

THE EXCLUSION OF RUSSIA FROM COUNCIL OF EUROPE: INITIAL REFLECTIONS ON THE EFFECTS

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ABSTRACT

The new situation related to Russia's aggression against Ukraine led to Russia's exclusion from the Council of Europe and the European regional human rights protection system in March 2022. This article aims to examine the legal and political consequences of the Russian Federation's exclusion from the Council of Europe and the European human rights protection system. The research objective was achieved through the analysis of normative acts (hard law, soft law) of the Council, a review of domestic and foreign literature, and the analysis of statistical data provided by the Council and the European Court of Human Rights.

The article seeks to answer the following research questions: 1. What are the actual and potential consequences of excluding Russia from the Council for both Russia and other member states?, 2. What impact will Russia's exclusion from the Council of Europe and the European human rights protection system have on the citizens of Russia and those under its jurisdiction?

Membership in the Council of Europe entails mandatory participation in the European human rights protection system, based on the European Convention on Human Rights and the European Court of Human Rights. The primary consequences of Russia's exclusion from the Council are: 1. exclusion from the family of European states, 2. denunciation of the Convention and other agreements adopted within the organisation, and 3. the inability to file individual and interstate complaints against Russia.

Keywords: Council of Europe, Russia, human rights

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INTRODUCTION

This article aims to identify and provide an initial analysis of the effects of Russia's exclusion from the Council of Europe (CoE, the Council). The consequences of this event will vary for Russia and other member states. The paper outlines the origins and development of the organisation, followed by a discussion of the European regional human rights protection system and issues related to membership in the Council of Europe. Thus, the consequences of the Russian Federation's exclusion are examined.

Russia's exclusion from the Council and the European human rights protection system resulted from its unjustified aggression against Ukraine. This conflict, which should be termed a war, contravenes not only the European Convention on Human Rights (Convention, ECHR), but also international law. R. Bierzanek and J. Symonides accurately define 'war' as 'a state of armed struggle between states and as a counterpoint to a state of peace'.¹ Every war inevitably leads to violations of certain aspects of human life. The actions of the Russian military constitute a blatant violation of human rights. The concept of human rights is inherently ambiguous due to the multitude of perspectives in this field. It can be assumed that human rights are entitlements inherent to individuals solely by virtue of being human.² Crimes committed against civilians certainly infringe upon all or nearly all of the rights enshrined in the Convention and its additional protocols, which Russia, upon ratification and acceptance, had committed to upholding.

ORIGINS AND DEVELOPMENT OF THE COUNCIL OF EUROPE

The Council of Europe was established in May 1949 in London. The founding members were ten European countries: Belgium, Denmark, France, Ireland, the Netherlands, Luxembourg, Norway, Sweden, the United Kingdom, and Italy.

The Council's formation was preceded by the Congress of Europe, held in The Hague from 7 to 10 May 1948. During this congress, two concepts of European cooperation were developed. The first was a federative concept, inspired by W. Churchill's 1943 call for the creation of a 'United States of Europe'. This project was innovative and ahead of its time, but states were apprehensive about relinquishing some of their prerogatives to a central authority. The second concept, which gained broader approval, proposed cooperation between sovereign states at the governmental level. This form of collaboration did not raise significant concerns about the loss of sovereignty and thus received greater support among the participants.

Three resolutions were adopted during the congress as part of the work of the cultural, political, and economic and social committees. These are now collectively known as the 'Manifesto to Europeans'. The document outlines four demands:

¹ Bierzanek, R., Symonides, J., *Prawo międzynarodowe publiczne*, Warszawa, 2009, p. 379.

² Kowalski, J., 'The right to water as a fundamental human right in Poland and worldwide', *International Journal of Human Rights and Constitutional Studies*, 2020, Vol. 7, No. 3, pp. 234–235.

1. free movement of persons, ideas, and goods; 2. adoption of a Charter of Human Rights; 3. creation of a Court of Justice with the authority to impose sanctions for non-compliance with the Charter; and 4. establishment of an Assembly representing all the countries of the continent. These demands were gradually fulfilled, some through the Council of Europe (e.g., the European Convention on Human Rights and the European Court of Human Rights), and others within the European Union (EU), e.g., the free movement of people and goods.

L. Griffith cites the desire to unite Western Europe to counteract the spread of communist ideology from the Eastern Bloc, as the primary reason for the Council's establishment. As a secondary goal, he notes promotion of Western values and their integration with human rights, in contrast to the lack of freedoms in Eastern Europe.³ The creation of the Council was a response to the horrors of World War II and represented the first step towards European integration.

The objectives of the Council are set out in its Statute.⁴ The preamble states that 'the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation.' By listing values such as justice, peace, and international cooperation at the outset, the Statute sets the main goal of the organisation and provides a 'roadmap' for achieving this goal.

It is often mistakenly assumed that the Council's activities are confined solely to the protection of human rights. This misconception stems from the robust human rights protection system established by the Council, which is based on the Convention and the European Court of Human Rights (ECtHR, Court). Although the protection of human rights is a dominant focus, it is not the only area of the Council's activity. Currently, the Council's work centres on three key areas: the protection of human rights, democracy, and the rule of law.

Accession to the Council occurs upon invitation from the Committee of Ministers, reflecting the Council's status as a conditionally open organisation. This means it is open to new members who meet specific formal and legal requirements, as set out in the organisation's Statute.

