

**THE EUROPEAN COURT OF HUMAN RIGHTS' JURISDICTIONAL
AND PROCEDURAL CHALLENGES ARISING FROM RUSSIA'S
EXPULSION FROM THE COUNCIL OF EUROPE**

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ABSTRACT

In March 2022, Russia became the first Member State to be expelled from the Council of Europe, raising unprecedented legal and institutional challenges. This thesis investigates how the European Court of Human Rights has responded to the jurisdictional and procedural challenges following Russia's expulsion. It examines the legal framework for membership termination, the implications for the Court's jurisdiction, and the procedural responses. In addition to doctrinal legal analysis and empirical case law review, the thesis incorporates sociological inquiries into international law, particularly the role of institutional identity and normative boundaries within international organisations. It engages with the concept of the CoE as a 'peace project' and examines how the ECtHR's response reflects broader tensions between institutional identity, affirmation of values, and institutional health. The study finds that the Court adopted a balanced and principled approach, preserving its institutional identity while ensuring continuity for victims. The ECtHR's jurisprudence indicates a shift toward more strategic, impact-driven adjudication in response to systemic obstruction. This thesis contributes to understanding the resilience of the Convention system during institutional crises and adds to legal debates on accountability beyond formal membership.

Key words: European Court of Human Rights, Council of Europe, Russia, expulsion, institutional identity.

AUTHOR'S DECLARATION

I, the undersigned, Maria Gevorgyan, candidate for the LLM degree in Human Rights declare herewith that the present thesis titled 'The European Court of Human Rights' Jurisdictional and Procedural Challenges Arising from Russia's Expulsion from the Council of Europe' is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography.

I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person's or institution's copyright.

I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Vienna, 10 June 2025

Maria Gevorgyan

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EPIGRAPH

‘The law’s final justification is in the good it does or fails to do to the society of a given place and time.’

— Albert Camus, Reflections on the Guillotine, 1957

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LIST OF ABBREVIATIONS

CC- Constitutional Court

CM – Committee of Ministers

CoE – Council of Europe

ECtHR – European Court of Human Rights

ECHR – European Convention on Human Rights

GC – Grand Chamber

ICJ – International Court of Justice

PACE – Parliamentary Assembly of the Council of Europe

RoP – Rules of Procedure

SG – Secretary General

UN – United Nations

VCLT – Vienna Convention on the Law of Treaties

INTRODUCTION

'In the common European home, there is no place for an aggressor.' These words, taken from the report introducing the Parliamentary Assembly's (PACE or Assembly) of the Council of Europe (CoE) draft Opinion,² accompanied its request for the Committee of Ministers (CM) to call upon the Russian Federation to withdraw from the CoE in the immediate aftermath of Russia's full-scale invasion of Ukraine. Simultaneously, during the debates at the PACE, Russia submitted formal notification of its intention to withdraw from the CoE and to denounce the European Convention on Human Rights (ECHR or Convention). Nevertheless, on 16 March 2022, one day after the adoption of PACE's Opinion declaring that Russia could no longer remain a Member State, the CM formally expelled Russia from the CoE, thereby terminating its 26-year membership. This has raised complex legal and institutional questions, including those relating to the applicable procedures for membership termination, the scope and legitimacy of membership sanctions, and the broader implications of expulsion for the integrity of the Convention system.

This thesis examines the jurisdictional and procedural challenges faced by the European Court of Human Rights (ECtHR or Court) following Russia's, an unprecedented event in the Organisation's history. As of 2022, no Member State had ever been expelled, suspended, or voluntarily withdrawn from the CoE pursuant to a resolution of the CoM under Article 8 of the Statute of the CoE (Statute). This makes Russia's expulsion a novel and significant case study for assessing the resilience and adaptability of the Convention system. The primary aim of this thesis is to critically examine how the ECtHR has navigated the jurisdictional and procedural uncertainties stemming from this exceptional situation.

² PACE, *Consequences of the Russian Federation's aggression against Ukraine* (Report Doc 15477, 14 March 2022) <https://pace.coe.int/en/files/29855/html> accessed 27 May 2025.

More specifically, I aim to address the following questions:

- a. What are the legal and procedural mechanisms governing a state's withdrawal from the CoE?
- b. What are the legal implications of a state's departure from the CoE for the jurisdiction of the ECtHR, and how has the Court responded to the jurisdictional challenges arising from such a departure?
- c. What are the procedural consequences of a state's exit from the CoE for the functioning of the ECtHR, and how has the Court addressed these challenges in practice?

In order to address these research questions, this thesis adopts a multi-layered methodology combining doctrinal legal analysis, case law study, and historical contextualisation. The approach includes a close examination of the foundational legal instruments of the CoE, as well as a wide range of official documents and materials produced in response to Russia's expulsion. Particular attention is paid to the jurisprudence of the ECtHR, both before and after the expulsion.

While the Greek withdrawal from the CoE in 1969 is the only other instance of a Member State leaving the Organisation, it is of limited comparative value for the purposes of this study. The Greek case was one of voluntary withdrawal, whereas Russia's departure in 2022 was the result of an expulsion under Article 8 of the Statute. The first key distinction lies in timing and procedure: Greece pre-emptively withdrew before Article 8 could be invoked, thereby avoiding formal suspension and expulsion. Russia, by contrast, attempted to withdraw only after Article 8 proceedings had already been initiated, a legally and procedurally distinct scenario, as I will later demonstrate.

