

**Revue québécoise de droit international**  
**Quebec Journal of International Law**  
**Revista quebequense de derecho internacional**



## **Russia and the *European Convention* (or Court) of Human Rights: The End?**

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Special Issue, December 2020

70 ans de la *Convention européenne des droits de l'homme* : L'Europe et les droits de la personne

URI: <https://id.erudit.org/iderudit/1078537ar>

DOI: <https://doi.org/10.7202/1078537ar>

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Publisher(s)

Société québécoise de droit international

ISSN

0828-9999 (print)

2561-6994 (digital)

[Explore this journal](#)

Cite this article

Bowring, B. (2020). Russia and the *European Convention* (or Court) of Human Rights: The End? *Revue québécoise de droit international / Quebec Journal of International Law / Revista quebequense de derecho internacional*, 201–218.  
<https://doi.org/10.7202/1078537ar>

Article abstract

Russia has been a member of the Council of Europe (CoE) for 25 years, and of the *European Convention on Human Rights* (ECHR) for 22 years, which is in itself a remarkable achievement on both sides. This article asks the questions: how has this been this possible? And is the close and mostly positive relationship between Russia and the Council of Europe and the European Court of Human Rights (ECtHR) about to come to an end? In order to answer these questions, I first provide an overview of the USSR's late acknowledgment of the need for compliance in its internal affairs with UN standards, and especially the contribution of Mikhail Gorbachev. I follow this with an account of Russia's accession to the CoE and ratification of the *ECHR* under Boris Yeltsin, and a snapshot of the popularity for Russians of complaining to Strasbourg. Second, I turn to the very controversial rulings by the Constitutional Court of the Russian Federation (CCRF) and new legislation on the question of the CCRF ruling on the "impossibility" for Russia of implementing judgments of the ECtHR. Third, I analyse the controversial *Yukos* case. This was in fact the second and last until now such ruling on impossibility. Fourth, the Parliamentary Assembly of the Council of Europe imposed sanctions on Russia following the illegal annexation by Russia of Crimea. Russia seemed poised to leave or be expelled from the CoE. But in 2019 a controversial deal was done. Fifth, I ask whether President Putin's 2020 amendments to the 1993 Constitution really pose a threat to Russia's continuing relationship with the CoE and the *ECHR*.

## RUSSIA AND THE *EUROPEAN CONVENTION* (OR COURT) *OF HUMAN RIGHTS: THE END?*

Bill Bowring\*

Russia has been a member of the Council of Europe (CoE) for 25 years, and of the *European Convention on Human Rights* (ECHR) for 22 years, which is in itself a remarkable achievement on both sides. This article asks the questions: how has this been this possible? And is the close and mostly positive relationship between Russia and the Council of Europe and the European Court of Human Rights (ECtHR) about to come to an end? In order to answer these questions, I first provide an overview of the USSR's late acknowledgment of the need for compliance in its internal affairs with UN standards, and especially the contribution of Mikhail Gorbachev. I follow this with an account of Russia's accession to the CoE and ratification of the ECHR under Boris Yeltsin, and a snapshot of the popularity for Russians of complaining to Strasbourg. Second, I turn to the very controversial rulings by the Constitutional Court of the Russian Federation (CCRF) and new legislation on the question of the CCRF ruling on the "impossibility" for Russia of implementing judgments of the ECtHR. Third, I analyse the controversial *Yukos* case. This was in fact the second and last until now such ruling on impossibility. Fourth, the Parliamentary Assembly of the Council of Europe imposed sanctions on Russia following the illegal annexation by Russia of Crimea. Russia seemed poised to leave or be expelled from the CoE. But in 2019 a controversial deal was done. Fifth, I ask whether President Putin's 2020 amendments to the 1993 Constitution really pose a threat to Russia's continuing relationship with the CoE and the ECHR.

La Russie est membre du Conseil de l'Europe (CE) depuis 25 ans et de la *Convention européenne des droits de l'homme* (CEDH) depuis 22 ans, ce qui est en soi une réalisation remarquable des deux côtés. Cet article pose les questions: comment cela a-t-il été possible? La relation étroite et surtout positive entre la Russie et le Conseil de l'Europe et la Cour européenne des droits de l'homme (Cour EDH) est-elle sur le point de prendre fin? Afin de répondre à ces questions, je donne d'abord un aperçu de la reconnaissance tardive par l'URSS de la nécessité de se conformer dans ses affaires internes aux normes de l'ONU, et en particulier de la contribution de Mikhaïl Gorbatchev. Je poursuis avec un compte rendu de l'adhésion de la Russie au CE et de la ratification de la CEDH sous Boris Eltsine, ainsi qu'un aperçu de la popularité des Russes à se plaindre à Strasbourg. Deuxièmement, j'en viens aux décisions particulièrement controversées de la Cour constitutionnelle de la Fédération de Russie (CCFR) et à la nouvelle législation sur la question de la décision du CCFR sur « l'impossibilité », pour la Russie, de mettre en œuvre les arrêts de la Cour EDH. Troisièmement, j'analyse le cas controversé de *Yukos*. Il s'agissait en fait de la deuxième et dernière décision de ce genre à ce jour sur l'impossibilité. Quatrièmement, l'Assemblée parlementaire du Conseil de l'Europe a imposé des sanctions à la Russie à la suite de l'annexion illégale par la Russie de la Crimée. La Russie semblait sur le point de quitter ou d'être expulsée du CE mais, en 2019, un accord controversé a été conclu. Cinquièmement, je demande si les amendements 2020 du président Poutine à la Constitution de 1993 constituent vraiment une menace pour la relation continue de la Russie avec le CE et la CEDH.

Rusia ha sido miembro del Consejo de Europa (CE) por 25 años y de la *Convención Europea de Derechos Humanos* (CEDH) por 22 años, lo que en sí mismo es un logro notable de ambas partes. Este artículo hace las preguntas: ¿cómo fue esto posible? ¿Está a punto de terminar la estrecha y sobre todo positiva relación entre Rusia y el Consejo de Europa y la Corte Europea de Derechos Humanos (Corte EDH)? Para responder a estas preguntas, en primer lugar ofrezco una descripción general del reconocimiento tardío por parte de la URSS de la necesidad de ajustarse en sus asuntos internos a las normas de las Naciones Unidas y, en particular, a la contribución de Mijaíl Gorbachov. Continúo con un relato de la adhesión de Rusia al CE y la ratificación de la CEDH bajo Boris Yeltsin, así como un resumen de la popularidad de

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los rusos quejándose en Estrasburgo. En segundo lugar, llego a las decisiones muy controvertidas de la Corte Constitucional de la Federación de Rusia (CCFR) y la nueva legislación sobre el tema del fallo del CCFR sobre “la imposibilidad” de que Rusia ejecute las sentencias de la Corte EDH. En tercer lugar, analizo el controvertido caso *Yukos*. De hecho, fue la segunda y última sentencia de este tipo hasta la fecha sobre la imposibilidad. En cuarto lugar, la Asamblea Parlamentaria del Consejo de Europa ha impuesto sanciones a Rusia tras la anexión ilegal de Crimea por parte de Rusia. Rusia parecía estar a punto de salir o ser expulsada del CE, pero se llegó a un controvertido acuerdo en 2019. En quinto lugar, pregunto si las enmiendas de 2020 del presidente Putin a la Constitución de 1993 realmente representan una amenaza para la relación continua de Rusia con el Consejo de Europa y la *CEDH*.

Russia has been a member of the Council of Europe (CoE) for 25 years and of the *European Convention on Human Rights (ECHR)* for 22 years, which is in itself in my view a remarkable achievement on both sides.<sup>1</sup> This article asks the questions: how has this been this possible? And is the close and mostly positive relationship between Russia, the CoE and the European Court of Human Rights (ECtHR) about to come to an end?

