

“The Beginning of the End” of the 24-Year-Long Toxic Relationship Between the European Court of Human Rights and Russia

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Shortly after the dissolution of the Soviet Union, Russia, on its transition path, started to knock at the Council of Europe's door. Despite being engaged in bitter internal armed conflict in Chechnya¹, on 28 February 1996 was accepted as a full member of the organization. In 1998, Russia also became a Party to the European Convention. Thereby, it consented to the European Court of Human Rights' jurisdiction and the statutory execution of the Court's judgements on cases directed against Russia.

At the same time, the Council of Europe opened its doors for Russia not because of the latter's democratic progress or improvements in terms of human rights, although Russia made some efforts, including the adoption of a democratic constitution in 1993, but primarily because of Russia's future commitments² and in the hopes that Russia would use an opportunity to become a decent member of the European family with the support of the European institutions. Unfortunately, however, Russia soon started backsliding and disappointing its partners, which made it easy to anticipate that not only Russia was not going to use this chance, but its policy and resulting pressure would put the brakes on the rapid democratization of other post-soviet nations, which had just joined the Council of Europe or at least hinder full involvement of the Council of Europe's bodies in this process. Moreover, after a decade of Russia's membership to the Council of Europe, a question was raised on what extent the Council of Europe influenced Russia and to what extent Russia has modified the nature of the Council of Europe.³

The relationship between the Council of Europe and Russia, which was rather complicated from the very beginning, became toxic after several years. Two consecutive suspensions of the right to vote in the Parliamentary Assembly of the Council of Europe (in 2000 and 2014), Russia's constant and successful manipulation of the issue of leaving the Council of Europe, general disrespect vis-à-vis the Council of

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¹ Bill Bowring, “Russia And The European Convention (Or Court) Of Human Rights: The End?”, *Revue Quebecoise de Droit International* 33, no. Special Issue (December 2020): 201-218, 204.

² Lauri Mälksoo, “Introduction: Russia, Strasbourg, and the paradox of a human rights backlash”. In L. Mälksoo & W. Benedek (Eds.), *Russia and the European Court of Human Rights: The Strasbourg Effect* (European Inter-University Centre for Human Rights and Democratisation). Cambridge: Cambridge University Press (2017): 3-25.

³ Jean-Pierre Massias, “Russia and the Council of Europe: Ten Years Wasted?”, *Russie, Nei.Visions* n.15, January 2007. https://www.ifri.org/sites/default/files/atoms/files/ifri_CE_massias_ang_jan2007.pdf, Retrieved on: 17/11/2022.

Europe's bodies, most notably of the ECtHR which was manifested in non-recognition and non-implementation of the Court's judgements, attempt to sabotage the crisis-ridden ECtHR by denying a timely response to inefficiency problem and seeking to overload it, finally ended with Russia's expulsion from the Council of Europe, denunciation of the European Convention and the Assembly declaring Russia's incumbent government as a "terrorist regime".⁴

However, considering the historical experience, existing uncertainties with ending relations between Russia and the CoE on the one hand and Russia and the ECtHR on the other hand, as well as difficulty in anticipating both short-term and long-term consequences of this event, a logical question arises – **is this the end of a relationship or everything is just beginning?** Therefore, this paper aims to remind the abovementioned knowledge of Russia, offer an overview of the present situation vis-à-vis the European Court, and discuss current and future challenges.

From Ratification of the European Convention to its Denunciation: Russia Under the Jurisdiction of the ECtHR

Soon after Russia joined the Council of Europe, its membership became controversial because of the Second Chechen War. However, the Council of Europe's response in 2000 was limited to suspending the right to vote for the Russian delegation in the Parliamentary Assembly of the Council of Europe.⁵ Although Russia's suspended rights were restored in January 2001,⁶ Russia did not easily forgive its "punishment" to the CoE and ECtHR, particularly in light of Moscow's persistent allegations against the ECtHR for its anti-Russian bias.⁷ As a result, Russia used its "right to veto"⁸ on approval of Protocol No. 14⁹, which aimed to

⁴ Council of Europe Parliamentary Assembly, Resolution 2463 (2022) on Further escalation in the Russian Federation's aggression against Ukraine (adopted by the Assembly on 13 October 2022 (32nd sitting). Provisional version. <https://pace.coe.int/en/files/31390/html>, Accessed: 17/11/2022.

⁵ Philip Leach, "A time of Reckoning? Russia And The Council of Europe", Strasbourg Observers, March 17, 2022. <https://strasbourgoobservers.com/2022/03/17/a-time-of-reckoning-russia-and-the-council-of-europe/>, Accessed: 17/11/2022.

⁶ Pamela A. Jordan, "Russia's Accession to the Council of Europe and Compliance with European Human Rights Norms", 2003.

⁷ Courtney Hillebrecht, "Rights at risk: Russia's withdrawal from the ECtHR", Open Global Rights, May 26, 2022. <https://www.openglobalrights.org/rights-at-risk-russias-withdrawal-from-the-ecthr/>, Accessed: 17/11/2022.

⁸ Council of Europe, "Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention," *Council of Europe Treaty Series – No. 194*, Strasbourg, 13.V.2004. <https://rm.coe.int/1680083711>, Accessed: 17/11/2022.

⁹ The protocol needed to be ratified by the parliaments of all Council of Europe member states to enter into force. As of 2006, out of 47 member states, 46 had ratified the protocol. Russia was refusing to ratify the protocol, thereby hindering it from coming into effect. Russia ratified the protocol on 18 February 2010. See Council of Europe, "Chart

reduce the workload for the crisis-ridden ECtHR and ensure its long-term efficacy.¹⁰ Although high hopes were rested on Protocol No. 14, it was never considered a universal remedy that would overcome the crisis in one fell swoop.¹¹ Moreover, Russia's refusal to ratify Protocol No. 14, which according to Vladimir Putin's clarification, was a response from the Russian Duma over some "purely political rulings" of the ECtHR against Russia¹², postponed its entry into force for six years. As a result, the ECtHR ended with such a grave crisis that it would be incredible to pin hopes on this protocol alone. Nevertheless, the Council of Europe member states found a way to bypass a Russian-made impasse in 2009 when parties agreed¹³ to immediately invoke certain provisions of Protocol No. 14 (setting up a single judge formation and the new competence of the Committees of three judges) for those countries which consented to the provisional application of this protocol¹⁴ or for those which signed Protocol no. 14bis¹⁵ (which was adopted in Madrid and came into force on October 1, 2009). As a result, these norms were enacted for 19 member countries, including Georgia, before Protocol No. 14 went into force (01/01/2010).¹⁶ After Russia lost this instrument of manipulation and Moscow's boycott became purposeless, Russia ratified Protocol No. 14, and it came

of signatures and ratifications of Treaty 194." <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatyenum=194>, Accessed: 17/11/2022.

