



# The Council of Europe, Russia, and the future of European cooperation: any lessons to be learned from the past?

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## Abstract

The Council of Europe (CoE) was among the first Western institutions to open its doors to Russia after the end of the Cold War. However, during Russia's membership (1996–2022) hopes of socializing the country into the CoE's standards, norms, and principles in the areas of democracy, human rights, and the rule of law never materialized. While the CoE's norms and principles nowadays need to be secured from Russia, there might be a point in the (distant) future where Russia should be reintegrated into European structures, with the CoE then again being a likely forum to that end. Against this background, this paper analyses the CoE's interaction with Russia from the mid-1990s until today, focusing on the accession period as well as the organization's subsequent monitoring activities and (non-)use of sanctions during Russia's membership. It concludes with lessons that could guide future interactions between the CoE and Russia.

**Keywords** Council of Europe · Russia · European Court of Human Rights · Norms · Ukraine

## Introduction

The Council of Europe (CoE) is one of the key providers of 'soft security' in Europe. Since its founding in 1949, the organization has made the promotion of democracy, human rights, and the rule of law its core mission. With the end of Cold War and the ensuing enlargement of the CoE from 23 mostly Western European countries to a maximum of 47 states from all over Europe comprising some 800 million people, the organization has become truly pan-European (excluding only Belarus, Kosovo, and since a few months Russia) (for overviews, see Brummer 2008; Stivachtis and Habegger 2011; Schmahl and Breuer 2017).

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The CoE's key goal is to socialize its members into its propagated norms and values. The organization monitors whether its member states adhere to their obligations and at least potentially sanctions those member states that do not (Drzemczewski 2017). However, while there is no dearth in monitoring instruments, the CoE patently lacks a well-developed sanctions regime. However, the organization is not only short of tools to coerce its member states that violate its core norms and values but, at least as importantly, exhibits little political will to employ the few sanctions instruments that do exist in the first place.

Since its accession to the CoE in 1996, Russia has arguably been the main addressee for the CoE's efforts to diffuse its norms and values to the 20+ states that have acceded to the organization since the early 1990s (e.g. Althausser 1997). There can be little doubt that the organization failed in socializing Russia into its norms and values in any meaningful way. The 'Strasbourg effect' (Mälksoo 2018: 4) and with it the 'common European house' from Lisbon to Vladivostok built on the foundations of human rights, democracy, and the rule of law as envisioned by Mikhail Gorbachev (1989) in a speech before the CoE's Parliamentary Assembly in July 1989 never fully materialized during Russia's 'tumultuous' (Leach 2022) stint as member of the CoE.

The recent military invasion of Russia in Ukraine, hence (when the invasion started) a fellow CoE member state, is merely the climax of 'painful relations' (Drzemczewski and Dzehtsiarou 2018) between the two sides that emerged from a failed engagement policy which has never found traction and was eventually terminated in early March 2022 through Russia's expulsion from the organization. Indeed, Russia exhibited deep-seated problems with upholding the CoE's norms and values throughout its membership (1996–2022). Cases in point include: the wars in Chechnya in the mid-1990s and late-1990s/early 2000s, respectively, the brief war with Georgia in 2008, and the annexation of Crimea together with the intrusions in Eastern Ukraine in 2014, and numerous judgements against the country by the European Court of Human Rights (ECtHR) which often times highlighted structural deficiencies in the country's human rights protection system.

This paper analyses the CoE's interaction with Russia during the latter's membership of the organization. The discussion proceeds along three themes: accession, monitoring, and sanctioning. The paper argues that the CoE's main shortcomings in its dealings with Russia pertained to a fraught accession process and an unwillingness to employ the few sanctions instruments available which was grounded in political considerations and led to a misplaced continuation of a 'better include than exclude' strategy towards Russia. Building on this analysis, the concluding section teases out some possible lessons from the CoE's past dealing with Russia for a possible future engagement of the organization with Russia.

## Unconditional accession

The CoE's enlargement policy in the 1990s and 2000s was driven by a 'better include than exclude' strategy, as formulated by the organization's then-Secretary General, Daniel Tarschys. The policy's guiding assumption was that the organization



would have greater influence on countries especially from the former Eastern bloc and the Balkans ‘from the inside’, that is, if they were included in the organization as members, than ‘from the outside’, that is, if those countries were left on the sidelines as non-members. The hope was that accessions would lead to a faster and more effective introduction and consolidation of the standards, values, and principles advocated by the CoE (Brummer 2005: 320).

Accordingly, the ‘better include than exclude’ logic also guided the organization’s approach towards Russia, first during the accession process and then during the membership period (Brummer 2022). In both phases, this approach overrode blatant violations of the organization’s core norms and values by Russia. Indeed, Russia, which had applied for membership in May 1992, was eventually admitted to the organization in February 1996, thus at a time when the (first) war in Chechnya was still ongoing. Since December 1994, separatist forces had been fighting to break away from Russia. Russia committed serious human rights violations in response (e.g. Human Rights Watch 2000; Seely 2001).

Russia’s ‘objective non-readiness’ (Mälksoo 2018: 4) should have precluded its accession to the CoE as per the stipulations enshrined in the CoE’s statute. Key in this regard is Article 3, which states that ‘Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council as specified in Chapter I [which outlines the CoE’s aims].’ States that fulfil those requirements, or conditions for membership, can apply for accession: ‘Any European State which is deemed to be able and willing to fulfil the provisions of Article 3 may be invited to become a member of the Council of Europe by the Committee of Ministers’ (Article 4).