In order to answer these questions, I first provide an overview of the Russia's Accession to the Council of Europe and Human Rights' (USSR) late acknowledgment of the need for compliance in its internal affairs with UN standards, and especially the contribution of Mikhail Gorbachev. I follow this with an account of Russia's accession to the CoE and ratification of the *ECHR* under Boris Yeltsin, and a snapshot of the popularity for Russians of complaining to Strasbourg. Second, I turn to the very controversial rulings by the Constitutional Court of the Russian Federation (CCRF) and new legislation on the question of the CCRF ruling on the "impossibility" for Russia of implementing judgments of ECtHR. Third, I analyze the controversial *Yukos* case. This was in fact the second and last until now such ruling. Fourth, the Parliamentary Assembly of the Council of Europe (PACE) imposed sanctions on Russia following the illegal annexation by Russia of Crimea. Russia seemed poised to leave or be expelled from the CoE but in 2019, a controversial deal was done. Fifth, I ask whether President Putin's 2020 amendments to the 1993 *Constitution* really pose a threat to Russia's continuing relationship with the CoE and the ECtHR.

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1 For my own contributions from 1997, see: Bill Bowring, "Russia's Accession to the Council of Europe and Human Rights: Compliance or Cross-Purposes?" (1997) 6 *European Human Rights L Rev* 628. This has been translated into Russian and appears in: Bill Bowring, "Russia's Accession to the Council of Europe and Human Rights: Compliance or Cross-Purposes?" (1998) 10 *Russian Bulletin on Human Rights* 12; Bill Bowring, "Russia's Accession to the Council of Europe and Human Rights: Four Years on" (2000) 4 *European Human Rights L Rev* 362; Bill Bowring, "Russia in a Common European Legal Space Developing Effective Remedies for the Violations of Rights by Public Bodies: Compliance with the European Convention on Human Rights" in Kaj Hober, ed, *The Uppsala Yearbook of East European Law 2004* (London: Wildy, Simmonds and Hill Publishing, 2005) at 89-116; Bill Bowring, "Tensions Multiply between Russia and Council of Europe: Could the Malaise be Terminal?" (2008) 6 *The EU-Russia Rev* 4; Bill Bowring, "Russia and Human Rights: Incompatible Opposites?" (2009) 1:2 *Göttingen J Intl L* 257; Bill Bowring, "The Russian Federation, Protocol No. 14 (and 14bis), and the Battle for the Soul of the ECHR" (2010) 2 *Goettingen J Intl Law* 589; Bill Bowring, "The Russian Federation and the Strasbourg Court: The Illegitimacy of Sovereignty?" in Katja S Ziegler, Elizabeth Wicks and Loveday Hodson, eds, *The UK and European Human Rights: A Strained Relationship?* (London: Bloomsbury, 2015) at 415-437; Bill Bowring, "Does Russia have a Human Rights Future in the Council of Europe and OSCE?" in Doutje Lettinga and Lars van Troost, eds, *Shifting Power and Human Rights Diplomacy Russia*, (Strategic Studies, 2017) at 53-63, online: <[www.academia.edu/31979697/Shifting\\_Power\\_and\\_Human\\_Rights\\_Diplomacy\\_Russia?auto\\_accept\\_coauthor=true](http://www.academia.edu/31979697/Shifting_Power_and_Human_Rights_Diplomacy_Russia?auto_accept_coauthor=true)>; Bill Bowring, "Russian Cases in the ECtHR and the Question of Implementation" in Lauri Mälksoo and Wolfgang Benedek, eds, *Russia and the European Court of Human Rights: The Strasbourg Effect* (Cambridge: Cambridge University Press, 2018) at 188; Bill Bowring, "Politics and Pragmatism: The Constitutional Court of the Russian Federation and its 20 Years of Engagement with the European Convention on Human Rights" (2018) 1:1 *East European YB on Human Rights* 5; Bill Bowring, "Russia and the Council of Europe: an Incompatible Ideology, and a Transplanted Legal Regime?" in P Sean Morris, ed, *Russian Discourses on International Law: Sociological and Philosophical Phenomenon* (Abingdon: Routledge, 2018) at 133-157; Bill Bowring, "The Crisis of the European Court of Human Rights in the Face of Authoritarian and Populist Regimes" in Avidan Kent, Nikos Skoutaris and Jamie Trinidad, eds, *The Future of International Courts: Regional, Institutional and Procedural Challenges* (Abingdon: Routledge, 2019) at 76-92.

## I. The USSR, Russia and the CoE

I first visited Russia in December 1983. Yuriy Andropov was in his last year as General Secretary of the Communist Party of the USSR. Had he lived longer, it is possible that the USSR would have followed a similar path to that taken by China still ruled by its Communist Party. But he died on 9 February 1984, followed by the lacklustre leadership of Konstantin Chernenko, who in turn died on 10 March 1985.

Mikhail Gorbachev, after a short-lived return to Leninism, began in 1986 the process which would lead to the collapse of the USSR in December 1991, with his call for a revolution in the USSR, in his speech to party officials in Vladivostok on 29 July 1986.<sup>2</sup> His book *Perestroika New Thinking for Our Country and the World* was published in November 1987 and he announced a new policy of a Common European Home in 1989.

In April 1990, a new Committee for Constitutional Supervision (CCS), conceived in 1988, started work and during 1991 brought the USSR closer to the UN human rights systems. In its ratification of the *Optional Protocol Case* (4 April 1991)<sup>3</sup>, the CCS requested the Supreme Soviet of the USSR to secure ratification by the USSR of the *First Optional Protocol to the UN International Covenant on Civil and Political Rights (ICCPR)*. On 5 July 1991, the Supreme Soviet adopted two Resolutions acceding to the *Optional Protocol* and recognizing the jurisdiction of the UN Human Rights Committee.<sup>4</sup> This was already a giant step in recognising international human rights standards. Previously there had been two pillars of Soviet international law, state sovereignty and the prohibition of interference in the internal affairs of states.<sup>5</sup>

But there was no question while the USSR still existed of joining the CoE, or, in obligatory consequence, ratifying the *ECHR*.<sup>6</sup>

### A. The Council of Europe

Russia applied to join the CoE on 7 May 1992, at a time when there were a number of progressive developments in terms of legislation and in the work of the new Constitutional Court. Despite the fact that it was then engaged in bitter internal armed conflict in Chechnya, Russia became a full member of the CoE on 28 February 1996. On

<sup>2</sup> “Excerpts from Gorbachev’s Speech”, *The New York Times* (29 July 1986), online: <[www.nytimes.com/1986/07/29/world/excerpts-from-gorbachev-s-speech.html](http://www.nytimes.com/1986/07/29/world/excerpts-from-gorbachev-s-speech.html)>; I watched this speech on TV in Krasnodar and it was clear that the assembled *apparatchiks* were aghast when Gorbachev announced: “Comrades, there will be a revolution!”.

<sup>3</sup> Office of the United Nations High Commissioner for Human Rights, *Selected Decisions of the Human Rights Committee under the Optional Protocol*, 56th to 65th Sess, Doc NU CCPR/C/OP/6 (2005).

<sup>4</sup> *Vedomosti SSSR*, 1991, No 29, item 842, 843 (Russia).

<sup>5</sup> See Lauri Mälksoo, *Russian Approaches to International Law* (Oxford: Oxford University Press, 2015); for a critique, see Bill Bowring, Book Review of *Russian Approaches to International Law* by Lauri Mälksoo, (2015) *Brit YB intl L* 85:1 at 189-193.

<sup>6</sup> Bill Bowring, “Human Rights in Russia: A Discourse of Emancipation or Just Another Mirage?” in Istvan Pogany, ed, *Human Rights in Eastern Europe* (London: Edward Elgar, 1995) at 87-110.

