

INADMISSIBILITY OF LIFTING SANCTIONS IMPOSED ON THE RUSSIAN FEDERATION BY THE COUNCIL OF EUROPE IN RELATION TO GRAVE AND SYSTEMIC HUMAN RIGHTS VIOLATIONS IN CRIMEA AND EASTERN UKRAINE

Position paper

Introduction

Since its establishment in 1949, the Council of Europe (CoE) has been a driving force for the advancement of human rights and of democratic values. Forming part of regional responses to World War II, the CoE was established in a collaborative process driven by France, Italy, the UK, Ireland, the Benelux and Scandinavian countries. The CoE's aim is 'to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress'. This aim is pursued through international agreements – most notably the European Convention on Human Rights (ECHR), and common action by its Member States (MSs). Adherence to the rule of law and human rights is the main condition of CoE membership.

From the turn of the 21st century, Russia has increasingly displayed its disregard for the core values and institutions of the CoE. Russia's unwillingness to uphold the basic principles uniting Europe is exemplified in its systematic violation of its citizens' rights and illegal invasions of neighbours Georgia and Ukraine, followed by widespread and systematic human rights violations on their territories. Its disinterest in being part of a community of European States is evidenced by its flagrant disregard for European Court of Human Rights (ECtHR) judgments and CoE resolutions.

Russia's illegal annexation of the Crimean Peninsula and subsequent conduct in Eastern Ukraine was initially met with strong and effective condemnation and sanctions by the CoE. The Russian delegation had its voting rights removed until efforts are made to restore Ukraine's territorial integrity and uphold human rights in territories under Russia's control. However, the most recent statements by the CoE Committee of Ministers and Rapporteur on Rules of Procedure suggest that the CoE is reconsidering its position and may be prepared to lift sanctions.

The Parliamentary Assembly of the Council of Europe (PACE) is due to meet on 24 – 27 June 2019 to consider its position on Russia. We urge the delegates not to lift sanctions against Russia. Russia has not met the conditions set by the CoE for lifting sanctions, and continues to violate the core values of the CoE. Lifting sanctions will only legitimise Russia's conduct in Ukraine, and may ultimately lead to the loss of the CoE's role in the advancement of human rights and the rule of law in Europe, and its eventual disintegration.

Russia's increasing disregard for the CoE and its core values

Following dissolution of the USSR, the CoE underwent substantial expansion, and now includes former Soviet states in Eastern Europe and the Caucasus. On 7 May 1992 - in line with its new leadership's aspirations to modernise and democratise – the Russian Federation

applied to join the CoE. In its Opinion concerning Russia's application,¹ the PACE noted progress towards a general awareness of and respect for the rule of law, and recognised Russia's willingness to fulfil the CoE membership requirements as set forth in Article 3 of the CoE statute. In the same Opinion, PACE invited Russia to meet a number of conditions, including:

“[T]o settle international as well as internal disputes by peaceful means, rejecting any forms of threats of force against its neighbours; to settle outstanding international border disputes according to the principles of international law, abiding by existing international treaties; to respect strictly the provisions of international humanitarian law {..}”.²

Russia joined the CoE on 28 February 1996 and ratified the ECHR on 5 May 1998. Ratification of ECHR had a profound impact on the development of rule of law in Russia. The country undertook serious reforms in the administration of justice on the basis of key ECtHR decisions, most notably in the provision of adequate remedies to the victims of rights violations (*Burdov v Russia*); key reforms of the penitentiary system (*Kalashnikov v Russia*; *Ananyev v Russia*), and measures to strengthen the rights of mentally disabled persons (*Shtukaturov v Russia*).

With the resurgence of Russia's assertiveness on international stage since the mid 2000s, the CoE has increasingly struggled to influence Russia's adherence to CoE principles and ECHR rights. The ECtHR has repeatedly identified systematic violations in areas such as unlawful action by the security forces, ineffective investigations, arbitrary detention and sub-standard conditions of detention, ineffective judiciary, shortcomings in the legal framework governing secret surveillance and home searches, freedom of assembly, electoral rights and property rights. Russia has repeatedly come up for supervision by the Committee of Ministers for systemically failing to address these violations. Of particular note is the prevailing culture of impunity for grave violations of the ECHR committed during the Russia's second Chechen war (1999 to 2009).