The admission of a state follows an accession procedure, and over time, mechanisms regulating the accession of new countries have evolved. These include the monitoring procedure and the accession procedure.

The accession of the Russian Federation to the Council of Europe was a lengthy and challenging process for both sides. In Russia's case, there were significant concerns regarding compliance with democratic standards and respect for human rights. The accession procedure was interrupted for six months due to the ongoing First Chechen War and the blatant human rights violations associated with this conflict.⁵ It appears that Russia's admission to the Council in 1996 was motivated

³ Griffith, L., 'The Council of Europe, the European Convention on Human Rights and the Social Charter', in: McCann, G., Ó hAdhmaill, F. (eds), *International Human Rights, Social Policy and Global Development*, Bristol, 2020, p. 41.

⁴ Statute of the Council of Europe, signed in London on 5 May 1949, ETS No. 1.

⁵ See: Bowring, B., 'Russia's accession to the Council of Europe and human rights: compliance or cross-purposes?', *European Human Rights Law Review*, 1997, Vol. 6, pp. 628–643.

more by the desire to promote human rights in post-Soviet states than by Russia's actual fulfilment of the accession requirements.

Since its foundation in 1949, the Council of Europe has expanded to include new countries. Currently, the Council comprises 46 member states. Notably, among all the countries that have applied for membership, only Belarus's application has been rejected. The application submitted by Belarus in 1993 was suspended in 1998 due to a lack of progress in democratisation, human rights development, and the rule of law.⁶

EUROPEAN REGIONAL SYSTEM OF HUMAN RIGHTS PROTECTION

As an international organisation, the Council was a precursor in creating regional human rights protection systems. The vision for such a system emerged during the Hague Congress in May 1948. Following the Congress, resolutions were adopted that included the desire to establish a Charter of Human Rights (ECHR) and create a specialised Tribunal to supervise the implementation of its provisions.⁷ Intensive work on the Convention culminated on 4 November 1950 in Rome, where its text was signed by ten member states of the Council. After securing the required number of ten ratifications, the ECHR entered into force on 3 September 1953. Currently, 46 countries (all Council of Europe member states) are parties to the ECHR.

The next step in establishing a European regional system for the protection of human rights was the creation of bodies to ensure compliance with the rights and freedoms set out in the Convention. The European Commission of Human Rights was established in 1955, and the European Court of Human Rights (ECHR) was established in 1959. In its case law, the Court was supported by the Committee of Ministers of the Council of Europe (the Committee).⁸ This tripartite system functioned until 1998 when Additional Protocol No. 11⁹ came into force. This reform, the most profound of the Strasbourg system to date, resulted in the dissolution of the European Commission of Human Rights, the removal of the Committee's *quasi*-judicial powers, and the transformation of the ECHR into a permanent court.¹⁰ Under these changes, the ECHR was granted exclusive jurisdiction over individual complaints.

The Court, individual applications, interstate applications, and the enforcement mechanism collectively form the control mechanism of the Convention. Over the

⁶ Parliamentary Assembly, *Resolution 1671 (2009). Situation in Belarus*, adopted by the Assembly on 23 June 2009, <https://pace.coe.int/pdf/c20caac0840755656eafa0a83dde01f5f8c71901001fa28a6789f68643de7282?title=Res.%201671.pdf> [accessed on 26 August 2024].

⁷ Robertson, A.H., Merrills, J.G., *Human rights in Europe: A study of the European Convention on Human Rights. Vol. 1*, Manchester, 1993, p. 5.

⁸ Madsen, M.R., 'From Cold War instrument to supreme European court: The European Court of Human Rights at the crossroads of international and national law and politics', *Law & Social Inquiry*, 2007, Vol. 32, No. 1, p. 144.

⁹ Additional Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, ETS No. 155, <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=155> [accessed on 26 August 2024].

¹⁰ The European Commission of Human Rights ceased its activities on 31 October 1999.

seventy years of the ECHR, this mechanism has undergone numerous adjustments. The primary objective of the reforms introduced through additional protocols and non-protocol measures has been to maintain the effectiveness and efficiency of the entire control mechanism.¹¹

The accession procedure for newly admitted countries and the requirements they must meet have also evolved. Currently, membership in the Council obligates states to accede to the Convention. In the early years of the Council and the convention system, there was no such requirement; this applied to both founding members and states already within the organisation. The obligation for states to join the ECHR developed over time, eventually merging Council membership with accession to the Convention. In this context, the organisation and the ECHR cannot be viewed separately. Article 58(3) of the Convention provides that '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.'

The signing of the ECHR by representatives of Russia took place on 28 February 1996, coinciding with the country's accession to the Council. However, the Russian Federation delayed the ratification and entry into force of the agreement by more than two years. It is worth noting the effects of the Convention ratification. Perhaps the most significant result for the Russian authorities was the unprecedented consent to external oversight of its activities. This situation was extraordinary, given that Russia, as a member of many international organisations and agreements, had never before agreed to limit its sovereignty in favour of other entities of international law.¹²

RUSSIA IN THE COUNCIL OF EUROPE

The Council of Europe is a conditionally open organisation, meaning that only states meeting specific requirements outlined in its Statute can be accepted. These conditions are set out in Article 3 and the preamble to the Statute, though not all are presented *expressis verbis*. The conditions for membership in the organisation are as follows:

- Representative and pluralistic democracy;
- The principle of the rule of law;
- Respect for fundamental human rights and freedoms;
- Sincere and substantial cooperation towards achieving the objective of the Council set out in Chapter I of the Statute;
- A European vocation and cultural identity;
- The peaceful nature of the candidate.¹³

¹¹ Kowalski, J., 'Istota mechanizmu kontrolnego w porządku Europejskiej Konwencji Praw Człowieka', in: Jaskiernia, J., Spryszak, K. (eds), *System ochrony praw człowieka w Europie w czasie wyzwań pandemicznych*, Toruń, 2022, pp. 85–100.