Secondly, the consequences of Greece's withdrawal were far less significant for the Convention system than those resulting from Russia's expulsion. Under the version of the

Convention in force in 1969, Contracting Parties could choose whether to accept the jurisdiction of the Court and the right of individual petition. Greece had accepted neither, nor at the time of its withdrawal had no individual applications pending before the Court, only inter-state proceedings before the Commission. In contrast, Russia's expulsion occurred with over 18,000 pending applications, posing an enormous challenge. Additionally, Russia was a major financial contributor to the CoE, meaning its departure also had substantial budgetary implications. These are just a few examples of the broader and deeper systemic impacts associated with Russia's expulsion as compared to Greece's withdrawal.

It is therefore understandable that, following the invasion of Ukraine, Jörg Polakiewicz, Director of the Directorate of Legal Advice and Public International Law at the CoE, instructed staff to review all available material on the Greek case in search of legal guidance. Yet, as noted by those involved, the Greek precedent failed to provide a meaningful or comprehensive template for addressing the Russian case.³ For this reason, the Greek withdrawal is not treated as a central comparative reference in this thesis.

The challenges analysed in this thesis have, to date, received limited attention in the academic literature, with the notable exception of the comprehensive work by Bates, Dzehtsiarou, and Forde published in February 2025. This thesis seeks to contribute to the growing body of scholarship by incorporating social inquiries into international law and drawing on the social identity of international organisations to offer additional insight into the implications of Russia's expulsion and the Court's approach. By grounding the analysis in both historical context and new empirical data drawn from recent case law from the ECtHR between September 2020 and September 2024, covering the period both before and after Russia's

³ Frederick Cowell, 'Council of Europe Expulsion and the European Convention on Human Rights: The Foundations of Involuntary Treaty Withdrawal' (2025) *Int Comp Law Q* 1 <https://doi.org/10.1017/S0020589325000077>

expulsion, this study aims to fill existing gaps in the literature and assess changes in the Court's approach.

Importantly, this thesis does not seek to assess the validity or legitimacy of Russia's expulsion. Rather, it uses the surrounding legal and institutional developments as a foundation for constructing a step-by-step chronology and legal analysis, situated within the relevant legal framework and contextual background.

The structure of this thesis reflects the legal, institutional, and jurisprudential dimensions of the unprecedented expulsion of the Russian Federation from the CoE. Chapter One lays the legal foundation by examining the framework governing a Member State's exit from the CoE. It focuses on the provisions of the Statute concerning voluntary withdrawal, suspension, and expulsion. This foundational analysis is critical, as the procedural pathway chosen directly determines the legal consequences for the state concerned and for the operation of the Convention system more broadly. This chapter sets the stage for the case-specific inquiry that follows.

Chapter Two contextualises the Russian case study by tracing Russia's complex and often contradictory relationship with the CoE from its 'therapeutic' accession in 1996 to its expulsion in 2022. It maps the key legal and institutional developments and dilemmas that shaped Russia's position within the Organisation, culminating in the events following the full-scale invasion of Ukraine on 24 February 2022. The chapter critically analyses the decisions adopted by the CoE bodies in response to the invasion, building upon the legal principles introduced in Chapter One. This contextual and institutional analysis provides the groundwork for the subsequent examination of the Court's response.

Chapter Three engages with the Court's evolving jurisprudence in the wake of Russia's expulsion. It begins by addressing the Convention framework governing the termination of a

state's participation in the system, before turning to the jurisdictional and procedural challenges that have emerged in the post-expulsion landscape. These include the interpretation of Article 58 of the Convention, absence of a national judge, Russia's systematic non-cooperation, and the persistent non-execution of judgments. The chapter offers a critical evaluation of the Court's doctrinal and institutional responses to these challenges and concludes with an empirical analysis of recent case law, identifying a potential shift in the Court's strategic priorities and jurisprudential posture in relation to Russia.

1. LEGAL FRAMEWORK OF A STATE'S EXIT FROM THE COE: A DRAFTING MESS?

This chapter examines the legal framework regulating a Member State's exit from the CoE, with particular attention to the Statute of the CoE and its provisions concerning voluntary withdrawal, suspension, and expulsion. Establishing this foundation is essential, as the specific procedure invoked directly influences the legal consequences and implications for the Convention system. This analysis provides the necessary context for the case study on the Russian Federation, which is developed in the subsequent chapters.

It is generally accepted that, under international law, states may withdraw from an international organization⁴ even in the absence of an express provision authorizing withdrawal.⁵ This understanding arguably rests on the notion of an inherent right of withdrawal, grounded in the principle of state sovereignty.⁶ However, unlike some international organizations, the CoE's founding instrument expressly regulates the suspension and termination of membership. At the moment of its creation, the Statute of the CoE incorporated detailed legal provisions addressing this issue. These mechanisms are codified in Chapter II of the Statute, specifically Articles 7 to 9, which regulate voluntary withdrawal, suspension and enforced withdrawal for serious violations of the Council's principles, and suspension for failure to meet financial obligations. It is noteworthy that membership can also be terminated due to circumstances governed by public international law, such as the dissolution of a state. However, this thesis does not delve into such scenarios and focuses exclusively on the mechanisms explicitly provided within the

⁴ Ramses A Wessel, 'You Can Check Out Any Time You Like, But Can You Really Leave? On "Brexit" and Leaving International Organizations' (2016) 13 *International Organizations Law Review* 197.

⁵ Henry G Schermers and Niels M Blokker, *International Institutional Law* (5th edn, Martinus Nijhoff 2011) 98–110.

⁶ Nagendra Singh, *Termination of Membership of International Organisations* (Praeger 1958) 27.

Statute, as they form the legal foundation necessary for the subsequent case study of Russia's expulsion.