Russia’s war against its own people in Chechnya was in clear violation of Article 3. However, this ultimately had only limited effect on the accession process. The latter was only delayed for a few months. In turn, this delay was not promoted by the CoE’s member states acting through the Committee of Ministers. Rather, it was upon the insistence of the organization’s Parliamentary Assembly that the admission process was temporarily halted in February 1995. The parliamentarians ‘unreservedly condemn the indiscriminate and disproportionate use of force by the Russian military, in particular against the civilian population’ which in turn ‘constitute a grave violation of the Council of Europe’s most elementary human rights principles, which Russia, by requesting membership of the Organisation, pledged to uphold’ (Parliamentary Assembly 1995a, para. 2, 3). Accordingly, the parliamentarians demanded the termination of the military operations and the initiation dialogue to end the conflict. In terms of Russia’s pending membership application, they resolved to ‘to suspend the procedure concerning its statutory opinion on Russia’s request for membership’ (Parliamentary Assembly 1995a, para. 11). The parliamentarians instructed several of the Assembly’s committees to henceforth follow developments in Russia (Parliamentary Assembly 1995b).

Hence, Russia’s admission process was halted. However, it did not take long until the Parliamentary Assembly itself removed the roadblock. Based on information collected by the parliamentarians for example, during visits in Russia including



Chechnya, in September 1995 the Assembly came to the opinion that Russia was now ‘seeking a political solution’ to the conflict (Parliamentary Assembly 1995c, para. 4). More broadly, the Assembly acknowledged broader positive trends and developments in terms of Russia’s political transition: ‘[D]espite the tragic experience of Chechnya...the Assembly recognizes the dynamics and direction of many positive developments across the Russian Federation’ (Parliamentary Assembly 1995c, para. 9). Therefore, the parliamentarians resolved to continue with admission process, hence tasking its Political Affairs Committee to resume its work on the required option on Russia’s membership request (Parliamentary Assembly 1995c, para. 11).

Less than six months later, on 26 February 1996, Russia was eventually admitted to the CoE. It joined at a time when the (first) war in Chechnya was still ongoing, and where the country as a whole was not in a position to actually guarantee and uphold the standards, norms, and values of the CoE. A telling assessment to that effect came from the Parliamentary Assembly shortly prior to the country’s accession. In late January 1996, the parliamentarians opined that the country ‘is clearly willing and *will be able in the near future* to fulfil the provisions for membership of the Council of Europe as set forth in Article 3’ (Parliamentary Assembly 1996a, para. 7; emphasis added). In other words, at the time of accession, the country was not able to fulfil the membership criteria set out in the CoE’s statute. Tellingly, the parliamentarians provided Russia a ‘to-do-list’ comprising 25 items in which they set out steps that Russia would have to undertake in the near future in order to live up to the expectations of CoE membership (Parliamentary Assembly 1996a, para. 10). This did not hinder the Assembly to recommend to the Committee of Ministers to invite Russia for membership.

Russia’s accession was highly controversial. According to Holtz (2000, 15; own translation), it almost tore apart ‘the “soul” of the Council of Europe.’ Indeed, there is no doubt that Russia’s accession came at a time when the country was nowhere near ready to live up to the commitments and expectations emanating from CoE membership. Rather than based on the actual fulfilment of membership requirements, Russia’s admission was driven by the hope that through membership the country will eventually be willing and able to meet those requirements. However, with Russia now being a member state of the organization, the lever of asking for reforms, etc., as a precondition for membership was no longer available. Instead, it was incumbent upon the organization’s monitoring mechanisms, to which the discussion now turns, to accompany and scrutinize Russia’s future development and offer advice and support on how to eventually meet the membership requirements along the way.

## Multi-faceted monitoring

The CoE was patently aware of the challenges posed by its new member state Russia with respect to the upholding of its standards, norms, and values, and ultimately for the organization’s reputation as flagbearer of democracy, human rights, and the rule of law in Europe. Accordingly, numerous organs and expert bodies subsequently



engaged in monitoring developments in Russia. While some of those monitoring activities were undertakings that were routinely directed at all members of the organization, others were specifically initiated or expanded in light of the shortcomings on part of Russia. The following paragraphs highlight such activities on part of the Parliamentary Assembly, the Anti-Torture Committee, and the European Court of Human Rights.<sup>1</sup>

## Parliamentary Assembly

One example are the monitoring activities of the Parliamentary Assembly, in which compliance with the obligations entered into by the member states through their accession to the CoE were reviewed.<sup>2</sup> The parliamentarians wasted little time in scrutinizing Russia's behaviour. As early as April 1996, they unequivocally voiced its dissatisfaction with the lack of progress in terms of ending the military conflict in Chechnya, where 'violations of human rights and international humanitarian law being committed both by the Federal Russian troops and the Chechen combatants' were still ongoing and which represented 'a grave violation of the Council of Europe's most elementary human rights principles' (Parliamentary Assembly 1996b, paras. 2, 3). In response, the parliamentarians emphasized the need for peaceful conflict resolution, respect for the provisions of international humanitarian law, and Russia's necessary cooperation with organizations active in this field.

The following year, the Assembly lamented that Russia had continued to carry out executions despite its commitment upon entering the CoE to end the death penalty (Parliamentary Assembly 1997a). In 1998, the Parliamentarians noted some progress, such as Russia's signing and ratification of several of the CoE's conventions and agreements. On the other hand, they flagged numerous ongoing deficits, for example, with regard to the political resolution of the conflict in Chechnya (the military conflict ended in August 1996) or the punishment of human rights violations committed during the war (Parliamentary Assembly 1998a).