¹⁰ Among other things, the protocol envisaged the creation of new, smaller Court formations to consider more straightforward cases and freeing time and other resources of the ECtHR that could be directed to cases of greater legal importance or urgency. It also established new admissibility criteria for the degree of disadvantage imposed on the applicants, which aimed to declare inadmissible applications from those individuals who have not suffered a significant disadvantage.

¹¹ Speech given by Mr Luzius Wildhaber, President of the European Court of Human Rights, on the occasion of the opening of the judicial Year, 21 January 2005. in: Council of Europe, *Annual Report 2004 of the European Court of Human Rights*, 32.

¹² Julia Lapitskaya, *ECHR, Russia And Chechnya: Two Is Not Company And Three Is Definitely A Crowd*, New York University Journal of International Law And Politics, vol. 43, no.2 (2011): 479-546, 499.

¹³ Council of Europe, "Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention: Agreement on the provisional application of certain provisions of Protocol No. 14 pending its entry into force" *Council of Europe Treaty Series* – no. 194, Madrid, 12.05.2009. <https://rm.coe.int/1680083718>, Accessed: 17/11/2022.

¹⁴ Ibid. "List of the High Contracting Parties having accepted the provisional application of certain provisions of Protocol No.14".

¹⁵ Council of Europe, Protocol No. 14 bis to the Convention for the Protection of Human Rights and Fundamental Freedoms, *Council of Europe Treaty Series* – no. 204, Strasbourg, 27.05.2009. <https://rm.coe.int/1680084825>, Accessed: 17/11/2022. It was declared null and void on 1 June 2010 immediately after the Protocol No. 14 went into effect.

¹⁶Council of Europe, "Chart of signatures and ratifications of Treaty 204". <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatyenum=204>, Accessed: 17/11/2022.

into effect on June 1, 2010. Therefore, changes envisaged by Protocol No. 14 have become mandatory for all contracting parties to the European Convention from that day on.¹⁷

Notably, by the end of 2010, nearly 140,000 allocated applications were pending before the Court, and 22,000 applications were at the pre-trial stage. At the same time, out of 47 member states of the Council of Europe, Russia accounted for the immense amount of pending cases. In particular, of 140,000 pending cases before the Court by the end of 2010, 29% (40,295 applications) were lodged against Russia.¹⁸ These figures perfectly illustrate the ECtHR's workload and Russia's massive contribution to this situation.

The relationship between Russia and the Council of Europe and, respectively, between Russia and the ECtHR deteriorated again in 2014 after Russia annexed Crimea. In particular, in response to the annexation of Ukraine's territory, the Parliamentary Assembly of the Council of Europe adopted a resolution to condemn the annexation and suspend the right to vote for the Russian delegation in the Assembly.¹⁹ This resolution also suspended Russia's right to representation in other Assembly bodies.²⁰ It was emphasized, however, that suspension of the credentials of the Russian delegation was not in the Assembly's interests since it was crucial to have room for political dialogue because the Assembly constituted an excellent platform where representatives of member states had an opportunity to confront Russia face-to-face with questions and facts and demand answers and accountability.²¹ The suspension was initially scheduled to last until the end of 2014, although given Russia's refusal to address the problem, it was prolonged during the 2015 Assembly session.²²

These measures served as a good pretext for Russia to come forward with a suggestion to revise the mandatory nature of the ECtHR's judgements, claiming that its delegations did not take part in the

¹⁷ Council of Europe, "Annual Report 2009 of the European Court of Human Rights," *Registry of the European Court of Human Rights* (Strasbourg, 2010), 12. https://www.echr.coe.int/Documents/Annual_report_2009_ENG.pdf, Accessed: 17/11/2022.

¹⁸ Council of Europe, "Annual Report 2010 of the European Court of Human Rights," *Registry of the European Court of Human Rights* (Strasbourg, 2011), 146. https://www.echr.coe.int/Documents/Annual_report_2010_ENG.pdf, Accessed: 17/11/2022.

¹⁹ Council of Europe Parliamentary Assembly, Resolution 1900 (2014) on Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation (Adopted by the Assembly on 10 April 2014 (16th Sitting). <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=20882&lang=en>, Accessed: 17/11/2022.

²⁰ Ibid.

²¹ Ibid. § 14.

²² Council of Europe Parliamentary Assembly, Resolution 2034 (2015) on Challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation (Adopted by the Assembly on 28 January 2015 (6th Sitting). <http://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=21538&lang=en>, Accessed: 17/11/2022.

appointments of most of the ECtHR's judges.²³ However, this was not the first case when the representatives of the Russian authorities were animated with such desires and decided to make that happen. In particular, a draft law about the non-implementation of the ECtHR's judgements was prepared as early as 2010 in response²⁴ to the ECtHR's judgement over *Markin v. Russia*.²⁵ In this case, the ECtHR ruled a violation of the European Convention and therefore did not consider a domestic-level ruling of Russia's Constitutional Court, which declared that three-month parental leave for servicemen, while servicewomen were allowed to take a three-year-long leave was consistent with the Constitution of Russia. At that time, in light of the political circumstances and technical flaws of the draft law, it was shelved in 2011.²⁶ However, the intention materialized shortly afterwards. In particular, on December 14, 2015, Law on Constitutional Court was amended to give the power to the Constitutional Court to declare "impossible to implement" judgements of human rights bodies if that judgement is inconsistent with the Constitution of the Russian Federation.²⁷ As a result, for the first time in modern history, the Constitutional Court considered the case of enforceability of the ECtHR's judgement. In particular, on April 19, 2016, Russia's Constitutional Court ruled that the ECtHR's judgement could not be implemented since it contradicted the Russian Constitution.²⁸ In this case – *Anchugov and Gladkov v. Russia* – the application was on the Constitutional deprivation of prisoners' right to vote, in which the ECtHR found a violation of the European Convention and instructed the Russian Federation to ensure electoral rights of prisoners through a revised interpretation of the disputed constitutional norm.²⁹ Additionally, the Russian Federation introduced amendments to the Russian Constitution in 2020, effectively granting the Constitutional Court the power to rule about the non-implementation of rulings of international bodies, including the ECtHR.³⁰

²³ Lize R. Glas, "Russia Left, Threatened And Won: Its Return To The Assembly Without Sanctions", *Strasbourg Observers*, July 2, 2019. <https://strasbourgobservers.com/2019/07/02/russia-left-threatened-and-has-won-its-return-to-the-assembly-without-sanctions/>, Accessed: 17/11/2022.

²⁴ William E. Pomeranz, "Uneasy Partners: Russia and the European Court of Human Rights", *The Human Rights Brief* 19, no. 3 (Spring 2012):17-63, 19.