28 February 1998, the State Duma of the Russian Federation voted to ratify the *ECHR*. A total of 294 (65.3 per cent) deputies voted for, with only 11 (2.4 per cent) against and two (0.4 per cent) abstentions. The Federal Law of the Russian Federation (RF) "*On ratification of the ECHR*" entered into force on 30 March 1998. The *ECHR* itself entered into force for Russia on 1 November 1998.<sup>7</sup>

I had been practising at the ECtHR since 1992, mostly in cases on behalf of Kurdish applicants against Turkey.<sup>8</sup> In 2000, I applied to the European Commission for a grant to assist Russian human rights activists to take cases to the ECtHR and, in 2002, I was awarded €1 million for a partnership between the Memorial society in Moscow and its Human Rights Centre, the Bar Human Rights Committee of England and Wales and the University of North London where I was then teaching. The European Human Rights Advocacy Centre (EHRAC) was founded in 2003, in partnership with Memorial, and is still going strong.<sup>9</sup> EHRAC has assisted applicants in securing 247 judgments from the Court establishing Russian responsibility for aerial bombardments, extrajudicial killings, enforced disappearances and torture during the conflict in Chechnya.

Vladimir Putin became President of the RF in April 2001, after starting the Second Chechen War as Prime Minister in 1999, and has effectively been in power for more than 20 years. He is not a friend of human rights, to say the least. Nevertheless, as noted above, Russia has now been a member of the CoE for 24 years and of the *ECHR* for 22 years. During his period of rule, the supremacy of international law and of the *ECHR* in particular has been further strengthened by the Supreme Court of the Russian Federation (SCRF).

On 10 October 2003, the SCRF adopted a Resolution: "*On application by courts of general jurisdiction of the commonly recognized principles and norms of the international law and the international treaties of the Russian Federation.*"<sup>10</sup> This *Resolution* drafted with the participation of the justices of the CCRF and Anatolij Kovler, then Russia's judge at the ECtHR, is binding on all lower courts and contained the following with reference to the *ECHR*:

10. It is clarified to the courts that international treaties should be interpreted in accordance with the *Vienna Convention on the Law of Treaties* of 23 May, 1969 (Section 3; Articles 31-33).

In accordance with item "b" of paragraph 3 of Article 31 of the *Vienna Convention*, any subsequent practice in the application of a treaty, which establishes the agreement of the parties regarding its interpretation, should be

<sup>7</sup> It should be noted that on the same day the state Duma voted, by an even larger majority, to ratify the *European Convention for the Prevention of Torture and Inhuman and Degrading Treatment (CPT)*.

<sup>8</sup> More than once in front of Judge Jean-Paul Costa, for whom I have the highest regard, including an in-country fact-finding hearing in *Ipek and others v Turkey*, 2009 No 25760/94 and 30070/02, ECHR.

<sup>9</sup> "Russia Gross Abuses in the North Caucasus", online: *European Human Rights Advocacy Centre* <ehrac.org.uk/about-our-work/where-we-work/russia/>.

<sup>10</sup> Supreme Court of the Russian Federation, *On application by courts of general jurisdiction of the commonly recognized principles and norms of the international law and the international treaties of the Russian Federation*, Res 5 (10 October 2003), online (pdf): <www.legal-tools.org/doc/d7870e/pdf/> [Resolution].

taken into account along with its context for the purposes of interpretation of the treaty.

As a member state of the [ECHR], the Russian Federation recognizes the jurisdiction of the [ECtHR] as compulsory in issues of interpretation and application of the *Convention* and its *Protocols* in the event of presumed breach of provisions of said treaty acts by the Russian Federation, if such a breach took place after their entry into force in respect of the Russian Federation (Article 1 of Federal Law “On Ratification of the *Convention for the Protection of Human Rights and Fundamental Freedoms* and its *Protocols*”, No. 54-FZ of 30th March 1998). This is why the said *Convention* should be applied by courts with regard to the practice of the [ECtHR] in order to avoid any violation of the *Convention*.

On 27 June 2013, the SCRF passed a Ruling: “*On application of the ECHR by the courts of general jurisdiction*.”<sup>11</sup> This affirmed the principles contained in the 2003 *Resolution* and directed that the judgments of the ECtHR in cases against Russia are mandatory for Russian courts, and that judgments against other countries must be taken into account.

2. As follows from Article 46 of the *Convention*, Article 1 of [the Federal Law on Ratification], the legal positions of the European Court of Human Rights contained in the final judgments of the Court delivered in respect of the Russian Federation are obligatory for the courts.

Indeed, the ECtHR dealt with 9,238 applications concerning Russia in 2019, of which 8,793 were declared inadmissible or struck out. It delivered 198 judgments (concerning 445 applications), 186 of which found at least one violation of the *ECHR*.<sup>12</sup> Russia complies with almost all judgments in terms of payment of just satisfaction (compensation) and there are many examples of substantive implementation.

## II. Russia, the ECtHR, the Constitutional Court and “impossibility”<sup>13</sup>

Very soon after the 2013 *Resolution*, Russia was taking a rather different position.

On 14 July 2015, the CCRF handed down its *Postanovleniye (Resolution)* of 14 July 2015, No. 21-P.<sup>14</sup> This judgment resulted from a request by a group of 93

<sup>11</sup> Supreme Court of the Russian Federation, *On Application of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and Protocols thereto by Courts of General Jurisdiction*, Res 21 (27 June 2013), online: <[www.supcourt.ru/en/files/16427/](http://www.supcourt.ru/en/files/16427/)>.

<sup>12</sup> “Russia Press country profile”, online (pdf): *European Court of Human Rights* <[www.echr.coe.int/Documents/CP\\_Russia\\_ENG.pdf](http://www.echr.coe.int/Documents/CP_Russia_ENG.pdf)>.

<sup>13</sup> See Bill Bowring, “Russian cases in the ECtHR and the question of implementation” in L Mälksoo and W Benedek, eds, *Russia and the European Court of Human Rights: The Strasbourg Effect* (Cambridge: Cambridge University Press, 2018) at 188.

<sup>14</sup> “Постановление Конституционного Суда Российской Федерации от 14 июля 2015 г. N 21-П г” [*Resolution of the Constitutional Court of the Russian Federation of July 14, 2015 N 21-PG*], *Rossiiskaya Gazeta Federal Edition* n°163 (27 July 2015), online: <[rg.ru/2015/07/27/ks-dok.html](http://rg.ru/2015/07/27/ks-dok.html)>.

deputies of the State Duma as to whether a number of legislative enactments were compatible with the *Constitution*. These were Article 1 of the 1998 Law “*On Ratification of the ECHR*”; Article 32(1) and (2) of the Federal law “*On international treaties of the Russian Federation*”; and provisions of the *Civil Procedural Code*, *Arbitrazh (Commercial) Procedural Code*, *Code of Administrative Misdemeanours* and *the Criminal Procedural Code*. In the view of the deputies, these enactments were incompatible with Articles 15(1), (2) and (4), and Article 79 of the *Constitution*, since they in fact obliged Russian organs of legislative, executive and judicial power to unconditionally implement judgments of the ECtHR, even in cases where such judgments contradicted the *Constitution*.

The Court ruled that these provisions were compatible with the *Constitution* but laid the basis for the amending *Law* discussed below. The judgment, for which the Judge-Rapporteur was the Court’s Deputy Chairman Sergey Mavrin, confirmed the subsidiary nature of the Strasbourg system and the obligatory nature of Strasbourg judgments, and paid close attention not only to the provisions of the 1969 *Vienna Convention on the Law of Treaties*, but also to the case law of the German Constitutional Court (the *Gorgulu and Solange-I judgments*), the Italian Constitutional Court in its judgment of 31 May 2011 on the *Maggio v. Italy* case and its 22 October 2014 judgment following the ICJ’s *Jurisdictional Immunities of the State (2012)* case; the Austrian Constitutional Court’s judgment of 14 October 1987; and, of course, the UK Supreme Court’s judgment of 16 October 2013 following *Hirst v. UK*. State organs could apply to the Constitutional Court in a concrete case to ask whether a judgment of the ECtHR was “impossible” to implement because it contradicted the foundations of the Russian constitutional order.