¹² Busygina, I., Kahn, J., 'Russia, the Council of Europe, and "Ruxit," or Why Non-Democratic Illiberal Regimes Join International Organizations', *Problems of Post-Communism*, 2020, No. 67, pp. 64–77.

¹³ Drzewicki, K., 'Triada czy sekstet? Kontrowersje wokół warunków członkostwa w Radzie Europy', in: Gajda, A., Grajewski, K., Rytel-Warzocho, A., et al. (eds), *Konstytucjonalizm polski*:

In addition to these conditions for acquiring membership, each member state is required to fulfil several obligations, such as ratification of the Convention, recognition of the Court's jurisdiction, and more prosaic ones, such as payment of membership fees. Member states are also obliged to comply with the judgments of the Court and to implement the settlements concluded before it. Alongside these duties, a member state also has certain powers, such as having representatives in the bodies of the organisation, as well as a judge in the ECtHR.

A member state may participate in decision-making on the functioning of the organisation and takes part in its work through its representatives. In the Committee of Ministers, each country has one representative. However, the number of representatives in the Parliamentary Assembly varies, ranging from 2 (for the smallest countries) to 18 (for the largest countries). The number of representatives is significant because it translates into voting power. Russia, as a large country, had 18 representatives in this body.

Failure by a member state to comply with its treaty obligations may result in suspension from membership or even exclusion from the Council. The Statute of the Council provides for the possibility for a state to leave the organisation under Articles 7 and 8. Article 7 addresses voluntary withdrawal from the organisation, where the member state notifies the Secretary-General of its decision. Article 8, on the other hand, concerns the exclusion of a state from the organisation when a member has seriously violated Article 3 of the Statute. In this situation, exclusion is preceded by the suspension of the member's rights and a call by the Committee of Ministers to withdraw from the organisation. Until January 2022, this had only occurred once. In December 1969, the Greek government decided to withdraw from the Council¹⁴ following the takeover of power in Greece by the military junta of the so-called 'Regime of Colonels' in 1967. Greece was readmitted to the Council of Europe in 1974.

Fifty years after these events, it may have seemed that such a situation would not occur again. The idea of protecting human rights appeared to have taken strong root in the member states. Democracy and the rule of law were intended to be values common to all member states, serving as the foundation for the shared future of European countries. However, events that unfolded after 24 February 2022 demonstrated that this was not the case. The Russian Federation, one of the member states, launched an unprovoked armed attack on Ukraine, another member state. Russia's actions were a continuation of the aggression that began in 2014, when Russian troops illegally seized Crimea and the Luhansk and Donetsk regions.¹⁵ In light of these developments, the reaction of the Council and the Court was resolute and immediate. On 25 February, the Committee of Ministers suspended the rights of the Russian Federation's representative in the organisation, with immediate effect in response to the invasion of Ukraine. Russia's actions were described by the

refleksje z okazji jubileuszu 70-lecia urodzin i 45-lecia pracy naukowej profesora Andrzeja Szymta, Gdańsk-Sopot, 2020, p. 495.

¹⁴ Turner, B., *The Statesman's Yearbook 2008: The Politics, Cultures and Economies of the World*, New York, 2007, p. 37.

¹⁵ Rokita, J., 'Przegrana wojna, wygrana rewolucja', *Horyzonty polityki*, 2014, Vol. 5, No. 12, pp. 149–164.

Committee of Ministers as 'a breach of peace of unprecedented magnitude on the European continent since the creation of the Council of Europe'.

Russia's actions clearly violated the standards of the Council of Europe, as well as the provisions of the Convention and other agreements that Russia had accepted as a member state. On 16 March 2022, the Committee of Ministers of the Council of Europe, during a special session, unanimously adopted a resolution on the exclusion of the Russian Federation from the Council of Europe, effective immediately. The adoption of the resolution was preceded by a strong opinion from the Parliamentary Assembly of the Council of Europe on 15 March 2022, which stated that Russia had committed serious violations of the Statute of the organisation.^{16,17} All 216 members of the Parliamentary Assembly voted in favour of excluding Russia, with no votes against. On the same day, the Russian government informed the Secretary-General of the Council of Europe of its decision to withdraw from the organisation. As a result, Russia was excluded from the Council on 16 March 2022, and, pursuant to Article 58 of the Convention, which provides for a six-month notice period, Russia ceased to be a party as of 16 September 2022.¹⁸