²⁵ *Markin v. Russia*, no.30078/06, 07 October 2010.

²⁶ Pomeranz, "Uneasy Partners: Russia and the European Court of Human Rights", 19.

²⁷ Natalia Chaeva, "The Russian Constitutional Court and its Actual Control over the EctHR Judgement in *Anchugov and Gladkov*," *EJIL:Talk*, April 26, 2016. <https://www.ejiltalk.org/the-russian-constitutional-court-and-its-actual-control-over-the-ecthr-judgement-in-anchugov-and-gladko/>, Accessed: 17/11/2022.

²⁸ Peter Roudik, "Russian Federation: Constitutional Court Allows Country to Ignore ECHR Rulings," *Library of Congress*, May 18, 2016. <https://www.loc.gov/item/global-legal-monitor/2016-05-18/russian-federation-constitutional-court-allows-country-to-ignore-echr-rulings/>, Accessed: 17/11/2022.

²⁹ *Anchugov and Gladkov v. Russia*, nos. 11157/04 and 15162/05, 4 July 2013.

³⁰ European Commission for Democracy Through Law, "Opinion No. 981/2020 On The Draft Amendments To The Constitution Related To The Execution In The Russian Federation Of Decisions By The European Court Of Human Rights," Strasbourg, 18 June 2020. CDL-AD (2020)009.

In 2016, Russia became aware that its actions provided no ground for the Assembly to change its approach vis-à-vis Russia; hence, restoring suspended rights to the Russian delegation was not expected, and it was even questionable whether or not the PACE would ratify the credentials of the Russian delegation. Therefore, Russia decided to assume a pose of "being offended", refused to nominate a delegation and stated that it would not return to the Assembly unless the latter would abandon its right to ban the right to vote and represent any delegation. Although this move did not bring desirable results, Russia kept that position in 2017 and 2018. As a result, Russian delegates were not involved in the works of the Assembly since 2016.³¹

Financial Crisis and Victorious Russia

Since 2017, along with refusing to nominate the delegation to Assembly, Russia has started using the last resort measure. In particular, Russia ceased mandatory financial contribution and, in this manner, inflicted a significant blow on one of the weakest points of both the ECtHR and Council of Europe, which is the budget.

In 2017, the Russian Minister of Foreign Affairs, Sergey Lavrov, announced that Russia was suspending its annual contribution (USD 33 million) as the answer to the Assembly's "persecution" of the Russian delegation and clarified that Russia was not going to pay next year's dues either until the rights of the Russian delegation were thoroughly restored.³² In addition, Russia demanded changes in the rules of the Assembly which implied the removal of the possibility of excluding the delegates.³³

Russia's step to stop funding the Council of Europe was a particularly devastating financial blow because it coincided with Turkey's decision to refrain from paying its additional contribution. Given the formula³⁴ which determines the amount of mandatory contribution from a member state, based on a number of population and gross domestic product indicators, Russia was one of the most significant

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)009-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)009-e),
17/11/2022.

Accessed:

³¹ Andrew Drzemczewski and Kanstantsin Dzehtsiarou, "Painful Relations between the Council of Europe and Russia", *European Journal of International Law*, September 28, 2018. <https://www.ejiltalk.org/painful-relations-between-the-council-of-europe-and-russia/>, Accessed: 17/11/2022.

³² Bowring, "Russia And The European Convention (Or Court) Of Human Rights: The End?", 215.

³³ Drzemczewski and Dzehtsiarou, "Painful Relations between the Council of Europe and Russia".

³⁴ "Where does the money come from?", Council of Europe – Budget. <https://www.coe.int/en/web/about-us/budget>, Accessed: 17/11/2022.

contributors, together with Germany, France, UK and Italy. Since 2016, Turkey was also added to their ranks as Ankara decided to become one of the most significant contributors and committed itself to pay additional sums³⁵ on top of mandatory contributions. Turkey suspended this status in 2017 by refusing to pay the previously pledged increased contribution.³⁶ In the case of Russia, it was a response to criticism after the annexation of Crimea, whereas Turkey decided to punish the Council of Europe for awarding the Vaclav Havel Human Rights Prize to the imprisoned former judge of Turkey's Constitutional Court, Murat Arslan, whom Ankara accused of being a supporter of Fethullah Gülen.³⁷ However, in contrast with Russia, Turkey only refused to pay voluntarily, whereas Russia declined to pay mandatory contributions altogether.

This predicament pushed the Council of Europe to revise the budget and "tighten belts"³⁸ to avoid further deepening the financial crisis. In addition, this fact made it clear that funding was one of the most potent instruments to influence the Council of Europe, which Russia successfully used. It is noteworthy that stopping financial contributions is a cumbersome burden for the ECtHR since the latter does not have a separate budget and is entirely dependent on the Council of Europe.³⁹ Therefore, substantial changes can also become necessary for the ECtHR's budget, depending on the impact of the financial crisis on the Council of Europe.⁴⁰

Considering the extent of Russia's contribution on the one hand and the challenges before the ECtHR, which could not be handled even with previously available resources, on the other hand, Russia's decision turned out to be a severe challenge for the ECtHR.⁴¹ Moreover, the situation was further complicated by thousands of cases lodged after the annexation of Crimea and three inter-state applications against Russia.⁴²

³⁵ Kanstantsin Dzehtsiarou and Donal K Coffey, "Suspension and expulsion of members of the Council of Europe: Difficult decisions in troubled times", *International and Comparative Law Quarterly* 68(2). (2019):443-476, 459.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Mikhail Bushuev and Markian Ostapchuk, "Funding crisis for Council of Europe?", *Deutsche Welle (DW)*, 03/01/2018. <https://www.dw.com/en/russia-withholds-payments-to-the-council-of-europe/a-42792673>, Accessed: 17/11/2022.

³⁹ "Convention for the Protection of Human Rights and Fundamental Freedoms," opened for signature November 4, 1950, *European Treaty Series* no.5, Article 50. https://www.echr.coe.int/Documents/Convention_ENG.pdf, Accessed: 17/11/2022.

⁴⁰ Lize R. Glas, "The Assembly's Row With Russia And Its Repercussions For The Convention System", *Strasbourg Observers*, October 30, 2017. <https://strasbourgobservers.com/2017/10/30/the-assemblys-row-with-russia-and-its-repercussions-for-the-convention-system/>, Accessed: 17/11/2022.

⁴¹ Speech given by Mr Guido Raiomondi, President of the European Court of Human Rights, on the occasion of the opening of the judicial Year, 26 January 2018. in. Council of Europe, "Annual Report 2018 of the European Court of Human Rights", 13. https://www.echr.coe.int/Documents/Annual_report_2018_ENG.pdf, Accessed: 17/11/2022.