The Court gave as an example the judgment in *Anchugov and Gladkov v. Russia* of 14 July 2013<sup>15</sup>, the Russian *Hirst v. UK*, on prisoners’ voting rights. In the Court’s view, to implement the judgment would mean violating a series of Articles of the *Constitution* (Article 15(1), 32(3), and 79), or adopting a new constitution.

Anna Pushkarskaya, writing on the day of the judgment in *Kommersant*, pointed out that the background to the application was the *Yukos* just satisfaction decision and expected that there would be a further application to the CCRF in respect of that decision.<sup>16</sup> However, the following day she published an interview with Sergey Mavrin in which he stated that the CCRF would always seek a compromise with Strasbourg and avoid a direct collision. The effect of an application to the CCRF in a concrete case would be to provide a breathing space.<sup>17</sup> I will turn below to some recent compromises.

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<sup>15</sup> *Anchugov and Gladkov v Russia*, 2013 No 11157/04 and 15162/05, ECHR [*Anchugov and Gladkov v Russia*].

<sup>16</sup> “Конституционный суд разрешил не исполнять решения ЕСПЧ если они противоречат Конституции РФ” [The Constitutional Court Allowed not to Execute the Decisions of the ECtHR if They Contradict the *Constitution* of the Russian Federation], *Kommersant* (14 July 2015), online: <[www.kommersant.ru/doc/2767837](http://www.kommersant.ru/doc/2767837)>.

<sup>17</sup> “КС сказал о необходимости взаимного компромисса” [The COP Spoke About the Need for a Mutual Compromise], *Kommersant* (15 July 2015), online: <[www.kommersant.ru/doc/2768367](http://www.kommersant.ru/doc/2768367)>.



On 14 December 2015, President Putin signed the *Federal Law "On enacting amendments to the Federal constitutional law on the CCRF."*<sup>18</sup> One headline on the day of signature read: "Putin approved a law permitting the non-implementation of decisions of the European Court of Human Rights."<sup>19</sup> The *Law* came into force on its publication on 15 December 2015 in the *Russian Gazette*.<sup>20</sup> It amended Article 3(3) of the *Federal Law "On the Constitutional Court"* so as to give the Court the jurisdiction to decide the question on the possibility (*vozmozhnost*) of implementing the decision of an international organ for the protection of the rights and freedoms of the person; the CCRF can declare "possibility" or "impossibility".

The word "possibility" is not defined. I now turn to its deployment in the CCRF's Resolution of 14 July 2015 in the context of the judgment of the ECtHR in *Anchugov and Gladkov v. Russia* of 14 July 2013,<sup>21</sup> the Russian *Hirst v. UK*,<sup>22</sup> and the *Yukos* judgment.

On 19 December 2015, Philip Leach and Alice Donald wrote under the headline "Russia Defies Strasbourg: Is Contagion Spreading?"<sup>23</sup> This was a reference to their article of 21 November 2013, "Hostility to the European Court and the risks of contagion,"<sup>24</sup> which focused not on Russia but on the United Kingdom's position. They quoted the former President of the European Court, Sir Nicolas Bratza, who had expressed his concern about the risks of contagion:

There is a risk of this attitude in the UK to judgments of the Court negatively impacting on other states and complaints being made of double standards [...] [which] could result in a wider refusal to implement ECtHR judgments across the Council of Europe.

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<sup>18</sup> *Federal Constitutional Law "On amendments to the Federal Constitutional Law 'On the Constitutional Court of the Russian Federation'"*, L2015, N7-FKZ.

<sup>19</sup> "Путин одобрил закон, позволяющий не исполнять решения Европейского суда по правам человека" [Putin Approved a Law Allowing Non-enforcement of Decisions of the European Court of Human Rights], *Newsru* (15 December 2015), online: <[newsru.com/russia/15dec2015/podpisal.html](http://newsru.com/russia/15dec2015/podpisal.html)>.

<sup>20</sup> "Федеральный закон от 14 декабря 2015 г. N 7-ФКЗ О внесении изменений в Федеральный конституционный закон О Конституционном Суде Российской Федерации" [Federal Law of December 14, 2015 N 7-FKZ On Amendments to the Federal Constitutional Law On the Constitutional Court of the Russian Federation], *Rossiiskaya Gazeta* n°284 (16 December 2015), online: <[www.rg.ru/2015/12/15/ks-site-dok.html](http://www.rg.ru/2015/12/15/ks-site-dok.html)>.

<sup>21</sup> *Anchugov and Gladkov v Russia*, *supra* note 15.

<sup>22</sup> *Hirst v the United Kingdom* (No 2), 2005 No 74025/01, ECHR.

<sup>23</sup> Philip Leach and Alice Donald, "Russia Defies Strasbourg: Is Contagion Spreading?" (19 December 2015), *Blog of the European Journal of International Law* (blog), online: <[www.ejiltalk.org/russia-defies-strasbourg-is-contagion-spreading/](http://www.ejiltalk.org/russia-defies-strasbourg-is-contagion-spreading/)>.

<sup>24</sup> "Hostility to the European Court and the risks of contagion – Philip Leach and Alice Donald" (21 November 2013), *UK Human Rights Blog* (blog), online: <[ukhumanrightsblog.com/2013/11/21/hostility-to-the-european-court-and-the-risks-of-contagion-philip-leach-and-alice-donald/](http://ukhumanrightsblog.com/2013/11/21/hostility-to-the-european-court-and-the-risks-of-contagion-philip-leach-and-alice-donald/)> ["Hostility to the European Court"].

And they referred to the Commissioner for Human Rights of the CoE, Nils Muižnieks, who suggested in a memorandum to Nick Gibb MP that:

[...] continued non-compliance would have far-reaching deleterious consequences; it would send a strong signal to other member states, some of which would probably follow the UK's lead and also claim that compliance with certain judgments is not possible, necessary or expedient. That would probably be the beginning of the end of the ECHR system, which is at the core of the Council of Europe.<sup>25</sup>

Their fears of “contagion” seemed to be confirmed by the new Russian law. In their view, it did not “simply concern the relationship between the Strasbourg Court and the domestic courts (reflecting, for example, the long-standing debate in the UK about the implications of Section 2 of the *Human Rights Act*).”<sup>26</sup> It went, they asserted, much further than that. It denied the enforceability of ECtHR judgments as regards the Russian state altogether, thereby purporting to extinguish the effect of Article 46 of the *ECHR*, unprecedented in the history of the European human rights regime.

The response of the CoE was more measured. On 15 December 2015, the then Secretary General of the CoE, Thorbjørn Jagland, said:

[I]t will be up to the Constitutional Court of Russia to ensure respect for the Convention if it is called upon to act under the new provisions. The Council of Europe will only be able to assess Russia's compliance with its obligations when and if a specific case arises. The compatibility of Strasbourg judgments with the national constitutions has been examined in some other member States. So far, countries have always been able to find a solution in line with the Convention. This should also be possible in Russia.<sup>27</sup>

## A. The Russian Hirst?

However, on 19 April 2016, the CCRF rendered a judgment<sup>28</sup> in which it examined the question of the possibility of executing the judgment of the ECtHR of 4 July 2013 in the case of *Anchugov and Gladkov v. Russia* in accordance with the *RF Constitution*.<sup>29</sup>

<sup>25</sup> Council of Europe, PA, *Memorandum of the Commissioner of Human Rights*, (2013) at 3, online: <rm.coe.int/16806db5c2>.

<sup>26</sup> “Hostility to the European Court”, *supra* note 24.

<sup>27</sup> “Russia's new law on the Constitutional Court. Jagland: 'a solution should be possible'” (15 December 2015), online: *Council of Europe* <www.coe.int/da/web/portal/news-2015/-/asset\_publisher/9k8wkRrYhB8C/content/russia-s-new-law-on-the-constitutional-court-jagland-a-solution-should-be-possible>.

<sup>28</sup> European Commission for Democracy through Law, Judgment No 12-II/2016 (19 April 2016), online: *Council of Europe* <www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)033-e>.