With the onset of the second Chechen war in 1999, the relationship significantly deteriorated (e.g. Francis 2008). It was in this context that the parliamentarians eventually decided to impose Assembly-internal sanctions against Russian delegation to the Assembly, at least temporarily. More than a decade later, the Assembly again imposed sanctions against the Russian delegation, this time in response to the latter's annexation of Crimea in 2014 and the aggression against Ukraine in the Donbass (see below for details on the Assembly's sanctions).

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<sup>1</sup> Other institutions engaged in monitoring activities of Russia included the Committee of Ministers, for example, when supervising the implementation of the ECtHR's judgements based on Article 46/2 ECHR as well as the Secretary General acting upon Article 52 ECHR based on which he or she can request from states 'an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention' and which has also been used in the context of the second Chechen War (Brummer 2010).

<sup>2</sup> While the Assembly set up a separate monitoring committee ('Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)') only in 1997, parliamentarians had already engaged in corresponding activities before.



Throughout Russia's membership, the Assembly continued with its monitoring activities towards Russia. The overall assessment remained very similar over the years: On the one hand, the parliamentarians commended positive developments on part of Russia (e.g. the ratification of CoE conventions or the initiation and implementation domestic reforms). On the other hand, they continued to enumerate a number of ongoing deficits, for example, pertaining to finding a political solution to the conflict in Chechnya, incidents of torture and ill-treatment of prisoners, the treatment of certain minorities, judicial reforms, the (mal-)functioning of pluralist democracy, or the country's military aggression against Ukraine in 2014, among other things (e.g. Parliamentary Assembly 2002a, 2005a, 2009a, 2018a).

Besides, the Assembly dealt with Russia multiple times outside of the immediate monitoring context. This concerned, for example, the situation in the Northern Caucasus, including the human rights situation (Parliamentary Assembly 2004a, 2010a) or the state of cultural diversity (Parliamentary Assembly 2006a) in the region. In addition, like in their monitoring reports, the parliamentarians also addressed a host of other issues, and deficits therein, with respect to Russia. Those concerned: exerting political pressure through the use of energy (Parliamentary Assembly 2007a); the war between Russia and Georgia in 2008 (Parliamentary Assembly 2008a) and its humanitarian consequences (Parliamentary Assembly 2009b); the detention of Ukrainian citizens as 'political prisoners' by Russia (Parliamentary Assembly 2018b); or the imprisonment of the Russian opposition politician Alexei Navalny (Parliamentary Assembly 2021a), among other things.

Taken together, the activities of the Parliamentary Assembly led to a sustained and substantively broad engagement with Russia. In a host of reports, resolution, and recommendations, the parliamentarians highlighted multiple areas of concern where Russia continued to violate the organization's standards and norms throughout its membership, despite legal obligations as well as political promises to respect what the CoE stands for. The following paragraphs show that the Assembly was by no means the only institution that monitored developments in Russia and highlighted deep-reaching deficits in the process.

## **Committee for the Prevention of Torture**

The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ('Anti-Torture Committee'; CPT) has been set up to monitor compliance with the CoE's Convention against Torture ('European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment'), which entered into force in 1989. To fulfil its mandate, the CPT conducts visits to the convention's member states, both on a regular basis and ad hoc whenever deemed necessary. Importantly, the exchanges between the CPT and member states are confidential. The only exception to this results when the CPT makes recourse of article 10/2 of the Anti-Torture Convention, which reads: 'If the Party fails to cooperate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on



the matter.’ Hence, when states continuously ignore the CPT’s suggestions, it can go public as instrument of last resort.

To date, the CPT has issued only 10 public statements. Four of them concerned Russia, which already indicates the extent to which Russia featured prominently in the committee’s activities. The public statements came in 2001, 2003, 2007, and 2019, respectively. All four statements dealt with the situation in Chechnya. In their statements, the experts criticized specific abuses (such as the failure to investigate cases of ill-treatment) on the one hand and Russia’s lack of willingness to cooperate in general, as evidenced by the failure to implement recommendations or to grant access to certain facilities on the other. For example, in their 2007 statement the CPT lamented that ‘Resort to torture and other forms of ill-treatment by members of law enforcement agencies and security forces continues, as does the related practice of unlawful detentions. Further, from the information gathered, it is clear that investigations into cases involving allegations of ill-treatment or unlawful detention are still rarely carried out in an effective manner; this can only contribute to a climate of impunity’ (CPT 2007, 2).

Another indication for how prominently Russia featured on the CPT’s agenda is that the latter conducted 22 ad hoc visits to the country. Such visits are conducted only when ‘required in the circumstances’ (CPT 2022a, 36). Next to the aforementioned public statements, the high number of ad hoc visits—only Turkey saw (two) more such visits than Russia (CPT 2022a, 42–43)—is another indication of how problematic the experts considered the situation in Russia, and in Chechnya in particular, suggesting deep-seated deficiencies on part of Russia to fulfil its obligations emanating from its accession to the CoE’s Anti-Torture Convention.<sup>3</sup>

## European Court of Human Rights

While not engaging in regularized monitoring activities like the Parliamentary Assembly and the CPT, the European Court of Human Rights (ECtHR) was also closely involved with developments in Russia throughout the latter’s CoE membership. The Court monitors compliance with the European Convention on Human Rights (ECHR), to which all members of the CoE belong and which enshrines numerous political and civil rights (including the right to life, the prohibition of torture, freedom of assembly, and freedom of expression) (for an overview, see Nussberger 2020). The ECtHR acts only after applicants have exhausted domestic remedies before. The vast majority of complaints are individual applications by ‘any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties’ based on Article 34 ECHR. Besides, Article 33 ECHR foresees inter-state applications were one contracting party refers to the court alleged breaches of the ECHR by another contracting party. The judgements of the ECtHR are binding on the contracting parties

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<sup>3</sup> Technically speaking, Russia is still covered by the CPT, now as a ‘non-member state’ (CPT 2022b). However, since visits are essential for the CPT’s work, it is patently unclear how the committee will be in a position to continue with its monitoring activities.