⁴² Glas, "The Assembly's Row With Russia And Its Repercussions For The Convention System".

As a result of tactical pressure and "blackmail" - as many viewed it - from Russia, in 2019, the Council of Europe agreed to some concessions, and 30 ministers⁴³ of 47 countries agreed⁴⁴ that all member states should have the right to participate in the Committee of Ministers and Assembly. However, this decision was decried as an interference in the authority of the Assembly without having a legal ground in line with the Statute of the Council of Europe.⁴⁵ In turn, the Assembly, taking into account the decision of the Committee of Ministers, adopted a resolution to allow an exception in the rules of authorizing the delegations. Therefore, parliaments of those Council of Europe's member states not represented by their delegations (Russia and Bosnia-Herzegovina)⁴⁶ were permitted to present the credentials of their representatives at the June part-session instead of the first session of the year (January session). At the same time, to ensure that the member states' right and obligation to be represented and to participate in statutory bodies of the Council of Europe was respected, the Assembly decided to amend Rule 10 of its Rules of Procedure, adding the following clarification: "The members' rights to vote, to speak and to be represented in the Assembly and its bodies shall not be suspended or withdrawn in the context of a challenge to or reconsideration of credentials."⁴⁷

As a result, despite protests from Georgia and Ukraine, the years-long conflict between the Council of Europe and Russia ended with the removal of international sanctions against Russia,⁴⁸ the restoration of rights to the Russian delegation in June 2019⁴⁹ and the resumption of Russia's financial contribution.⁵⁰

⁴³ "Foreign Ministers: rights, obligations and action priorities of Member States", Council of Europe: News 2019, 17 May 2019. <https://www.coe.int/en/web/portal/-/foreign-affairs-ministers-recall-rights-and-duties-of-member-states-define-priority-areas-for-future-action>, Accessed: 17/11/2022.

⁴⁴ Council of Europe Committee of Ministers, A shared responsibility for democratic security in Europe (Adopted by the Ministers on 129th Session of the Committee of Ministers, Helsinki, 17 May 2019). CM/Del/Dec (2019)129/2. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168094787e, Accessed: 17/11/2022.

⁴⁵ Glas, "Russia Left, Threatened And Won: Its Return To The Assembly Without Sanctions".

⁴⁶ Council of Europe Parliamentary Assembly, Resolution 2287 (2019) on Strengthening the decision-making process of the Parliamentary Assembly concerning credentials and voting (adopted by the Assembly on 25 June 2019 (20th Sitting), §7. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=27980&lang=en>, Accessed: 17/11/2022.

⁴⁷ Ibid. §10.

⁴⁸ Gilbert Reilhac, "Council of Europe readmits Russia, five years after suspension over Crimea", *Reuters*, June 25, 2019. <https://www.reuters.com/article/us-europe-rights-council-russia-idUSKCN1TQ1VL>, Accessed: 17/11/2022.

⁴⁹ Council of Europe Parliamentary Assembly, Resolution 2292 (2019) on Challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation (Adopted by the Assembly on 26 June 2019 (24th Sitting). <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28049>, Accessed: 17/11/2022.

⁵⁰ Helga Molbæk-Steensig, "Did we solve the caseload problem? Russia's exit from the European Court of Human Rights", *EU Ideas*, March 24, 2022. <https://euideas.eui.eu/2022/03/24/did-we-solve-the-caseload-problem-russias-exit-from-the-european-court-of-human-rights/>, Accessed: 17/11/2022.

Finally, Russia won, and the Council of Europe lost that battle, at least considering that not even "internal sanctions" were imposed on Russia before restoring its rights.⁵¹ Russia won with blackmail, where its primary weapon was to threaten withdrawal from the Council of Europe, which meant leaving nearly 145 million people without legal safeguards. However, one of the decisive factors turned out to be Russia's refusal to pay a mandatory contribution which would be a significant loss for the budget of the Council of Europe and could have caused many problems for the organization.⁵² These circumstances raise a logical question of whether or not the Council of Europe would employ a similar approach vis-à-vis such a country whose mandatory contribution is less than Russia's.⁵³ Although many could have an intuitive answer to that question, talks on this issue were primarily limited to asking merely similar rhetorical questions.

Although this specific chapter of a toxic relationship between Russia and the ECtHR (and generally with the Council of Europe) was closed, the abovementioned controversy remains a black mark for the Council of Europe and ECtHR. Perhaps, the Council of Europe's robust and immediate response to Russia's further invasion of Ukraine was prompted by seeing a chance to clean this black mark or considering the vast experience of dealing with Russia. Of course, it is also possible that both factors played a role. However, this decision did not lack controversy either, since some claimed that the Council of Europe did not punish Putin but individuals abused by the Russian government.

Denunciation of the European Convention

Considering the abovementioned circumstances and since Russia has threatened to quit the Council of Europe numerous times,⁵⁴ ending relations between Russia and the Council of Europe was expected at any moment. However, the "beginning of the end" of toxic relations between Russia and the ECtHR was

⁵¹ Glas, "Russia Left, Threatened And Won: Its Return To The Assembly Without Sanctions".

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

officially confirmed only on March 16, 2022, with Russia's denunciation of the European Convention.⁵⁵ Accordingly, under the decision of the ECtHR,⁵⁶ denunciation came into effect on September 16, 2022.⁵⁷

The denunciation was a result of suspending Russia's membership to the Council of Europe on March 16, 2022,⁵⁸ in the context of Article 8 of the Statute,⁵⁹ which was a response to the invasion of the sovereign territory of Ukraine and a breach of peace of unprecedented magnitude on the European continent since the creation of the Council of Europe.⁶⁰

Considering their years-long experience dealing with Russia, the European institutions' decision raised fewer questions on political and moral reasons. However, we cannot say the same concerning legal aspects, which lack clarity on many levels. Discussion over the legal flaws has been ongoing across many blogs, focused on legal issues, scrutinizing those practical issues that the Council of Europe's institutions

⁵⁵ 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 1428ter meeting of the Ministers' Deputies) https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a5da51, Accessed: 17/11/2022.

⁵⁶ 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 (Adopted by The European Court of Human Rights, sitting in the plenary session on 21 and 22 March) https://echr.coe.int/Documents/Resolution_ECHR_cessation_membership_Russia_CoE_ENG.pdf, Accessed: 17/11/2022.

⁵⁷ „ 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”. See “Convention for the Protection of Human Rights and Fundamental Freedoms”, Article 58(1). Council of Europe – “Russia ceases to be party to the European Convention on Human Rights,” 16 September 2022. <https://www.coe.int/en/web/portal/-/russia-ceases-to-be-party-to-the-european-convention-on-human-rights>, Accessed: 17/11/2022.