By pursuing an imperial and aggressive policy towards neighbouring countries, Russia has caused problems for the Council of Europe since the beginning of its membership. In 2000–2001, the rights of the Russian delegation to the Parliamentary Assembly of the Council of Europe were suspended in response to numerous human rights violations associated with the Second Chechen War in Russia.¹⁹ The Russian delegation was again suspended in 2014 after Russia's annexation of Crimea. In response, Russia accused the organisation of applying double standards to member states and suspended the payment of membership fees in 2017. At the same time, the country began signalling its willingness to leave the Council. After more than two years, the sanctions imposed on Russia were lifted, and the country resumed participation in the work of the Parliamentary Assembly of the Council of Europe.²⁰

The annexation of Crimea, Donbas, and Luhansk in 2014, along with the earlier war with Georgia and armed intervention in Chechnya, signalled that Russia did not share the values of modern Europe. In addition to its foreign policy, Russia repeatedly challenged the judgments of the ECtHR, attempting to delegitimise the Court in the eyes of member states. During its membership, Russia frequently

¹⁶ Resolution CM/Res (2022)2 of the Committee of Ministers on the cessation of the membership of the Russian Federation to the Council of Europe, adopted by the Committee of Ministers on 16 March 2022, <https://rm.coe.int/0900001680a5da51> [accessed on 9 May 2023].

¹⁷ Parliamentary Assembly, *Opinion 300 (2022), Consequences of the Russian Federation's aggression against Ukraine*, adopted by the Assembly on 15 March 2022, <https://pace.coe.int/en/files/29885/html> [accessed on 9 May 2023].

¹⁸ Resolution CM/Res (2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe, adopted by the Committee of Ministers on 23 March 2022, https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680a5ee2f [accessed on 9 May 2023].

¹⁹ See Ziemblicki, B., 'Rosja jako strona Europejskiej konwencji praw człowieka', in: Jaskiernia, J., Spryszak, K. (eds), *Wyzwania dla europejskiego systemu ochrony praw człowieka u progu trzeciej dekady XXI wieku*, Toruń, 2021, pp. 804–822.

²⁰ Zaremba, S., 'Powrót Rosji do Zgromadzenia Parlamentarnego Rady Europy', *Polski Instytut Spraw Międzynarodowych – Biuletyn*, 2019, No. 108(1856).

failed to comply with the judgments of the ECtHR. In 2017, it was estimated that Russia had not properly executed nearly 1,600 of more than 2,100 unfavourable judgments.²¹ It should also be pointed out that in the case of unfavourable judgments of the ECtHR, the improper implementation of the judgment most often consisted in Russia limiting its actions to the payment of awarded compensation to the applicant without amending national legislation that was incompatible with the Council's standards.

Moreover, from the outset of its presence in the Council and the European human rights protection system, Russia withheld support for all draft amendments to the Convention. The most notable instance was its opposition to changes introduced by Additional Protocol No. 14, where Russia's resistance led to the adoption of a separate Protocol No. 14 bis specifically for this country.²² This situation demonstrated how one state could paralyse the operation of the Council and the Convention's control system.

LEGAL AND POLITICAL CONSEQUENCES OF THE RUSSIAN FEDERATION'S WITHDRAWAL FROM THE COUNCIL OF EUROPE

The direct consequences of excluding Russia from the Council is that the country is prevented from influencing the organisation's functioning. This outcome is significant because Russia has been stripped of any influence over the actions undertaken by the organisation in relation to other member states and itself. With its departure from the Council, Russia lost its representation in the statutory bodies of the organisation, namely the Parliamentary Assembly and the Committee of Ministers. Additionally, by leaving the organisation, Russia also forfeited its representatives in the non-statutory body, the Congress of Local and Regional Authorities of Europe. Furthermore, Russia will have no influence over the election of the Secretary-General of the Council of Europe or the Commissioner for Human Rights of the Council of Europe. Interestingly, despite Russia's exclusion from the Council, a Russian judge continued to hold his mandate until 16 September 2022, serving in Section III of the Court. However, pursuant to the Court's resolution of 5 September 2022, the office of the judge representing the Russian Federation was dissolved.²³ The dissolution of this office also resulted in the termination of the posts of *ad hoc* judges representing Russia. In 2022, Russia had three such judges.

The effect of Russia's exclusion from the Council of Europe is the severance of cooperation between the excluded country and the other member states. It should be noted that the Council includes all countries that are also members of the EU. As

²¹ Zaremba, S., 'Rosja w Radzie Europy: skutki potencjalnych ustępstw', *Polski Instytut Spraw Międzynarodowych – Biuletyn*, 2018, No. 41(1614).

²² Bowring, B., 'The Russian Federation, Protocol No. 14 (and 14 bis), and the Battle for the Soul of the ECHR', *Göttingen Journal of International Law*, 2010, Vol. 2, No. 2, pp. 605–613.

²³ Resolution of the European Court of Human Rights, Strasbourg, 5 September 2022, https://echr.coe.int/Documents/Resolution_ECHR_cessation_Russia_Convention_20220916_ENG.pdf [accessed on 9 May 2023].

a result, Russia has lost the opportunity to collaborate in many important areas of life. Considering Russia's relations with the EU and the economic sanctions imposed on it, the loss of Council membership has effectively excluded the country from the European community.

