



## Russia and the Council of Europe

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Many analysts point to a difficult relationship between Russia and the Council of Europe, particularly with regard to Russia's adherence to the European Convention on Human Rights and other Council of Europe instruments.

While there have been some amendments to laws which violate the European Convention, there have also been many significant breaches of Convention rights in Russia, and the country has one of the highest numbers of applications and findings of violations at the European Court of Human Rights out of the 47 Council of Europe Member States.

This Note looks at Russia's membership of the Council of Europe and its implementation of the *European Convention on Human Rights*.

It also considers the Council of Europe's response to the alleged Russian action in Ukraine and Russian views on Council of Europe membership.

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## **1 Russia, human rights and the Council of Europe**

### **1.1 Russia's bid for Council of Europe membership**

The Russian Federation applied to join the Council of Europe (CoE) on 7 May 1992 and the Russian Parliament had been given special guest status with the Parliamentary Assembly of the Council of Europe (PACE) on 14 January 1992. The procedure for an Opinion on Russia's formal request for membership was interrupted in early 1995 because of the conflict in Chechnya. With the adoption of [Resolution 1065](#) in September 1995, the procedure was resumed on the grounds that Russia was committed to finding a political solution to the situation and that alleged and documented human rights violations were being investigated.

Russia became the 39<sup>th</sup> member of the CoE in February 1996 and ratified the [European Convention on Human Rights](#) in 1998.

Although the country's poor human rights record was a major concern at the time of its bid for membership, in [Opinion 193](#) in 1996 PACE recognised that progress had been made in tackling many of the issues and that there was "progress towards a general awareness – and respect for – the rule of law". It referred to Russia's participation in intergovernmental cooperation and assistance programmes in areas such as legal reform and human rights, the "political dialogue" between Russia and the Committee of Ministers<sup>1</sup> since 1992, Russia's accession to several CoE conventions and its preparation to ratify others; its preparation, in line with CoE standards, of legislation on new criminal and civil codes and procedures, on the functioning and administration of the penitentiary system, the Procurator's Office and the Office of the Commissioner for Human Rights; on the protection of national minorities and on freedom of assembly and religion. Russia would protect the legal profession and establish a professional bar association; it would bring to justice those responsible for human rights violations in Chechnya; it would respect constitutional guarantees on the freedom of movement and choice of place of residence; improved prison conditions and pre-trial detention centres and transfer responsibility for prisons and the administration of justice to the Ministry of Justice.

The Russian Government would allow the repatriation of those deported from the Baltic States or their descendants and prepare compensation programmes.

PACE would establish a parliamentary "advisory and control" programme to complement its monitoring procedure, and welcomed a joint CoE/EU joint programme to help strengthen human rights protection and legal reform in Russia.

PACE acknowledged Russia's human rights commitments and intentions in 25 areas, including primarily ratifying the European Convention on Human Rights and its protocols, the Convention on the abolition of the death penalty in time of peace (Russia has not executed anyone since 1996, although the death penalty remains codified), the Framework Convention for the Protection of National Minorities, and conventions on minority languages, extradition, mutual assistance in criminal matters, the transfer of sentenced persons and laundering, search, seizure and confiscation of the proceeds of crime.

According to the Opinion, Russia also intended to "settle international as well as internal disputes by peaceful means ... rejecting resolutely any forms of threats of force against its neighbours" and "to settle outstanding international border disputes according to the principles of international law, abiding by the existing international treaties". Russian troops would be withdrawn from Trans-Dniester (Moldova, where Russia has maintained a peacekeeping force of 1,000-1,500).

Russia intended to abide by the Treaty on Conventional Armed Forces in Europe, to settle cultural property claims and issues, end excessive travel restrictions, amend national laws to bring them into line with CoE principles, in particular those on pre-trial detention centres and military service; tackle the problem of ill-treatment in the armed forces, respect international humanitarian law and cooperate with international humanitarian organisations working on its territory.

## **1.2 Debate on Russian membership**

In a Lords [debate in November 1995](#) the former UK parliamentarian and PACE member, Lord (Geoffrey) Finsberg, described continuing poor conditions in Russian prisons, the

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<sup>1</sup> CM - an intergovernmental body composed of Member States' foreign ministers.

inadequate legal system and restrictions on free movement. He suggested the CoE could either wait for Russia to achieve acceptable standards, which could take five or more years; or “admit Russia now, when she is far from attaining acceptable standards, in the hope that she will improve”. He continued:

If we accept Russia now we will—not may—lower our standards immensely and will not be able to ask any future applicant to hold any higher standards. Our monitoring of countries like Romania and Bulgaria will be useless. Earlier this month the chairman in office of the Council of Europe Ministers—then the Czech Foreign Minister—said he hoped that we would admit Russia as soon as she met our standards. If she is admitted, she will be monitored to ensure that the undertakings she gives are honoured. But what if she fails to keep them? We have the power to suspend or expel a member. But would we dare, once Russia was inside?

In the end, most commentators agreed that CoE States granted membership in the hope that this would be an incentive for Russia to improve standards of human rights protection. Jean-Pierre Massias, Professor of Law at the University of Pau-Bayonne, commented:

... it was accepted under the banner of a twofold argument, combining geopolitical pragmatism and democratic hope. In fact, the majority of speakers supported Russia's candidacy, evoking the interests of Europe and the impossibility of marginalizing such an important state, whose European roots should supposedly "attract" toward Western values.

This attempt at integration was also followed in the name of the Council's specific interests as an international organization. Finally—and this argument was systematically used in the debates concerning criticism of Russia's democratic maturity—the willingness and democratic progress achieved since the fall of the Soviet Union had to be taken into consideration, beyond the 1996 situation. In other words, Russia was admitted in the name of an "up-and-coming" democracy and the risks entailed in its possible isolation, even if the decision was made without any real enthusiasm.<sup>2</sup>

An article in the [Moscow Times, 27 January 1996](#) just after the vote on Russian membership of the CoE emphasised the significance of the decision as a way of bringing stability to the region:

Russia's membership does offer the council and Russian citizens some small degree of leverage over Moscow and its justice system. That has value, despite the fact that the court's decisions are not legally binding. But it was not the reasoning behind Thursday's vote.