⁵⁸ On 25 February 2022, the next day after Russia invaded Ukraine, the Committee of Minister suspended Russia's rights of representation. Council of Europe Committee of Ministers, - Situation in Ukraine – Measures to be taken, including under Article 8 of the Statute of the Council of Europe (Adopted by Ministers' Deputies on 1426er meeting, 25 February 2022). CM/Del/Dec (2022) 1426ter/2.3

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5a360, Accessed: 17/11/2022. According to the opinion received from the Assembly, as part of communication with PACE, Russian Federation can therefore no longer be a member State of the Organization. See Council of Europe Parliamentary Assembly, Consequences of the Russian Federation's aggression against Ukraine. Opinion 300(2022). <https://pace.coe.int/pdf/c31443e940156c87eced0fbb80aee5a6de0aec5c3eebbc5b08e2448fb47149cd/opinion%20300.pdf> Accessed 17/11/2022. Russian Federation notifies Secretary General about withdrawal from the Council of Europe. Since 16 March 2022, Russia's membership to the Council of Europe was ceased under Article 8. (CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe, 16 March 2022. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a5da51, Accessed 17/11/2022.

⁵⁹“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 determine”. See. Council of Europe, Statute of the Council of Europe, European Treaty Series – no. 1, London 5.V.1949. <https://rm.coe.int/1680306052>, Accessed: 17/11/2022.

⁶⁰Council of Europe Committee of Ministers, Consequences of the aggression of the Russian Federation against Ukraine (Adopted by Ministers' Deputies on 1428bis meeting, 10 March 2022). CM/Del/Dec(2022) 1428bis/2.3 https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5c619, Accessed: 17/11/2022.

and Court may face due to this decision.⁶¹ Therefore, an overview of this discussion and the problematic issues is interesting.

Expulsion or voluntary withdrawal (Russia ceased membership under Article 7 or Article 8?)

One of the main subjects of the discussion is to analyse how relevant the legal ground based on which Russia left the Council of Europe is. In particular, Russia's expulsion ended on the ground of Article 8 of the Statute of the Council of Europe, whereas field experts believe the departure should be governed by Article 7 of the Statute.

Moreover, the abovementioned is essential since legal consequences differ in these two cases.⁶² Under Article 7 of the Statute,⁶³ state withdrawal (voluntary) comes into effect at the end of that fiscal year, in which the state notifies the Council of Europe of its decision to quit. However, this happens if notification is made in the first nine months of a fiscal year. If notification is made during the last three months, it will come into effect by the end of the next fiscal year.

Article 8 of the Statute establishes a procedure for mandatory suspension of a country's membership over a breach of Article 3 of the Statute.⁶⁴ This procedure is divided into several stages and leaves the country a chance to withdraw voluntarily in line with Article 7 of the Statute. Firstly, the Committee of Ministers suspends the right of representation of the country and requests to withdraw under Article 7. Only if the country does not comply with the official demand of the Committee of Ministers to withdraw voluntarily the Committee of Ministers is authorized to cease the country's membership to the Council of Europe and set a date when cessation will come into effect.

As mentioned earlier, the right to represent Russia was suspended on February 25.⁶⁵ On March 15, the Assembly declared that the Committee of Ministers should request Russia to leave the Council of Europe immediately. If the Russian Federation had not complied with that demand, the Committee of Ministers would have set the earliest possible day to suspend the Russian Federation's membership to the Council

⁶¹ Kanstantsin Dzehtsiarou and Laurence Helfer, "Russia and the European human rights system: Doing the right thing ... but for the right legal reason?" *European Journal of International Law*, March 29, 2022, <https://www.ejiltalk.org/russia-and-the-european-human-rights-system-doing-the-right-thing-but-for-the-right-legal-reason/>, Accessed: 17/11/2022.

⁶² Leach, "A time of Reckoning? Russia And The Council of Europe".

⁶³ Council of Europe, "Statute of the Council of Europe", Article 7.

⁶⁴ Council of Europe, "Statute of the Council of Europe", Article 8.

⁶⁵ Council of Europe Committee of Ministers, "CM/Del/Dec (2022)1426ter/2.3".

of Europe.⁶⁶ However, instead of resisting, Russia notified the Secretary General of the Council of Europe on the same day that it was leaving the organization purposely.⁶⁷ Nevertheless, the Committee of Ministers used the procedure prescribed by Article 8,⁶⁸ documenting the termination of Russia's membership as expulsion and the decision came into effect on the same day (16 March 2022).⁶⁹

Experts opine that the immediate termination of Russia's membership in the Council of Europe contradicts the Statute of the Council of Europe.⁷⁰ In particular, it is believed that the cessation of Russia's membership to the Council of Europe should be discussed regarding Article 7 instead of Article 8. Therefore, the date of cessation should be December and not March 16, set by the Committee of Ministers.⁷¹ It is worth mentioning that on 17 March 2022, the Committee of Ministers published a document to clarify the legal aspects of cessation of membership to the Council of Europe.⁷² According to the document, in the procedure set forth by Article 8, whether or not a member state complies with the request to withdraw itself or disagrees, in both cases, cessation of membership is considered to happen under Article 8. Therefore the Committee of Ministers sets a date when cessation becomes effective.⁷³ Accordingly, this clarification contradicts opinions expressed by the experts that in the case of a member state complies with the request, Article 7 is activated. Unfortunately, when discussing the legal aspects, the Committee of Ministers does not specify whether or not the timing of a member country's declared intent of withdrawal is essential. Mainly the intent is shown before or after the Committee's official request. This is crucial because Russia's notice of withdrawal overlapped with PACE sharing its opinion about Russia's withdrawal with the Committee of Ministers. At the same time, it needs to be taken into account that it is not observable from the publicly available documents whether the official application of the Committee of Ministers preceded Russia's notice.

⁶⁶ Council of Europe Parliamentary Assembly, "Opinion 300(2022)".

⁶⁷ Priyanka Shankar, "What does Russia leaving the Council of Europe mean?", *Deutsche Welle*, 17 May 2022. <https://www.dw.com/en/what-does-russia-leaving-the-council-of-europe-mean/a-61164543>, Accessed: 17/11/2022.

⁶⁸ Council of Europe, "Statute of the Council of Europe", Article 8.

⁶⁹ Leach, "A time of Reckoning? Russia And The Council of Europe".

⁷⁰ Sebastián Mantilla Blanco, A Backdoor Exit from the European Convention on Human Rights, *Verfassungsblog*, 5 April 2022. <https://verfassungsblog.de/a-backdoor-exit-from-the-european-convention-on-human-rights/>, Accessed: 17/11/2022.

⁷¹ Ibid.

⁷² Council of Europe Committee of Ministers, Memorandum on Legal and financial consequences of the cessation of membership in the Council of Europe under Article 8 of its Statute (prepared by the Secretariat), 1429th meeting, 17 March 2022. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5d7d3#_Toc97927179, Accessed: 17/11/2022.