In addition to statutory and non-statutory bodies operating within the Council, there are several institutions functioning within organisations that are not formally part of the Council. These institutions perform various functions and undertake tasks related not only to human rights protection but also to other areas, such as combating corruption, supporting and promoting linguistic diversity in Europe, and financing social projects. Before 24 February 2022, Russia was a member of most of these bodies. After that date, in accordance with Resolution CM/Res (2022)3, Russia ceased to be a member of the following partial agreements:

- International Cooperation Group on Drugs and Addictions (Pompidou Group);
- Co-operation Group for the Prevention, Protection Against, and Organisation of Relief in Major Natural and Technological Disasters (EUR-OPA);
- European Support Fund for the Co-Production and Distribution of Creative Cinematographic and Audiovisual Works 'Eurimages';
- Enlarged Partial Agreement on Sport (EPAs);
- Enlarged Partial Agreement on Cultural Routes (EPA);
- Enlarged Partial Agreement on the Observatory on History Teaching in Europe;
- European Audiovisual Observatory.

Russia also ceased to be a member of the European Commission for Democracy through Law. However, it remained a member of the Group of States against Corruption, although the Committee of Ministers severely limited its participation.²⁴

Another consequence of Russia's exclusion from the Council of Europe is its exit from the European regional system of human rights protection. As of 16 September 2022, Russia ceased to be a party to the ECHR and, consequently, to all its additional protocols. This means that Russia has lost both active and passive procedural and substantive standing before the ECtHR, rendering it unable to bring or defend cases in the Court. The Strasbourg Court retains jurisdiction over cases against the Russian Federation concerning acts or omissions that may constitute a violation of the Convention, provided these occurred before 16 September 2022. The Committee of Ministers continues to oversee the execution of judgments against Russia. The excluded state has the right to participate in Committee of Ministers' meetings when it supervises the enforcement of judgments in cases where Russia is the respondent state. However, Russia has been deprived of the right to participate in voting and decision-making.

In the current context, it can be assumed that Russia will not comply with the Court's judgments. It is important to note that neither the Court nor the Council possesses legal or political tools to compel Russia to comply with judgments rendered against it.

In practical terms, Russia's exit from the European system of human rights protection signifies a departure from the principles of human rights. Russia is expected to reinstate the death penalty, which is prohibited under the ECHR. It can

²⁴ Resolution CM/Res (2022)3, *op. cit.*

be anticipated that the rights and freedoms of Russian citizens and persons residing in areas under Russian jurisdiction will be restricted and potentially violated. This expectation is supported by the crimes committed by the Russian military in the occupied territories of Ukraine. Furthermore, changes in Russian legislation, including harsher penalties in the Criminal Code and the introduction of new categories of offences, are evident. Examples include severe prison sentences and fines for using the term 'war in Ukraine'. The introduction of prison sentences for individuals protesting against the aggression towards Ukraine constitutes a blatant violation of the freedom of speech and expression guaranteed by the ECHR.²⁵ The current legislation of the Russian Federation grossly violates virtually all the rights and freedoms set out in the Convention and the Additional Protocols.

CONSEQUENCES OF RUSSIA'S WITHDRAWAL FROM THE COUNCIL OF EUROPE FOR RUSSIAN CITIZENS AND PERSONS UNDER ITS JURISDICTION

The exclusion of Russia from the Council of Europe has significant consequences for its citizens, as well as for those under its jurisdiction. One of the most important outcomes of Russia's exclusion from the organisation and the European system of human rights protection is the inability to file individual complaints against the country. Consequently, Russian citizens and persons under Russia's jurisdiction have been deprived of the ability to assert their rights before the Court in Strasbourg. It is worth emphasising that Russia, with its population of 144 million, was the most populous member state. With Russia's departure from the Council, the number of persons subject to conventional protection decreased by 144 million.

Russia has historically had persistent human rights issues. It was hoped that the country's admission to the Council of Europe and its ratification of the ECHR and additional protocols would improve this situation. Unfortunately, this has not been the case. Since joining the Council, Russia has opposed any proposed changes to the control mechanism and the catalogue of rights and freedoms. The entire period of Russia's membership in the organisation was characterised by tension in its relations with the Council. Russia consistently resisted any attempt to limit its sovereignty in favour of the Council of Europe or the Court. While pursuing aggressive policies towards Chechnya, Georgia, and Ukraine, Russia was suspended from membership several times.²⁶ In recent years, Russian rhetoric against the Court and its rulings has intensified. The official denial of Strasbourg judgments and the open undermining of the Court's authority, not only by ordinary courts but also by state authorities, led to the Russian Constitutional Court's decision on 14 July 2015. This ruling declared that judgments issued by the Court that were contrary to the

²⁵ Fischer, S., 'Russia on the road to dictatorship: Internal political repercussions of the attack on Ukraine', *SWP Comment*, 2022, No. 30, pp. 1–3.

²⁶ Leach, P., 'A time of reckoning?: Russia and the Council of Europe', *European Human Rights Law Review*, 2022, Vol. 3, p. 219.

Russian Constitution could not be implemented and that no international treaty could constitute a renunciation of national sovereignty.²⁷

Statistical data on the number of violations of rights and freedoms set out in the ECHR and the Additional Protocols, as identified by the Court, reveal the serious human rights problems in Russia (Table 1). By December 2021, the ECHR had found a total of 6,910 violations of individual rights and freedoms contained in the Convention and the Additional Protocols. The most frequent violations concerned Article 5 of the ECHR – the right to liberty and security of person – with 1,299 violations. The second most common violation was of Article 3 – the prohibition of inhuman and degrading treatment – with 992 violations. In third place was Article 6 – the right to a fair trial – with 988 violations. During its membership in the Council of Europe, Russia also faced significant problems with the right to an effective remedy (Article 13 ECHR), the right to respect for property (Article 1 of Additional Protocol No. 1), the prohibition of punishment without a legal basis (Article 7 ECHR), and the right to life (Article 2 ECHR). Notably, the Court did not find any violations by Russia of Article 12, the right to marry.