This was an issue of geopolitics, a minimal step that Europe had to take to keep alive the chance to bring Russia into that state of mutual dependence with the rest of the world that is required to assure stability on the continent.

### **1.3 Russia's human rights record since joining the Council of Europe**

Many analysts point to the difficult relationship between Russia and the CoE (and the EU) and the geopolitical struggle of each to achieve closer integration in its sphere of influence.

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<sup>2</sup> Russia/NIS research program, [Russia and the Council of Europe: Ten Years Wasted?](#) Jean-Pierre Massias, January 2007.

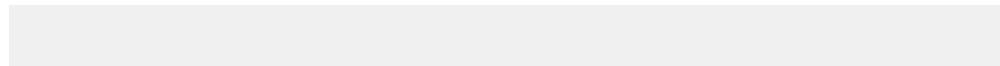
One study in 2010 referred to a “systemic non-application of the Convention by the Russian judicial authorities”.<sup>3</sup>

Russia has signed or ratified/acceded to a number of CoE human rights instruments<sup>4</sup> but it has not signed or ratified many more of these than it has ratified. The overall picture as of 5 March 2015 is as follows:

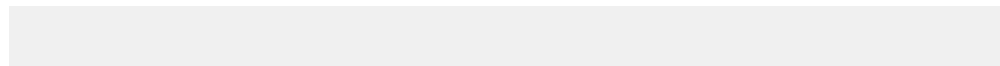
▶ 17 Signature(s) not followed by ratification(s)



▶ 58 Signature(s) followed by ratification(s) or accession(s)



▶ 1 Denunciation(s)



▶ 141 Treaty(ies) neither signed nor ratified  
(full right participation or following an invitation by the Committee of Ministers)

Source: CoE Treaty Office

Under Article 15(4) of the 1993 Russian Constitution,<sup>5</sup> the European Convention is part of the Russian legal system and has primacy over national legislation. Dr Anton Burkov<sup>6</sup> elaborates on the relationship and its effects:<sup>7</sup>

Article 1 of the Federal Law “On Ratification of the Convention and its Protocols” recognises as binding the jurisdiction of the ECHR in interpretation and application of the Convention. Article 3 of the Federal Constitutional Law “On Judicial System” states that “Russian courts are obliged to apply international treaties ratified by Russia”. The latest piece of legislation on this matter is Federal Law of 30 April 2010 “On Compensation to Citizens for Violation of the Right to a Fair Trial within a Reasonable Time”.

Under Article 2(2) of that law compensation for the delay in consideration of a case or in the execution of a judicial act is determined inter alia by taking into account principles of reasonableness, justice and the case-law of the ECHR. The highest courts of the state issue binding explanations regarding the application of the Convention. For example, the Russian Supreme Court in its Regulation No. 5 of 10 October 2003 “On the Application by Courts of General

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<sup>3</sup> *Clinique internationale de défense des droits humains de l’UQAM (CIDDHU) & Sutyajnik, Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: A Solution to the Systematic Non-Application of the Convention by the Federation of Russia?* Mélissa Beaulieu-Lussier, Claudine Bouvier, Catherine Rozon, Philippe Tousignant, 15 December 2010.

<sup>4</sup> List at <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?PO=Rus&MA=999&SI=2&CM=3&CL=ENG>. Russia ratified the *Convention on the Prevention of Terrorism* in May 2006. For information on cases against Russia under the European Convention in this area, see *Factsheet – Terrorism and the ECHR*, January 2014.

<sup>5</sup> Article 15(4) states: 4. “The universally-recognised norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied”.

<sup>6</sup> Head of European and Comparative Law Department, University of Humanities.

<sup>7</sup> Sutyajnik №4 2012, *How to implement guarantees of the European Convention for the Protection of Human Rights in Russian courts*. Sutyajnik is a Russian nongovernmental human rights organisation.

Jurisdiction of the Universally-Recognised Principles and Norms of International Law and the International Treaties of the Russian Federation” stressed that in order to avoid any violations of the Convention, the Convention must be understood by taking into account the case-law of the ECHR.

Similarly, the Constitutional Court’s judgment of 5 February 2007 No. 2-P recognises that the Convention as well as judgments of the ECHR form part of the Russian legal system and thus must be taken into account by the federal legislature and by law-application bodies.

In early 2000 PACE voted to suspend Russia’s voting rights and lodged a complaint against Moscow at the European Court of Human Rights because of its alleged action against civilians in Chechnya. But the Committee of Ministers decided against expulsion and in June 2000 voted for the return of the Russian delegates.

By 2002 the CoE Monitoring Committee welcomed Russia’s progress in signing and ratifying many CoE conventions, the reform of the judicial system, the transfer of responsibility for the penitentiary system from the Ministry of Interior to the Ministry of Justice, and the adoption of the Law on the Office of the Commissioner of Human Rights. But the Committee considered that “progress on a number of obligations and major commitments by the Russian authorities remains insufficient”.<sup>8</sup> A number of human rights issues remained which the CoE continued to monitor, including:

- Settlement of Chechnya conflict by peaceful means;
- Proper investigation into all cases of human rights violations and the abuse of power in Chechnya, and to prosecute their perpetrators irrespective of their functions.<sup>9</sup>
- Replace the moratorium on executions, based on a presidential decree, with a formal abolition of the death penalty based on law, thereby allowing Russia to ratify Protocol 6 to the European Convention on Human Rights.
- Further action to ensure that the law on religion was applied in a uniform manner throughout the country, ending unjustified regional and local discrimination against certain religious communities, including the Salvation Army and Jehovah witnesses in Moscow, and local officials’ preferential treatment of the Russian Orthodox Church.<sup>10</sup>
- Complete withdrawal of Russian troops and heavy weaponry from the Transnistrian (Trans-Dniestr) region of Moldova by the deadline set for 31 December 2002 in order to create more favourable conditions for a final settlement of the conflict there, as well as contribute to consolidating peace and security in the region.<sup>11</sup>
- Regarding the return of diplomatic property transferred to the Soviet Union in 1940 and compensation for persons deported from the Baltic states, a speedy settlement of these issues and all issues related to the return of cultural property claimed by Council of Europe member states directly with these states, and on mutually beneficial terms, taking into consideration the need to return the cultural property transferred from Russia during the second world war.<sup>12</sup>
- Introducing an alternative to military service.
- A new law on the secret services.
- Improving conditions in prisons and the treatment of prisoners and conscripts.
- Removing restrictions on freedom of the press.
- Removing restrictions on freedom of movement.