⁷³ Ibid.

According to the experts, having a precise answer under which Article of the Statute Russia's membership ceased is crucial since it is directly linked with the ECtHR's ability to safeguard persons suffering from Russia's influence. Experts argue that in the case of determining an accurate legal ground, the abovementioned would have been prolonged to the end of December. To affirm their claim, experts also refer to Article 58 of the European Convention and section 3 of that Article. They argue that, if interpreted correctly, denunciation should become effective from the moment of Russia's cessation of membership to the Council of Europe (which, according to the expert discussions, should have been 31st of December 2022 – the end of the fiscal year).

From this discussion, we can pinpoint the second issue, that is determining when the denunciation should have entered into force and, thus, how adequately Article 58 of the European Convention was interpreted. Debating on these issues must not be surprising since, for good or for worse, there is no well-developed practice of denunciation of the European Convention.⁷⁴

The date for the denunciation to enter into force and interpretation of Article 58 of the ECHR

Article 58 of the European Convention envisages a member state's right to denounce the Convention and sets the conditions of denunciation. Moreover, Paragraph 3 of this article specifically pertains to those cases when a member state ceases its membership in the Council of Europe.⁷⁵ In particular, according to Paragraphs 1 and 2 of the same Article:

- Denunciation of the Convention is allowed only after the expiry of five years from the date on which it became a party to it (Paragraph 1)
- The State will cease to be a Party to the ECHR six months after submitting the notification of denunciation to the Secretary of the Council (Paragraph 1)
- The contracting party is not released from its obligations under the European Convention and from relevant responsibility 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 becomes effective (Paragraph 2)

⁷⁴ The only case of leaving the Council of Europe was Greece, ruled by a military junta, in 1969. However, in case of Greece, there was no need of denunciation under Article 58(3) of the European Convention. Dzehtsiarou and Helfer, *“Russia and the European human rights system: Doing the right thing ... but for the right legal reason?”*.

⁷⁵ “Convention for the Protection of Human Rights and Fundamental Freedoms,” Article 58.

As regards Paragraph 3, the wording is as follows: "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 conditions".

Therefore, Paragraph 3 is specifically about ceasing membership to the Council of Europe (both voluntary withdrawal and expulsion), which implies automatic denunciation, whereas Paragraph 1 concerns other cases when a contracting party voluntarily (without leaving the Council of Europe) expresses the intent of denunciation of the European Convention. According to the experts, a reference to "same conditions" does not mean a reference to Paragraphs 1 and 2 of the same Article but to the conditions of cessation of membership to the Council of Europe. In particular, if the cessation of membership happens under Article 8 of the Statute, cessation of membership both to the Council of Europe and European Convention will come into effect at a date set by the Committee of Ministers, whereas if cessation happens under Article 7, it will come into effect by the end of the respective fiscal year (only if cessation happens in the first nine months of a fiscal year. If that happens in the last three months, it will come into effect by the end of the next fiscal year). Therefore, the ECtHR's resolution, which envisages that denunciation shall come into effect in six months, is believed to be a wrong interpretation⁷⁶ of Article 58 and understanding Paragraph 3 of this Article as if the words "same conditions" refers to those conditions stipulated in Paragraphs 1 and 2 of Article 58.⁷⁷

The ECtHR's resolution about the cessation of Russia's membership to the European Convention only refers to Article 58 of the Convention as a legal ground for denunciation and not to the specific Paragraph of this Article. The resolution declares that, on the one hand, it notes the notification of Russia about its intention to denounce the European Convention (March 15 2022) and, on the other hand, has regard to the decision of the Committee of Ministers on cessation of Russia's membership to the Council of Europe (March 16 2022). Accordingly, the ECtHR declared that 1. The denunciation will come into effect on September 16 2022 (six months after Russia's expulsion from the Council of Europe), and 2. Therefore, the Court remains competent to deal with applications directed against Russia concerning acts or omissions capable of constituting a violation of the Convention, provided that they occurred until September 16 2022. However, neither of these declared points has shed further light on which Paragraph the ECtHR relied on. In addition, following the Committee of Ministers' document, which concerns the cessation of Russia's membership to the Council of Europe as well as the cessation of Council of Europe membership in general and legal aspects of denunciation of the European Convention, highlights that

⁷⁶ Blanco, *"A Backdoor Exit from the European Convention on Human Rights"*.

⁷⁷ Ibid.

according to Article 58(3) of the European Convention, in case of cessation of membership to the Council of Europe, membership to the European Convention is ceased under the same conditions as those stipulated under Article 58 (1) and (2).⁷⁸

Understanding this legal aspect and accurate interpretation is paramount for establishing the right precedent to ensure no legal blunders that may provoke much hassle in the future. However, it is essential for Russia's case as such. In particular, if we fully agree with the stance of legal experts (if the cessation of Russia's membership to the Council of Europe had happened under Article 7 and in line with the correct interpretation of Article 58(3), denunciation would have come into effect by the end of the fiscal year, as set out in Article 7), the best-case development would have been as follows: denunciation of the European Convention would have come into effect by the end of December instead of September 16. This means that it would have been possible to lodge applications against Russia for violations of the European Convention that happened until the end of December 2022 and not only including September 16, 2022. Whereas, if we only partially agree with the stance of legal experts (given the reality that officially, Russia was excluded from the Council of Europe under Article 8 of the Statute and cessation came into effect immediately based on the decision of the Committee of Ministers) with correct interpretation of Article 58 of Convention, the worst-case outcome would have been the immediate entry into effect of denunciation of the European Convention. **Therefore, in this legal discussion, experts are mainly focused on to what extent it was possible to extend the protective shield of the European Convention. Hence, figuring out whether Russia was withdrawn or expelled is essential only through these lenses.**

Finally, whether or not the ECtHR provided an accurate interpretation of Article 58, considering the given circumstances (because expulsion from the Council of Europe took place immediately, by the decision of the Committee of Ministers, under Article 8 of the Statute of the Council of Europe), we have to acknowledge that offered interpretation, eventually brought about the best possible result in terms of human rights protection. In particular, the ECtHR's declaration that denunciation would come into effect on September 16 2022, six months after the cessation of membership, is an apparent intention of the Court to extend the Convention's protection filed as long as possible.⁷⁹

⁷⁸ Council of Europe Committee of Ministers, "CM (2022)70".

⁷⁹ "ECHR Continues to Apply for Russia Until 16 September 2022", *ECHR Blog*, 23 March 2022. <https://www.echrblog.com/2022/03/echr-continues-to-apply-for-russia.html>, Accessed: 17/11/2022.