1.1 Voluntary withdrawal

The process for voluntary withdrawal from the CoE is straightforward. According to Article 7 of the Statute, any Member can withdraw by formally notifying the Secretary General (SG) of its intention to leave the organization. The SG is then required to communicate this notice to the CM. However, the withdrawal procedure does not occur immediately. If notification is given within the first nine months of the current budget year, the withdrawal will take effect at the end of that year. Conversely, if notification is provided during the last three months of the year, the withdrawal will take place at the end of the following financial year.⁷ Furthermore, it is in the discretion of the CM to decide on the legal and financial consequences of such withdrawal which have to be notified afterwards to the Member State by the SG.⁸

This procedure has only been used once by Greece, during military rule in 1967. At that time, the military coup led by the Colonels overthrew the legitimate government in violation of the CoE's democratic principles and imposed an authoritarian regime.⁹ In January 1969 the PACE asked the CM to invite Greece to withdraw from the CoE, an action specified in Article 8 of the Statute.¹⁰ At the same time, the Netherlands, and Scandinavian countries brought a state application against Greece.¹¹ Faced with expulsion, Greece chose to leave CoE voluntarily just

⁷ Statute of the CoE (adopted 5 May 1949, entered into force 3 August 1949) ETS No 1. Article 7.

⁸ CoE, Rules of Procedure of the CM (4th revised ed, 1964) (Strasbourg, 17 June 2003) Article 28 http://www.cvce.eu/obj/rules_of_procedure_of_the_council_of_europe_s_committee_of_ministers_august_1951_consolidated_version_1964-en-10971069-8ff3-45c6-8ec8-7c004491c2a9.html accessed 25 January 2025.

⁹ Yearbook of the ECHR: The European Commission and European Court of Human Rights – *The Greek Case* (1969) ISBN 90247 1310 2; See also Birte Wassenberg, *Histoire du Conseil de l'Europe (1949–2009)*, 207–8.

¹⁰ PACE Recommendation 547 (1969) on the Situation in Greece (30 January 1969, 26th sitting).

¹¹ Ed Bates, *The Evolution of the ECHR: From Its Inception to the Creation of a Permanent Court of Human Rights* (Oxford University Press 2010) 264.

when the CM was about to decide on the proposal of the PACE, announcing its withdrawal in a last-minute statement at the CM's Paris meeting in December 1969.¹² Commissioner Sorensen criticized the CM's approach, asserting that expulsion should be considered a last resort.¹³ Thus, the CM declared that it would not continue the debate on that matter.¹⁴ This highlights a preference for integration rather than isolation, a concept that will continue to be significant in the context of Russia, as I will explore further. This idea is also central to the framework of this thesis, serving as a basis for the analysis of the Court's approach in the following chapters.

Pursuant to Article 7 of the Statute, denunciation in December could have effect only at the end of the following year. Nonetheless, both Greece and the CoE were hesitant to maintain their relationship, resulting in Greece's de facto suspension in 1969. Legally, Greece remained a Member until the end of the following year, when, in late November 1970, the CM adopted a resolution on the legal and financial consequences of Greece's withdrawal.¹⁵ This historical example reveals a recurring pattern that demands creative reading, as I will further explore in this thesis. It highlights how, despite the presence of legal frameworks, political influences often shape the interpretation and enforcement of membership rules, an insight that becomes particularly evident in the Russian case. Greece returned to the CoE through the regular procedure only in November 1974, following the fall of the military regime.¹⁶

Upon withdrawal, membership and all related rights and obligations are terminated, save for any obligations that remain to be fulfilled. This extends to a state's status under treaties

¹² Panayotis Pipinelis, 'Withdrawal of Greece from the Council of Europe: Speech by the Foreign Minister of Greece HE Mr Panayotis Pipinelis at the CM of the CoE(1970)' (1970) 9(2) International Legal Materials 396–410 <http://www.jstor.org/stable/20690610> accessed 28 November 2024; *See also* Florence Benoît-Rohmer and Heinrich Klebes, *Le Droit Du Conseil de l'Europe: Vers Un Espace Juridique Paneuropéen* (Conseil de l'Europe 2004) 40.

¹³ Bates (n 11) 268.

¹⁴ CoE CM, Resolution (69) 51 on Greece (12 December 1969).

¹⁵ CoE CM, Resolution (70) 34 on Legal and Financial Consequences of the Withdrawal of Greece from the CoE(27 November 1970) <https://rm.coe.int/16804bc2a7> accessed January 28, 2025.

¹⁶ PACE Opinion 69 (1974) on the Readmission of Greece to the CoE adopted by the Standing Committee, acting on behalf of the Assembly (27 November 1974) Doc 3512; *See also* CM, Resolution (74) 34 Invitation to Greece to Rejoin the CoE (28 November 1974).

such as the ECHR.¹⁷ Pursuant to Article 58 of the ECHR, Greece ceased to be a party to the ECHR on 13 June 1970, but regained its status on the same day it rejoined the CoE.¹⁸ The issues related to Article 58 will be discussed in the Chapter Three.

1.2 Enforced withdrawal (expulsion)

Unlike statutes of some other international organisations,¹⁹ the Statute of the CoE clearly provides it with the power to suspend and expel its members. In some instances, a ‘creative’ interpretation of founding documents may be justified, allowing for the expulsion of a Member State from an organisation even if no explicit provisions exist in those documents.²⁰ However, this approach is not universally accepted by scholars.²¹

Under Article 8 of the Statute, any Member State of the CoE that ‘seriously violates Article 3’ of the Statute may be suspended from its rights of representation and requested to withdraw by the CM under Article 7. In case of failure to comply, the CM may decide that a state will cease to be a member on a specified date.²²

Although a measured terminology has been adopted, this decision de jure still amounts to expulsion from the CoE. To further elaborate on this, analogous provisions within the founding documents of other international organisations may be considered. For instance, Article 6 of the United Nations (UN) Charter, allows for the ‘expulsion’ of a Member State that ‘has persistently violated’ the principles of the UN.²³ The CoE’s decision while employing

¹⁷ European Convention on Human Rights (opened for signature 4 November 1950, entered into force 3 September 1953) ETS 5, Article 59.

