Overview," Social Science Research Network (Rochester, NY, December 30, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4458281; see also judgment of the EU General Court in Case T-125/22, RT France v. Council, of 27 July 2022.

⁶¹⁹ Council of Europe, "Council of Europe Leaders Make Joint Statement on Ukraine," Committee of Ministers Chairmanships, February 15, 2022, https://www.coe.int/uk/web/presidency/italian-presidency-news/-/asset_publisher/Z1fkQCGqWw4N/content/council-of-europe-leaders-make-joint-statement-on-ukraine/16695.

⁶²⁰ Council of Europe, "Statement by Council of Europe Secretary General Marija Pejčinović Burić on the Recognition of the So-Called 'People's Republics' of Donetsk and Luhansk by the Russian Federation," Council of Europe Office in Ukraine, February 21, 2022, <https://www.coe.int/en/web/kyiv/-/statement-by-council-of-europe-secretary-general-marija-pejcinovic-buric-on-the-recognition-of-the-so-called-people-s-republics-of-donetsk-and-luhansk>.

⁶²¹ Marie Dumoulin, "Ukraine, Russia, and the Minsk Agreements: A Post-Mortem," European Council of Foreign Relations - ECFR, February 19, 2024, <https://ecfr.eu/article/ukraine-russia-and-the-minsk-agreements-a-post-mortem/>. Under the auspices of France, Germany, and the OSCE, the Minsk agreements were negotiated and signed by Ukraine, Russia, and the OSCE special representative in September 2014 and February 2015. These agreements formalized Russia's commitment to return the regions of Donetsk and Luhansk to Ukrainian control.

⁶²² Drzemczewski and Lawson, *cit supra* note 618, 4.

Organization⁶²³. He promptly called for an urgent meeting of the Joint Committee⁶²⁴ to orchestrate a coordinated response to the crisis⁶²⁵. Contrary to the internal divisions and hesitation that characterized their reaction to Russia's annexation of Crimea in 2014, the main policy-making bodies of the CoE worked in close alignment⁶²⁶. The CoE had evidently taken lessons from that earlier event, having agreed in 2020 on a new "complementary joint procedure" for crisis response⁶²⁷. This procedure allows for activation by the Secretary General, the Committee of Ministers, or the Parliamentary Assembly, obligating the others to engage promptly, followed by structured dialogue within a designated timeframe with the State responsible for the crisis⁶²⁸.

Thus, on February 24th, the Committee of Ministers held an emergency session to address the Russian invasion of Ukraine, condemning the act⁶²⁹. The Committee resolved to promptly review, in close coordination with other CoE bodies, "measures to be taken in response to the serious violation by the Russian Federation of its statutory obligations as a Council of Europe member State"⁶³⁰. The following day, under the leadership of the PACE President, the Joint Committee met, and shortly thereafter, the Committee of Ministers decided to immediately suspend Russia's rights of representation⁶³¹. This action, taken under Article 8 of the CoE Statute, marked the initiation of the first step of the provision. In making this decision, the CM clarified that "suspension is not a final measure but a temporary one, leaving channels of communication open"⁶³². One week later, on March 2nd, the CM passed another Resolution addressing the legal and financial repercussions of the

⁶²³ Council of Europe, "PACE President Reacts to Russian Military Attack on Ukraine," Council of Europe Office in Ukraine, February 25, 2022, <https://www.coe.int/en/web/kyiv/-/pace-president-reacts-to-russian-military-attack-on-ukraine>.

⁶²⁴ The Joint Committee comprises the Committee of Ministers and the Parliamentary Assembly.

⁶²⁵ Council of Europe, *cit supra* note 623.

⁶²⁶ Andrew Drzemczewski, "The (Non-) Participation of Russian Parliamentarians in the Parliamentary Assembly of the Council of Europe: Recent Developments" *Revista Do Instituto Brasileiro de Direitos Humanos* 20 (December 16, 2020): 49–58, <https://revista.ibdh.org.br/index.php/ibdh/article/view/420/399>; Memorandum by Russian human rights defenders, "Addressing the Crisis in Relations between the Council of Europe and Russia: Upholding the Values and the Mission to Protect Human Rights across All of Europe," mhg.ru, November 2018, <https://mhg.ru/addressing-crisis-relations-between-council-europe-and-russia-uphold-values-and-fulfil-mission>.

⁶²⁷ Parliamentary Assembly, "Resolution 2319: Complementary Joint Procedure between the Committee of Ministers and the Parliamentary Assembly in Response to a Serious Violation by a Member State of Its Statutory Obligations," Assembly debate on 29 January 2020 (6th Sitting), adopted on 29 January 2020, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28568&lang=en>.

⁶²⁸ *Ibid.*

⁶²⁹ Committee of Ministers, "Situation in Ukraine – Measures to be taken, including under Article 8 of the Statute of the Council of Europe," CM/Del/Dec(2022)1426ter/2.3, 1426ter meeting, 25 February 2022, <https://www.cambridge.org/core/journals/international-legal-materials/article/documents-on-russias-exclusion-from-council-eur-unhrc/68933885929ECA533FB0228DDFB54E35>; Council of Europe, "Situation in Ukraine: Decisions by Council of Europe's Committee of Ministers," [www.coe.int](https://www.coe.int/en/web/portal/-/situation-in-ukraine-decisions-by-council-of-europe-s-committee-of-ministers), February 24, 2022, <https://www.coe.int/en/web/portal/-/situation-in-ukraine-decisions-by-council-of-europe-s-committee-of-ministers>.

⁶³⁰ *Ibid.*

⁶³¹ Council of Europe, "Council of Europe Suspends Russia's Rights of Representation," [www.coe.int](https://www.coe.int/en/web/portal/-/council-of-europe-suspends-russia-s-rights-of-representation), February 25, 2022, <https://www.coe.int/en/web/portal/-/council-of-europe-suspends-russia-s-rights-of-representation>.

⁶³² *Ibid.* The decision was made with 42 votes in favor, two votes against (from Russia and Armenia), and one abstention (from Turkey). Azerbaijan did not vote, and Serbia was absent.

suspension of Russia. This suspension affected Russia's rights in the CM and PACE, as well as their subsidiary organs and committees established under Articles 15a, 16, and 17 of the Statute, and in the Congress of Local and Regional Authorities and its subsidiary bodies⁶³³. Russia was permitted to attend conferences of specialized ministers only upon explicit invitation⁶³⁴. Additionally, the Resolution stated that the suspension did not absolve Russia of its financial commitments to the Council or its legal responsibilities under applicable CoE conventions⁶³⁵. Consequently, Russia continued to be fully bound by the ECHR and under the jurisdiction of the Strasbourg Court, which in turn implemented several interim measures⁶³⁶.

2.2. March 10th-16th, 2022

Despite Russia's suspension, the invasion persisted. Consequently, on March 10th, the Committee of Ministers decided to seek the Parliamentary Assembly's advice "on the potential further application of Article 8 of the Statute"⁶³⁷. In response, the PACE convened an extraordinary plenary session on March 14th and 15th, featuring Ukrainian Prime Minister Denys Shmyhal as a speaker. During the session's second day, Russian Foreign Minister Sergueï Lavrov, in Moscow, announced Russia's intent to leave the Council of Europe pursuant to Article 7 of the Statute, citing the suspension of its rights of representation as a "discriminatory decision"⁶³⁸. Russia claimed that the EU and NATO

⁶³³ Committee of Ministers, "Resolution CM/Res(2022)1 on Legal and Financial Consequences of the Suspension of the Russian Federation from Its Rights of Representation in the Council of Europe," adopted on 2 March 2022 at the 1427th meeting of the Ministers' Deputies, <https://rm.coe.int/2022-cm-resolution-1/1680a5b463>.

⁶³⁴ Ibid.

⁶³⁵ CM/Res(2022)1, cit supra note 633.

⁶³⁶ European Court of Human Rights, "Press Release: The European Court Grants Urgent Interim Measures in Application Concerning Russian Military Operations on Ukrainian Territory," ECHR 068 (2022), issued on 1 March 2022, <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7272764-9905947&filename=The%20Court%20grants%20urgent%20interim%20measures%20in%20application%20concerning%20Russian%20military%20operations%20on%20Ukrainian%20territory.pdf>. The ECtHR directed the Russian Government to "to refrain from military attacks against civilians and civilian objects, including residential premises, emergency vehicles and other specially protected civilian objects such as schools and hospitals, and to ensure immediately the safety of the medical establishments, personnel and emergency vehicles within the territory under attack or siege by Russian troops".