(Article 46/1 ECHR). The CoE's Committee of Ministers is responsible for monitoring the implementation of the judgements.

For Russia, the ECHR entered into force in May 1998. Since then, the country developed into one of the ECtHR's main high case-count states (for an overview, see Mälksoo and Benedek 2018). To give but a few numbers: Since 2010, an average of 10,000 complaints against Russia were assigned to one of the court's formations (single judges, chambers, etc.) per year. During the same time period, the court handed down some 500 judgements per year against the country (ECtHR 2022b). Overall, together with states such as Turkey, Ukraine, and Italy, Russia consistently occupied a top spot in terms of newly filed complaints. In turn, the number of judgements illustrates once more that Russia repeatedly violated the provisions of the ECHR. Most violations related to the right to liberty and security, inhuman and degrading treatment or punishment, and the right to a fair trial (ECtHR 2022a). Overall, by the end of 2021 more than 3100 judgements had been handed down against Russia, putting the country—which, as noted, joined the CoE only in 1996—in second place among all member states, trailing only Turkey which, however, had entered already in 1950 (ECtHR 2022a). In late November 2022, 16,750 applications against Russia allocated to a judicial formation were still pending, which represented more than 20 per cent of the total (ECtHR 2022b).

The ECtHR's intensive involvement with Russia is thus beyond question, as are the latter's repeated violations of the provisions of the ECHR. Less clear, however, is the impact that the court's jurisprudence had on Russia. Although the Court's rulings are binding, as noted, Russia had a mixed record in this regard. A total of 1365 judgements have been implemented and, accordingly, considered as completed by the Committee of Ministers, which, as stated before, is responsible for monitoring implementation (Council of Europe , 2022a). In response to ECtHR judgements, Russia put into practice measures pertaining, for example, to improvements in the functioning of the judicial system, the protection of freedom of expression or freedom of assembly (Council of Europe , 2022b). According to Bowring (2018: 212, 189), 'in-depth and serious engagement' between the ECtHR and Russia 'has brought about real change'. At the same time, numerous judgements have not been implemented (for examples, see Council of Europe 2022c). This "'à la carte" implementation' (Roter 2018: 27) certainly adds a qualifier to the aforementioned assessment.

## Partially unable and mostly unwilling to sanction

Due to the aforementioned multi-faceted monitoring activities, the CoE was patently aware of the shortcomings of its member state Russia, which on several occasions and in multiple substantive areas found itself in blatant violation of the organization's standards and values. Yet, until most recently, the consequences that Russia had to face in response to its non-compliance were minor at most. This was the case for two reasons: First, the CoE has a very limited arsenal of sanctions at its disposal, which narrowed down its potential responses to a few options. Second, the other member states of the organization proved unwilling to make use of the





available instruments in the first place. Such behaviour was grounded in the aforementioned ‘better include than exclude’ logic on part of the organization as a whole as well as in individual country-specific political motives that rendered member states reluctant to hold Russia to account.

### **Sanctions instruments**

The sanctions instruments at the disposal of the CoE are few and far between. Indeed, most of the CoE’s institutions that played pivotal roles in the monitoring of Russia were simply not in a position to impose any sanctions. While they were tasked with bringing out into the open any forms of non-compliance of Russia with the organization’s standards and norms, they lacked the mandate and formal authority to sanction Russia (or any other member state for that matter). The above-mentioned case of the CPT is illustrative in this regard: Other than engaging in naming and shaming by breaking the otherwise upheld confidentiality and issuing public statements, the Anti-Torture Committee could not adopt any decisions that would have impacted the status, standing, or rights of Russia in the CoE as such.<sup>4</sup>

Having said that, the organization’s two statutory bodies, namely the Committee of Ministers and the Parliamentary Assembly, can impose sanctions, albeit with varying scope and consequences. As an intergovernmental organization, all authoritative decisions in the CoE are taken by the Committee of Ministers as the representative body of the member states. This is also true for the imposition of sanctions against member states which find themselves in violation of the organizations standards and values. The CoE’s statute contains two provisions in this regard. On the one hand, Article 9 addresses ‘financial violations’, in the sense that ‘The Committee of Ministers may suspend the right of representation on the Committee and on the Consultative Assembly of a member which has failed to fulfil its financial obligation during such period as the obligation remains unfulfilled.’

On the other hand, and more crucial for this paper’s discussion, Article 8 addresses ‘normative violations’ based on a country’s actions deemed incompatible with the organization’s core principles as outlined in Article 3 of the statute (see above). Article 8 reads: ‘Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.’