¹⁸ Bundesgesetzblatt Teil II 358 (2008).

¹⁹ The Charter of the Organization of American States, Organization for Security and Co-operation in Europe (OSCE) do not explicitly provide for expulsion.

²⁰ Charles G Fenwick, ‘The Issues at Punte Del Este: Non-Intervention v Collective Security’ (1962) 56 *American Journal of International Law* 474.

²¹ Alison Duxbury, *The Participation of States in International Organisations: The Role of Human Rights and Democracy* (Cambridge University Press 2011) 174.

²² Statute of the CoE (n 7), Article 8.

²³ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) Article 6.

diplomatic vocabulary, effectively mirrors these provisions. Thus, it is evident that the procedure under Article 8 of the Statute, despite its soft phrasing, constitutes a *de jure* expulsion, and will be referred to as such in this thesis.

Article 8 employs flexible language, using terms like ‘may,’ and despite numerous alleged serious violations²⁴ of the CoE’s principles committed by its members, before Russia’s full-scale invasion, there has been no suspension, expulsion from the CoE, or voluntary withdrawal based on a resolution of the CM, under Article 8 of the Statute.²⁵ This, however, does not necessarily entail that Article 8 has never been activated and remained a symbolic decree, nevertheless, initiatives taken by the PACE did not result in actions taken by the CM based on Article 8²⁶ which I will discuss further.

There exists a notable lack of consensus regarding the interpretation of Article 8 of the Statute. This divergence in understanding may impact its application and implications in legal contexts. Schmahl and Breuer argue that suspension and a request to withdraw or expulsion cannot be considered separate procedures.²⁷ While Benoît-Rohmer and Klebes take the view that suspension constitutes a prerequisite for forced withdrawal and must precede it,²⁸ meaning that a state must first be suspended before being asked to withdraw.

At first glance, this may suggest that suspension is enacted immediately and serves as a preliminary measure before a formal request for withdrawal or the potential of expulsion is initiated. However, a careful textual analysis of Article 8 suggests that the CM is not required

²⁴ For instance, PACE Recommendation 1456 (2000) on Conflict in the Chechen Republic – Implementation by Russia 1444 (2000) (6 April 2000) para 24.2 <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16797> accessed 2 February 2025; *See also* on situation in Ukraine in 2014: PACE Resolution 1990 (2014) on Reconsideration on Substantive Grounds of the Previously Ratified Credentials of the Russian Delegation (10 April 2014) para 4 <https://pace.coe.int/en/files/20882> accessed 2 February 2025; *See also* Azerbaijan and the situation in Nagorno-Karabakh: PACE Resolution 2527 (2024) Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of Azerbaijan, paras 1 and 4 <https://pace.coe.int/en/files/33333/html> accessed 10 February 2025.

²⁵ Stefanie Schmahl and Marten Breuer (eds), *The Council of Europe: Its Law and Policies* (2017, online edn, Oxford Academic) 67 <https://doi.org/10.1093/law/9780199672523.001.0001> accessed 19 February 2025.

²⁶ Schmahl and Breuer (n 25) 67.

²⁷ Schmahl and Breuer (n 25) 69.

²⁸ Benoît-Rohmer and Klebes (n 12) 41.

(has any obligation) to implement the procedural steps delineated within the article. This interpretation indicates that the obligations set forth are not mandatory but rather contingent on the CM's discretion. This discretionary approach has also been applied in cases involving serious violations of Article 3, where the decision ultimately depends on a political assessment.²⁹ This indicates that suspension and the withdrawal request are neither cumulative nor alternative measures. Therefore, I contend that the procedure outlined in Article 8 should be understood as a two-step process (or a three-step process if the request for withdrawal is disregarded): suspension,³⁰ request to withdraw, and (if the request is ignored) expulsion³¹.

As Article 8 stipulates, suspension and termination of membership is a matter of the CM, although similar to the admission procedure, Resolution (51)30 obliges it to consult the PACE first.³² The PACE often takes initiative by suggesting the application of the procedure under Article 8 of the Statute to the CM, for instance, in response to Greece's 1967 military coup,³³ Turkey's 1980 military takeover in 1983,³⁴ and Russia's conduct during the Second Chechen war.³⁵ The CM after consulting the PACE or on the latter's proposal may request the state in question to withdraw from the organisation under Article 7 of the Statute. This option enshrined in Article 8 enables states to preserve their reputation, 'sidestepping' expulsion, a fate that befell Greece in 1969. In case of the state's consent, the procedure under Article 7 has to be invoked. However, if the state does not comply with the CM's request, the latter may

²⁹ Ed Bates, Kanstantsin Dzehtsiarou, Andrew Forde, and Daniel Tarschys, "'Therapeutic Admission' (1992–1998)" in *Russia, the CoE and the ECHR: A Troubled Membership and Its Legacy*, 1st edn (Bristol University Press 2025) 148 <https://doi.org/10.2307/jj.18323770.9> accessed 1 March 2025.

³⁰ All consideration of the suspension of a member must begin by a proposal for suspension put forward by at least one representative. The proposal must have been included in the agenda of the session at which it is discussed. The member concerned shall receive through the SG a notification of the decision reached in its case. This notification shall set out the legal and financial consequences of the decision. RoP of CM (n 8), Article 26.