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<sup>8</sup> PACE [Document 9396](#), 26 March 2002. Rapporteurs: David Atkinson (UK) and Rudolf Bindig (Germany).

<sup>9</sup> A PACE [Resolution](#) in October 2004 stated that there had been “little progress in the prosecution of perpetrators of human rights violations by the national law enforcement bodies”.

<sup>10</sup> Resolution 1278 (2002)1, [Russia’s law on religion](#).

<sup>11</sup> Recommendation 1553 (2002)[1], [Honouring of obligations and commitments by the Russian Federation](#).

<sup>12</sup> Ibid.

- Ratification of European Charter of Regional and Minority Languages.
- Enforcement of legal reform (this includes reform in many above-mentioned areas).
- Relations with Georgia regarding Meskhetians.

#### 1.4 Human rights protection under President Putin

The US-based human rights organisation, Human Rights Watch, commented that under President Putin Russia's human rights standards have fallen.<sup>13</sup> In 2013 Russia had the most human rights violations of the 47 CoE members.<sup>14</sup> Amnesty International UK [reported](#) in January 2014 that basic human freedoms were still being denied.

The UK Government has also flagged up Russian weaknesses: see FCO reports, [Russia - Country of Concern](#), [Russia - Country of Concern: latest update, 31 March 2014](#) and [Russia - Country of Concern: latest update, 30 June 2014](#).

The United Nations High Commissioner for Human Rights published a report on 15 July on [the human rights situation in Ukraine](#). The report was critical of Russian political and military intervention in Crimea, including restrictions on free movement and peaceful assembly, and the application of Russian laws and regulations in the region, which “continues causing confusion, legal problems and jeopardizing the rights of the residents of this region, in particular those who do not hold Russian Federation citizenship”. However, the report also documents increasing levels of “anti-Russia” rhetoric and the physical targeting of Russian-owned banks and businesses on the grounds that they are “financing terrorism”.

The Russian Foreign Ministry said the UN report was “unobjective and even hypocritical”,<sup>15</sup> maintaining that it had not mentioned the detentions of Russian journalists in eastern Ukraine and the reported use of heavy rockets by the Ukrainian army against civilians.

The Russian Constitutional Court ruling in *Markin* on 6 December 2013 confirmed that the Russian Constitution took precedence over rulings of the European Court of Human Rights. The European Court ruled in *Konstantin Markin* on 22 March 2012 that there had been violations of Articles 14 and 8 of the European Convention. The Russian Constitutional Court press release on its own judgment read:

Decisions of the European Court of Human Rights constitute grounds for reviewing the civil case in conjunction with new circumstances. During judicial proceedings the court may come to a conclusion about the impossibility of implementing the decision of the European Court under the current Russian legislation. Since the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Constitution of the Russian Federation in essence share the same values, such a conclusion makes it necessary to determine the constitutionality of the provision contested by the ECtHR's ruling. Such a question can only be solved by the Constitutional Court of the Russian Federation. If regular courts were to solve it by themselves, this could result in a different evaluation of the constitutionality of the same provisions of the law.

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<sup>13</sup> See [Russia: Worst Human Rights Climate in Post-Soviet Era: unprecedented crackdown on civil society](#), 24 April 2013. See also [BBC News](#), 31 January 2013, [Telegraph](#), 24 April 2013, and [Human Rights Watch](#).

<sup>14</sup> [Deutsche Welle](#), 31 January 2014.

<sup>15</sup> “EU set to widen sanctions on Russia over Ukraine”, [BBC News](#), 29 July 2014.

Consequently, the supremacy of the Constitution of the Russian Federation itself would be challenged.<sup>16</sup>

At a meeting with Constitutional Court judges on 13 December 2013 President Putin [praised them](#) for upholding the Russian Constitution:

A few years ago, failure to comply with the Constitutional Court's or other courts' rulings was a serious problem. Today, things are changing for the better. I think it is symbolic that just on the eve of this anniversary, you made a ruling that defends the highest status of our Constitution and proposed an algorithm for action in cases when European Human Rights Court rulings contradict our Constitution's provisions. I think that you did this in an exceptionally proper fashion from the legal point of view.

We know that various European states have encountered these same issues, and each solves the problem in their own way. In some countries they take a very clear-cut line and settle in favour of their own constitutions.

I think the Russian Constitutional Court has found optimal solutions, and very rational ones too in legal terms, as I said. You have proposed a very rational means of implementing European Human Rights Court decisions without going against the Russian Constitution's provisions in the process.

In April 2014 the Constitutional Court also upheld the controversial "foreign agents" law, adopted in November 2012, which requires NGOs such as advocacy groups and human rights organisations in receipt of or planning to receive foreign funding to register with the Ministry of Justice as "carrying out functions of a foreign agent" if they are engaged in "political activities". The complaint had been lodged by four Russian NGOs in August 2013. The law was widely criticised [by the European Parliament](#), by [PACE](#) and human rights organisations such as [Amnesty International](#) and [Human Rights Watch](#). The CoE's Venice Commission<sup>17</sup> adopted an [Opinion](#) on the new law on 13-14 June 2014, recommending several amendments.