⁶³⁷ CM/Del/Dec(2022)1428bis/2.3, cit supra note 629; Council of Europe, "Council of Europe to Discuss Potential Further Measures against Russia," Portal CoE, March 10, 2022, <https://www.coe.int/en/web/portal/-/council-of-europe-to-discuss-further-measures-against-russia>.

⁶³⁸ The Ministry of Foreign Affairs of the Russian Federation, "Foreign Ministry Statement on Initiating the Process of Withdrawing from the Council of Europe - the Ministry of Foreign Affairs of the Russian Federation," Mid.ru, March 15, 2022, https://mid.ru/en/foreign_policy/news/1804379/; see also TASS, "Lavrov's Letter on Russian Withdrawal from CoE Handed over to Secretary General — MP," TASS - Russian News Agency, March 15, 2022, <https://tass.com/politics/1422531>. Quoting Mr P. Tolstoy, deputy speaker of the Russian State Duma and head of Russia's delegation to PACE: "The decision to withdraw from the Council of Europe has been taken. Foreign Minister Sergey Lavrov's corresponding letter has been handed over to the Organization's Secretary General [...] Russia is withdrawing from the Council of Europe under its own volition. It is a well-balanced and deliberate decision". According to Tolstoy, "the responsibility for the wreckage of dialogue between Russia and the Council of Europe rests on NATO countries, which have been using the topic of human rights in their own geopolitical interests. In view of the unprecedented political and sanction pressure on our country, Russia is not planning to pay its annual contribution to this Organization".

Members had gradually turned the CoE into a tool against Russia and accused the CoE organs of meddling in its internal affairs⁶³⁹. These justifications appeared to underscore that the withdrawal was a move to safeguard essential national interests. Nonetheless, there was no explanation as to why Russia's ongoing "special military operation" in Ukraine, which had escalated to a full-scale interstate conflict, did not constitute a violation of Article 3, as determined by the CM⁶⁴⁰.

Despite Moscow's notification of withdrawal, the discussion in the PACE continued unabated. Toward the conclusion of the debate, PACE President Kox told the Assembly that "this does not intervene in our discussions. We are asked an opinion by the Committee of Ministers whether further action and Article 8 is needed, and we are in this process and we will finish this process"⁶⁴¹. Less than two hours later, the PACE unanimously passed Opinion No. 300⁶⁴², recommending that the CM urge Russia to withdraw immediately using Article 8 and to set the earliest possible date for the termination of Russia's membership if it failed to comply⁶⁴³.

Immediately following the session, Committee of Ministers President Di Maio, PACE President Kox, and Secretary General Burić issued a joint statement on "the exclusion of the Russian Federation from the Council of Europe"⁶⁴⁴. They highlighted the repeated denunciations of Russia's unjustified aggression, which had triggered the Article 8 process. The following morning, on March 16th, the Committee of Ministers enacted Resolution CM/Res(2022)2, which officially ended Russia's membership in the Organization, effective immediately⁶⁴⁵.

2.3. Withdrawal or expulsion?

It is crucial to note that, through its Resolution CM/Res(2022)2, the Committee of Ministers deviated from the typical protocol prescribed in Article 8, which usually involves a solicitation for voluntary withdrawal and a subsequent evaluation of the response, by immediately expelling Russia. While the Resolution acknowledged Russia's declared intent to withdraw, it did not refer to Article 7 of the

⁶³⁹ Magliveras, cit supra note 597, 107.

⁶⁴⁰ Magliveras, cit supra note 597, 107.

⁶⁴¹ Drzemczewski and Lawson, cit supra note 618, 9.

⁶⁴² Parliamentary Assembly, "Opinion 300: Consequences of the Russian Federation's Aggression against Ukraine," Assembly debate on 15 March 2022 (3rd and 4th sittings), adopted on 15 March 2022 (4th sitting), <https://pace.coe.int/en/files/29885/html>, adopted with 216 votes in favor, 0 against, 3 abstentions.

⁶⁴³ Ibid, para 20.

⁶⁴⁴ Council of Europe, "Council of Europe Leaders Make Joint Statement on the Exclusion of the Russian Federation from the Council of Europe," Portal CoE, March 15, 2022, <https://www.coe.int/en/web/portal/-/council-of-europe-leaders-make-joint-statement-on-the-exclusion-of-the-russian-federation-from-the-council-of-europe>.

⁶⁴⁵ Committee of Ministers, "Resolution CM/Res(2022)2 on the Cessation of the Membership of the Russian Federation to the Council of Europe," adopted on 16 March 2022 at the 1428th meeting of the Ministers' Deputies, <https://rm.coe.int/0900001680a5da51>.

Statute, which the State had invoked in its announcement⁶⁴⁶. The CM's choice to bypass Article 7 might have stemmed from a political imperative and the need to robustly denounce Russia for its stark breach of the Statute. At that time, there was evident tension between the political urgency to distance Russia, demonstrating unity with the European Union and the global community, and the legal requirement to hold Russia accountable under the CoE's statutory provisions⁶⁴⁷. However, this approach conflicted with Article 8's requirements, which explicitly demand an initial step of requesting the non-compliant State to withdraw, a step Russia had in fact taken just one day before. According to Article 8, the CM is meant to only proceed with terminating Russia's membership if the State does not fulfill such a request.

Academics have proposed several legal interpretations to explain why the CM's decision on March 16th overlooked Russia's declaration of withdrawal. The first theory was implied by PACE President Kox's immediate response to the Russian withdrawal announcement: once Article 8 proceedings are initiated, the concerned State cannot simply invoke Article 7 to evade expulsion⁶⁴⁸. Moreover, it is noted that Articles 7 and 8 serve different functions, with the former allowing for voluntary, unilateral withdrawal and the latter addressing serious statutory violations, under which the CM retains control once proceedings have begun⁶⁴⁹. However, this view conflicts with Article 8's stipulation that requests for withdrawal under Article 7 precede any move toward exclusion⁶⁵⁰.

A second interpretation centers on the method of Russia's notice, specifically a fax from Foreign Minister Lavrov, which some argue is not an appropriate medium for such critical communication⁶⁵¹. Article 7 mandates that a Member State must "formally notify the Secretary General"⁶⁵², and there could be doubts whether a fax meets this criterion of formality. Yet, this argument weakens upon examination of Article 67 of the Vienna Convention on the Law of Treaties, which merely requires written notification from an authorized official, without specifying the medium⁶⁵³. Moreover,

⁶⁴⁶ Ibid. "[...] Noting that by a communication dated 15 March 2022, the Government of the Russian Federation informed the Secretary General of its withdrawal from the Council of Europe in accordance with the Statute of the Council of Europe and of its intention to denounce the European Convention on Human Rights, Decides, in the context of the procedure launched under Article 8 of the Statute of the Council of Europe, that the Russian Federation ceases to be a member of the Council of Europe as from 16 March 2022".

⁶⁴⁷ Drzemczewski and Lawson, cit supra note 618, 11.

⁶⁴⁸ Drzemczewski and Lawson, cit supra note 618, 9-12.

⁶⁴⁹ Council of Europe, "Russia's Expulsion from the Council of Europe - Communication to the 62nd Meeting of the Committee of Legal Advisers on Public International Law (CAHDI)," Portal CoE, March 24, 2022, <https://coe.int/en/web/dlapil/-/62nd-meeting-of-the-committee-of-legal-advisers-on-public-international-law-cahdi->.

⁶⁵⁰ Drzemczewski and Lawson, cit supra note 618, 12. One potential counterargument is that it was unnecessary to ask Russia to withdraw because the outcome was already evident. However, this is not convincing: according to Article 8, a Member can only be excluded after it has explicitly rejected the request to withdraw.

⁶⁵¹ Ibid.

⁶⁵² The Statute of the Council of Europe, 1949, Article 7.

⁶⁵³ Vienna Convention on the Law of Treaties, 1969, Article 67.

President Kox’s reference to “a notification from the Russian Federation” during the March 15th debate in the PACE suggests that the fax’s form was not an issue⁶⁵⁴.

A third possibility is that there was a defect in the content of Russia’s notice, perhaps due to it being framed “on its own terms”⁶⁵⁵. However, according to Bischoff, even if the notice was flawed, the Committee should have requested a legally valid declaration of intent to withdraw, with expulsion remaining an alternative should Russia fail to rectify the notification⁶⁵⁶.