Dealing with applications directed against Russia after the denunciation

Following the data published by the ECtHR, by the time denunciation came into effect, 17,367 cases were pending against Russia.⁸⁰ Moreover, as ECtHR declared, it has the competence to deal with applications directed against Russia on possible violations of the European Convention, provided that they occurred until denunciation came into effect (September 16 2022). Therefore, the flow of applications against Russia may not halt with denunciation coming into effect and can be prolonged by several months or years, depending on the time needed for claimants to exhaust domestic remedies.⁸¹ Considering the human rights situation in Russia, particularly the massive violations and actions it commits outside its territories, it will be unsurprising that thousands more applications will be added to the already thousands-long list of existing ones. However, it is also possible that victims refuse to lodge applications simply because it is groundless to expect Russia's current ruling regime to implement judgements of the ECtHR. Furthermore, it was already reported that the Russian government would not implement those ECtHR judgements that came into effect after March 15, 2022.⁸² Even those ECtHR judgements, which Russia pledged to enforce, will be limited by paying financial compensation only, and no other in-depth collaboration with the Committee of Ministers is expected.⁸³

Despite Russia's resistance to implementing the ECtHR judgements, the latter started to consider applications against Russia and issue judgements actively. In particular, over the next two months after denunciation (16/09/2022 – 16/11/2022), there were 151 judgements (in total, 999 applications), where in 150 cases, ECtHR found a violation of at least one article of the European Convention and only a single case turned out where the ECtHR did not find a violation of any article. Noteworthy that 95% of these judgments are delivered by the Committee, while the Chamber made only seven judgements. It is essential considering that since September 1, 2021, Committee has been delivering judgements in line with the new summary formula, which implies more laconic and focused justification, not exceeding 2,000

⁸⁰ European Court of Human Rights, "Press country profile: Russia", (last updated: September 2022). https://echr.coe.int/Documents/CP_Russia_ENG.pdf, Accessed: 17/11/2022.

⁸¹ Kanstantsin Dzehtsiarou, "The Range of Solutions to the Russian Cases Pending before the European Court of Human Rights: Between 'Business as Usual' and 'Denial of Justice'", *ECHR Blog*, 16 August 2022. <https://www.echrblog.com/2022/08/the-range-of-solutions-to-russian-cases.html>, Accessed: 17/11/2022.

⁸² "Подписаны законы о прекращении исполнения постановлений ЕСПЧ," СОВА информационно-аналитический центр, 14 июня 2022 года. <https://www.sova-center.ru/misuse/news/lawmaking/2022/06/d46432/>, Accessed: 17/11/2022.

⁸³ Dzehtsiarou, "The Range of Solutions to the Russian Cases Pending before the European Court of Human Rights: Between 'Business as Usual' and 'Denial of Justice'".

words.⁸⁴ The new formula aims to ensure rapid response to cases accumulated in the ECtHR and turns out the vital mechanism to filter cases against Russia promptly. However, the efficiency of this mechanism requires additional study, which goes beyond the scope of this paper.

However, another legal issue related to dealing with applications against Russia is that office of the Russian judge also ceased to exist. In particular, with a denunciation of the European Convention coming into effect, the office of the Russian judge was also shut down.⁸⁵ According to Article 20 of the European Convention, the Court shall consist of a number of judges equal to that of the high contracting parties. Therefore, Russian judge Mikhail Lobov, elected on January 2, 2022, cannot continue fulfilling his responsibilities. Moreover, the latter is challenging regarding pending cases against Russia, as Article 26 of the European Convention stipulates that the judge elected from the country against which the case is considered shall sit as an *ex officio* member of the Chamber and the Grand Chamber. Where such a judge is unavailable, the *ad hoc* judges are selected from the list previously submitted by Russia. However, it is less likely that those judges will agree to take part or will be allowed to participate in hearing cases.⁸⁶ Fortunately, the ECtHR can allow an exception in this case as well, similar to what it did concerning the "foreign agents" case⁸⁷ when judge Serghides, representing Cyprus, was appointed to sit as an *ad hoc* judge (in line with Rule 29 § 2 (b) of the Rules of Court) instead of the Russian judge.⁸⁸ According to the experts, allowing this exception will not be a catastrophe, although systematic deviation from normalcy may undermine the legitimacy of the Court processes.⁸⁹

Denunciation – The End?

The 24-year-long toxic relationship between Russia and the ECtHR officially ended on September 16 2022. For many, terminating this relationship was not a surprise but keeping it for so long was. Of much

⁸⁴ Council of Europe, "Annual Report 2021 of the European Court of Human Rights," *Registry of the European Court of Human Rights* (Strasbourg, 2022), 176. https://www.echr.coe.int/Documents/Annual_report_2021_ENG.pdf, Accessed: 17/11/2022.

⁸⁵ European Court of Human Rights, "Resolution Of The European Court Of Human Rights". https://echr.coe.int/Documents/Resolution_ECHR_cessation_Russia_Convention_20220916_ENG.pdf, Accessed: 17/11/2022.

⁸⁶ Dzehtsiarou, "The Range of Solutions to the Russian Cases Pending before the European Court of Human Rights: Between 'Business as Usual' and 'Denial of Justice'".

⁸⁷ *Ecodefence and others v. Russia*, nos. [9988/13 and 60 others](#), 14 June 2022.

⁸⁸ Dzehtsiarou, "The Range of Solutions to the Russian Cases Pending before the European Court of Human Rights: Between 'Business as Usual' and 'Denial of Justice'".

⁸⁹ *Ibid.*

interest is which party became more traumatized at the end of this challenging cohabitation and which will suffer more from this solution.

At the very start of answering this question, it needs to be emphasized that Russia's departure from the Convention system means leaving nearly 145 million people without an umbrella which, although often did not protect people from violation of their rights, at least many pinned their hopes to its existence.⁹⁰ These people were left without the platform where they were able to make their voices heard, where their truth used to win, albeit mostly formally, and they were able to get from the ECtHR something that often is more important than paying compensation to a specific individual or even taking other measures (individual or general) – that is recognition that their rights were violated. Therefore, human rights advocates and field experts note that with the expulsion of Russia and by denying millions of people the opportunity to protect their rights, it was not Putin that was punished, but his victims.

Moreover, as we are perfectly aware that every coin has two sides, it cannot be slipped from our attention that in light of this universal frustration, the Kremlin celebrates getting rid of the enormous burden and announces the annulment of the ban on capital punishment imposed by the Council of Europe.⁹¹ Moreover, Russia will not have to pay millions (or maybe billions) of Euros to the Council of Europe (indirectly to the ECtHR) on the one hand and those people, on the other hand, whose rights were violated by the Russian government. However, it is also possible that stopping mandatory financial contributions from Russia is not a significant loss, considering that in exchange for paying nearly 10% of the ECtHR's budget, the Court's expenses for Russia far exceeded Moscow's financial contribution.