Table 1. Number of violations of individual rights and freedoms set out in the Convention and the Additional Protocols

Violated right and/or freedom	Number of identified violations of the rights and freedoms set out in the ECHR and additional protocols
Right to life	349
Prohibition of punishment without a legal basis	406
Prohibition of torture	83
Prohibition of inhuman and degrading treatment	992
Right to a fair and public hearing/right to a fair trial	273
Prohibition of slavery and forced labour	1
Right to liberty and security	1,299
Right to a fair trial	988
Length of proceedings/right to a fair trial	207
Prohibition of punishment without a legal basis	3

²⁷ Bowring, B., 'Russian cases in the ECtHR and the question of implementation', in: Mälksoo, L., Benedek, W. (eds), *Russia and the European Court of Human Rights: The Strasbourg Effect*, Cambridge, 2018, pp. 191–194.

Violated right and/or freedom	Number of identified violations of the rights and freedoms set out in the ECHR and additional protocols
Right to respect for private and family life	297
Freedom of thought, conscience and religion	14
Freedom of speech	114
Freedom of assembly and association	79
Right to marry	0
Right to an effective remedy	701
Prohibition of discrimination	27
Right to respect for property	688
Right to education	3
Right to free elections	7
Prohibition of re-trial or punishment	7
Other articles of the ECHR and additional protocols	372

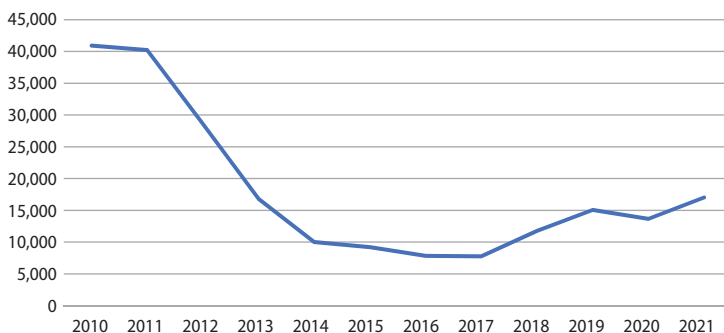
Source: https://www.echr.coe.int/Documents/Stats_analysis_2021_ENG.pdf [accessed on 9 May 2023].

The entire period of Russia's membership in the Council of Europe was characterised by a large number of individual complaints against the country. In 2010, more than 40,000 cases were pending before the ECtHR (Figure 1). In the subsequent years, the number of cases gradually decreased, reaching its lowest point in 2017, with 7,747 cases against Russia heard by the Court. However, in the following years, the number of cases again began to gradually increase. At the beginning of 2022, the number of complaints in which the Russian Federation was the defendant was approximately 17,550. This figure represented 24.1% of all cases pending before the Court.²⁸

Russia's exit from the European system of human rights protection will undoubtedly result in a significant decrease in the number of complaints filed with the ECtHR. This reduction will have an impact on the entire human rights protection system. It seems likely that a reduced caseload will enhance the effectiveness and efficiency of not only the ECtHR but also the entire control mechanism.

²⁸ ECtHR, *Pending Applications Allocated to a Judicial Formation*, https://echr.coe.int/Documents/Stats_pending_month_2022_BIL.PDF [accessed on 9 May 2023].

Chart 1. Number of cases brought against the Russian Federation pending before the ECtHR (2010–2021)



Source: Own study based on numerical data available on the website of the European Court of Human Rights, https://www.echr.coe.int/sites/search_eng/pages/search.aspx#{}%22sort%22:%22createdAsDate%20Descending%22,%22Title%22:%22\%22analysis%20of%20statistics\%22%22,%22contentlanguage%22:%22ENG%22 [accessed on 9 May 2023].

CONSEQUENCES OF RUSSIA'S WITHDRAWAL FROM THE COUNCIL OF EUROPE FOR OTHER MEMBERS OF THE ORGANISATION

One of the consequences of excluding Russia from the Council, as previously mentioned, is that it loses its representation in the organisation. Reducing the number of members of the Parliamentary Assembly by the number of representatives previously held by Russia will alter the balance of power within this body, which will be important when making decisions. It can be assumed that having fewer member states may lead to a more efficient functioning of the organisation. The speed of decision-making is likely to increase, and the time between the adoption and the entry into force of subsequent agreements within the organisation's activities may be shortened.

As a result of Russia's exclusion, its obligation to pay membership fees to the Council ceases. The organisation's budget for 2022 was set at EUR 447 million.²⁹ Russia, as a member state, contributed approximately EUR 34 million annually to the budget.³⁰ This amount will now need to be distributed among the remaining 46 member states. It is worth mentioning that the organisation could achieve considerable savings by releasing all Russian staff from the secretariat and chancellery instead of transferring them to other Russian-speaking countries, including Ukraine.