Conversely, since the organization has no role whatsoever in the economic realm, it cannot impose any kind of economic sanctions. Moreover, the CoE is prohibited by its statute to engage in matters of defence (Article 1d), which also excludes the imposition of military measures to sanction member states. Overall,

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<sup>4</sup> The same held true, for example, for the CoE’s Human Rights Commissioner who also engaged in systematic monitoring of Russia, which included several visits to the North Caucasus, and highlighted numerous shortcomings by the country without, however, being in a position to impose sanctions on Russia for its non-compliance (Brummer 2010).



then, the member states, through the Committee of Ministers, can essentially only choose between two political options: suspending of rights of representation of a member state or terminating a state's membership (by either asking the state to withdraw or the Committee of Ministers actively making a decision to end membership). Hence, the arsenal of sanctions at the disposal of the CoE('s member states) is rather limited. Indeed, when comparing the multi-faceted measures undertaken by the European Union in response to Russia's recent invasion in Ukraine including individual sanctions (travel bans, asset freezes), economic sanctions in the realms of finance, transport, energy, defence, raw materials, and services, restrictions on media, and visa measures (European Council/Council of the European Union n.d.), both the substantive breadth and the scope of the Committee of Minister's tools appear severely constrained.

In turn, the sanctioning powers of the Parliamentary Assembly are even more limited. Of course, given its subordinate position in the institutional set-up of the CoE—the Parliamentary Assembly was originally called the 'Consultative Assembly' and has retained this formally purely consultative character to this day—, this comes as little surprise. Most importantly, the parliamentarians cannot impose sanctions against member states that would affect the latter's status or standing in the organization as a whole. However, while not being undisputed (DLAPIL 2018), acting on its rules of procedure (rules 8 and 9, respectively) the Parliamentary Assembly can on substantive grounds impose certain measures against the national delegations of states to the Assembly. Those include: the suspension of voting rights, of the right to be represented in certain bodies of the Assembly, or to participate in election monitoring missions by the Assembly.

Lastly, the ECtHR occupies a sort of in-between position between the structurally powerless institutions like the CPT and the somewhat more powerful statutory organs of the CoE, particularly the Committee of Ministers. The court clearly is a powerful 'sanctions body' in the sense that its rulings are binding, as mentioned before. However, it is not incumbent upon the ECtHR to monitor the implementation of its judgements. Rather, according to Article 46/2 ECHR, this task falls to the Committee of Ministers, hence the member states. In pursuit of this task, the Committee of Ministers holds regular meetings in which it engages in the supervision of the execution of the court's judgements by the member states. If the Committee of Ministers resolves that a state is in continued non-compliance with a judgement, it can initiate proceedings before the ECtHR under Article 46/4 ECHR, which may end with another judgement finding a violation, this time concerning Article 46/1 ECHR (thus a state failing to abide by a final judgement of the ECtHR). Ultimately, however, in case a state neither implements the court's original judgement (re. the substantive violation of rights enshrined in the ECHR) nor acts upon a follow-up judgement (re. its failure to abide by the ECtHR's judgement), the Committee of Ministers' main remaining option to (politically escalate) sanctions against a state that finds itself in continued violation of its obligations boils down to the, as stated rather limited, provisions as enshrined in Article 8 of the CoE's statute (i.e. suspension of rights or termination of membership).



## Reluctance

The preceding paragraphs have highlighted that the number of tools at the disposal of the CoE to sanction member states that violate the organization's core standards and norms is anything but plentiful. Still, the Committee of Ministers could act against states and eventually even terminate a state's membership in the organization. Less far-reaching, the Parliamentary Assembly could sanction state's Assembly delegation. However, the case of Russia suggests that the parliamentarians are only selectively/temporarily willing and that the member states are in all but the most extreme situations unwilling to use the few instruments that exist to move against states.

Repeated grave violations of the organization's standards and principles by Russia gave the member states acting through the Committee of Ministers ample opportunity to take measures of varying scope against the country by means of Article 8 of the CoE statute. In fact, during the second Chechen war, the Parliamentary Assembly even expressly recommended that the Committee of Ministers use Article 8 against Russia if the situation in Chechnya did not improve fundamentally and sustainably in the near future. In early April 2000, the parliamentarians opined that 'should substantial, accelerating and demonstrable progress not be made immediately in respect of the requirements set out in paragraph 19, initiate without delay, in accordance with Article 8 of the statute, the procedure for the suspension of the Russian Federation from its rights of representation in the Council of Europe' (Parliamentary Assembly 2000a, para. 24.2). However, the Committee of Ministers explicitly rejected the Assembly's demands to sanction Russia using Article 8. It stated that 'The Committee believes that, in the present circumstances, there is no need for the Committee to act in the context of Article 8 of the Statute' (Committee of Ministers 2000, para. 44).

This evasive attitude on part of the Committee of Ministers, thus the member states, was justified by the above-mentioned 'better include than exclude' logic. The continuation of cooperation was deemed indispensable in order to implement the obligations entered into by Russia with its accession to the CoE, at least in perspective. Excluding the country would inevitably remove this possibility. Accordingly, the application of sanctions under Article 8 would not be expedient: 'The Committee remains of the view that the Council of Europe has a major contribution to make to the restoration of human rights in the Chechen Republic. At the same time, it recognizes that the contribution can only be made on the basis of Russia being a member of the Organisation and fulfilling its commitments to the Organisation' (Committee of Ministers 2000, para 44).

The Committee of Ministers upheld its position also after Russia's invasion of Ukraine in 2014. On the one hand, a 'large number' of states condemned 'the annexation of Crimea as contravening international law and the Statute of the Council of Europe using the pretext of protecting the Russian speaking population' (Committee of Ministers 2014). On the other hand, the military invasion by one member state of another did not prompt the Committee of Ministers to take action based on Article 8. Once again, the 'better include than exclude' logic prevailed, with not least Germany emerging as a proponent of such an approach (FAZ 2019).