A final theory posits that the overwhelming scale of the Russian military action created exceptional circumstances (*rebus sic stantibus*) that warranted deviation from Article 8’s procedural requirements. This perspective, among others, has been forwarded by Guido Raimondi, the former President of the Strasbourg Court⁶⁵⁷.

Thus, although there are uncertainties about whether all the conditions of Article 8 were fulfilled⁶⁵⁸, one truth is undeniable: the Committee of Ministers was determined to penalize Russia for its clear breach of obligations. Allowing Russia to leave under Article 7 would have permitted it to withdraw from the Council on its own accord, purportedly to defend its national interests against what it deemed to be the Organization’s unfair actions⁶⁵⁹.

3. The consequences of Russia’s exit

In its Resolution (2022)3 of March 23rd⁶⁶⁰, the Committee of Ministers addressed the legal and financial implications following the cessation of Russia’s membership in the Council of Europe. Specifically, the Committee declared that Russia no longer has the right to assert any claims for rights, nor is it considered bound by any obligations linked to the Statute of the Council or its membership in the Organization⁶⁶¹. This determination does not affect Russia’s responsibilities under the Statute

⁶⁵⁴ Drzemczewski and Lawson, cit supra note 618, 13. He clearly based his statement on the message from the Secretary General, who wrote that she had been “formally notified of the decision of the Russian Federation to withdraw from the CoE, in accordance with Article 7 of the Statute”.

⁶⁵⁵ Drzemczewski and Lawson, cit supra note 618, 14.

⁶⁵⁶ James L. Bischoff, “Documents on Russia’s Exclusion from Council Eur. & U.N.H.R.C.,” *International Legal Materials* 62, no. 2 (April 1, 2023), 296, <https://doi.org/10.1017/ilm.2022.57>.

⁶⁵⁷ Guido Raimondi, “L’expulsion de La Fédération de Russie Du Conseil de l’Europe. Quel Impact Sur La Convention Européenne Des Droits de L’homme?” in *Liber Amicorum*, ed. Jon Fridrik Kjlbros, Sofra O’leary, and Marialena Tsirli (Eleven Intl Pub, 2022); Vienna Convention on the Law of Treaties, 1969, Article 62.

⁶⁵⁸ Magliveras, cit supra note 611. The author emphasizes the importance of these issues, which pertain to the application of the rule of law to international organizations. To address these concerns, he suggests that amendments should be made to the Statute or, at a minimum, that relevant provisions be added to the Rules of Procedure of the Council of Ministers.

⁶⁵⁹ Magliveras, cit supra note 597, 108.

⁶⁶⁰ Committee of Ministers, “Resolution CM/Res(2022)3 on Legal and Financial Consequences of the Cessation of Membership of the Russian Federation in the Council of Europe,” adopted on 23 March 2022 at the 1429bis meeting of the Ministers’ Deputies, <https://rm.coe.int/resolution-cm-res-2022-3-legal-and-financial-conss-cessation-membershi/1680a5ee99>.

⁶⁶¹ Ibid

for any events that occurred before its membership ended, including its obligation to contribute financially to the Organization, calculated proportionally up to the termination date⁶⁶². Furthermore, the Committee discussed the impact of membership termination on the validity of treaties within the Council’s framework that Russia is a signatory to, starting with the European Convention on Human Rights⁶⁶³.

3.1. Financial consequences

When a State’s membership in an international organization ends, it becomes a third party in relation to the organization and its other Members. It is common for the State to have outstanding commitments, such as unpaid budgetary contributions. The Council of Europe provides a 12-month window to resolve such issues in cases of voluntary withdrawal⁶⁶⁴; however, this grace period does not apply in instances of immediate expulsion, leading to questions about how these pending obligations will be fulfilled⁶⁶⁵.

Regarding the Russian Federation, its financial situation was notably problematic, as it was significantly behind in payments⁶⁶⁶. Specifically, in 2017, Russia did not pay dues amounting to €22 million, and in February 2018, it chose not to pay €11 million of its annual contribution of €33 million⁶⁶⁷. As Russia continued to withhold payments, the CoE encountered a severe financial shortfall, which remained unresolved despite other Members’ attempts to address it⁶⁶⁸. For 2019, Russia’s budgetary contribution was €32.6 million, and it increased slightly to €33.1 million in 2020⁶⁶⁹. The exact amount of its arrears at the time its membership ended is not publicly known, but it is speculated that it had been accumulating for over two years⁶⁷⁰. In its Resolution (2022)3, the CM declared that Russia must settle all its financial obligations from its membership fully, including its

⁶⁶² Resolution CM/Res(2022)3, cit supra note 660.

⁶⁶³ Resolution CM/Res(2022)3, cit supra note 660.

⁶⁶⁴ Magliveras, cit supra note 597, 109.

⁶⁶⁵ Ibid.

⁶⁶⁶ Magliveras, cit supra note 597, 109; Drzemczewski and Lawson, cit supra note 618, 19. Russia was the fifth largest contributor to the CoE budget.

⁶⁶⁷ Mikhail Bushuev and Markian Ostapchuk, “Funding Crisis for Council of Europe? ,” dw.com, January 3, 2018, <https://www.dw.com/en/russia-withholds-payments-to-the-council-of-europe/a-42792673>; Euractiv, “Russian MPs Prolong Payments Freeze to Council of Europe,” www.euractiv.com (EURACTIV, January 18, 2019), <https://www.euractiv.com/section/global-europe/news/russian-mps-prolong-payments-freeze-to-council-of-europe/>.

⁶⁶⁸ Auswärtiges Amt, “Why Russia Must Remain in the Council of Europe,” German Federal Foreign Office, January 15, 2019, <https://www.auswaertiges-amt.de/en/aussenpolitik/internationale-organisationen/russia-council-of-europe-maas/2177690>. In particular, the former German Foreign Minister, Heiko Maas, stated in 2019 that it was in his Country’s interest for Russia to remain a full CoE Member “with all attendant rights and obligations”.

⁶⁶⁹ Committee of Ministers, “Draft Council of Europe Programme and Budget 2020–2021,” 1361 (Budget) Meeting, 19-21 November 2019, CM(2019)130, <https://rm.coe.int/090000168096d082>.

⁶⁷⁰ TASS, “Council of Europe Confirms Debt Payment by Russia,” TASS - Russian News Agency, September 4, 2019, <https://tass.com/economy/1076413>.

contribution for 2022, calculated on a *pro rata temporis* basis⁶⁷¹. However, the resolution left unanswered the question of how these funds would be recovered if Russia refused to pay.

3.2. The exclusion from the European Convention on Human Rights

In the Council of Europe, a significant outcome of membership termination is that ex-Members can no longer be part of “closed” legal instruments, such as the European Convention on Human Rights, the European Convention on the Suppression of Terrorism⁶⁷², and the Revised European Social Charter⁶⁷³. Among these, the ECHR stands out as particularly crucial, largely due to the oversight of the Strasbourg Court, which still has numerous pending cases against the Russian Federation.

On the day the CM confirmed Russia’s cessation of membership, the ECtHR suspended all case examinations against Russia, pending its evaluation of how this resolution would impact the Court’s work⁶⁷⁴. Under Article 58 of the ECHR, a State that exits the Council of Europe also loses its status as a Party to the Convention⁶⁷⁵. Subsequently, on March 22nd, the ECtHR, in a plenary session, resolved to immediately resume examining Russian-related cases, stipulating that Russia would remain a Party to the ECHR until September 16th, 2022, six months post-expulsion by the CM⁶⁷⁶. Until that date, the Court maintained jurisdiction to review cases alleging violations of the ECHR by Russia. This decision was framed as necessary to “to ensure practical and effective protection to those subject to the High Contracting Parties’ jurisdiction”⁶⁷⁷.

In Resolution (2022)3 of March 23rd, the Committee of Ministers reiterated the contents of the ECtHR’s Resolution and further stated its role in overseeing the implementation of the Court’s judgments, as outlined in Article 46 of the ECHR⁶⁷⁸. Additionally, it mandated that Russia must carry out all judgments made against it. Russia was permitted to remain involved in relevant meetings of

⁶⁷¹ Resolution CM/Res(2022)3, cit supra note 660.

⁶⁷² European Convention on the Suppression of Terrorism, 1977.

⁶⁷³ Revised European Social Charter, 1996.

⁶⁷⁴ European Court of Human Rights, “Press Release: The European Court of Human Rights Decides to Suspend the Examination of All Applications against the Russian Federation,” ECHR 092 (2022), 16 March 2022, <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7287047-9930274&filename=The%20European%20Court%20of%20Human%20Rights%20decides%20to%20suspend%20the%20examination%20of%20all%20applications%20against%20the%20Russian%20Federation.pdf>.