³¹ Pursuant to Article 27, the same logic outlined in Article 26 applies to expulsion. RoP of CM (n 8).

³² CM Resolution 51(30) Admission of new members (3 May 1951).

³³ PACE Recommendation 547 (n 10) para 5.

³⁴ PACE Recommendation 904 (1980) 'Situation on Turkey' para 11 <https://pace.coe.int/en/files/14938/html#:~:text=11,of%20Ministers> accessed 12 February 2025; See also PACE Resolution 794 (1983) 'Situation in Turkey' para 19 <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=16205&lang=en#:~:text=19,the%20Council%20of%20Europe> accessed 12 February 2025.

³⁵ PACE Recommendation (n 24) para 24.2.

decide that the state ‘ceases to be a member of the CoE’.³⁶ The CM has to determine the date of the termination, and the SG has to notify the state of the decision as well as the legal and financial consequences of the withdrawal.³⁷

1.3 Suspension for failure to respect financial obligations

Under Article 9 of the Statute, Member States that fail to meet their financial obligations may be suspended from the CM and PACE. Unlike Article 8, this procedure does not concern expulsion. However, persistent non-payment could amount to a serious violation of Article 3, potentially triggering a request to withdraw.³⁸

It is important to distinguish between suspension under Article 8 and the suspension of representation rights under Article 9. The latter only restricts participation in CM and PACE activities, while other membership rights remain intact. This thesis also differentiates between suspension of representation and voting rights. Notably, PACE had already suspended Russia’s voting rights before February 2022.

Furthermore, it is noteworthy that the suspension of representation rights within PACE may also be enacted by the CM under Article 8 of the Statute and Resolution 51(30).³⁹ However, PACE effectively took matters into its own hands by enacting a de facto restricted suspension. This may eventually lead to the procedures outlined in Articles 7 and 8 of the Statute.⁴⁰ The reason for creating this legal instrument is the examination of the credentials of a national delegation under Rules 8 and 9 of the PACE Rules of Procedure (RoP). The credentials of a national delegation may be challenged on substantial grounds under Rule 8, specifically based

³⁶ CoE Statute (n 7), Article 8.

³⁷ RoP of CM (n 8), Article 26 and 27.

³⁸ Schmahl and Breuer (n 25) 73.

³⁹ CM Resolution (n 32).

⁴⁰ Schmahl and Breuer (n 25) 71. *See also* PACE, Resolution 1115 (1997) on Setting Up of an Assembly Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee).

on serious violations of basic principles of the organisation outlined in Article 3 of, as well as the Preamble to the Statute if they have not yet been ratified.⁴¹

1.4 Practical application of Article 8: Challenges

Despite explicit provisions in the CoE Statute, there is significant ambiguity about the practical procedures for suspension and expulsion decisions.⁴² The CM RoP lack any detailed guidelines. Article 26 of the RoP requires any suspension proposal to be introduced by at least one representative and included in the session's agenda. The member concerned must be notified by the SG of the decision and its legal and financial consequences. This procedure similarly applies if the CM decides to expel a suspended member.

The procedure of expulsion has two stages, described by Dzehtsiarou and Coffey as 'trigger' and 'response'.⁴³ The first stage includes events that can serve as reasons to activate Article 8. The 'trigger' involves events activating Article 8, but CoE statutory documents are broad and undefined, allowing any Member State theoretically to propose suspension or expulsion.

There is only one substantive condition for invoking Article 8, a serious violation of Article 3 of the Statute. Any other violations of Article 3 simply do not qualify for the application of Article 8. Any action that contradicts a state's obligations under the Statute is a violation of Article 3, however, will activate Article 8 of the Statute only if it is 'serious'. Article 8 of the Statute does not elaborate on the threshold of 'seriousness' of the violation.

⁴¹ PACE, ROP (adopted by Resolution 1202 (1999) on 4 November 1999, as modified, January 2023). Rule 8.2.

⁴² Marko Milanovic called the wording of Articles 7 and 8 'a drafting mess'. See Marko Milanovic, 'Russia's Submission to the ICJ in the Genocide Case; Russia's Withdrawal from the Council of Europe' (*EJIL: Talk!*, 2022) www.ejiltalk.org/russias-submission-to-the-icj-in-the-genocide-case-russias-withdrawal-from-the-council-of-europe/ accessed 2 January 2025.

⁴³ Kanstantsin Dzehtsiarou and Donal K Coffey, 'Suspension and expulsion of members of the Council of Europe: difficult decisions in troubled times' (2019) 68 *International and Comparative Law Quarterly* 443 https://www.cambridge.org/core/product/identifier/S0020589319000101/type/journal_article accessed 9 February 2025.

Thus, it might be helpful to refer to the instruments provided by the public international law, governing the interpretation, application, and termination of treaties. The serious violation provision of Article 8 strongly corresponds with the Vienna Convention's on the Law of Treaties (Vienna Convention or VCLT) material breach provision enshrined in Article 60. The latter reads that only a 'material breach' entitles the other parties to invoke the breach as a ground to suspend the operation of the treaty or even terminate it.⁴⁴ If taken literally, a material breach of a treaty consists of 'the violation of a provision essential for the accomplishment of the object or purpose of the treaty'.⁴⁵

The values established by Article 3, are vague and abstract in nature which makes it significantly difficult to assess whether the violation of 'the rule of law' or 'human rights' is serious according to Article 8 and which legal provision or right is essential for the accomplishment of the object or purpose of the CoE Statute. As mentioned and I will argue further in this thesis, the practice of CoE illustrates that despite multiple violations by its Member States being considered as 'serious', the instruments provided by Article 8 were not used in practice until February 2022.⁴⁶ This raises questions about the threshold of seriousness of violations that can activate the procedure under Article 8. Until 2022, there have been only assumptions regarding the possible 'triggers'⁴⁷ of Article 8, including the ECtHR ruling under Article 46(4) of the Convention confirming failure to implement a judgment of the Court, an interstate judgment of the ECtHR signalling systematic violations of human rights in an ongoing situation, a report by the PACE or investigation by the Human Rights Commissioner.⁴⁸

⁴⁴ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT), Article 60 (1).