This approach was abandoned only in the wake of Russia's 2022 invasion of Ukraine. Until the full-scale invasion, the Committee of Ministers limited itself to simultaneously criticizing Russia and calling on it to change its behaviour while refraining from imposing sanctions. The Committee of Ministers' supervision of ECtHR judgements, which brought to the fore multiple instances in which Russia did not fulfil its legal obligations emanating from its ratification of the ECHR, did also not prompt the member states to impose sanctions against Russia. This was notwithstanding the fact that Russia topped the list of countries with leading cases under enhanced supervision, which pertains to cases that require urgent individual measures or point to fundamental structural shortcomings (Committee of Ministers 2022d, 63).

In a similar vein, most of the member states refrained from taking Russia to the ECtHR based on Article 33 ECHR. Again, the parliamentarians uttered explicit statements in this regard, for example: 'The Assembly also deeply regrets that none of the Council of Europe's governments—high contracting parties to the European Convention on Human Rights—have yet made use of Article 33 of the Convention and referred to the European Court of Human Rights alleged breaches by the Russian Federation of the provisions of the Convention and its protocols' (Parliamentary Assembly 2000b, para. 22). However, over the years the member states only very rarely heeded such calls despite Russia's systematic violations of the organization's standards and norms including those as enshrined in the ECHR. Indeed, there have just been around a dozen inter-state applications against Russia overall. Nine of them have been lodged by Ukraine, four by Georgia, and one by the Netherlands (ECtHR n.d.).<sup>5</sup> All other member states of the CoE, including the other members of the allegedly 'normative power European Union', have not initiated such measures.

The members of the Parliamentary Assembly considered the half-hearted and for the most part pure declaratory measures taken by the Committee of Ministers insufficient. Therefore, at least on two occasions the parliamentarians decided to make use of their Assembly-internal sanctions regime against Russia. The first such move came during the second Chechen war and the second in aftermath of the annexation of Crimea.

After a motion to this effect had not yet found a majority in January 2000, the parliamentarians eventually decided in April 2000 to suspend the voting rights of Russian representatives in the Assembly (Brummer 2005: 223-224). Apparently, however, the parliamentarians themselves were not convinced of the effect of their measures. Therefore, in late January 2001, thus after less than a year, the Assembly terminated (in the sense of: did not extend) its measures against the Russian delegation, despite the ongoing war in Chechnya. Although parliamentarians continued to note deficits in human rights compliance, the Russian delegation was to be given another chance to help improve the situation in Chechnya: 'Despite some

<sup>5</sup> The Dutch application (no. 28525/20) concerned the shooting down of flight MH17 and the subsequent failure of Russia to investigate the incident. The ECtHR has combined this application with two applications submitted by the Ukraine (nos. 8019/16 and 43,800/14) under 'Case of Ukraine and the Netherlands v. Russia', which is still pending at the time of writing.



recent progress made, the Assembly remains gravely concerned about the human rights situation in the Chechen Republic. It nevertheless believes that the Russian parliamentary delegation deserves to be given another chance to prove that it is willing—and able—to influence the situation in the Chechen Republic for the better’ (Parliamentary Assembly 2001a, para. 2). To that end, a Joint Working Group (JWG) was established between the Parliamentary Assembly and the Russian Parliament, the Duma, to work together towards human rights compliance in Chechnya (Brummer 2005: 223–224). With this stance, the Assembly de facto also took on the ‘better include than exclude’ logic that already drove the behaviour of the Committee of Ministers.

Then, following the annexation of Crimea and the invasion of the Donbass in 2014, the Assembly returned to its sanctions policy. The parliamentarians called Russia’s actions ‘beyond any doubt, a grave violation of international law’ and considered them being ‘in clear contradiction with the Statute of the Council of Europe, in particular its preamble, and the obligations resulting from Article 3, as well as with the commitments undertaken by the Russian Federation upon accession’ (Parliamentary Assembly 2014a, paras. 3, 4). While not ‘tak[ing] the drastic decision to divest the [Russian] delegation from continuing to participate in its work’ (Drzemczewski 2020) altogether, the Assembly decided in their April 2020 session to withdraw the voting rights of the Russian delegation. In addition, the latter were no longer allowed to serve on certain Assembly bodies or to participate in Assembly election observation missions. Parliamentarians also reserved the right to annul the credentials of the Russian delegation, thereby excluding it from the Assembly entirely, unless Russia withdrew its annexation of Crimea (Parliamentary Assembly 2014a, paras. 15, 16).

These measures against the Russian delegation ended (in the sense of: were not extended) in January 2016. However, this was not because the Assembly had diagnosed any meaningful changes in Russian behaviour. Rather, it simply had no other choice since, contrary to its actions during the second Chechen war, the Russian Duma had decided to no longer send parliamentarians to the Assembly in the first place. Thus, there simply was no Russian delegation on which sanctions could have been imposed.

As result, the Assembly was also limited in its monitoring activities towards Russia since the boycott of the latter’s Assembly delegation rendered visits of the Assembly rapporteurs to the country impossible (e.g. Parliamentary Assembly 2019, para. 2). It was not until mid-2019, thus after more than three years of voluntary absence, that the Russian delegation returned to the Assembly.

While the decision to that effect was not just hotly debated but outright challenged in the Assembly on both substantial and procedural grounds (see Drzemczewski 2020), a majority of the parliamentarians eventually decided to fully ratify the credentials of the Russian delegation (right to vote, right to speak, etc.)—a decision for which the Assembly had to “bend” its Rules of Procedure’ (Drzemczewski 2020) by ratifying credentials at this point of the year rather than at the year’s opening session in January as would have been the norm. A commentator called this development a ‘win’ for Russia (Glas 2019), not least since the Assembly ‘seems to have “forgotten” about the possibility to ratify credentials and impose internal



sanctions’ during the following years (Glas 2021). Overall, the fact that the Russian delegation was readmitted without facing any internal sanctions despite any meaningful progress on the ground in the Ukraine suggests that political imperatives to bring Russia back overrode continued violations of the organization’s norms.