⁶⁷⁵ European Convention on Human Rights, 1950, Article 58.

⁶⁷⁶ European Court of Human Rights, “Resolution of the European Court of Human Rights on the Consequences of the Cessation of Membership of the Russian Federation to the Council of Europe in Light of Article 58 of the European Convention on Human Rights,” 22 March 2022, https://echr.coe.int/Documents/Resolution_ECHR_cessation_membership_Russia_CoE_ENG.pdf.

⁶⁷⁷ Ibid.

⁶⁷⁸ Resolution CM/Res(2022)3, cit supra note 660.

the CM, where it could both provide and obtain essential information, yet it was barred from participating in decision-making processes and from voting⁶⁷⁹.

From a political standpoint, this decision is justifiable: the Council of Europe aimed to prevent Russia from avoiding its responsibility for the severe human rights abuses associated with its invasion of Ukraine. Ending Russia's participation in the ECHR abruptly would have complicated the process for victims of these violations to obtain justice in Strasbourg⁶⁸⁰. However, legally, the decision appears more complex, with neither the Committee nor the Court clarifying their rationale. The legal debate primarily hinges on how Article 58 ECHR is interpreted. The provision states:

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions⁶⁸¹.

According to Resolution CM/Res(2022)2, Russia's membership in the Council was terminated on March 16th, 2022⁶⁸². This raises the issue of whether Russia also ceased to be a Party to the ECHR on that same date. To address this question, the interpretation of "under the same conditions" in Article 58(3) is critical⁶⁸³. There are several viable ways to interpret the paragraph. Firstly, section 3 might be seen as referring only to section 2 of the Article. If interpreted this way, the ECHR would no longer be applicable from the moment of expulsion, with Article 58 establishing that the expelled Party is only responsible under international law for violations of the ECHR that occurred before the

⁶⁷⁹ Ibid.

⁶⁸⁰ Kanstantsin Dzehtsiarou, "Russia and the European Human Rights System: Doing the Right Thing ... but for the Right Legal Reason?," EJIL: Talk!, March 29, 2022, <https://www.ejiltalk.org/russia-and-the-european-human-rights-system-doing-the-right-thing-but-for-the-right-legal-reason/>; Sebastián Mantilla Blanco, "A Backdoor Exit from the European Convention on Human Rights," Verfassungsblog, April 5, 2022, <https://verfassungsblog.de/a-backdoor-exit-from-the-european-convention-on-human-rights/>.

⁶⁸¹ European Convention on Human Rights, 1950, Article 58.

⁶⁸² Resolution CM/Res(2022)2, cit supra note 457.

⁶⁸³ Dzehtsiarou, cit supra note 680. Since no other Member State has ever been expelled from the CoE, there is limited practice or commentary on Article 58. It has only been applied once, in the case of Greece denouncing the ECHR; however, that situation was different, and Section 3 was not involved.

expulsion date⁶⁸⁴. Secondly, the “conditions” in section 3 might relate to the cessation of membership in the Council. According to this perspective, the conditions are those defined by the Statute of the CoE and the Committee of Ministers, meaning that the CM’s decision on March 16th to expel Russia also ended its membership in the ECHR immediately⁶⁸⁵. Lastly, the “conditions” could pertain to both sections 1 and 2 of the Article. This interpretation implies that the Convention remains applicable to the expelled Party for six months, applying the same conditions to an expulsion as to a voluntary withdrawal⁶⁸⁶. This more progressive approach has been adopted by both the ECtHR and the CM. Nevertheless, aware that it was navigating previously unexplored legal terrain, the Strasbourg Court included a saving clause: “The present Resolution is without prejudice to the consideration of any legal issue, related to the consequences of the cessation of the Russian Federation’s membership to the Council of Europe, which may arise in the exercise by the Court of its competence under the [ECHR] to consider cases brought before it”⁶⁸⁷.

Russia’s reaction was harsh. In June 2022, the Chairman of the State Duma politicized the matter by stating that “The [ECtHR] has turned into a political weapon used by Western politicians against our nation”⁶⁸⁸. He also declared that a legislative measure had been passed which ruled that decisions by the ECtHR after March 15th would not be enforced within Russia⁶⁸⁹. Shortly thereafter, this measure was ratified into law by President Vladimir Putin⁶⁹⁰.

On September 16th the Strasbourg Court issued a Presse Release, highlighting that there were 17,450 cases still awaiting resolution against the State. Moreover, it affirmed its jurisdiction over complaints against Russia concerning actions constating alleged violations of the ECHR if they occurred before September 16th⁶⁹¹. Furthermore, the Court announced that, on the same day, the position of the judge at the ECtHR representing the Russian Federation was also discontinued⁶⁹². This posed an additional complication since, under Article 26(4) of the ECHR, the judge elected from the concerned Contracting Party automatically serves on the Chamber and the Grand Chamber⁶⁹³. Therefore, the

⁶⁸⁴ Dzehtsiarou, cit supra note 680.

⁶⁸⁵ Dzehtsiarou, cit supra note 680.

⁶⁸⁶ Ibid.

⁶⁸⁷ ECtHR, cit supra note 683.

⁶⁸⁸ Magliveras, cit supra note 597, 113.

⁶⁸⁹ Magliveras, cit supra note 597, 113.

⁶⁹⁰ “Law Cancelling Implementation in Russia of European Court of Human Rights Rulings Issued after March 15, 2022,” President of Russia, June 11, 2022, <http://en.kremlin.ru/acts/news/68645>.

⁶⁹¹ European Court of Human Rights, “Press Release: The Russian Federation Ceases to Be a Party to the European Convention on Human Rights,” ECHR 286 (2022), 16 September 2022, <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7435446-10180882&filename=The%20Russian%20Federation%20ceases%20to%20be%20a%20Party%20to%20the%20European%20Convention%20on%20Human%20Rights.pdf>.

⁶⁹² European Convention on Human Rights, 1950, Article 20. “The Court shall consist of a number of judges equal to that of the High Contracting Parties”; Dzehtsiarou, cit supra note 680. Until September 16th, the Russian judge continued to hear cases.

⁶⁹³ European Convention on Human Rights, 1950, Article 26(4).

absence of the Russian judge meant that key lawsuits against the State could not proceed. With the office of the Russian judge eliminated, the list of *ad hoc* Russian judges was deemed invalid. The ECtHR addressed this issue in the Chamber judgments of *Kutayev v. Russia*⁶⁹⁴ and *Svetova and Others v. Russia*⁶⁹⁵. In these cases, it was communicated to the parties that the Court planned to select one of its current judges to serve as an *ad hoc* judge to examine their cases and intended to adopt this strategy for other relevant cases against Russia. The Russian Government was asked to provide comments but offered no response. Consequently, the President of the Chamber opted to appoint an *ad hoc* judge from the existing judges⁶⁹⁶, applying by analogy Rule 29, paragraph 2(b) of the ECtHR Rules of Procedure⁶⁹⁷.

4. Human rights protection in Russia today

Russia's departure from the Council of Europe does not inhibit the ECtHR from ruling on existing cases, including both individual and inter-state complaints, as well as potential cases concerning violations that occurred on or before September 16th, 2022. The Court's decisions remain legally binding on Russia. Nonetheless, Russia is not properly participating in the Court's litigation processes or adhering to its rulings concerning ECHR violations. Additionally, the fact that violations occurring after September 16th are ineligible for consideration by the ECtHR represents a significant diminution in protection for victims. As Róisín Pillay from the International Commission of Jurists pointed out, the ECtHR has been particularly vital in Russia, where victims of severe human rights abuses, often let down by their domestic systems, have found some measure of redress⁶⁹⁸. Karinna Moskalenko, a Russian attorney and co-founder of the Campaign to Uphold Rights in Europe, noted that the inability to appeal to the Strasbourg Court constitutes "a punishment for ordinary people, not the government"⁶⁹⁹. This sentiment was echoed by prominent Russian human rights advocates who, discussing the risk of Russia's withdrawal from the CoE in 2018, argued: "Those who wish to punish the Kremlin miss the target: it is not the Russian government, but the Russian public who would suffer the most. For millions of people residing in Russia [...] the ECtHR has been an ultimate hope for

⁶⁹⁴ European Court of Human Rights, "Press Release: European Court Rules on Two Cases against Russia Concerning Well-Known Human Rights Activists," ECHR 025 (2022), 24 January 2023, <https://hudoc.echr.coe.int/eng-press?i=003-7548884-10370276>.