At the same time, since Russia has always been among those countries against which the highest number (absolute level) of applications were lodged and pending,⁹² and therefore it was a significant contributor to the ECtHR's workload, it is possible that in the long run this factor will be reflected at least on the ECtHR's work's statistical figures and may lead to a significant easing of the ECtHR's workload.

⁹⁰ "Russia No Longer a Party to the ECHR as of Today", *ECHR BLOG*, 16 September 2022. <https://www.echrblog.com/2022/09/russia-no-longer-party-to-echr-as-of.html>, Accessed: 17/11/2022.

⁹¹ Shankar, "What does Russia leaving the Council of Europe mean?"

⁹² Since 2006, Russia almost always took place at top among the member states in terms of statistics of pending applications. In particular, in 2006, Russia accounted for 21.5% (19 300) of total cases, in 2007 – 20 300 (26.0%); in 2008 – 27 250 (28.0%); in 2009 – 33 550 (28.1%); in 2010 – 40 300 (28.9%); in 2011 – 40 250 (26.6%); in 2012 – 28 600 (22.3%); in 2013 – 16 800 (16.8%); in 2014 – 10 000 (14.3%); in 2015 – 9 200 (14.2%); in 2016 – 7 800 (9.8%); in 2017 – 7 750 (13.8%); in 2018 – 11 750 (20.9%); in 2019 – 15 050 (25.2%); in 2020 – 13 650 (22.0%) and in 2021 – 17 000 (24.2%).

However, this approach can also be criticised by those who believe it is impossible to speak about efficiency at the expense of the rights of individuals.⁹³

On the other hand, it is tough to speak about short-term results when it comes to efficiency. In this case, it needs to be taken into account that by the time denunciation came into effect, there were 17,367 pending cases⁹⁴ directed against Russia in the ECtHR, which require substantial time and resources of the Court. At the same time, since the ECtHR decided to accept all those applications concerning Russia's possible violation of the European Convention committed until 16 September 2022⁹⁵, thousands more applications are expected to be lodged. Therefore, the ECtHR still requires considerable resources to fully exhaust cases against Russia and ensure proper implementation of each judgement. In this light, Russia's further relationship with the ECtHR is indefinite. Currently, we know that at least the Russian government will not implement those ECtHR judgements, which came into effect after 15 March 2022.⁹⁶ Moreover, those judgments that Russia may enforce will likely be limited to paying financial compensation only, and no in-depth collaboration with the Committee of Ministers is expected.⁹⁷ This is unsurprising in light of Russia's poor track record in implementing the judgements in good faith, which was mostly restricted to paying compensations instead of taking general and systemic measures addressing the problems.⁹⁸

It is noteworthy that as early as 2019, the ECtHR gave Russia three months to pay EUR 10 million in compensation for moral damages to those 1,500 Georgian nationals collectively deported from Russia. However, the chances of implementing this and the second judgement on inter-state application against Russia were lessened after denunciation.⁹⁹ Despite numerous cases of Russia's disobedience, the

⁹³ Dimitry Kurnosov, "Russia Without Strasbourg And Strasbourg Without Russia: A Preliminary Outlook", September 20, 2022. <https://strasbourgobservers.com/2022/09/20/russia-without-strasbourg-and-strasbourg-without-russia-a-preliminary-outlook/>, Accessed: 17/11/2022.

⁹⁴ European Court of Human Rights, "Press country profile: Russia".

⁹⁵ „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“. "Convention for the Protection of Human Rights and Fundamental Freedoms", Article 58(2).

⁹⁶ "Подписаны законы о прекращении исполнения постановлений ЕСПЧ," СОВА информационно-аналитический центр, 14 июня 2022 года. <https://www.sova-center.ru/misuse/news/lawmaking/2022/06/d46432/>, Accessed: 17/11/2022.

⁹⁷ Dzehtsiarou, "The Range of Solutions to the Russian Cases Pending before the European Court of Human Rights: Between 'Business as Usual' and 'Denial of Justice'".

⁹⁸ Lize R. Glas, "The Assembly's Appeasement Towards Russia", September 27, 2018. <https://strasbourgobservers.com/2018/09/27/the-assemblys-appeasement-towards-russia/>, Accessed: 17/11/2022.

⁹⁹ Council of Europe Committee of Ministers, Interim Resolution CM/ResDH(2022)254 on Execution of the judgments of the European Court of Human Rights Georgia v. Russia (I) (adopted by the Committee of Ministers on 22 September 2022 at the 1443rd meeting of the Ministers' Deputies). https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a8353b, Accessed: 17/11/2022.

Committee of Ministers emphasized that the cessation of membership to the Council of Europe does not change the accountability of Russia to implement the ECtHR's judgements.¹⁰⁰ Therefore, the Committee of Ministers continues supervision of the enforcement of judgments and other decisions against Russia, amounting to 2,129 at the time of denunciation.¹⁰¹

Russia's non-implementation of thousands of the judgements, as well as a complete disregard of the Court, when the ECtHR spends plenty of resources to consider cases against Russia, among which most of them are considered priority cases, negatively affects the ECtHR's reputation. On top of that, there is legal and political criticism – overviewed in the preceding pages – concerning Russia's expulsion from the Council of Europe and ending the spread of ECtHR's jurisdiction over Russia (however, in this aspect, as opposed to the Council of Europe, the ECtHR did not have another option and tried to protect human rights under these circumstances as much as possible).

Analysis of a combination of all these factors, accumulated experience and existing reality (which means a complete loss of interest from Russia's incumbent regime to keep its international image at least formally), we may conclude that it was Russia (and not the ruling regime) and the ECtHR in general, most precisely the system of Convention and common aim that unites 47 nations, that were harmed in the first place. From the perspective of Russia's incumbent regime, considering certain factors, the regime's subjective view of expulsion from the Council of Europe and denunciation of the European Convention, which is perceived as a release from imposed obligations and restoration of absolute freedom of action, can be considered more of a benefit than a loss. However, despite the celebratory mood force-fed to the internal audience, it is possible to say precisely, based on the abovementioned experience, that loss is visible even for the incumbent regime because it no longer possesses the significant leverage that it used for two decades to effectively manipulate the whole system to achieve its foreign policy objectives.

¹⁰⁰ Council of Europe Committee of Ministers, Interim Resolution CM/ResDH(2022)254 on Execution of the judgments of the European Court of Human Rights Georgia v. Russia (I) (adopted by the Committee of Ministers on 22 September 2022 at the 1443rd meeting of the Ministers' Deputies). Notes: <https://hudoc.exec.coe.int/ENG#%7B%22EXECIdentifier%22:%5B%22004-14138%22%5D%7D>, Accessed: 17/11/2022.

¹⁰¹ Ibid.