Systemic violations of the Convention rights at home are coupled by increasingly frequent violations of foreign citizens' rights abroad. In terms of scale and gravity, CoE MSs bordering Russia, most notably Georgia and Ukraine, have borne the brunt of these violations. The most widespread and systematic violations of European Convention rights committed by Russia abroad include:

- The mass expulsion of thousands of ethnic Georgians following the 2006 diplomatic row³ between Russia and Georgia;
- The killing, torture and forced expulsion of ethnic Georgians from South Ossetia committed during the armed conflict between Russia and Georgia in August 2008. The conflict took the lives of hundreds of civilians and left over 22,000 ethnic Georgians permanently displaced;
- The killing, torture, enforced disappearance, arbitrary detention, destruction of property and large scale forced displacement occurring in the context of the conflict

¹ Opinion 193 (1996) Application by Russia for membership of Council of Europe

² Paras. 10.7. 10.8. and 10.24. of the Opinion 193

³ See: *CASE OF GEORGIA v. RUSSIA (I)* (Application no. 13255/07)

in eastern Ukraine and Russia's illegal annexation of Crimea since 2014. The civilian death toll has now exceeded 3,300 persons and more than 1.5 million Ukrainians have been displaced by the conflict, losing their livelihoods and property. Violations committed by Russian nationals and Russia-backed separatist groups in Crimea and Donbas amount to war crimes and crimes against humanity as defined by the Rome Statute of the International Criminal Court.⁴

Many of these violations have already been recognised by the ECtHR. However, Russian authorities continue to systematically turn a blind eye to the victims' suffering, and show little interest in paying just satisfaction. In 2015, a Russian law gave its Constitutional Court primacy over the ECHR and ECtHR rulings.

CoE's response to the illegal annexation of Crimea and conduct in Eastern Ukraine

In the spring of 2014, Russian forces illegally occupied and annexed the Crimean Peninsula from Ukraine. In response, PACE applied sanctions against Russia, suspending the voting rights of its delegation.⁵

In a strongly worded resolution PACE considered that:

“[T]he actions of the Russian Federation leading up to the annexation of Crimea, and in particular the military occupation of the Ukrainian territory and the threat of the use of military force, the recognition of the results of the illegal so-called referendum and subsequent annexation of Crimea into the Russian Federation constitute, beyond any doubt, a grave violation of international law, including of the United Nations Charter and the Organization for Security and Co-operation in Europe (OSCE) Helsinki Final Act.”

The resolution further held Russia's actions to be:

“[I]n 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 and contained in Assembly Opinion 193 (1996) on Russia's request for membership of the Council of Europe.”

In the same resolution, PACE stated that “by violating the sovereignty and territorial integrity of Ukraine, Russia has created a threat to stability and peace in Europe.”

⁴ See for example: Attacks on Civilians and Civilian Infrastructure in Eastern Ukraine (<https://www.iphronline.org/new-report-attacks-civilians-civilian-infrastructure-eastern-ukraine.html>); Violations of International Humanitarian Law and International Crimes in Eastern Ukraine (<https://iphronline.org/wp-content/uploads/2016/05/Fighting-impunity-in-Eastern-Ukraine-October-2015.pdf>); International crimes in Crimea: An assessment of two and a half years of Russian occupation (<https://www.iphronline.org/international-crimes-crimea-20160927.html>); Fighting terrorism or terrorising activism? Persecution of civic activists in Crimea (<https://www.iphronline.org/new-report-fighting-terrorism-or-terrorising-activism-persecution-of-civic-activists-in-crimea.html>)

⁵ Resolution 1990 (2014), Reconsideration on substantive grounds of the previously rarified credentials of the Russian delegation

In a subsequent resolution (2034/2015), PACE expressed its concerns about the “deterioration of the human rights situation in Crimea, including the deaths and disappearances of political activists who were critical of Russia’s annexation of Crimea and about the threats and actions against independent and critical media outlets”, and urged the Russian Federation to “reverse the illegal annexation of Crimea; fully and transparently investigate these deaths and disappearances as well as allegations of abuse and human rights violations by the police and (para)military forces active in this region; disband all paramilitary forces in the region and refrain from exerting pressure and threatening to close independent media outlets”.

The resolution also called on Russia to:

“Refrain from harassing, and putting pressure on, Crimean Tatar institutions and organisations; withdraw all its troops, including covert forces, from Ukrainian territory; refrain from supplying weapons to the insurgent forces”.

In a further resolution (2063/2015), the Assembly reiterated its calls to Russia to “immediately reverse the illegal annexation of Crimea and withdraw all its troops from Ukrainian territory {...}.”