⁶⁹⁵ Ibid.

⁶⁹⁶ European Court of Human Rights, "Press Release: Latest Rulings by the European Court Set Out the Procedure for Future Processing of Applications against Russia," ECHR 036 (2023), 3 February 2023, <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7559628-10388013&filename=Future%20processing%20of%20applications%20against%20Russia.pdf>.

⁶⁹⁷ Rules of Procedure of the European Court of Human Rights, 2024, Rule 29, para 2(b).

⁶⁹⁸ Philip Leach, "A Time of Reckoning? Russia and the Council of Europe," Strasbourg Observers, March 17, 2022, <https://strasbourgobservers.com/2022/03/17/a-time-of-reckoning-russia-and-the-council-of-europe/>.

⁶⁹⁹ Ibid.

justice, which in many cases they cannot find in Russia. Thousands of its judgments have had a significant positive impact on Russian laws and judicial practice⁷⁰⁰. Thus, academic consensus often regards not Russia but its 144 million citizens as the real “losers” from the expulsion from the Council of Europe, now stripped of the legal safeguards provided by the European Convention⁷⁰¹. Moreover, the ECtHR itself also suffers a loss, as its influence over human rights enforcement in Russia diminishes⁷⁰².

To better understand the extent to which, as a direct consequence of its departure from the CoE, Russia is backsliding in human rights protection, two examples will be mentioned: the death penalty and political pluralism.

4.1. Resurgence of the death penalty

Historically, the Soviet Union was among the most prolific executors of capital punishment, a practice that Russia continued until 1996. In that year, President Boris Yeltsin initiated a moratorium on the death penalty, promising its complete abolition within three years⁷⁰³. Although the Russian Parliament never officially removed provisions that permitted capital punishment from the Constitution or the Penal Code, the Constitutional Court ruled in 1999 that executions could not occur until jury trials were established nationwide⁷⁰⁴. By 2009, after the implementation of jury trials, the Constitutional Court decreed that the moratorium would persist, complying with the Council of Europe’s standards⁷⁰⁵. Following Russia’s expulsion from the Council, some Russian lawmakers posited that the absence of the ECHR’s oversight might allow for the reinstatement of the death penalty without necessitating constitutional amendments⁷⁰⁶. Former Russian President Dmitry Medvedev, currently Deputy Chief of the National Security Council, suggested that Russia’s departure from the Council offered “a good opportunity to restore a number of important measures to prevent especially serious

⁷⁰⁰ “Addressing the Crisis in Relations between the Council of Europe and Russia: Uphold the Values and Fulfil and Mission to Protect Rights across All of Europe, Memorandum by Russian Human Rights Defenders,” MHG, November 2019, <https://mhg.ru/addressing-crisis-relations-between-council-europe-and-russia->.

⁷⁰¹ Bîrsan Corneliu, Spătaru Negură, and Laura Cristiana, “Russia’s Exclusion from the Regional Human Rights Mechanism or How Human Rights Are Endangered in a Sensitive International Context?,” *www.proquest.com*, 2023, <https://www.proquest.com/scholarly-journals/russias-exclusion-regional-human-rights-mechanism/docview/2834506707/se-2?accountid=16503>.

⁷⁰² *Ibid.*

⁷⁰³ Isabella Risini and Andrew Forde, “Parting Paths – Russia’s Inevitable Exit from the Council of Europe,” *Völkerrechtsblog*, March 12, 2022, <https://doi.org/10.17176/20220313-000939-0>.

⁷⁰⁴ Valeriya Safronova, “Russia Has No Formal Death Penalty. Some Want to Change That.,” *The New York Times*, March 27, 2024, sec. World, <https://www.nytimes.com/2024/03/27/world/europe/russia-death-penalty-moratorium.html>.

⁷⁰⁵ Library of Congress, “Russia: Death Penalty Ruled Unconstitutional,” Library of Congress, Washington, D.C. 20540 USA, December 1, 2009, <https://www.loc.gov/item/global-legal-monitor/2009-12-01/russia-death-penalty-ruled-unconstitutional/>. The RCC asserted that “stable guarantees of the human right not to be subjected to the death penalty have been formed and a constitutional and legal regime has emerged”.

⁷⁰⁶ Safronova, *cit supra* note 704.

crimes, such as the death penalty, which is actively used in the US and China”⁷⁰⁷. These views were reiterated in the wake of the Crocus City Hall bombing on March 22nd, 2024⁷⁰⁸. Following the attack, various public figures have called for the execution of the perpetrators, who officials identified as militant Islamists from Tajikistan⁷⁰⁹. Although President Putin has previously criticized the death penalty as “senseless and counterproductive”, the Russian Constitutional Court has recently announced it would review whether and how it might be reinstated⁷¹⁰.

4.2. The fate of political prisoners

In recent years, Russian authorities have intensified their repression of activists and individuals exercising their right to freedom of expression⁷¹¹. Between 2020 and 2024, the number of political prisoners has surged five-fold, rising from 50 to over 250⁷¹². While some of these figures were convicted of crimes they did not commit, the majority are detained for engaging in activities that are unequivocally protected under international law, such as posting on social media, participating in peaceful protests, practicing their religion, or associating with certain groups⁷¹³. For instance, Russia has consistently used criminal and administrative charges like “mass simultaneous presence in public causing a violation of public order” and “repeated violation of the procedures for holding public events” to suppress protests⁷¹⁴. This persecution is facilitated by an ever-expanding array of laws specifically designed to criminalize everyday activities, thereby enabling the authorities to arrest, detain, and imprison anyone at will⁷¹⁵.

Among those affected by such violations, no one has appealed to the Strasbourg Court more frequently than Alexey Navalny since Russia joined the Council of Europe. As Russia’s most renowned opposition figure, Navalny worked tirelessly to uncover corruption at the highest levels of

⁷⁰⁷ France24, “Russia Says Quitting Council of Europe,” France 24, March 15, 2022, <https://www.france24.com/en/live-news/20220315-russia-says-quitting-council-of-europe>.

⁷⁰⁸ Safronova, cit supra note 704; The Moscow Times, “Number of Wounded in Crocus City Hall Attack Rises to 360,” The Moscow Times, March 27, 2024, <https://www.themoscowtimes.com/2024/03/27/number-of-wounded-in-crocus-city-hall-attack-rises-to-360-a84642>.

⁷⁰⁹ Safronova, cit supra note 704. Former President Medvedev wrote on Telegram: “Is it necessary to kill them? Necessary. And it will be done”.

⁷¹⁰ Safronova, cit supra note 704.

⁷¹¹ Steve Gutterman, “The List Is Long: Russians Who Have Died after Running Afoul of the Kremlin,” Radio Free Europe/Radio Liberty, February 19, 2024, sec. Russia, <https://www.rferl.org/a/enemies-kremlin-deaths-prigozhin-list/32562583.html>.

⁷¹² Perseus Strategies, “Report: The Kremlin’s Political Prisoners: Advancing a Political Agenda by Crushing Dissent | Free Russia Foundation,” Coalition to Free the Kremlin’s Political Prisoners, April 29, 2019, <https://www.4freerussia.org/the-kremlins-political-prisoners/>.

⁷¹³ Ibid.

⁷¹⁴ Perseus Strategies, cit supra note 712.

⁷¹⁵ Perseus Strategies, cit supra note 712; Françoise Tulkens, “Russia vs. Aleksey Navalny,” April 2022, <https://cfj.org/wp-content/uploads/2022/04/Eng-Navalny-Fairness-Report-Apr-7-2022-Final.pdf>. In particular, one law mandates that NGOs register as foreign agents.