Last but not least, starting in mid-2017 Russia withheld its annual membership fees in violation of its commitments to the organization. For the years 2017 and 2018 alone, Russia owed some 55 million Euros to the CoE, thereby triggering ‘difficult financial consequences’ (Drzemczewski 2020).<sup>6</sup> This, in turn, might have qualified for actions by the Committee of Ministers based on article 9 of the statute (non-fulfilment of financial obligations by a member state). Those were also not forthcoming. Overall, then, despite systematic non-compliance and at times repeated blatant violations of everything the CoE claims to stand for and represent, the consequences that Russia had to bear for its actions remained extremely limited.

## The 2022 invasion: (finally) no choice but to impose sanctions

The previous sections showed that strong rhetoric and a few rather limited sanctions notwithstanding, Russia did not have to bear any significant consequences for its breaches of the CoE’s standards and norms—which included a military invasion in and ensuing annexation of territory of another member state in 2014. This changed only after the Russia’s attempted full-scale invasion of Ukraine in 2022, whose original goal apparently was to bring the entire country under its control. Thus, scope and approach of Russia’s actions represented a further escalation compared to the 2014 invasion. The renewed, and this time even deeper, breach of the CoE’s standards and norms now left the other member states with no choice but to finally abandon the ‘better include than exclude’ policy it so stubbornly had clung to for decades (Brummer 2022: 460; for a detailed account of the CoE’s decision-making process, see Drzemczewski and Lawson 2023).

The Committee of Ministers’ first reaction was to issue a statement on 24 February in which it ‘condemned in the strongest terms the armed attack on Ukraine by the Russian Federation in violation of international law’ (Committee of Ministers 2022a, para 1). The following day, acting on Article 8 of the statute the Committee of Ministers decided to immediately suspend Russia’s representation in the CoE’s organs and bodies (Committee of Ministers 2022b)—a first in the history of the organization (Drzemczewski and Lawson 2023: 5) which was supported by 42 member states.<sup>7</sup> After consulting with the Parliamentary Assembly, which during an extraordinary plenary session on 15 March had unanimously endorsed the end of Russia’s membership in the CoE (Parliamentary Assembly 2022), the Committee of Ministers finally decided based on Article 8 on 16 March to terminate Russia’s

<sup>6</sup> In the second half of 2019, Russia eventually fulfilled most of its financial obligations for the years 2017 and 2018 (Drzemczewski 2020).

<sup>7</sup> Russia and Armenia voted against the suspension, Turkey abstained, Azerbaijan did not vote, and Serbia was absent (Drzemczewski and Lawson 2023: 6).



membership with immediate effect (Committee of Ministers 2022c). Russia, in turn, had already informed the CoE's Secretary General on 15 March of its intention to withdraw from the organization (Council of Europe 2022d) which, however, would have entered into force only on 1 January 2023 (on different interpretations of 'expulsion versus withdrawal', see Drzemczewski and Lawson 2023: 11–15). Either way: The relationship was severed by mid-March 2022, at least for the most part. That is, Russia's membership in the ECHR continued until 16 September 2022. Technically, violations of the ECHR by Russia committed until that date could still be brought before the ECtHR and eventual judgements would still have to be implemented by the country (ECtHR 2022c). However, in view of the problematic enforcement of judgements already during Russia's membership, the enforceability of any judgements, past and future, against Russia, which is now a non-member state, is ever more in doubt (for details, see Drzemczewski and Lawson 2023: 19–28; Speck 2022).

Overall, even based on the CoE's lenient stance towards Russia as epitomized in the 'better include than exclude' logic, Russia's behaviour was no longer tenable. In this sense, the Committee of Ministers' chairperson at that time, Italian Foreign Minister Luigi Di Maio, opined: 'The expulsion of the Russian Federation from the Council of Europe was made inevitable by the atrocity of the crimes committed in Ukraine. Not only has Russia illegally and unjustifiably invaded another Member State, but it has continued its aggression in open violation of human rights and the rules of international humanitarian law' (Council of Europe 2022e).

The end of Russia's membership in the CoE has numerous consequences. To name but a few: Projects with Russia have been cancelled and questions about how to deal with the organization's employees hailing from Russia remain. Further, Russian citizens will no longer have access to the human rights protection system evolving around the ECHR and the ECtHR, a route which tens of thousands of Russians had taken in the past, thereby highlighting the trade-off between 'a robust and principled response' (Leach 2022) on part of the organization and human rights protection in Europe (Jahn 2022). In addition, the CoE, which is not exactly well-funded anyway, lost one of its largest contributors, which recently shouldered more than ten per cent of the budget (Committee of Ministers 2021a, 209). Last but not least, the CoE lost a significant part of its pan-European dimension.

## **Implications: any lessons for a possible future engagement with Russia?**

Russia's expulsion from the CoE in March 2022 marked the end of the country's 26-year membership in the organization. The objectives associated with the CoE's 'better include than exclude' policy towards Russia, i.e. the transfer of the organization's standards and principles in the fields of democracy, human rights, and the rule of law through membership, were not achieved at any time during the country's membership. The policy made the member states refrain from sanctioning Russia despite the latter's repeated systematic violation of the organization's standards and norms, as exemplified by the second war in Chechnya (1999–2001), the first invasion of Ukraine (2014), and the tens of thousands of applications brought against the



country before the ECtHR. Adhering to such a policy of integration at essentially any price despite a discernible ‘human rights backlash’ (Mälksoo 2018) on part of Russia damaged the reputation and legitimacy of a values-based organization like the CoE and at the same time did not bring Russia closer to internalizing the organization’s standards and values.