## **2 Council of Europe response to Russia's human rights record**

The CM and PACE have exerted pressure on the Russian Government to uphold the principle set out in the [CoE Statute](#) that "Every 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 ...". Russia has frequently been subjected to the judicial machinery of the European Convention and the Court of Human Rights has found against the State on numerous occasions (see below).<sup>18</sup>

But the process of ensuring the rule of law, transparency and human rights protection in a vast and powerful country without a democratic tradition can be slow and difficult. Human rights protection cannot be guaranteed by CoE membership, whose mechanisms for tackling human rights violations involve monitoring, reporting, dialogue and diplomatic pressure, with suspension of membership rights or expulsion from PACE or from the CoE itself as a sanction of last resort. Under Article 41 of the European Convention on Human Rights,

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<sup>16</sup> Translation of judgment from *Institute of Modern Russia, A Rubik's Cube from the Russian Constitutional Court*, Ekaterina Mishina, 30 December 2013. Ekaterina Mishina is assistant professor for the National Research University, Higher School of Economics, Moscow.

<sup>17</sup> Established in May 1990, the European Commission for Democracy through Law - the Venice Commission – acts as the CoE's advisory body on constitutional matters.

<sup>18</sup> Russia's profile at the CoE can be accessed at <http://www.coe.int/en/web/portal/russian-federation>.



States violating the Convention can be required to pay “just satisfaction”.<sup>19</sup> Russia has been required to pay “just satisfaction” on numerous occasions, including most recently €1,866,104,634 to the shareholders of the Yukos oil company.<sup>20</sup> But compared with the economic and trade embargoes, asset freezes and diplomatic sanctions that the United Nations and the European Union can apply, CoE sanctions may not seem particularly onerous.

## 2.1 Russia at the European Court of Human Rights

The CoE’s report on ‘[pending cases: current state of execution](#)’ lists 1,389 cases in which it is supervising the execution of judgments against Russia at the European Court of Human Rights. The table below from the Court’s [Annual Report 2013](#) shows that Russia had the most applications pending before the court at the end of 2013. The Court dealt with 24,102 applications concerning Russia in 2013, of which 23,845 were declared inadmissible or struck out. It delivered 129 judgments (concerning 257 applications), 119 of which found at least one violation of the European Convention.<sup>21</sup>

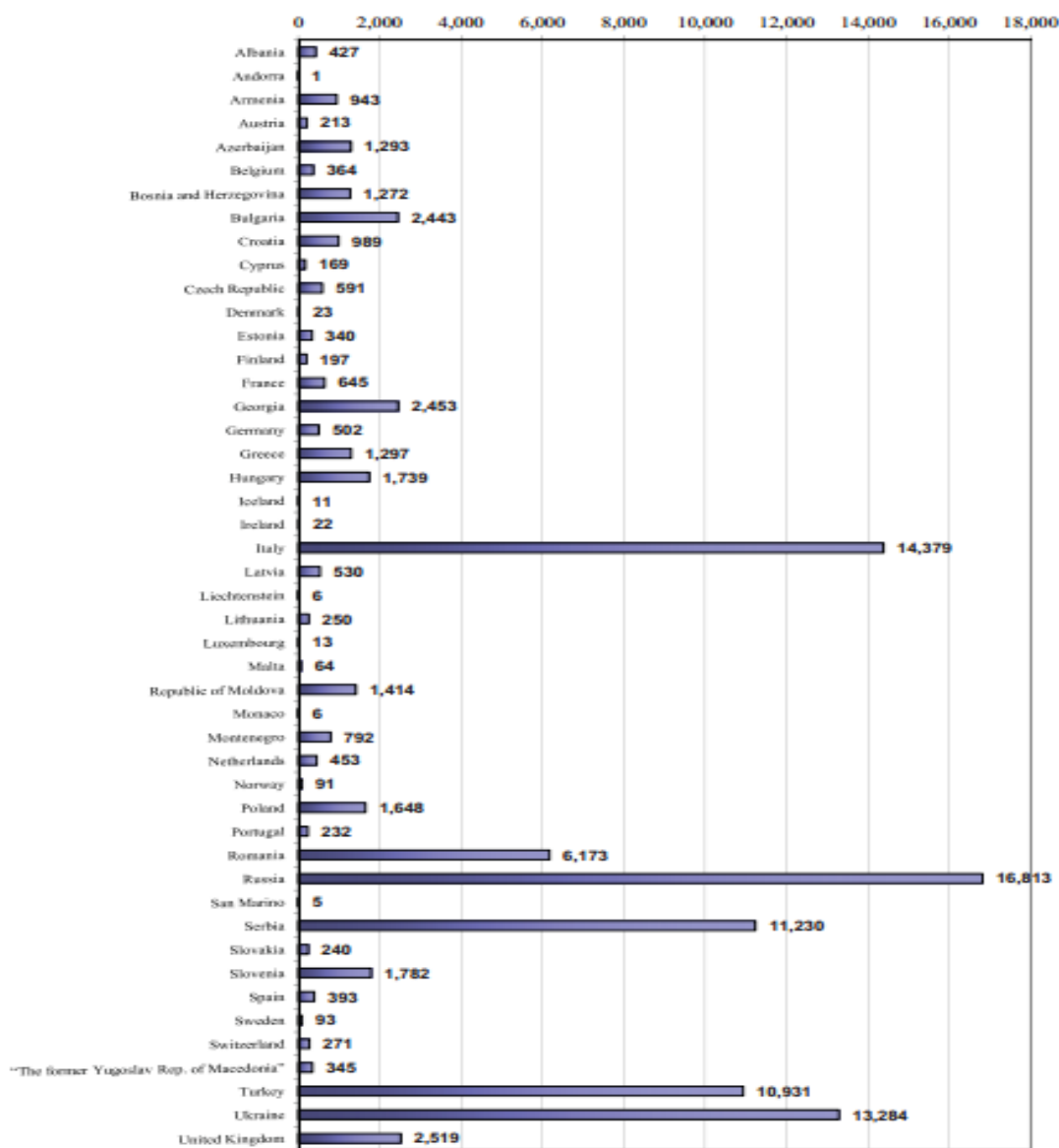
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<sup>19</sup> Non-pecuniary damage, which may be paid together with costs and expenses.