<sup>29</sup> Marina Aksénova, “Anchugov and Gladkov is not Enforceable: the Russian Constitutional Court Opines in its First ECtHR Implementation Case” (25 April 2016), online (blog): *OpinioJuris* <opiniojuris.org/2016/04/25/anchugov-and-gladkov-is-not-enforceable-the-russian-constitutional-court-opines-in-its-first-ecthr-implementation-case/>.

There were *amicus curiae* briefs before the CCRF arguing that the problem could be resolved by interpreting the *RF Constitution*, rather than seeking to amend it, which the CCRF cannot do. The CCRF, with three powerful dissents, disagreed and held that in 1998, when Russia ratified the *ECHR*, there was no case law under Article 3 of *Protocol 1* (right to democratic elections) prohibiting a “blanket ban” on prisoners’ voting. Otherwise, ratification would have contradicted the *RF Constitution*. However, the CCRF suggested that, by an amendment to the criminal law, persons detained in Russian “open prison” correctional colonies could be reclassified so that they do not fall within Article 32(2) of the *RF Constitution*. If this was done, Russia would in effect implement the ECtHR’s judgment. The CCRF emphasized the priority of international law, especially the *ECHR*, over Russian domestic law, while insisting that it is the final judge on issues concerning the *RF Constitution*.<sup>30</sup>

Indeed, the pragmatism of the CCRF prevailed and, on 25 September 2019, the Committee of Ministers (CM) of the CoE, which pursuant to Article 46(2) of the *ECHR* supervises the execution of judgments of the ECtHR, adopted a final resolution<sup>31</sup>, which closed the supervision of *Anchugov and Gladkov v. Russia*.<sup>32</sup> The closure of the case means that Russia, taking the advice of the CCRF, has complied with the ECtHR’s judgment, according to the CM’s assessment. According to the *Final Action Report on Execution of the Judgments of the European Court of Human Rights Under Application*<sup>33</sup> submitted by the Russian authorities on 27 June 2019, the judgment was executed through the introduction to the *Russian Criminal Code* of a new category of criminal punishment—“community work” (translation provided in the Action Report).<sup>34</sup> The Action Report further explained that such punishment is carried out through “placement in correctional centers for community work and may be imposed for committing a small or medium gravity offence or in case of a grave offence is committed for the first time.” These persons would have the right to vote and, in this way, Russia was able to comply with the ECtHR’s judgment.

<sup>30</sup> See Julia Haak, “Constitutional Court of the Russian Federation, Decision from 19 April 2016, No. 12-P/16. An Assessment from a German Point of View” (2017) 6 *J of Siberian Federal U Humanities & Social Sciences* 845.

<sup>31</sup> Committee of Ministers, *Execution of the judgments of the European Court of Human Rights Two cases against Russian Federation*, CM/Res DH (2019) 240.

<sup>32</sup> Ausra Padskocimaite and Gleb Bogush, “Case Closed, but what about the Execution of the Judgment? The closure of Anchugov and Gladkov v. Russia” (30 October 2019), online (blog): *Blog of the European Journal of International Law* <[www.ejiltalk.org/case-closed-but-what-about-the-execution-of-the-judgment-the-closure-of-anchugov-and-gladkov-v-russia/](http://www.ejiltalk.org/case-closed-but-what-about-the-execution-of-the-judgment-the-closure-of-anchugov-and-gladkov-v-russia/)>.

<sup>33</sup> Council of Europe, Secretariat of the Committee of Ministers, 1335th Sess, *Final Action Report on Execution of the Judgments of the European Court of Human Rights Under Application*, (23-25 September 2019).

<sup>34</sup> Article 53.1. Forced labor, *Criminal Code of the Russian Federation*, N 63-FZ, 1996, online: <[www.consultant.ru/document/cons\\_doc\\_LAW\\_10699/fbf561e8e76ded47846e0b625229d7933bbcc93a/](http://www.consultant.ru/document/cons_doc_LAW_10699/fbf561e8e76ded47846e0b625229d7933bbcc93a/)>.

## B. The ECtHR Seeks to Maintain Good Relations with Russia

The ECtHR had in any event attempted to maintain good relations with Russia. On 6 December 2016, it was reported that the IX Congress of Judges of the RF had been addressed by Guido Raimondi, the then president of the ECtHR.<sup>35</sup> According to the report, he was careful to sidestep difficult issues and praised the Russian authorities for the fact that they were implementing the decisions of the ECtHR. He approvingly observed that Russia was no longer the main source of complaints to the Strasbourg Court. Mr. Raimondi also praised the practice of reversing sentences in connection with violations of Article 6 of the *ECHR* on the right to a fair trial. And in the work of the CCRF, he was attracted by the way in which it interwove the practice of the ECtHR in its decisions.

As to the problems in relations between Russia and the ECtHR, he preferred to pass them by, preferring to “look at the picture as a whole.” He did not mention, for example, that on 15 December the Russian Constitutional Court was to consider the question of the possibility of implementing the judgment of the ECtHR as to paying €1.8 billion to the former shareholders of Yukos. In fact, the question of noncompliance with this judgment was soon to be considered by the CM.<sup>36</sup> Also, he did not call to mind that, on 16 November 2016, the RF Supreme Court had overturned the sentence in the *Kirovles* case concerning the opposition leader and fighter against corruption, Aleksei Navalny.<sup>37</sup> Mr. Navalny did not agree with the RF Supreme Court’s decision that there must be a retrial, considering that the ECtHR had ruled that there was no criminal element in his activities.<sup>38</sup>

<sup>35</sup> Vladimir Bagaev, “Председатель ЕСПЧ похвалил Россию за исполнение решений суда // Открытие девятого Съезда судей прошло оптимистично” [The President of the ECtHR Praised Russia for the Execution of the Court Decisions; The opening of the Ninth Congress of Judges was optimistic], *Zakon.ru* (6 December 2016), online:

<[zakon.ru/discussion/2016/12/06/predsedatel\\_espch\\_pohvalil\\_rossiyu\\_za\\_ispolnenie\\_reshenij\\_suda\\_otkrytie\\_devyatogo\\_sezda\\_sudej\\_prosh](http://zakon.ru/discussion/2016/12/06/predsedatel_espch_pohvalil_rossiyu_za_ispolnenie_reshenij_suda_otkrytie_devyatogo_sezda_sudej_prosh)>.

<sup>36</sup> “Европа вернулась к делу ЮКОСа В КС поступили отзывы независимых экспертов” [Europe Returned to the Yukos Case; The Constitutional Court received feedback from independent experts], *Kommersant* (6 December 2016), online: <[www.kommersant.ru/doc/3162703](http://www.kommersant.ru/doc/3162703)>.

<sup>37</sup> Gulnara Ismagilova, “Президиум ВС отправил дело «Кировлеса» на новое рассмотрение // Решение ЕСПЧ не исполнено, считает Алексей Навальный” [The Presidium of the Supreme Court Sent the Kirovles Case for a New Consideration; The Decision of the ECtHR Was Not Executed, Says Alexei Navalny], *Zakon.ru* (16 November 2016), online: <[zakon.ru/discussion/2016/11/16/prezidium\\_vs\\_otpravil\\_delo\\_kirovlesa\\_na\\_novoe\\_rassmotrenie\\_posle\\_resheniya\\_espch\\_o\\_narushenii\\_prav](http://zakon.ru/discussion/2016/11/16/prezidium_vs_otpravil_delo_kirovlesa_na_novoe_rassmotrenie_posle_resheniya_espch_o_narushenii_prav)>.

<sup>38</sup> *Navalnyy and Ofitserov v Russia*, 2016 No 46632/13 and 28671/14, ECHR; the Russian courts had found the applicants guilty of acts indistinguishable from regular commercial activities. In other words, the criminal law had been arbitrarily construed to the applicants’ detriment. The courts had failed to address Mr. Navalny’s arguable allegation that the reasons for his prosecution were his political activities.