⁴⁵ VCLT (n 44), Article 60(3).

⁴⁶ Michaela Wittinger, *Der Europarat: die Entwicklung seines Rechts und der "europäischen Verfassungswerte"* (Nomos 2005) 460-1.

⁴⁷ In the 1960s, a decision by the European Commission on Human Rights, which found numerous violations of the ECHR in Greece, served as such a trigger. (*Denmark, Norway, Sweden, and the Netherlands v Greece*, App nos 3321/67, 3322/67, 3323/67, 3344/67, 5 November 1969).

⁴⁸ Dzehtsiarou and Coffey (n 44).

After the ‘trigger’ the ‘response’ follows, entailing the actions and procedures within the CoE.⁴⁹ to accommodate the expulsion of a State Party. Even in the 1960s while discussing Greece’s potential expulsion, the procedural difficulties were identified and examined. Firstly, ‘controversy erupted’ as to whether the resolution on suspension required unanimity or a qualified majority.⁵⁰ Article 20 of the Statute regulates voting, however, neither suspension nor expulsion is mentioned among ‘important matters’ requiring unanimity. As Article 20 does not explicitly mention that respecting parties are excluded from voting, this is an open invitation for the ‘unwelcome’ states to cast a negative vote which will effectively veto the adoption of the resolution on suspension or expulsion by the CM. However, the proposed solution was to apply the voting conditions regulating the admission of new Members by analogy. Hence, a two-thirds majority was sufficient.⁵¹ The proposed solution is rooted in the idea that the CoE has a way broader experience in admitting Members which can be utilised in cases of expulsion.

In sum, despite clear statutory provisions, practical application of CoE exit mechanisms remains ambiguous. Key challenges include the undefined ‘serious’ violation standard, procedural uncertainties in Article 8, the discretionary nature of CM decisions, and lack of safeguards or timelines. Until Russia’s expulsion, no state had been suspended, expelled, or forced to withdraw under Article 8, making Russia’s case a valuable opportunity to critically assess the CoE membership mechanism’s legal and functional dynamics.

⁴⁹ *ibid.*

⁵⁰ Konstantinos D Magliveras, *Exclusion from Participation in International Organisations* (Kluwer 1999) 81.

⁵¹ *ibid.*

2. RUSSIA AND THE COE: FAILED COURSE OF THERAPY?

This chapter aims to contextualize the case study by examining Russia's relationship with the CoE from its accession in 1996 up to its expulsion in 2022. It maps the key legal and institutional developments within the CoE that are relevant to understanding Russia's position prior to its departure. The chapter then turns to the period following 24 February 2022, analysing the responses and decisions taken within the CoE in the aftermath of Russia's full-scale invasion of Ukraine. Building upon the legal framework established in Chapter One and the historical developments outlined in the first section of this chapter, it offers a critical analysis of the post-invasion developments leading up to Russia's expulsion. This analysis lays the necessary foundation for the final chapter, which examines the Court's response to these developments.

2.1 Russia's troubled relationship with the CoE

Russia's membership and admission⁵² to the CoE was paradoxical from the outset, ironically described by Peter Leuprecht, the Deputy SG of the CoE, as 'therapeutic admission',⁵³ a decision driven by the belief that integration would be more effective than isolation. Russia was not in a position to join the organisation due to its failure to adhere to the rule of law and respect human rights.⁵⁴ On one side of the scale was the pressing need for a thorough legal and human rights evaluation, while on the other was the political calculation of

⁵² Russia faced repeated criticism for human rights abuses, particularly related to its actions in Chechnya, which initially resulted in the deferral of its application for the CoE membership in 1995. *See* Report of the Rapporteur Mühlemann 'Developments in the Russian Federation in the Situation in Chechnya', Doc 7531 (23 April 1996) <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=7466&lang=EN> accessed 12 February 2025. *See also* Walter Schwimmer, *The European Dream*, London, Continuum, (2004) 137.

⁵³ Peter Leuprecht, 'Innovations in the European System of Human Rights Protection: Is Enlargement Compatible with Reinforcement?', *Transnational Law and Contemporary Problems* 8 (1998), 313-332.

⁵⁴ PACE Committee on Legal Affairs and Human Rights, 'Russia's Application for Membership of the Council of Europe' Doc 7463, 18 January 1996 <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=7397&lang=enL> accessed 28 February 2025.