<sup>20</sup> See [Court press release](#), 31 July 2014, and [judgment](#).

<sup>21</sup> [Press country profile Russia](#), ECHR, June 2014

**Pending cases allocated to a judicial formation  
at 31 December 2013 (respondent States)**



**Total: 99,900 applications pending before a judicial formation**

Where the Court has found violations Russia is obliged to execute judgments. The Committee of Ministers ensures payment of compensation awarded to applicants by the Court for the damage they have sustained. The CM also ensures that general measures, particularly amendments to legislation, and individual measures where necessary, are put in place to remedy the situation.

Cases that are proposed for more detailed examination can be found on the CoE pages on the [execution of judgments](#), 28 May 2014. They include:

- *Ananyev and others* (judgment final on 10/04/2012): Poor conditions of pre-trial detention in the remand centres under the authority of the Ministry of Justice and lack of an effective remedy in this respect.

- *Mikheyev group* (first judgment final on 26/04/2006): Torture or inhuman/degrading treatment in police custody with a view to extracting confessions and lack of effective investigations; arbitrary and/or unacknowledged detention in police custody; use in criminal proceedings of confessions obtained in breach of Article 3 and lack of an effective remedy to claim compensation for ill-treatment.
- *Garabayev group* (first judgment final on 30/01/2008): Different violations related to extradition proceedings, in particular lack of effective protection against abduction and irregular transfer and effective investigations into such allegations.
- *Catan and others\** (judgment final on 19/10/2012): Violation of the right to education concerning children and parents from Moldovan/Romanian language schools in the Transnistrian region of the Republic of Moldova.

\*Case against the Republic of Moldova and the Russian Federation but the European Court found no violation in respect of the Republic of Moldova.

## 2.2 Recent Court judgments against Russia

In a judgment on 3 July 2014, in [Georgia v Russia](#), the Court of Human Rights found violations of Convention Articles 5, 3, 13 and 38 for the mass expulsion of Georgians in 2006, two years before the 2008 Russian-Georgian War.

In [Svinarenko and Slyadnev v. Russia](#) the Court held unanimously on 17 July that there had been a violation of Articles 3 and 6 § 1. The case concerned the practice of keeping remand prisoners in metal cages during hearings on their cases.

In another judgment on 24 July, in the case of [Lyapin v. Russia](#), the Court found a violation of the Convention on account of the acts of torture inflicted on the applicant by police officers, and the lack of an effective investigation into his credible allegations.

## 2.3 Recent Council of Europe representations

### Death of Sergei Magnitsky

The CoE leadership and PACE have tried to tackle the Russian Government over human rights issues. In 2013 CoE Secretary General Thorbjørn Jagland expressed the CoE's concerns directly to President Putin about Russia's law requiring non-governmental organisations to register as foreign agents and about the persecution of LGBT people, in spite of the decriminalisation of homosexuality in Russia in 1993.

Also in 2013 a [CoE report](#) condemned the Russian Government's failure to investigate the death in prison of Sergei Magnitsky, the anti-corruption lawyer who had been investigation fraud and large scale theft of public funds. On 28 January 2014 PACE approved a [resolution](#) criticising Russia for its handling of the investigation into Magnitsky's death, and recommending as a last resort adopt "targeted sanctions" against individuals involved in his death, such as visa bans and the freezing of accounts, if the competent authorities in Russia fail to respond adequately to its demands within a reasonable period of time.

### Imprisonment of Nadiya Savchenko

In June 2014 a Ukrainian military pilot Nadiya Savchenko was arrested on grounds of being involved in the deaths of two Russian journalists covering the conflict in eastern Ukraine in providing the coordinates for the mortar attack on a rebel checkpoint outside Luhansk, in which they died. Savchenko denied complicity in the deaths, maintaining she had been

captured by the Russian-backed separatists an hour before the mortar attack. She was taken to Russia and imprisoned there. While in prison she resigned from the army to become a member of the Ukrainian parliament following in the October 2014 Ukrainian parliamentary election. She went on hunger strike in December 2014 in protest against her detention.

The Ukraine Foreign Ministry accused the Russian authorities of illegally transferring Savchenko to Russia, calling the ‘kidnapping’ an act of state terrorism.

In January 2015 PACE President, Anne Brasseur, asked the Duma Speaker Sergey Naryshkin for help in securing her release in time for her to attend the opening of the January part-session of the Assembly on 26 January as a member of the Ukrainian delegation.<sup>22</sup> On 3 March Ms Brasseur called the Russian authorities to “make a humanitarian gesture to save the life of Ms Savchenko”.<sup>23</sup>

On 4 March 2015 the CoE Committee of Ministers called on the Russian authorities to release Nadia Savchenko without delay on humanitarian grounds, given her deteriorating health situation.<sup>24</sup>

On 4 March a Moscow Court rejected the appeal for her temporary release to attend the PACE meeting.

## 2.4 Murder of Boris Nemtsov

On 4 March 2015 the CoE Committee of Ministers condemned the murder of the former Deputy Prime Minister and critic of Vladimir Putin, Boris Nemtsov, on 27 February in Moscow.