### III. The *Yukos* Case – Had Russia Finally Decided against Strasbourg?

The long-awaited judgment in the *Yukos* case was delivered on 19 January 2017.<sup>39</sup> Once again, the Court was furnished with, and accepted for consideration, expert *amicus curiae* briefs. On 30 November 2016, Kanstantsin Dzehtsiarou of Liverpool University and Maxim Timofeyev of the European Humanitarian University in Vilnius submitted their eighteen-page *amicus* brief<sup>40</sup>, and, on 7 December 2016, the Institute for Law and Public Policy provided a closely argued thirty-three-page brief, drafted by the young advocate Grigoriy Vaipan<sup>41</sup>, arguing against a finding of “impossibility”, both briefs warning of damage to the reputation and authority of the CCRF.<sup>42</sup>

In his dissenting opinion, Judge Yaroslavtsev argued that the judgment of the CCRF contradicted the principle of legality and by taking on the function of a legislator exceeded its competence.<sup>43</sup> Judge Aranovskiy concluded: “But taking the judgment as a whole, the court does not find a correct basis for its decision, and, shifting its coordinates, loses itself in a general series of political, administrative and financial considerations, which are not equal to legal reasoning.”

On 21 January 2017, the co-rapporteurs of the Monitoring Committee for the Russian Federation of PACE expressed their deep concern at the CCRF judgment.<sup>44</sup> They reiterated that the full implementation of the judgments of the ECtHR is a legal commitment to which Russia has subscribed under the *ECHR*. They added:

Unconditionally honouring the Convention is an obligation incumbent on all member States and it is therefore unacceptable that Russia would not enforce a judgment of the European Court of Human Rights. The Russian authorities should therefore consider implementing the recommendation of the Venice Commission of the Council of Europe that the authorities consider revising

<sup>39</sup> See Maria Golubkova, “КС РФ вынес решение по делу ЮКОСа” [The RF Constitutional Court Ruled on the Yukos Case], *Rossiyskaya Gazeta Federal Edition* 12 (19 January 2017) online: <rg.ru/2017/01/19/reg-szfo/konstitucionnyj-sud-rf-vynes-reshenie-po-delu-iukosa.html> [Maria Golubkova]; text of the judgment with the two dissenting judgments, online (pdf): <doc.ksrf.ru/decision/KSRFDecision258613.pdf>.

<sup>40</sup> This is to be found on the website of the Constitutional Court of the Russian Federation, online : <www.ksrf.ru/ru/Sessions/Documents/Yukos\_Zaklyucheniye\_30\_11\_2016.pdf>.

<sup>41</sup> A member of the Russian team from Moscow State University which became World Champion in March 2012 in the final in Washington DC of the Jessup International Law Moot Court Competition, see Study in Russia. Study in Moscow, “MSU team wins Jessup International Law Moot Court Competition” (31 March 2012), *Study in Russia. Study in Moscow*, online: Facebook <www.facebook.com/StudyInRussiaStudyInMoscow/photos/msu-team-wins-jessup-international-law-moot-court-competitionmoscow-state-univer/263034803802841/>.

<sup>42</sup> “*Amicus curiae* on the case of the oil company “Yukos” vs. Russia”, (7 December 2016), online : *Institute for Law and Public Policy* <http://arc.ilpp.ru/netcat\_files/userfiles/Litigation\_Treinings/Amicus/8\_YUKOS\_Amicus%20Curiae%20Brief\_07-12-2016.pdf>.

<sup>43</sup> See Anna Pushkarskaya, “В деле ЮКОСа появилось особое мнение” [Dissenting opinion appeared in Yukos case], *Kommersant* (24 January 2017), online: <www.kommersant.ru/doc/3200196>.

<sup>44</sup> Parliamentary Assembly, Council of Europe, News Release, “PACE Rapporteurs express deep concern at Russian Constitutional Court decision”, (21 February 2017), online: *Parliamentary Assembly* <www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6484&lang=2&cat=9>.

the constitutional provisions at odds with the implementation of the ECtHR judgment. One cannot accept a selective implementation of the ECtHR's judgments.

As Maxim Timofeyev, the coauthor of one of the *amicus* briefs, commented on 26 January 2017,<sup>45</sup> this was the first time the apex court of a CoE member state had concluded that it should not pay just satisfaction. He summarized three main reasons given by the CCRF for its decision.

Firstly, the CCRF noted that both the prosecution of the company for tax evasion and subsequent enforcement proceedings were based on legal provisions that it earlier had found to be in compliance with the *Russian Constitution*. Secondly, the CCRF relied on the historical context of the 1990s, the “economic uncertainty,” and the fact that the Russian state was seeking to take special measures to defeat the tax avoidance strategies of Yukos and to pay for social welfare. If the government had decided to apply the statutory time-bar in the *Yukos* case, it would have acted in contradiction with the *Constitution*, which requires the state to ensure the payment of taxes by every person as required by the principles of equality and fairness. Thirdly, the CCRF emphasized that Yukos was acting in bad faith by using tax avoidance schemes. Yukos should have foreseen the government's actions. Thus, payment of just compensation from the Russian budget to the shareholders of a company that was involved in vast tax avoiding activities would be contrary to the constitutional principles of equality and fairness.

On this reasoning, execution of the ECtHR judgment on just satisfaction was not possible. In Timofeyev's view, this judgment only deepened the distance between Russia and Strasbourg and increased the chances of escalating the confrontation even farther.

The response of the ECtHR has so far been more muted. On 26 January 2017, Mr. Raimondi addressed the annual press conference of the ECtHR and answered a question concerning the *Yukos* judgment of the CCRF. His answer has not been published by the court but can be seen and heard on the Court's website.<sup>46</sup> Mr. Raimondi made the point that enforcement of judgments is not a matter for the ECtHR, but for the CM, which had the *Yukos* case under review. His remarks were greeted with enthusiasm by Russia. The official Russian news agency *TASS* announced that “Strasbourg court chief says Russia fulfils 95% of court's rulings. Russia's judicial authorities generally demonstrate their full readiness for cooperation with the Strasbourg court, the *ECHR* president said.”<sup>47</sup>

<sup>45</sup> Maxim Timofeev, “Money Makes the Court Go Round: The Russian Constitutional Court's Yukos Judgment” (26 January 2017), online (blog): *Verfassungsblog* <verfassungsblog.de/money-makes-the-court-go-round-the-russian-constitutional-courts-yukos-judgment/>.

<sup>46</sup> “Annual Press Conference of the European Court of Human Rights” (26 January 2017), online (video): *European Court of Human Rights* <vodmanager.coe.int/cedh/webcast/cedh/2017-01-26-1/lang>.

<sup>47</sup> “Strasbourg court chief says Russia fulfils 95% of court's rulings”, *Tass* (26 January 2017), online: <tass.com/world/927460>; for a different point of view, see “В 2016 году в ЕСПЧ Россия вышла в лидеры” [In 2016, Russia Took the Lead in the ECHR], *Kommersant* (26 January 2017), online: <www.kommersant.ru/doc/3202083>.

TASS quoted Mr. Raimondi as follows:

Very much positive can be said about relations with the Russian Federation. The Court has excellent relations with the Russian judicial authorities. [...] I made a visit to Russia in late 2016 and held quite fruitful negotiations, in particular, with Chairman of the Supreme Court Mr. Lebedev and Chairman of the Constitutional Court Mr. [Valery] Zorkin. [...] They have big willpower to cooperate with the ECHR and with the Council of Europe as a whole. We could state with Chairman Lebedev that the Supreme Court is carrying out excellent work for preparing judges and we know that Russia has a large judge corps, which depends on the Supreme Court's preparation programs. [...] In most cases, up to 95% of our court's decisions are fulfilled duly in Russia and this is a positive aspect in Russia's relations with the ECHR.<sup>48</sup>

Russia did not seek to appeal the *Yukos* judgment of the ECtHR to the Grand Chamber and some years have passed.<sup>49</sup> Russia has agreed to pay some costs and expenses, but still refuses to pay the just satisfaction ordered. On 22 February 2019, the applicants submitted a strongly worded protest at failure to enforce the judgment.<sup>50</sup> No more has been heard from the ECtHR or the CM.