As long as Russian President Vladimir Putin is in office, a return to the integration policy, thus of Russia to the CoE, seems extremely unlikely at best. For the time being, European norms and values as well as its security must be protected from Russia. However, even if only in the medium- or long-term future (if at all), a change in the Russian presidency in conjunction with a change in policy by the new leadership towards Europe could bring the integration policy back into play (e.g. Mölling et al. 2022, 5–6; Zubok 2022). Hence, it cannot be dismissed out of hand that at some (distant) point in the future the CoE might be tasked to take on a similar role as it did after the end of the Cold War, in forms of offering one of the main initial points of interaction and eventual integration of Russia into European structures. The ensuing question is whether lessons can be learned from the previous and eventually failed effort of the organization to engage Russia and socialize it into its standards, norms and principles in the areas of democracy, human rights, and the rule of law for a possible, and ideally more successful, second try. The main implications and resulting lessons of the preceding discussed can be summarized in forms of one upside (concerning monitoring) and two downsides (concerning accession and sanctions policy).

*Monitoring:* As an upside, there was by no means a lack of information about developments in Russia. Indeed, multiple organs and bodies of the CoE were continuously and deeply involved in monitoring and scrutinizing developments in Russia. Those include not only the Parliamentary Assembly, the Anti-Torture Committee, and the ECtHR as discussed above, but also numerous other bodies, such as the Human Rights Commissioner, the Congress of Local and Regional Authorities, the European Commission against Racism and Intolerance (ECRI), the Group of States against Corruption (GRECO), and the European Commission for Democracy through Law (‘Venice Commission’), to name but a few. So for a possible future interaction with Russia, the CoE seems already well-placed to engage with the country through multiple channels covering a diversity of issue areas, thus being able to detect any deficiencies concerning the upholding or implementation of the organization’s standards and offer advice to remedy any shortcomings.

*Accession:* The first downside concerns the admission process as previously enacted. As stated above, it was patently clear to every institution involved in the process, most notably the Committee of Ministers and the Parliamentary Assembly, that at the time of its admission Russia was nowhere near in a position to fulfil the requirements associated with membership. The country was admitted nonetheless based on ‘a pragmatic, not to say politically accommodating, interpretation of the Statute’ (Drzemczewski and Lawson 2023: 16). This, in turn, robbed the CoE of any lever it might possibly have had in terms of requiring Russia to implement domestic reforms prior to, hence as a precondition for, membership. The bet on the future the CoE made by admitting Russia despite glaring shortcomings was unsuccessful. Hence, if membership was ever to come back on the agenda, the CoE should insist





on the successful implementation of reforms on part of Russia prior to admission, rather than again engaging in the hope that shortcomings will be overcome during membership. This also includes Russia's relationship, and borders in particular, with Ukraine. Indeed, there has been precedent of admitting countries with unresolved border issues into the CoE, including Armenia and Azerbaijan. Recent military conflict between those two countries, which occurred more than 20 years after their respective admission to the CoE, reinforces the necessity of settling disputed (border) issues prior to membership (Forde 2021).

*Sanctions:* The second downside concerns the CoE's sanctions policy. One key weakness in this regard is that the organization has a very limited arsenal of sanctions at its disposal. So while the organization is very well able to identify shortcomings based on its monitoring activities (see above), there is actually little it can do in order to incentivize or coerce states to live up to their commitments. Since the CoE will also in the future not play a role in economic affairs or defence, a significant broadening of instruments can be ruled out. At best, the organization will undertake statutory reforms that lead to broadening of the political sanctions that goes beyond the two consecutive steps (suspension of rights of representation followed by termination of membership) currently enshrined in Article 8 of the CoE's statute. The latter might entail the exclusion from certain programmes (such as the Joint Programmes that the CoE conducts together with the European Union) or the imposition of fines.

Already getting to an expansion of sanctions instruments will be a tall order since it requires agreement by all member states, several of which (e.g. Turkey) are likely to be hesitant, to say the least, to see this happening out of fear that the new tools might be directed at them. Even more crucially, though, even if the sanctions toolbox were expanded, the use of sanctions depends on the political will of member states. Throughout Russia's membership, this will was lacking. This was exemplified not only in the refusal on part of the Committee of Ministers to use Article 8—the use of which truly 'is a politically complex exercise' (Drzemczewski 2020)—but also by the very sparring use of inter-state applications before the ECtHR against Russia.

Overall, then, the key lessons from the patent failure of Russia's (first) membership in the CoE for a possible future membership are that (a) admission must not be based on hopes in possible future developments but on the fulfilment of membership criteria at the time of accession and (b) member states must not exhibit 'complacent disinterest' (Leach 2022) or turn a blind eye when detecting systematic violations of the organization's standards and values during membership but act swiftly and forcefully to address such developments—which, by the way, is as true for a possible future engagement with Russia as it is true for the organization's present interaction with other member states such as Turkey that blatantly violate its norms and standards (Demir-Gürsel 2022). Between 1996 and 2022, such political will was not forthcoming towards Russia. Maybe the Russian invasion will 'serve as a point of inflection' (Forde 2022), thus making member states revisit and rethink their past approach, and failures therein, should the question of Russia's re-admission to the CoE should ever come back on the agenda.



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## Declarations

**Conflict of interest** I state that there is no conflict of interest.

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