Russian society, earning the description of “a thorn in the Kremlin’s side”⁷¹⁶. Russian authorities declared his organization, the Anti-Corruption Foundation⁷¹⁷, “extremist”⁷¹⁸. Navalny has been jailed more than ten times since 2011⁷¹⁹, clearly in retaliation for his political activities. For example, in July 2013, he was convicted of large-scale embezzlement⁷²⁰ related to his involvement with the state-owned timber company Kirovles⁷²¹. However, the ECtHR later clarified that Navalny had been convicted for “regular commercial middleman activities”⁷²². In December 2014, he was convicted of money laundering and fraud, receiving a 3.5-year prison sentence, which was then suspended. The ECtHR later ruled that “the decisions reached by the domestic court [...] were arbitrary and manifestly unreasonable,” violating his right to a fair trial⁷²³. Navalny also spent a significant part of 2017 and 2018 in jail⁷²⁴. In November 2018, the ECtHR ruled on several applications filed by Navalny regarding his arrest at seven different public events for disobeying a lawful order⁷²⁵ and violating procedures for public gatherings⁷²⁶. The Court found that these arrests violated his right to liberty and security of person, the related administrative proceedings violated his right to a fair trial, and his right to freedom of assembly was also infringed⁷²⁷. In an unusual move, the Court further held that some arrests were specifically intended to suppress political pluralism⁷²⁸. In 2020, while traveling back to Moscow from Siberia, Navalny was poisoned with the military-grade chemical agent Novichok⁷²⁹. In 2021, he was sentenced to 3.6 years in prison for allegedly violating the terms of the suspended 2014 sentence. The following year, he was sentenced to nine years in a strict-regime penal colony. In

⁷¹⁶ Daria Litvinova, “Explainer: Why Navalny Is a Thorn in the Kremlin’s Side,” AP News, January 22, 2021, <https://apnews.com/article/alexei-navalny-russia-explained-88c97b51172dbc0cff13f4d9e17b1f2a>.

⁷¹⁷ Together Against Putin, “Together against Putin: The Anti-Corruption Foundation,” Together against Putin, accessed May 14, 2024, <https://acf.international/>.

⁷¹⁸ Steve Rosenberg, “Alexei Navalny: Moscow Court Outlaws ‘Extremist’ Organisations,” Wwww.bbc.com, June 9, 2021, <https://www.bbc.com/news/world-europe-57422346>.

⁷¹⁹ “In and out and in Again: All the Times Aleksei Navalny Has Been in Jail,” RadioFreeEurope/RadioLiberty, February 3, 2021, <https://rferl.org/a/in-and-out/29550949.html#>.

⁷²⁰ The Criminal Code of the Russian Federation No. 63-Fz, 1996, Article 160(4).

⁷²¹ European Court of Human Rights, *Navalnyy and Ofitserov v. Russia*, applications nos. 46632/13 and 28671/14, judgment of 4 July 2016, para 61. <https://hudoc.echr.coe.int/eng?i=001-161060>.

⁷²² *Ibid.*, paras 115-120. The Court continued, stating that “the acts described as criminal fell entirely outside the scope of the provision under which [he was] convicted” and that “the criminal law was arbitrarily and unforeseeably construed to [his] detriment”. It further asserted that it was “obvious” there was “a link between [Navalny’s] public activities and the Investigative Committee’s decision to press charges against him”, concluding that his conviction violated his right to a fair trial.

⁷²³ European Court of Human Rights, *Navalnyye v. Russia*, application no. 101/15, judgment of 5 March 2018, <https://hudoc.echr.coe.int/eng?i=001-177665>.

⁷²⁴ Andrew E. Kramer, “Seconds after Release from Jail, Russia Arrests Aleksei Navalny Again,” The New York Times, September 24, 2018, sec. World, <https://www.nytimes.com/2018/09/24/world/europe/russia-navalny.html>.

⁷²⁵ Code of Administrative Offences of the Russian Federation, 2001, Article 19(3).

⁷²⁶ Code of Administrative Offences of the Russian Federation, 2001, Article 20(2).

⁷²⁷ European Court of Human Rights, *Navalnyy v. Russia*, applications nos. 29580/12, 36847/12, 11252/13, 12317/13, and 43746/14, judgment of 15 November 2018, <https://hudoc.echr.coe.int/eng?i=001-187605>.

⁷²⁸ *Ibid.*, paras 174-176.

⁷²⁹ European Stability Initiative, “Why Russia Had to Be Expelled from the Council of Europe | ESI,” www.esiweb.org, 2024, <https://www.esiweb.org/proposals/why-russia-had-be-expelled-council-europe>.

August 2023, his sentence was extended to 19 years compared to the previous nine. On February 16th, 2024, less than a year after his last conviction, Navalny died in prison⁷³⁰.

Following Navalny's death, PACE President Theodoros Rousopoulos issued a statement asserting that "there is little doubt that the Russian state, which attempted to poison him, illegally imprisoned him, and systematically subjected him to appalling and inhumane treatment, bears full responsibility for his death. This adds to all those crimes already committed by the Russian regime"⁷³¹. Additionally, during its 1492nd Human Rights meeting, where the nine cases of the *Navalnyy and Ofitserov*⁷³² group concerning the Russian Federation were on the agenda, the Committee of Ministers adopted an Interim Resolution. The CM stated that Navalny's death "appears to be the alarming consequence of the pattern of victimization and his political persecution revealed by the many violations found by the European Court in this group of cases, in retaliation for his anti-government protests and investigation activities"⁷³³.

Although Russia faced strong condemnation, the Council of Europe currently has limited means to achieve justice for Navalny's death, as Russia is no longer a Member. The Committee of Ministers has called for an international commission of inquiry into his death to ensure the investigation's independence, given the distrust in Russia's relevant institutions⁷³⁴. Moreover, the CM emphasized the importance of information from Russian civil society as a crucial source of awareness about the situation. An informal discussion was held with the representatives of Russian human rights NGOs, highlighting the need for a public apology and condemnation of the killings of political opponents, proper investigation by special independent commissions, and prevention of future incidents⁷³⁵. Additionally, Secretary General Burić sent a letter to the Russian Minister of Foreign Affairs, expressing deep regret over the Russian authorities' cessation of communication with the Council

⁷³⁰ Gleb Bogush, "The Triumph of Evil," *Verfassungsblog*, February 18, 2024, <https://verfassungsblog.de/the-triumph-of-evil/>.

⁷³¹ "There Is Little Doubt That the Russian State Bears Full Responsibility for the Death of Alexei Navalny," CoE Portal, February 16, 2024, <https://www.coe.int/en/web/portal/-/there-is-little-doubt-that-the-russian-state-bears-full-responsibility-for-the-death-of-alexei-navalny-pace-president-says>.

⁷³² European Court of Human Rights, *Navalnyy and Ofitserov v. Russia*, application No. 46632/13, judgment of 23 February 2016, <https://hudoc.exec.coe.int/?i=004-13537>.

⁷³³ Committee of Ministers, "Interim Resolution CM/ResDH(2024)49 on the Execution of the Judgments of the European Court of Human Rights *Navalnyy and Ofitserov* against Russian Federation," adopted on 14 March 2024 at the 1492nd meeting of the Ministers' Deputies, <https://hudoc.echr.coe.int/eng?i=001-231824>.

⁷³⁴ *Ibid.*

⁷³⁵ Council of Europe, "Informal Exchange of Views of the Committee of Ministers with Representatives of Russian NGOs Relating to Cases against the Russian Federation - Department for the Execution of Judgments of the European Court of Human Rights," Department for the Execution of Judgments of the European Court of Human Rights, March 11, 2024, <https://www.coe.int/en/web/execution/-/informal-exchange-of-views-of-the-committee-of-ministers-with-representatives-of-russian-ngos-relating-to-cases-against-the-russian-federation>.

regarding the implementation of the Court's judgments and noting that numerous judgments against Russia remain unimplemented⁷³⁶.

Despite advancing all possible non-binding mechanisms to hold Russia accountable for Navalny's death, the CoE can no longer use its most powerful tool, the Strasbourg Court, since the assassination occurred after September 16th. This situation has led scholars to argue for the adoption of a Protocol of amendment to the ECHR that would remove the link between CoE membership and the ECHR, ensuring that States remain bound by their human rights obligations even if excluded from the Organization⁷³⁷. While States could still choose to denounce the ECHR, severing the link between the Council and the Convention would stop them from justifying their decision to withdraw by citing other Members' alleged political misconduct within the Council. This would force them to provide proper justification to the people they deprive of their human rights protection⁷³⁸.

5. Future prospects for Russia and the Council of Europe

Russia's departure from the Council of Europe concluded its 26-year troubled membership in the Organization. The aims of the Council's "better include than exclude" strategy towards Russia went unfulfilled throughout its membership⁷³⁹. Instead, this policy led Member States to avoid imposing sanctions on Russia, despite its repeated and systematic breaches of the Council's principles, as seen in events like the second Chechen War (1999-2001), the first invasion of Ukraine in 2014, and the numerous cases filed against the Country before the ECtHR⁷⁴⁰. Adhering to this policy of integration at any cost, in the face of clear setbacks in human rights by Russia, not only undermined the CoE's credibility and legitimacy but also failed to align Russia more closely with its principles and values⁷⁴¹. Klaus Brummer argued that as long as Russian President Vladimir Putin is in office, the prospect of Russia rejoining the Council of Europe is highly improbable. For the time being, European norms and values as well as its security must be protected from Russia⁷⁴². However, if there is a change in the Russian presidency in the medium- to long-term future, coupled with a shift in policy by the new

⁷³⁶ Council of Europe, "Letter to Minister Sergey Lavrov," The Secretary General of the Council of Europe, March 14, 2024, <https://rm.coe.int/letter-for-the-attention-of-minister-sergey-lavrov/1680aee2de>. As of March 2024, 2,633 cases remained under the supervision of the Committee of Ministers, awaiting full implementation by the Russian authorities. Information regarding the payment of just satisfaction was pending in 1,378 of these cases. Furthermore, the total outstanding amount exceeded €2 billion.