#### IV. The Illegal Annexation of Crimea<sup>51</sup> and PACE Sanctions on Russia

Sanctions were imposed on Russia and on a large number of Russian officials and businessmen, following inter alia the annexation of Crimea in March 2014.<sup>52</sup> This led to very serious economic costs to Russia.<sup>53</sup>

But even more painful for Russia were the sanctions imposed by the CoE. In April 2014, after the Russian parliament's backing for the occupation of Crimea and Russian military intervention in Ukraine, PACE decided to suspend the Russian delegation's voting rights as well as the right of Russian members to be represented

<sup>48</sup> *Ibid.*

<sup>49</sup> Iryna Marchuk and Marina Aksenova, "The Tale of Yukos and of the Russian Constitutional Court's Rebellion against the European Court of Human Rights" (2017), online: *Associazione Italiana dei Costituzionalisti* <[www.osservatorioaic.it/it/osservatorio/ultimi-contributi-pubblicati/iryna-marchuk/the-tale-of-yukos-and-of-the-russian-constitutional-court-s-rebellion-against-the-european-court-of-human-rights](http://www.osservatorioaic.it/it/osservatorio/ultimi-contributi-pubblicati/iryna-marchuk/the-tale-of-yukos-and-of-the-russian-constitutional-court-s-rebellion-against-the-european-court-of-human-rights)>.

<sup>50</sup> Secretariat of the Committee of Ministers, *Communication from the applicant in the case of Oao Neftyanaya Kompaniya Yukos v. Russian Federation* (No 14902/04), 134<sup>th</sup> meeting, DH-DD (2019)186.

<sup>51</sup> See Bill Bowring, "Who Are the "Crimea People" or "People of Crimea"? The Fate of the Crimean Tatars, Russia's Legal Justification for Annexation, and Pandora's Box", in Sergey Sayapin and Evhen Tsybulenko, eds, *The Use of Force against Ukraine and International Law Jus Ad Bellum, Jus In Bello, Jus Post Bellum*, 1st ed (The Hague: T.M.C. Asser Press, 2018) at 21-40.

<sup>52</sup> The sanctions were imposed by the United States, the European Union and other countries and international organisations against Russian individuals, businesses and officials.

<sup>53</sup> Leonid Bershidsky, "Five Years Later, Putin Is Paying for Crimea" (16 March 2019), online: *Bloomberg Opinion* <[www.bloomberg.com/opinion/articles/2019-03-16/russia-s-annexation-of-crimea-5-years-ago-has-cost-putin-dearly](http://www.bloomberg.com/opinion/articles/2019-03-16/russia-s-annexation-of-crimea-5-years-ago-has-cost-putin-dearly)>.

in PACE's leading bodies and to participate in election observation missions. However, the Russian delegation remained members of PACE. The sanction applied throughout the remainder of the 2014 session and was renewed for a full year in January 2015, lapsing in January 2016. The sanction applied only to Russian parliamentarians in PACE, the CoE's parliamentary body and Russia continued to be a full member of the CoE as a whole.

In response, the Russian parliamentary delegation suspended its co-operation with PACE in June 2014, and in January 2016 - despite the lapsing of the sanctions - the Russian parliament decided not to submit its delegation's credentials for ratification, effectively leaving its seats empty. It did so again in January 2017, January 2018 and January 2019.

On 30 June 2017, the Russian Foreign Minister, Mr. Lavrov announced that Russia was cancelling its annual subscription payment to the CoE after claiming its 18 delegates to PACE were being "persecuted" in response to the annexation of Crimea. A Foreign Ministry statement said Moscow's contribution for 2017 was being withheld in response to a "rampant campaign [...] launched to persecute [Russian] parliamentarians". No future payments will be made until the rights of the Russian delegation to PACE "are fully restored", it added.<sup>54</sup>

Some kind of deal was done, though the details are obscure. On 17 May 2019, the CM, meeting in Helsinki, voted overwhelmingly in favour of a declaration that said "all member states should be entitled to participate on an equal basis" in the CoE's CM and PACE. This decision was condemned strongly by Ukraine.<sup>55</sup> Dmytro Kuleba, Ukraine's representative at the CoE, said: "This is not diplomacy, this is a surrender." According to his tweet<sup>56</sup> on the same occasion, five other countries opposed the decision, so the fight to keep Russia out of the Parliamentary Assembly was not over. And Vyacheslav Volodin, speaker of the Russian State Duma, also expressed caution.<sup>57</sup>

Next, on 26 June 2019, PACE members voted for a resolution in support of three key regulatory norms stipulating that the "rights to vote, speak and be represented

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<sup>54</sup> Tom Batchelor, "Russia cancels payment to Council of Europe after claiming its delegates are being persecuted over Crimea", *Independent* (30 June 2017), online: <[www.independent.co.uk/news/world/europe/russia-cancels-council-europe-payment-members-persecuted-a7816951.html](http://www.independent.co.uk/news/world/europe/russia-cancels-council-europe-payment-members-persecuted-a7816951.html)>.

<sup>55</sup> Jennifer Rankin, "Council of Europe votes to maintain Russia's membership", *The Guardian* (17 May 2019), online: <[www.theguardian.com/world/2019/may/17/council-of-europe-votes-to-maintain-russia-membership-crimea](http://www.theguardian.com/world/2019/may/17/council-of-europe-votes-to-maintain-russia-membership-crimea)>.

<sup>56</sup> Dmytro Kuleba, "Україна і 5 інших держав проголосували проти цього рішення під час ухвалення проекту на рівні послів. Це суперечливе за змістом і ганебне за контекстом рішення. Консенсусу щодо нього в Комітеті міністрів немає. Боротьба триватиме в ПАРС на рівні депутатів" [Ukraine and the 5 other powers voted against the decision before the hour of praising the project on the level of last. It is super-verbose in the context of the solution and not in the context of the decision. Consensus is common in the Committee of Ministries. Fighting trivetime in the PARC at the level of deputies.] (17 mai 2019 at 4:41), online: *Twitter* <[twitter.com/DmytroKuleba/status/1129306035943071744](https://twitter.com/DmytroKuleba/status/1129306035943071744)>.

<sup>57</sup> "Russian delegation will study all risks before deciding to return to PACE – lawmaker", *Tass* (18 May 2019), online: <[tass.com/politics/1058908](http://tass.com/politics/1058908)>.



in the Assembly and its bodies cannot be suspended or revoked or withdrawn in the context of a challenge to or reconsideration of credentials."<sup>58</sup> The following day, all powers of the Russian delegation were confirmed in full and without any exemptions. After that the Russian delegates rejoined the PACE activities as full-fledged participants.

Proposals by Ukraine to impose further limitations on Russian participation were rejected. PACE adopted recommendations that Russia should implement, including: releasing the 24 detained Ukrainian sailors; and immediate payment of all financial contributions to the CoE. PACE also requested "Russia's full co-operation with the investigations of the shooting down of Malaysian Airlines' flight MH17 and the murder of Boris Nemtsov, and urged vigorous measures to prevent violations of the human rights of lesbians, gays, bisexuals, transgender and intersex people, especially in Chechnya."<sup>59</sup>

On 2 July 2019, it emerged that Russia had paid its subscription to the CoE's budget for 2019. Lize Glas commented in a blog entitled "Russia left, threatened and won: Its return to the Assembly without sanctions."<sup>60</sup> She continued:

Russia has won. The Assembly has not only lost this fight, but also part of its credibility by permitting Russia to return without attaching any 'internal sanctions'. As can be inferred from the debate and the report of the Monitoring Committee, the Assembly was prepared to make this 'concession', not only because Russia threatened to leave the Council of Europe, which would be a major blow to the Russian population of about 145 million people<sup>61</sup>, but also because non-payment of the Russian contribution to the Organisation's budget would cause considerable difficulties for the Council of Europe. Therefore, one cannot help but wonder whether the Assembly would have taken a more principled stance, had the State in question been a State with a lower membership fee and, therefore, with less leverage (a third of the member States pays contributions that do not even cover the costs of a judge to the Court, an administrative officer and an assistant working full time).