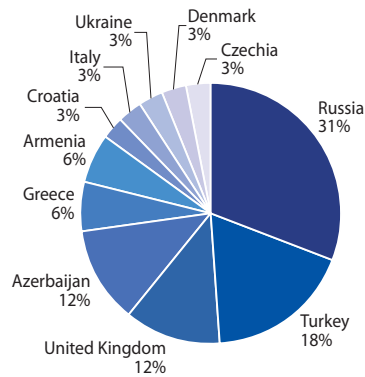
Another consequence of excluding Russia from the Council of Europe is the inability to file interstate complaints against the country. This is significant because,

²⁹ CoE, *Budget*, <https://www.coe.int/en/web/about-us/budget> [accessed on 9 May 2023].

³⁰ Leach, P., 'A time of reckoning?...', op. cit., pp. 221–222.

by January 2022, almost a third of the 31 interstate cases brought before the Court were directed against the Russian Federation (Figure 2). All complaints were lodged by states against which Russia pursued aggressive policies, often involving the use of its armed forces. The countries that lodged complaints against Russia were: Georgia (4 complaints), the Netherlands (1 complaint), and Ukraine (6 complaints). In the case of the Netherlands, the complaint was joined with that of Ukraine. This case concerns the shooting down of a Malaysian airliner by Russian troops in July 2014, on board of which the majority of passengers were Dutch citizens.

Chart 2. Structure of actions brought under Article 33 of the Convention by respondent State



Source: Own study based on: <https://www.echr.coe.int/Pages/home.aspx?p=caselaw/inter-state&c> [accessed on 9 May 2023].

The lack of active and passive legitimacy means that Russia no longer has the opportunity to lodge such complaints. It is worth noting that Russia has, to date, only once decided to lodge a complaint under Article 33 of the Convention. This occurred on 22 July 2021, when the Government of the Russian Federation accused Ukraine of violating Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment), Article 5 (right to liberty and security), Article 8 (right to respect for privacy and family life), Article 10 (freedom of speech),³¹ Article 13 (right to an effective remedy), Article 14 (prohibition of discrimination), Article 18 (limitation of the use of rights restrictions) and Article 1 of Protocol No. 1 (protection of property), Article 2 of Protocol No. 1 (right to education), Article 3 of Protocol No. 1 (right to free elections), and Article 1 of Protocol No. 12 (general prohibition of discrimination). At the same time, Russia demanded urgent interim measures in its case. However, the application for interim measures was rejected by the Court, as no condition of irreparable damage to a right under the ECHR was found to exist.³²

³¹ ECtHR, *Inter-State application brought by Russia against Ukraine*, ECHR 240 (2021), <https://hudoc.echr.coe.int/eng-press?i=003-7085775-9583164> [accessed on 9 May 2023].

³² *Ibidem*.

CONCLUSION

The consequences of excluding Russia from the Council of Europe, and from the European system of human rights protection, are complex and can be considered from multiple perspectives. Russia's exit from the organisation is expected to improve its operation and increase the effectiveness and efficiency of the Court. It can be assumed that Russia's absence from this system will facilitate further reform and improvement of the control mechanism, as Russia was a major opponent of changes in the past.

A negative effect is that, as of 16 September 2022, citizens of the Russian Federation and persons under its jurisdiction have been deprived of the international protection of their rights within the framework of the ECHR and the European human rights system. This is a serious concern, as Russia has a history of repeatedly violating human rights, even without withdrawing from international agreements to which it is or was a party. The Russian Federation faces challenges with democracy and the rule of law, which translate into a lack of respect for human rights. Changes in the country's legislation indicate a shift towards dictatorship, or at least authoritarian governance.

In conclusion, it must be stated that the current and planned changes in Russia will lead to further isolation on the international stage. In the next few years, or even decades, there is little prospect of Russia being readmitted to the Council of Europe and the European human rights protection system. A potential return, as was the case with Greece, would likely require Russia to meet stringent new accession conditions. Such conditions might include the obligation to set aside the July 2015 judgment of the Constitutional Court, which openly undermines the legitimacy of the ECtHR. Other conditions could include the closure of gulags, reform of the justice system, release of political prisoners, and enhancement of democratic standards in the country.

BIBLIOGRAPHY

- Bierzanek, R., Symonides, J., *Prawo międzynarodowe publiczne*, Warszawa, 2009.
- Bowring, B., 'Russian cases in the ECtHR and the question of implementation', in: Mälksoo, L., Benedek, W. (eds), *Russia and the European Court of Human Rights: The Strasbourg Effect*, Cambridge, 2018.
- Bowring, B., 'Russia's accession to the Council of Europe and human rights: compliance or cross-purposes?', *European Human Rights Law Review*, 1997, Vol. 6.
- Bowring, B., 'The Russian Federation, Protocol No. 14 (and 14 bis), and the Battle for the Soul of the ECHR', *Göttingen Journal of International Law*, 2010, Vol. 2, No. 2.
- Busygina, I., Kahn, J., 'Russia, the Council of Europe, and "Ruxit," or Why Non-Democratic Illiberal Regimes Join International Organizations', *Problems of Post-Communism*, 2020, No. 67.
- CoE, *46 Member States*, <https://www.coe.int/en/web/portal/46-members-states> [accessed on 26 August 2024].
- CoE, *Budget*, <https://www.coe.int/en/web/about-us/budget> [accessed on 9 May 2023].