Russia's desire to secure its place within the 'democracy club' and shed the remnants of its Soviet past. Ultimately, the political considerations outweighed,⁵⁵ and paradoxically, Russia was admitted despite failing to meet CoE standards.⁵⁶ This 'emotional desire to help'⁵⁷ is key to understanding the procedural and jurisdictional challenges in the ECtHR following Russia's departure, revealing the complex legal and political factors shaping the CoE's and the Court's approach to Russia, which I will explore in the next chapter. The historic 'Yeltsin Letter',⁵⁸ which once assured that Russia's membership would not lead to lowering the high standards of the CoE, ultimately became a symbol of the very decline it promised to prevent.⁵⁹

After admission, Russia quickly became the subject of numerous Court judgments finding violations of the Convention, alongside a growing backlog of pending cases.⁶⁰ As Janis argues, Russia's political significance and the CoE's 'therapeutic approach', which facilitated its membership, have made it difficult for Strasbourg to enforce compliance.⁶¹ The human rights violations found by the ECtHR were often carried out in bad faith, further undermining Russia's commitment to the CoE's principles and Convention requirements.⁶² This not only weakened Russia's credibility but also carried significant risks, with negative consequences for the overall legitimacy of the Strasbourg system. Instead of benefiting from the 'therapeutic treatment' intended to foster democracy, Russia's behaviour has actively worked to dismantle the foundation of the CoE's authority.

⁵⁵ Bates et al (n 29) 30.

⁵⁶ Report 7443 (1996) of the PACE Political Affairs Committee on Russia's request for membership of the CoE (2 January 1996) §§ 6, 103(xii) <https://pace.coe.int/en/files/7032> accessed 14 May 2025.

⁵⁷ Bates et al (n 29) 29.

⁵⁸ The letter of January 1995, addressed to CoE and signed by Russian, Prime Minister, the Chair of the Federation Council, and the Chair of the Duma. PACE Committee on Legal Affairs and Human Rights Report from PACE Report (n 56).

⁵⁹ Dunja Mijatović, 'At the crossroads: democracy, human rights and the rule of law' (speech, Strasbourg, 24 June 2022).

⁶⁰ Jeffrey Kahn, 'The Rule of Law Under Pressure: Russia and the European Human Rights System' (2019) 44 *Review of Central and Eastern European Law* 275.

⁶¹ Mark Janis, 'Russia and the "Legality" of Strasbourg Law' (1997) 8 *European Journal of International Law* 98.

⁶² Jeffrey Kahn, 'The "Anti-Deference" Device: Article 18 of the ECHR' (2021–2022) 31 *Journal of Transnational Law & Policy* 117–143.

In 2000, PACE accused Russia of failing to uphold its obligations as a Member of the ECHR and responded by suspending its delegates' voting rights from April 2000 to January 2001.⁶³ Nonetheless, on 25 January 2001, it revoked this suspension, considering that Russia 'deserves to be given another chance to prove that it is willing, and able, to influence the situation in the Chechen Republic'.⁶⁴ The dilemma that would continue to follow the CoE, especially the Court, up until February 2022 was whether to prioritize its core values and risk further alienating Russia or to maintain its ability to monitor and assist.

Although barely any progress has been made, with Russia's violations in Chechen Republic, Moldova (Transnistria), Georgia, and beyond fostering an atmosphere of impunity,⁶⁵ without internal sanctions, including the invocation of Article 8⁶⁶. As Nußberger suggests, 'for both sides it was clear that the marriage, even if unhappy, should continue'.⁶⁷ There was a glimpse of hope in the early-2000s,⁶⁸ however, it quickly faded amid the 'schizophrenic nature' of Russia's interactions with the CoE⁶⁹. This decline accelerated with Russia's illegal activities in Eastern Ukraine and, most notably, the annexation of Crimea, the most serious breach of

⁶³ PACE Recommendation on the situation in Chechnya (n 24) para 24.2; PACE Recommendation 1553 (2002) 'Honouring of obligations and commitments by the Russian Federation' <https://pace.coe.int/en/files/16990> accessed 12 February 2025.

⁶⁴ PACE Resolution 1241 (2001) 'Credentials of the delegation of the Russian Federation' <https://pace.coe.int/en/files/16874/html> accessed 12 February 2025.

⁶⁵ PACE Resolution 1571 (2007) 'Member states' duty to cooperate with the European Court of Human Rights, para 5 and 7 <https://pace.coe.int/en/files/17576/html> accessed 12 February 2025.

⁶⁶ PACE Monitoring Committee Resolution 1990 (2014) 'Reconsideration on substantive grounds of previously ratified credentials of the Russian delegation' <https://pace.coe.int/en/files/20882/html> accessed 12 March 2025; PACE Report (Doc. 12045, 29 September 2009) 'Reconsideration on substantive grounds of previously ratified credentials of the Russian delegation (Rule 9 of the Rules of Procedure of the Assembly)' para 17 <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12311&lang=en> accessed 12 March 2025.

⁶⁷ Angelika Nußberger, 'The Reception Process in Russia and Ukraine' in Helen Keller and Alec Stone Sweet (eds), *A Europe of Rights* (Oxford University Press 2008) 605–606.

⁶⁸ In 2002, a PACE Resolution 'welcomed the undoubted progress made by Russia towards the rule of law and democracy'. PACE Resolution 1277 (2002) 'Honouring of obligations and commitments by the Russian Federation' para 1 <https://pace.coe.int/en/files/16991/html> accessed 12 March 2025; See also Alvaro Gil-Robles, *Report by the Commissioner for Human Rights on His Visit to the Russian Federation, 15 to 30 July 2004, 19 to 29 September 2004* (CommDH(2005)2, 20 April 2005) <https://rm.coe.int/16806db7be> accessed 20 February 2025.

⁶⁹ Bates et al (n 29) 79.

Article 3 of the CoE Statute in 40 years⁷⁰ before the full-scale invasion of Ukraine in 2022, as its membership increasingly became a matter of mere ritualism.