In a [statement](#), the Committee called for a “prompt, impartial and transparent investigation into the circumstances of this murder so that those responsible are rapidly brought to justice”. Secretary General Jagland said it was further evidence of the “climate of hate and intolerance” now enveloping Europe.<sup>25</sup>

## 3 Council of Europe action on the Ukraine situation

### 3.1 The Court issues interim measures

In March 2014 the European Court of Human Rights [issued](#) interim measures (under [rule 39](#)) in an inter-state case brought by Ukraine against Russia, indicating that the Russian Government should “refrain from measures which might threaten the life and health of the civilian population on the territory of Ukraine”. In a [European Journal of International Law blog: Ukraine, Russia and Crimea in the European Court of Human Rights](#), 19 March 2014, Philip Leach<sup>26</sup> looked at the implications of this in the light of “a perceptible increase in the rate of states’ non-compliance with rule 39 in recent years”.<sup>27</sup>

Is it possible to predict what the Court’s attitude might be as to the merits of the Ukrainian inter-state case, for example, as regards the alleged presence and activities of Russian troops in the Crimea? The issues of jurisdiction and

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<sup>22</sup> PACE [news](#), 21 January 2015.

<sup>23</sup> PACE [news](#), 3 March 2015.

<sup>24</sup> Committee of Ministers [press release](#), 4 March 2015.

<sup>25</sup> [Human Rights Europe](#), 2 March 2015.

<sup>26</sup> Professor of Human Rights Law at Middlesex University and Director of the European Human Rights Advocacy Centre.

<sup>27</sup> Under Rule 39 of the [Rules of Court](#), the Court may issue interim measures which are binding on the State concerned.

responsibility will be central. Under the European Convention, jurisdiction is presumed to be exercised normally throughout a state's territory. On that basis, for example, Georgia was held responsible for the unlawful detention of the former mayor of Batumi in the 'Ajarian Autonomous Republic' in [Assanidze](#). However, the presumption of jurisdiction may be limited in exceptional circumstances, notably where a state is actually prevented from exercising its authority in part of its territory. This was found to be the case in [Ilaşcu v Moldova and Russia](#). There, the applicants complained that they were unlawfully detained by the Transdniestrian authorities – a separatist entity in de facto control of part of the Moldovan territory. The European Court found that the Russia Federation could be held responsible under the Convention because of the military, economic, financial and political support which it had provided to the regime. This meant that the regime was under the effective authority of, or at the very least under the decisive influence of, Russia.

However, the Strasbourg jurisprudence establishes that the state in whose territory a separatist regime has been established may also be liable under the Convention, which imposes on such a state positive obligations to take appropriate steps to ensure that the rights under the Convention are respected within its territory. Thus, even where the exercise of the state's authority is limited in part of its territory, it still has a duty to take all the legal and diplomatic measures which it is within its power to take. As a consequence, in the *Ilaşcu* case, the Court found that Moldova was also responsible under the Convention, because the Moldovan authorities had themselves failed to take sufficient steps to ensure that the applicants were released. This principle has also been raised in the case of [Sargsyan v Azerbaijan](#), concerning the applicants' displacement from their village during the Nagorno-Karabakh conflict, which is currently pending before the grand chamber (the author is one of the applicants' legal representatives in this case). Azerbaijan denies that it has effective control over the area in question (which is *de jure* within its territory) and the applicants argue that, even if that were the case, there are still positive obligations on the state to ensure that the Convention rights are upheld within its territory.

In adjudicating on the Ukrainian inter-state case, many other significant issues are likely to arise, such as the [question](#) of whether Russia is occupying Ukrainian territory, and more generally the [inter-play](#) between international human rights law and international humanitarian law, a subject on which the forthcoming grand chamber judgment in [Hassan v UK](#) is one to look out for.

Do the recent inter-state cases signify that Council of Europe states are becoming more alive to their collective responsibilities under the Convention? Arguably not, as these recent cases fall into the usual pattern of inter-state cases only being instigated where the applicant state represents, or is closely connected with, the victims. There is no sign yet of any appetite to take up a broader policing role, epitomised by the *Greek case*, in which Denmark, Norway, Sweden and the Netherlands brought proceedings following the military coup d'état in 1967, which had led to mass internment, torture and trials before extraordinary courts martial. It was in the *Second Greek case*, in 1970, that the European Commission of Human Rights successfully invoked interim measures in order to prevent the executions of 34 criminal suspects. In the light of credible NGO reports of abductions of [journalists](#) and [activists](#) in Crimea, and the [threat of violence](#) against non-ethnic Russians, is this not a moment when European states should come together to invoke the inter-state process in Strasbourg?

### 3.2 PACE suspends the Russian delegation

On 10 April 2014 under [Resolution 1990](#) PACE suspended Russia's 18 parliamentarians in protest against its annexation of Crimea.<sup>28</sup> The ban will be effective until the end of the 2014 session (26 January 2015). A group of Conservative MPs led by the UK delegate Robert Walter wanted to suspend Russia fully from PACE. His amendment was defeated but a compromise resolution, based on a report by Austrian Stefan Schennach, was passed. It stated that Russian delegates should be suspended "in order to mark condemnation and disapproval of the Russian Federation's actions with regard to Ukraine". This means they have not been able to vote, be represented in its main committees or take part in the election of observation missions.<sup>29</sup> Delegates agreed that "political dialogue" with Russia was the best way forward, and that there should be no return to the Cold War.

The Conservative MP, Robert Neill, asked the UK Prime Minister on 21 July 2014: "Does he agree that the logical next political step might be to consider the appropriateness of Russia continuing as a member of the Council of Europe, which is supposedly a body of civilised democracies?" David Cameron replied that this was an important point and that "We demonstrated with the G8 that if countries want to belong to organisations that have at their heart a belief in democracy and the fundamental values that we share, they have to act accordingly".<sup>30</sup>

When the EU imposed sanctions against Members of the Russian Parliament in March 2014, the Russian PACE delegation leader Alexey Pushkov tabled a [motion](#) that this action raised questions "as to whether they comply with fundamental instruments of the Council of Europe", specifically, freedom of expression as set out in Article 10 of the Convention.