⁷³⁷ Jannika Jahn, "The Council of Europe Excludes Russia: A Setback for Human Rights," EJIL: Talk!, March 23, 2022, <https://www.ejiltalk.org/the-council-of-europe-excludes-russia-a-setback-for-human-rights/>.

⁷³⁸ Ibid.

⁷³⁹ Klaus Brummer, "The Council of Europe, Russia, and the Future of European Cooperation: Any Lessons to Be Learned from the Past?," International Politics, February 20, 2024, 272, <https://doi.org/10.1057/s41311-024-00557-w>.

⁷⁴⁰ Ibid.

⁷⁴¹ Brummer, cit supra note 739, 273; Lauri Mälksoo and Wolfgang Benedek, eds., *Russia and the European Court of Human Rights* (Cambridge University Press, 2017), <https://doi.org/10.1017/9781108235075>.

⁷⁴² Brummer, cit supra note 739, 273.

leadership towards Europe, the integration policy could be revisited⁷⁴³. Therefore, it cannot be entirely ruled out that, at some point in the future, the Council of Europe might once again assume a similar role to the one it played following the Cold War, serving as a key initial point of interaction and eventual integration of Russia into European structures. The ensuing question is whether lessons can be learned from the previous, ultimately unsuccessful, attempt by the Council to engage Russia and integrate it into its norms and principles, in anticipation of a potential second attempt. Brummer argued that the main implications of Russia's membership and the resulting lessons can be concentrated into one positive outcome related to the monitoring procedure, and two negative outcomes related to the accession procedure and the sanctions policy⁷⁴⁴.

5.1. Monitoring procedure

A positive aspect of Russian membership was the abundance of information regarding developments in the State, as various CoE's bodies were continuously and thoroughly involved in monitoring and scrutinizing events in the Country. These included the Committee of Ministers, the Parliamentary Assembly, the Anti-Torture Committee, the ECtHR, the Human Rights Commissioner, the Congress of Local and Regional Authorities, the European Commission against Racism and Intolerance, the Group of States against Corruption, and the Venice Commission⁷⁴⁵. Thus, for any potential future interaction with Russia, the Council appears well-positioned to engage through multiple channels covering a wide range of issues, allowing it to identify any deficiencies in upholding or implementing the Organization's standards⁷⁴⁶.

5.2. Accession procedure

The first downside concerns Russia's admission process. As previously mentioned, it was evident to every institution involved in the process, particularly the CM and the PACE, that Russia was far from meeting the membership requirements at the time of its admission. Nonetheless, the Country was admitted on the basis of "a pragmatic, not to say politically accommodating, interpretation of the Statute"⁷⁴⁷. This approach deprived the CoE of any leverage it might have had to require Russia to implement domestic reforms as a precondition for membership. Therefore, if membership is ever

⁷⁴³ Vladislav Zubok, "After Putin – What?," *Bulletin of the Atomic Scientists* 78, no. 6 (November 2, 2022): 299–306, <https://doi.org/10.1080/00963402.2022.2132731>.

⁷⁴⁴ Brummer, *cit supra* note 739, 273.

⁷⁴⁵ Brummer, *cit supra* note 739, 273.

⁷⁴⁶ Brummer, *cit supra* note 739, 273.

⁷⁴⁷ Drzemczewski and Lawson, *cit supra* note 618, 16.

reconsidered, the CoE should insist on the successful implementation of reforms by Russia before admission, rather than hoping that these shortcomings will be addressed during membership. This includes addressing Russia's relationship with Ukraine, particularly regarding borders⁷⁴⁸.

5.3. Sanctions policy

While the Council is effective at identifying shortcomings through its monitoring activities, it has limited means to incentivize or coerce States to fulfill their commitments⁷⁴⁹. Consequently, scholars have argued that the CoE should undertake statutory reforms to broaden the scope of sanctions beyond those currently outlined in Article 9 of the Statute⁷⁵⁰. These reforms could include exclusion from specific programs, such as the Joint Programs conducted with the European Union, or the imposition of fines. However, even if the sanctions toolbox were expanded, their application would still depend on the political will of the Member States, which was lacking throughout Russia's membership. For instance, in April 2014, the PACE temporarily suspended the voting rights of members of the Russian parliamentary delegation. This mild response could have been more severe, such as revoking the delegation's credentials and effectively expelling it from the Assembly⁷⁵¹. Arguably, the Assembly refrained from taking stronger action because Russia assumed that the Organization valued Russia's continued membership and funding more than Russia did itself⁷⁵². Consequently, the State did not present its delegation's credentials after 2015, effectively excluding itself from PACE, and then set conditions for its return. In October 2016, Leonid Slutsky, Chairman of the International Affairs Committee of the Russian Duma, stated, "Russia will return [to PACE] only if certain decisions are changed"⁷⁵³. In 2017, Russia resorted to financial blackmail, withholding its financial contributions to the Organization "until full and unconditional restoration of the credentials of the delegation of the Federal Assembly of the Russian Federation in PACE"⁷⁵⁴. In 2018, Russia further stipulated that it would only return to PACE and pay its outstanding fees if the Assembly changed its rules to ensure that no delegation's credentials could ever be revoked again⁷⁵⁵. The Parliamentary Assembly, which had rejected a similar set of rule changes in October 2018, approved them on June 24th, 2019⁷⁵⁶.

⁷⁴⁸ Andrew Forde, "Council of Europe at 72: Defusing the Defense Clause, Engaging the Acquis," *Strasbourg Observers*, June 15, 2021, <https://strasbourgobservers.com/2021/06/15/council-of-europe-at-72-defusing-the-defence-clause-engaging-the-acquis/>.

⁷⁴⁹ Brummer, *cit supra* note 739, 274.

⁷⁵⁰ Brummer, *cit supra* note 739, 274.

⁷⁵¹ European Stability Initiative, *cit supra* note 729.

⁷⁵² European Stability Initiative, *cit supra* note 729.

⁷⁵³ European Stability Initiative, *cit supra* note 729.

⁷⁵⁴ European Stability Initiative, *cit supra* note 729.

⁷⁵⁵ European Stability Initiative, *cit supra* note 729.

⁷⁵⁶ European Stability Initiative, *cit supra* note 729.

It can be concluded that two lessons emerge from the failure of Russia's membership in the Council of Europe, which are crucial for any potential future membership. Firstly, admission should be based on the fulfillment of membership criteria at the time of accession, rather than on hopes for future developments. Additionally, Member States must avoid exhibiting "complacent disinterest"⁷⁵⁷ or ignoring systematic violations of the CoE's principles. Instead, they should act swiftly and decisively to address such issues. The Russian invasion might serve as "a point of inflection"⁷⁵⁸, prompting Members to revisit and rethink their past approach and the failures therein, should the question of Russia's readmission to the Council ever arise again.

6. Conclusion

This chapter explored the termination process of Russia's membership in the Council of Europe. After analyzing the statutory provisions for the voluntary and compulsory termination of CoE membership, it outlined the chronology of Russia's departure. The chapter then examined the major consequences of Russia's expulsion from the Council, including the fulfillment of financial contributions owed to the Organization and Russia's status in the ECHR. Additionally, it provided an overview of the current state of human rights protection in Russia, which is no longer bound by the Convention, with a particular focus on issues related to capital punishment and political pluralism. Finally, the chapter concluded with lessons drawn from Russia's complex 26-year membership in the Council, focusing on the admission process, monitoring procedures, and the sanctions policy applied to the State, which could inform a potential future second membership.

To conclude, Russia's membership in the Council of Europe has always been controversial. While there was tangible progress⁷⁵⁹, significant conflicts arose, ranging from atrocities in the Chechen wars⁷⁶⁰ to the treatment of political opponents both inside⁷⁶¹ and outside⁷⁶² the Country. Additionally, there were issues related to the creation of a legal regime that placed unforeseeable and disproportionately severe burdens on civil society organizations⁷⁶³, as well as litigation over the

⁷⁵⁷ Leach, cit supra note 707.