On 29 August 2019, the Russian Prime Minister, Dmitry Medvedev, signed a decree ordering that Russia should additionally pay its debts to the CoE for 2017-2018.

<sup>58</sup> Council of Europe, PA, *PACE affirms its members' rights 'to vote, to speak and to be represented in the Assembly and its bodies'*, (2019), online: *Council of Europe* <[www.coe.int/en/web/portal/-/pace-affirms-its-members-rights-to-vote-to-speak-and-to-be-represented-in-the-assembly-and-its-bodies-](http://www.coe.int/en/web/portal/-/pace-affirms-its-members-rights-to-vote-to-speak-and-to-be-represented-in-the-assembly-and-its-bodies-)>.

<sup>59</sup> Pavel Antonov and Ksenia Vakhrusheva, "Russia's return to the Parliamentary Assembly of the Council of Europe: Diplomacy or defeat?", *Global Voices* (24 September 2019), online: <[globalvoices.org/2019/09/24/russias-return-to-the-parliamentary-assembly-of-the-council-of-europe-diplomacy-or-defeat/](http://globalvoices.org/2019/09/24/russias-return-to-the-parliamentary-assembly-of-the-council-of-europe-diplomacy-or-defeat/)>.

<sup>60</sup> Lize R Glas, "Russia left, threatened and won: Its return to the Assembly without sanctions" (2 July 2019), online (blog): *Strasbourg Observers* <[strasbourgobservers.com/2019/07/02/russia-left-threatened-and-has-won-its-return-to-the-assembly-without-sanctions/](http://strasbourgobservers.com/2019/07/02/russia-left-threatened-and-has-won-its-return-to-the-assembly-without-sanctions/)>.

<sup>61</sup> Memorandum by Russian human rights defenders, *Addressing the Crisis in Relations Between the Council of Europe and Russia: Uphold the Values and Fulfil the Mission to Protect Rights Across all of Europe* (November 2018), online (pdf): *Netherlands Helsinki Committee* <[www.nhc.nl/assets/uploads/2018/12/Memorandum-on-Russia-and-CoE\\_November\\_2018\\_eng\\_signatures-as-of-30.11.18.pdf](http://www.nhc.nl/assets/uploads/2018/12/Memorandum-on-Russia-and-CoE_November_2018_eng_signatures-as-of-30.11.18.pdf)>.

This payment amounted to €54.6 million at the expense of the Federal budget.<sup>62</sup> President Macron of France gave his full support to Russia's return. At the PACE session in October, he said: "I fully support the choice made in favor of letting Russia stay in the Council of Europe, because I am certain that the Russian people are close to European humanism. They participated in creating this humanism themselves."<sup>63</sup> The EU is therefore split on the question of Russia.

Thus, Russia had indeed won and the nature of the deal which had been done is still not clear. Russia is still in illegal occupation of Crimea and has not complied with the other PACE recommendations.

## V. *Constitutional Amendments in 2020*

*Amendments to the Constitution of the RF*<sup>64</sup> were proposed by President Putin in his message to the Federal Assembly on 15 January 2020<sup>65</sup> and adopted as the *Law on Amendment No.1-FKZ "On improving regulation of certain issues of the organisation and functioning of public authorities"* dated 14 March 2020.<sup>66</sup> On 16 March 2020, the CCRF ruled that the proposals were in accordance with the *Constitution*.<sup>67</sup> A total of 206 amendments were proposed to the *Constitution* and all of them were submitted to the so-called all-Russian vote as a package. This was a "referendum" held in conditions of pandemic from 25 June to 1 July 2020, in accordance with Article 2 of the *Law "On Amendments to the Constitution."* The referendum is legally referred to as an "All-Russian vote" (Russian: *общероссийское голосование*, romanized: *obshcherossiyskoye golosovaniye*), for it was not held in accordance with the *Federal Constitutional Law "On the Referendum."*<sup>68</sup>

The amendments received public support, and, on 3 July 2020, Mr. Putin signed a decree on their entering into force the following day.

On 8 April 2020, Yulia Khalikova of the University of Bremen published an article on the *Riddle* website entitled "Russia's cat and mouse game with international courts."<sup>69</sup> She pointed out that Article 79 of the amended *Constitution* will now stipulate

<sup>62</sup> "Council of Europe confirms debt payment by Russia", *Tass* (4 September 2019), online: <tass.com/economy/1076413>.

<sup>63</sup> "Macron declares full support for Russian delegation's work in Council of Europe, PACE", *Tass* (1 October 2019), online: <tass.com/world/1080748>.

<sup>64</sup> William Partlett, "Russia's 2020 Constitutional Amendments: A Comparative Perspective" (2020) 887 *U of Melbourne Leg Studies Research*, online: <papers.ssrn.com/sol3/papers.cfm?abstract\_id=3625390>.

<sup>65</sup> "Послание Президента Федеральному Собранию" [Message from the President to the Federal Assembly], *Kremlin.ru* (15 January 2015), online: <kremlin.ru/events/president/news/62582>.

<sup>66</sup> *Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation of March 14 2020*, N 1-FKZ, online: <www.consultant.ru/document/cons\_doc\_LAW\_346019/>.

<sup>67</sup> Maria Golubkova, *supra* note 39.

<sup>68</sup> Olga Sadovskaya, "The New Russian Constitution as a Pandora's Box", online: *EU-Russia Civil Society Forum* <eu-russia-csf.org/the-new-russian-constitution-as-a-pandoras-box/>.

<sup>69</sup> Yulia Khalikova, "Russia's cat and mouse game with international courts" (8 April 2020), online: *Riddle* <www.ridl.io/en/russia-s-cat-and-mouse-game-with-international-courts/>.

that decisions made by international institutions are not enforceable in Russia if their legal interpretation is contrary to the *Constitution*. Secondly, the powers of the CCRF will be expanded: the amended Section Five of Article 125 of the *Constitution* gives it jurisdiction to consider such cases. Thus, the CCRF will hear cases on the possibility of enforcing rulings made by international or foreign courts, including international arbitrations, if they are deemed contrary to the principles of public order.

According to Article 15 (4) of the 1993 *Constitution*, international law already has priority over Russian law. However, according to Article 79 there are two conditions under which Russia cannot take part in the activities of international organisations: if doing so leads to a restriction of human rights and freedoms and if it contradicts the fundamental principles of the country's constitutional system. These restrictions will now affect all actions undertaken on the basis of international treaties ratified by Russia. Furthermore, the restriction on "decisions contrary to the principles of public order" establishes an additional basis for failing to comply with decisions of international courts. At the same time, it will be the task of the CCRF to clarify what exactly these principles are.

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The *ECHR* and the case law of the ECtHR are now deeply embedded in the Russian constitutional and legal systems. Very many judgments of the CCRF are replete with references to and citations from ECtHR judgments. Valery Zorkin, Chairman of the CCRF and Vyacheslav Lebedev Chairman of the SCRF, have made it clear that there is one court which is superior to them, the Strasbourg Court. As I have shown, the Secretary General of the CoE and the President of the ECtHR are frequent visitors to Moscow and St Petersburg, and it is more than apparent that Russia wants to stay in and that the CoE is equally anxious for Russia to stay. Many observers said that the crisis over PACE representation would lead either to Russia leaving or to its expulsion. But Russia won. The chances are that despite everything, Russia will, to the great advantage of those within its jurisdiction, for whom the ECtHR is indeed a final court of appeal, remain a member of the international institution it joined in 1996.