The head of the Russian delegation, Alexey Pushkov, said Russia would consider terminating its PACE membership and in early June 2014 Russia suspended cooperation with PACE, accusing it of making "xenophobic statements" and staging a "parade of Russophobia". Russia contributes €23 million to the CoE budget annually, and the Russian delegation hinted that it might ask to retract this year's contribution.<sup>31</sup> There were meetings in Moscow in May-June between the Dutch Chair of the *Group of the Unified European Left* Tiny Kox and the *Duma* president Sergey Naryshkin, and in July they were joined by the leaders of PACE's two centre-right groups, the European People's Party and the Alliance of Liberals and Democrats in Europe (ALDE). Naryshkin was reported to have "signalled his preparedness to reach a rapid agreement, as well as his support for an upcoming enquiry into the political and humanitarian consequences of the crisis in Ukraine".<sup>32</sup> But he has said that Russian participation in PACE will only be fully possible if the delegation's voting rights are restored.

Meanwhile, at the end of June 2014, the CoE Commissioner for Human Rights, Nils Muižnieks, also [wrote to](#) the Ukrainian Prime Minister Arseniy Yatsenyuk asking for urgent action to protect internally displaced persons as a result of the violence.<sup>33</sup>

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<sup>28</sup> See also PACE news room at <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4982&lang=2&cat=8>.

<sup>29</sup> See "Council of Europe assembly suspends Russia's voting rights", *EurActiv*, 11 April 2014

<sup>30</sup> *HC Deb* 21 July 2014 c 1179.

<sup>31</sup> "Russia Quits Cooperation with 'Russophobic' Council of Europe Assembly", *The Moscow Times*, 3 June 2014.

<sup>32</sup> "Council of Europe and Russia meet on restoring relations", *SP International*, 16 July 2014.

<sup>33</sup> The Commissioner is directly answerable to the CoE, but also works with the UN, the International Committee of the Red Cross and the Office of the High Commissioner for Refugees.

### 3.3 The International Advisory Panel

In April 2014 a CoE [International Advisory Panel](#) (IAP) met to begin a judicial investigation into violent clashes in Ukraine between protesters and security forces, primarily events related to the *Maidan* demonstrations in Kiev from 30 November 2013 to 21 February 2014, after which the Crimean crisis began. The Panel is chaired by Sir Nicolas Bratza, a former UK President of the European Court of Human Rights. There have been several meetings between Bratza and Ukrainian government members, the latest of which on 4 July was [described](#) as “constructive”.

### 3.4 Investigating the Malaysia Airlines crash

After the crash of the Malaysian Airlines plane on the Russia-Ukraine border on 17 July 2014, CoE Secretary-General Jagland and CM Chair, Elmar Mammadyarov, joined the UN Secretary General Ban Ki-moon in calling for an independent and transparent investigation into the crash. Both the Russian and Ukrainian governments said they would comply with this, but access to the site by OSCE observers, police and forensic investigators has been hampered by continued fighting.

On 22 July 2014 President Putin made a foreign policy speech in which he pledged to use Russia’s influence with the separatists in eastern Ukraine, while also trying to reassure Russians that the repercussions of the Malaysian Airlines crash over Ukraine could be contained.<sup>34</sup> Other reports speculate that the air crash was a precursor for a future Russian invasion of eastern Ukraine.<sup>35</sup>

### 3.5 Visit by CoE High Commissioner for Human Rights

In September 2014 Nils Muižnieks, the CoE High Commissioner for Human Rights visited Ukraine and the Russian Federation, including Crimea, after which he published a [report](#) which said the Russian authorities had to “do more to strengthen human rights and the rule of law in the country” and make more effort to ensure judicial independence and impartiality. The Russians were “dissatisfied both with its form and its content”.<sup>36</sup>

### 3.1 Maidan protests in 2013-2014

The CoE Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reported in January 2015 that it had not found any evidence of Russian security forces’ presence on Independence Square (Maidan) in the centre of Kyiv during the protests there in 2013 and 2014.<sup>37</sup>

### 3.2 Russian suspension from PACE renewed

On 28 January 2015 the CoE renewed the suspension of Russia’s voting rights in PACE until at least April 2015.

In response Alexei Pushkov said Russia would not participate in PACE until the end of 2015, and raised the question of whether Russia should leave the CoE altogether.<sup>38</sup> He said Russia

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<sup>34</sup> See “Putin Pledges to Help but Sees Limits on Role”, [New York Times](#), 22 July 2014. See Putin statements, [18 July](#) and [21 July](#).

<sup>35</sup> E.g. “Putin’s next move – invade eastern Ukraine?”, [Financial Times](#), 20 July 2014.

<sup>36</sup> Embassy of Russian Federation to UK, [Comment by the Information and Press Department on the report by Nils Muižnieks, Council of Europe High Commissioner for Human Rights, on the results of his visit to Ukraine and the Russian Federation](#), 31 October 2014.

<sup>37</sup> <http://en.interfax.com.ua/news/general/244117.html>

<sup>38</sup> See RT, 29 January 2015, [Duma chief hints at Russia’s exit from Council of Europe](#).

would concentrate on its activities in the Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE) instead.<sup>39</sup>

#### 4 Russian views on Council of Europe membership

Some Russian commentators believe Russia's membership of the CoE and Court of Human Rights rulings have led to significant and positive changes.<sup>40</sup> Ekaterina Mouliarova<sup>41</sup> has written that in Russia "innovation can mainly be traced back to the Council of Europe and to international law, above all due to the influence of the European Convention on Human Rights".<sup>42</sup> Citing Olga Chernishova, head of the Legal Division of the Registry of the European Court of Human Rights, the *Guardian* reported on "concrete changes in Russian law" and a "general consensus" on the value of the Court's judgments:

Concrete changes in Russian law show the ECHR is making a difference, she says: a compensation system has been introduced for those affected by the non-execution of domestic judgments, a problem that has hurt "perhaps hundreds of thousands of people" in Russia.

There are new laws on prison overcrowding, and the removal of ubiquitous, daylight-obscuring shutters from prison cell windows. Russian courts are working quantifiably faster than they did 10 years ago; and the supreme court has explained to lower courts the difference between fact and opinion, so fewer journalists get banged up for libel.