⁷⁵⁸ Leach, cit supra note 763.

⁷⁵⁹ Council of Europe, "Execution of the European Court of Human Rights' Judgments Main Achievements in Member States: Russian Federation," Department for the Execution of Judgments of the European Court of Human Rights, 2024, <https://rm.coe.int/ma-russia-eng/1680a186c0>.

⁷⁶⁰ European Court of Human Rights, *Estamirova v. Russia*, application no. 27365/07, judgment of 24 September 2012, <https://hudoc.echr.coe.int/eng?i=001-110495>.

⁷⁶¹ European Court of Human Rights, "Press Release: The Court Grants an Interim Measure in Favour of Aleksey Navalnyy and Asks the Government of Russia to Release Him," ECHR 063 (2021), 17 February 2021, <https://hudoc.echr.coe.int/eng-press?i=003-6942317-9334363>.

⁷⁶² European Court of Human Rights, *Carter v. Russia*, Application no. 20914/07, Judgment, February 28, 2022, <https://hudoc.echr.coe.int/fre?i=001-211972>.

⁷⁶³ European Court of Human Rights, *Ecodefence and Others v. Russia*, applications nos. 9988/13 and 60 others, judgment of 10 October 2022, <https://hudoc.echr.coe.int/fre?i=001-217751>.

wealth of oligarchs who had fallen out of favor⁷⁶⁴. In this context, the Council arguably should have taken a much firmer stand, particularly regarding major human rights abuses in the North Caucasus, the annexation of Crimea by Russia in 2014, and, more recently, the amendment of the Russian Constitution to allow the Constitutional Court to determine the compatibility of Strasbourg Court findings with Russian constitutional norms and to refuse their implementation if deemed incompatible⁷⁶⁵. In response to Russia's invasion of Ukraine, however, the Council took unprecedented action by expelling the Country. According to many, this action resonated with what Pierre-Henri Teitgen, one of the spiritual fathers of the ECHR, described as the core need of the Organization: "to intervene before it is too late"⁷⁶⁶. Nonetheless, it can be argued that the real victim of the expulsion from the Council of Europe was not the Russian State but the Russian people. The key takeaway from this event is that now is the time to salvage, revitalize, and reinforce Europe's human rights protection architecture. It is crucial not only to offer wholehearted support to existing multilateral legal systems and mechanisms but also to involve civil society in the dialogue to ensure that the voices of human rights victims are heard.

⁷⁶⁴ European Court of Human Rights, *OAO Neftyanaya Kompaniya Yukos v. Russia*, application no. 14902/04, judgment of 8 March 2012, <https://hudoc.echr.coe.int/eng?i=001-106308>.

⁷⁶⁵ Paul Kalinichenko and Dimitry Vladimirovich Kochenov, "Amendments to the 1993 Constitution of the Russian Federation Concerning International Law (2020)," *International Legal Materials* 60, no. 2 (March 18, 2021): 341–46, <https://doi.org/10.1017/ilm.2021.10>.

⁷⁶⁶ European Stability Initiative, *cit supra* note 729. "Democracies do not become Nazi countries in one day. Evil progresses cunningly, with a minority operating, as it were to remove the levers of control. One by one, freedoms are suppressed, in one sphere after another. It is necessary to intervene before it is too late. A conscience must exist somewhere which will sound the alarm in the minds of a nation menaced by this progressive corruption, to warn them of the peril".

Concluding remarks

The present study analyzed the human rights backlash in the Russian Federation by scrutinizing its contradictory membership in the Council of Europe. To achieve this objective, the study was organized into four chapters, each concentrating on a pivotal moment or aspect of Russia's involvement in the Organization. This approach ultimately evaluated how, over time, Russia progressively distanced itself from the Council's fundamental values.

The first chapter unveiled a fundamental issue with Russia's membership in the Council of Europe: the flawed admission process. Despite Russia's momentum for internationalization following the fall of the Soviet Union, by the time of its accession in 1996, it had not yet met all the requirements outlined in Article 3 of the CoE's Statute. PACE's rapporteurs underscored significant deficiencies, noting that Russia not only failed to implement essential reforms in key legal sectors but also retained the Soviet instrumental view of law, wherein laws could be circumvented for convenient solutions. Nonetheless, driven by an arguably naïve optimism, Russia was admitted to the Council of Europe. Another critical issue concerning Russia's membership in the Council of Europe was its engagement in the ECHR system, a topic thoroughly explored in the second chapter. Initially, it was believed that adherence to the European Convention would significantly enhance human rights protection in Russia, as it allowed Russian citizens to bring claims of violations before the European Court of Human Rights. However, it soon became evident that Russia's participation in the Convention, far from being an achievement, primarily obstructed the Strasbourg Court's work by massively contributing to its caseload. The chapter then delved deeper to uncover the main reasons behind the high volume of cases referred to the ECtHR by Russians. These included the non-implementation or delayed implementation of national court decisions, the persistence of the *nadzor* institution, and the failure to investigate serious human rights violations.

Despite reforms like the Brighton Declaration aimed at addressing deficiencies in the ECHR system, in 2015, Russia adopted a drastic new approach regarding its participation. As detailed in chapter three, the Russian Constitutional Court was empowered to decide on the non-enforcement of judgments from the Strasbourg Court if they were deemed to violate the Russian Constitution. This development was not an abrupt decision but rather the culmination of mounting political pressures and ongoing legal battles between the RCC and the ECtHR. This study contends that this moment was pivotal in Russia's human rights backlash, signaling a decisive shift as Russia openly undermined one of the Council of Europe's core principles: the authority of the European Court of Human Rights. Nonetheless, the most prominent demonstration of Russia's human rights backlash was its 2022 invasion of Ukraine, an event that also marked the Country's departure from the Council of Europe.

This topic was explored in the fourth and final chapter of the study. Specifically, the chapter investigated the steps leading to Russia's expulsion and the associated financial and legal repercussions. It also evaluated the extent to which this backlash manifested in Russia following the expulsion, focusing on two critical issues: the prohibition of the death penalty and political pluralism, both of which are fundamental rights now significantly endangered in Russia.

The concluding remarks of this study explore the critical question of whether it is possible to halt the human rights backlash in Russia and, if so, when this might occur. Russian Deputy Foreign Minister Aleksandr Grushko asserted that "the withdrawal from the Conventions of the Council of Europe, contrary to various conjectures, didn't have a negative impact on the system of human rights protection in our country"⁷⁶⁷. However, this claim is fundamentally inaccurate. The European Court of Human Rights previously had the authority to monitor the functioning of the Russian justice system and mandate the resolution of its issues. In stark contrast, addressing human rights violations in Russia today faces severe obstacles. While it remains possible to appeal to United Nations Committees, there is little confidence in the effectiveness of this mechanism within the Russian legal system. Furthermore, given that Russia shows no intention of implementing decisions for cases brought before September 16th, 2024, the ECHR system has become "mere background noise, irrelevant to the system"⁷⁶⁸.

Based on these considerations, this study asserts that as long as the political landscape in Russia remains dominated by the totalitarian regime of President Vladimir Putin, the full restoration of human rights protection is unlikely. Nevertheless, Russia's fate is not set in stone, and two significant considerations suggest that a post-Putin Russia could embrace a democratic future. First, Russia has experienced democratization in the past, demonstrating that such a transformation is indeed possible. Second, and more crucially, the belief that Russians have a "genetic predisposition toward dictatorship"⁷⁶⁹ is fundamentally incorrect: pro-democratic Russians do exist, as evidenced by the numerous political prisoners, exiled dissidents, and the individuals protesting under the "Noon Against Putin" movement during the 2024 residential elections. Therefore, Russian history provides reassurance that an alternative path exists, and Russians striving for this different path today should ignite hope for a brighter, democratic future.

⁷⁶⁷ Konstantin Skoblik, "The Human Rights Backlash in Criminal Justice: The Case of Russia's Exit from the European Convention on Human Rights," EJIL: Talk!, August 1, 2023, <https://www.ejiltalk.org/the-human-rights-backlash-in-criminal-justice-the-case-of-russias-exit-from-the-european-convention-on-human-rights/>.

⁷⁶⁸ Ibid.

⁷⁶⁹ Michael McFaul, "Imagining a Russia without Putin," McFaul's World, March 27, 2024, <https://michaelmcfaul.substack.com/p/imagining-a-russia-without-putin>.

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