- Drzewicki, K., 'Triada czy sekstet? Kontrowersje wokół warunków członkostwa w Radzie Europy', in: Gajda, A., Grajewski, K., Rytel-Warzocho, A., et al. (eds), *Konstytucjonalizm polski: refleksje z okazji jubileuszu 70-lecia urodzin i 45-lecia pracy naukowej profesora Andrzeja Szmyta*, Gdańsk-Sopot, 2020.
- ECtHR, *Inter-State application brought by Russia against Ukraine*, ECHR 240 (2021), <https://hudoc.echr.coe.int/eng-press?i=003-7085775-9583164> [accessed on 9 May 2023].
- ECtHR, *Knowledge Sharing*, <https://www.echr.coe.int/Pages/home.aspx?p=caselaw/interstate&c> [accessed on 26 August 2024].
- ECtHR, *Pending Applications Allocated to a Judicial Formation*, https://echr.coe.int/Documents/Stats_pending_month_2022_BIL.PDF [accessed on 9 May 2023].
- Fischer, S., 'Russia on the road to dictatorship: Internal political repercussions of the attack on Ukraine', *SWP Comment*, 2022, No. 30.
- Griffith, L., 'The Council of Europe, the European Convention on Human Rights and the Social Charter', in: McCann, G., Ó hAdhmaill, F. (eds), *International Human Rights, Social Policy and Global Development*, Bristol, 2020.
- [https://www.echr.coe.int/sites/search_eng/pages/search.aspx#{%22sort%22:\[%22createdAsDate%20Descending%22\],\[%22Title%22:\[%22\%22analysis%20of%20statistics\%22%22\],\[%22contentlanguage%22:\[%22ENG%22}\]](https://www.echr.coe.int/sites/search_eng/pages/search.aspx#{%22sort%22:[%22createdAsDate%20Descending%22],[%22Title%22:[%22\%22analysis%20of%20statistics\%22%22],[%22contentlanguage%22:[%22ENG%22}]) [accessed on 9 May 2023].
- Kowalski, J., 'Istota mechanizmu kontrolnego w porządku Europejskiej Konwencji Praw Człowieka', in: Jaskiernia, J., Spryszak, K. (eds), *System ochrony praw człowieka w Europie w czasie wyzwań pandemicznych*, Toruń, 2022.
- Kowalski, J., 'The right to water as a fundamental human right in Poland and worldwide', *International Journal of Human Rights and Constitutional Studies*, 2020, Vol. 7, No. 3.
- Leach, P., 'A time of reckoning?: Russia and the Council of Europe', *European Human Rights Law Review*, 2022, Vol. 3.
- Madsen, M.R., 'From Cold War instrument to supreme European court: The European Court of Human Rights at the crossroads of international and national law and politics', *Law & Social Inquiry*, 2007, Vol. 32, No. 1.
- Parliamentary Assembly, *Opinion 300 (2022), Consequences of the Russian Federation's aggression against Ukraine*, adopted by the Assembly on 15 March 2022, <https://pace.coe.int/en/files/29885/html> [accessed on 9 May 2023].
- Parliamentary Assembly, *Resolution 1671 (2009). Situation in Belarus*, adopted by the Assembly on 23 June 2009, <https://pace.coe.int/pdf/c20caac0840755656eafa0a83dde01f5f8c-71901001fa28a6789f68643de7282?title=Res.%201671.pdf> [accessed on 26 August 2024].
- Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, ETS No. 155, <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=155> [accessed on 26 August 2024].
- Resolution CM/Res (2022)2 of the Committee of Ministers on the cessation of the membership of the Russian Federation to the Council of Europe, adopted by the Committee of Ministers on 16 March 2022, <https://rm.coe.int/0900001680a5da51> [accessed on 9 May 2023].
- Resolution CM/Res (2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe, adopted by the Committee of Ministers on 23 March 2022, https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ee2f [accessed on 9 May 2023].
- Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights, 22 March 2022, https://prd-echr.coe.int/documents/d/echr/resolution_echr_cessation_membership_russia_coe_eng.

- Resolution of the European Court of Human Rights, 5 September 2022, https://echr.coe.int/Documents/Resolution_ECHR_cessation_Russia_Convention_20220916_ENG.pdf [accessed on 9 May 2023].
- Robertson, A.H., Merrills, J.G., *Human rights in Europe: A study of the European Convention on Human Rights. Vol. 1*, Manchester, 1993.
- Rokita, J., 'Przeigrana wojna, wygrana rewolucja', *Horyzonty polityki*, 2014, Vol. 5, No. 12.
- Statute of the Council of Europe, signed at London on 5 May 1949, ETS No. 1.
- Turner, B., *The Statesman's Yearbook 2008: The Politics, Cultures and Economies of the World*, New York, 2007.
- Zaremba, S., 'Powrót Rosji do Zgromadzenia Parlamentarnego Rady Europy', *Polski Instytut Spraw Międzynarodowych – Biuletyn*, 2019, No. 108(1856).
- Zaremba, S., 'Rosja w Radzie Europy: skutki potencjalnych ustępstw', *Polski Instytut Spraw Międzynarodowych – Biuletyn*, 2018, No. 41(1614).
- Ziemblicki, B., 'Rosja jako strona Europejskiej konwencji praw człowieka', in: Jaskiernia, J., Spryszak, K. (eds), *Wyzwania dla europejskiego systemu ochrony praw człowieka u progu trzeciej dekady XXI wieku*, Toruń, 2021.

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