Most tellingly, Chernishova says, Russian constitutional court rulings now routinely make reference to ECHR judgments: "And you really cannot underestimate the importance, the message sent to ordinary people when justice is finally done in cases – police brutality, for example – that domestic courts have delayed, or failed even to consider."

In the past three years, Russia has accounted for half the ECHR's right-to-life violations. The vast majority relate to the pre-2006 "active anti-terrorist phase" of the conflict in Chechnya: disappearances, torture, extrajudicial detention, excessive use of force.

Politically, these judgments are hard for the Kremlin to swallow, and it has sometimes simply refused to co-operate. But even here there has been progress: two months ago, Russia finally accepted it used disproportionate force during a three-day artillery assault on a Chechen village that left 18 of the applicant's relatives dead, and failed to investigate.

"Now they will sometimes accept even these kind of judgments," Chernishova says. While democracy in Russia clearly has its challenges, she says people there "are telling us all the time that things could be much worse – much worse – without this court".<sup>43</sup>

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<sup>39</sup> [BBC News, 28 January 2015](#).

<sup>40</sup> For example, a Kremlin [press release](#) on 30 June 2014 announced that in response to the European Court of Human Rights ruling in [Zakharkin](#), Vladimir Putin had signed a federal law on amendments to a law on the custody of people suspected or accused of committing crimes.

<sup>41</sup> Faculty of Law, University of Regensburg, Germany.

<sup>42</sup> European University Institute Working Paper 2010/04, [The role of constitutional justice in Russia in the process of interpretation of European values and the promotion of European constitutionalism](#), Ekaterina Mouliarova, 2010.

<sup>43</sup> "Why is the European court of human rights hated by the UK right?", [Guardian, 22 December 2013](#).



Others are negative about CoE membership. Ilya Kharlamov, *Voice of Russia*, for example, maintained that the “Europeans tend to have a one-sided, perfectly biased view” of events in Russia that have become the focus of international debate.<sup>44</sup> He concluded that under United States influence the CoE had “started to be used as political instruments directed at Moscow. It was the effect of the traditional geopolitical standoff between Russia and the USA, which began to increase”. PACE and the European Court of Human Rights had, he thought, under US influence “stopped being purely advisory and focused on human rights in its nature”. The CoE was in his opinion anti-Russian, and long before the Crimea crisis, “many Russian politicians and experts were saying that participation in the organization, which professionally specializes on anti-Russian declarations and resolutions, has minimum sense and prospects”.

A Russian Foreign Ministry Spokesman, Alexander Lukashevich, said in reply to a press question about Russia’s relationship with the CoE following the latest PACE voting ban:

The Russian Federation intends to continue its constructive participation in the Committee of Ministers, and other statutory and conventional bodies of the Council of Europe, as well as in implementing joint Russia-Council of Europe programmes of cooperation, which involve a variety of federal bodies of executive and judicial power.<sup>45</sup>

He pointed to Russian contributions to the CoE budget, which are “irrevocable”, and noted that the contributions of Russia and the other major contributors to the CoE budget (including the UK) amounted “to at least 50 per cent of the total budget of the organisation. These contributions guarantee the proper functioning of the Council of Europe, including in times of crisis”.<sup>46</sup>

The *Moscow Times* reported on 4 February 2015 that Alexander Kurmaz, acting head of the Foreign Ministry’s All-European Cooperation Department, thought leaving the CoE “would be ill-advised”.

The English language edition of *Pravda* reported on 29 January that if Russia left the CoE, it may reinstate the death penalty. PACE Member Igor Lebedev was reported to have said that “All obligations that Russia took when entering the organization may be abolished”. According to the Levada Centre polling agency, in July 2014 52% of the Russian population supported the reinstatement of the death penalty.<sup>47</sup>

## 5 Further reading

Carnegie Endowment for International Peace, [Does Russia Need the Council of Europe?](#) Alexei Arbatov, Andrei Kolesnikov, *Eurasia Outlook*, 4 February 2015

Noelle Quenivet, [Between a Rock and a Hard Place: The Parliamentary Assembly of the Council of Europe and Russia](#), *Euro Rights Blog*, 11 April 2014

Courtney Hillebrecht [“The rocky relationship between Russia and the European Court of Human Rights”](#), *The Washington Post*, 23 April 2014

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<sup>44</sup> “Council of Europe and Russia: in painful search for compromise”. *The Voice of Russia*, 6 May 2014,

<sup>45</sup> Russian Ministry of Foreign Affairs, 30 January 2015, at [http://www.mid.ru/bdomp/brp\\_4.nsf/e78a48070f128a7b43256999005bcbb3/eba18ce5bff75a9843257de00044afcb!OpenDocument](http://www.mid.ru/bdomp/brp_4.nsf/e78a48070f128a7b43256999005bcbb3/eba18ce5bff75a9843257de00044afcb!OpenDocument). The CoE budget for 2015 is €416,981,300. The contribution of the Russian Federation is €32,805,837: <http://www.coe.int/en/web/portal/russian-federation>.

<sup>46</sup> Ibid.

<sup>47</sup> *Moscow Times*, 4 February 2015.

Olga Shedrova , [Does Russia Need PACE?](#) Strategic Culture Foundation, 21 June 2014,

Pamela A Jordan, [Russia's Accession to the Council of Europe and Compliance with European Human Rights Norms](#), 2003

Philip Leach, "Ukraine, Russia and Crimea in the European Court of Human Rights", [European Journal of International Law blog](#), 14 March 2014

"Council of Europe and Russia: in painful search for compromise", [The Voice of Russia](#), 6 May 2014

Anton Burkov, [The Impact of the European Convention on Human Rights on Russian Law: Legislation and Application in 1996-2006](#), 2007

William E. Pomeranz "Uneasy Partners: Russia and the European Court of Human Rights", [Human Rights Brief](#), Volume 19, Issue 3 (2012),", Washington College of Law,