Echoing these condemnations by the CoE, the European Union (EU),⁶ United States (US)⁷ and other nations have condemned the illegal annexation of Crimea and deliberate destabilisation of Ukraine, and imposed sectoral and targeted sanctions/restrictive measures against Russia and a hundreds of Russian citizens and entities.

These sanctions are widely regarded as essential for de-legitimising Russia’s illegal actions in Ukraine, and a key tool to curb the spread of the conflict in the region.

Russia’s response to CoE sanctions

In 2017, Russia retaliated against the CoE sanctions by suspending its 33 million euro annual contributions (amount to 7 percent of the organisation’s annual budget), conditioned on the full restoration of rights of the Russian delegation to PACE. Russia’s lower house of Parliament (the Duma) passed a resolution stating that nations responsible for repeatedly violating international law and causing thousands of casualties have no moral right to judge Russia or impose sanctions on it. Russia also refused to invite PACE monitors to its 2016 parliamentary elections. Officials in Moscow insist that they are seeking equal treatment amongst all MSs of the CoE.

Change in CoE policy

On 16-17 May 2019, the CoE Committee of Ministers met in Helsinki and declared that whilst “every member State of the Council of Europe must accept the principles of the rule of law

⁶ On EU restrictive measures see: https://europa.eu/newsroom/highlights/special-coverage/eu-sanctions-against-russia-over-ukraine-crisis_en

⁷ On US sanctions see: <https://2009-2017.state.gov/e/eb/tfs/spi/ukrainerussia/index.htm>

and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms”, it believes that “all member States shall be entitled to participate on an equal basis in the two statutory organs of the Council of Europe”. The Committee also called on PACE to synchronise the two bodies’ approach to States that violate fundamental CoE principles.

On 3 June 2019, the Rapporteur of the Committee on Rules of Procedure, Immunities and Institutional Affairs – Ms Petra De Sutter - recommended to invite “the parliaments of Council of Europe member States which are not represented by a delegation to the Assembly to present the credentials of their representatives and substitutes at the June 2019 part-session of the Assembly, by way of derogation from Rules 6.1 (last sentence), [11.3] and 6.3 of the Rules of Procedure. In her report, Ms De Sutter also recommends to amend the rules “so as to clarify the scope of sanctions to be applied to members of delegations whose credentials have been ratified but whose exercise of certain rights of participation or representation in the Assembly’s activities has been suspended or withdrawn.”⁸

The May declaration and subsequent report constitute a turning point in the CoE’s position towards Russia. These statements have paved the way to lift PACE sanctions against Russia, and to restore its voting rights. PACE will vote on the Russia sanctions during the part-Session scheduled for 24 – 27 June 2019.

Likely consequences of the change in CoE policy towards Russia

A change in CoE policy towards Russia and the lifting of PACE sanctions despite Russia’s continuing disregard for core CoE principles and institutions is deeply regrettable and may lead to further conflict and human rights violations in the region.

To date, Russia has failed to meet any of the conditions imposed by PACE for lifting its sanctions. On the contrary, mounting evidence of Russia’s conduct in Crimea, Georgia and Eastern Ukraine continue to demonstrate its disregard for human rights and the rule of law, as well as decisions of the ECtHR. Lifting sanctions in the present circumstances directly contradicts the principles enshrined in the Statutes of CoE. Crucially, it legitimises Russia’s illegal actions in Ukraine and Georgia, and sends a strong signal to Russian authorities that the most flagrant violations of the international law, the ECHR and CoE core principles, are collectively accepted and tolerated by CoE MSs.

The implicit legitimisation of an illegal invasion and annexation of a territory of a sovereign state, accompanied by flagrant violations of international humanitarian law and the human rights of the occupied population, creates a serious threat to the peace and security of the entire European Continent. Russia’s integration as a fully-fledged members of the CoE, despite its disregard for CoE institutions and fundamental legal obligations, will ultimately erode CoE values, cohesion and authority. The unintended consequence of keeping Russia within the CoE at all costs may be the loss of the Council’s role in the advancement of human rights and the rule of law in Europe, and its eventual disintegration.

⁸ See the text of the report here:

<file:///Users/simonpapuashvili/Desktop/Council%20of%20Europe%20RUSSIA/Position%20Paper/Material/De%20Sutter-decision-making-credentials-voting-EN.pdf>