As a result, PACE suspended some rights of the Russian Delegation, including rights to vote in 2014⁷¹. Although PACE did not formally revoke the credentials of the Russian Delegation, these decisions contributed to Russia's growing reluctance to cooperate and participate in the work of the CoE, highlighting the perceived lack of legitimacy of PACE from the perspective of the CoE Statute.⁷² However, according to its internal procedures, the credentials of delegations from all Member States must be ratified at the beginning of each year.⁷³ Given Russia's failure to comply with the PACE resolutions in 2015,⁷⁴ there was a strong likelihood that its credentials would not be ratified in 2016.⁷⁵ To pre-empt this and 'save its face', Russia decided not to submit the credentials for ratification which effectively led to a self-induced suspension or representation in the PACE.⁷⁶ This pattern of behaviour persisted and became even more evident in the lead-up to Russia's expulsion from the CoE, as well as in its evolving relationship with the Court, which will be discussed further in the next chapters.

Between 2016 and 2019, Russia's failure to submit credentials⁷⁷ prevented PACE from challenging them and caused significant financial damage, Russia accrued €90 million in

⁷⁰ *ibid* 97.

⁷¹ PACE Resolution (n 68).

⁷² Article 8 and 9 of the Statute grant the CM exclusive authority to sanction states by suspending voting rights. Russia challenged the legitimacy of PACE's Resolution, arguing that PACE lacked authority to withdraw voting rights, causing an imbalance between the CoE's two statutory organs. See Sergey Lavrov, 'Interview with Euronews, Moscow, 16 October 2018' https://coe.mid.ru/en_GB/-/interv-u-ministra-inostrannyh-del-rossii-s-v-lavrova-informacionnomu-agentstvu-evron-us-moskva-16-oktabra-2018-goda?inheritRedirect=true accessed 4 March 2025.

⁷³ PACE RoP (n 42), Rule 6.2.

⁷⁴ PACE Resolution 2028 (2015) 'The humanitarian situation of Ukrainian refugees and displaced persons' <https://pace.coe.int/en/files/21480/html> accessed 20 March 2025.

⁷⁵ PACE Resolution 2034 (2015) 'Challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation' <https://pace.coe.int/en/files/21538/html> accessed 12 March 2025.

⁷⁶ PACE, 'President regrets Russian parliament's decision not to participate in the work of the Assembly in 2016' (19 January 2016) <https://pace.coe.int/en/news/5980/president-regrets-russian-parliament-s-decision-not-to-participate-in-the-work-of-the-assembly-in-2016> accessed 12 March 2025.

⁷⁷ Kyiv Post, 'Kuleba says ad hoc committee to discuss proposals on Russia's return to PACE March 16' (2 February 2018) <https://archive.kyivpost.com/eastern-europe/kuleba-says-ad-hoc-committee-discuss-proposals-russias-return-pace-march-16.html> accessed 12 March 2025.

unpaid contributions.⁷⁸ While mechanisms exist to address financial obligations, and the CM had sufficient grounds to invoke Article 9 and suspend Russia from the CM,⁷⁹ as its representation in PACE was already de facto suspended, the CM decided to apply its decision which allows extension of the period of non-payment in exceptional circumstances.⁸⁰

Russia also threatened to leave the CoE, questioning the binding nature and legitimacy of ECtHR rulings, as it had not participated in the election of most of the Court's judges during this period.⁸¹ In June 2019, PACE ratified⁸² the Russian delegation's credentials following a resolution⁸³ in which it chose to derogate⁸⁴ from its own RoP concerning the transmission of credentials of national delegations⁸⁵ and appointments following parliamentary elections,⁸⁶ once again reflecting its 'therapeutic' approach based on the belief that integration is preferable to isolation,⁸⁷ however, notably weakening its sanction mechanism and 'amputating itself of one its key 'internal sanctions'.⁸⁸ This decision was made without imposing *any* internal

⁷⁸ PACE, 'Budget and priorities of the CoE for the biennium 2020-2021' (Doc. 14903, 7 June 2019) <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=27727&lang=en> accessed 12 March 2025.

⁷⁹ PACE Recommendation 2124 (2018) 'Modification of the Assembly's Rules of Procedure: the impact of the budgetary crisis on the list of working languages of the Assembly' (16 March 2018) <https://pace.coe.int/en/files/24546> accessed 14 June 2025; Explanatory Memorandum by Sir Roger Gale, Rapporteur, *Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of the Russian Federation*, Doc. 14922 (26 June 2019) para 12 <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28016&lang=en> accessed 14 May 2025.

⁸⁰ *ibid*, para 11.

⁸¹ 'Russia To Reject Strasbourg Court If Not Allowed To Help Select Judges' (RFE, 14 October 2017) <https://www.rferl.org/a/russia-to-reject-strasbourg-court-if-not-allowed-to-select-judges/28794729.html> accessed 12 March 2025.

⁸² PACE Resolution 2292 (2019) 'Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of the Russian Federation' <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28049&lang=en> accessed 12 March 2025.

⁸³ PACE Resolution 2287 (2019) 'Strengthening the decision-making process of the Parliamentary Assembly concerning credentials and voting' <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=27980&lang=en> accessed 12 March 2025.

⁸⁴ PACE Resolution introduced a clause which allows in exceptional cases to 'deviate' from the requirements of the CoE Statute and PACE RoP and 'allow 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. These credentials shall be submitted to the Assembly for ratification at the next sitting following their transmission.' PACE Resolution (n 85) Para 7.

⁸⁵ PACE RoP (n 42) Rules 6.1 and 6.3.

⁸⁶ PACE RoP (n 42), Rule 11.3.

⁸⁷ Rapporteur Roger Gale emphasized that for Russian citizens, the CoE is crucial as a means to protect their rights under the ECtHR's jurisdiction. Explanatory Memorandum (n 81) para 75.

⁸⁸ Andrew Drzemczewski, 'Reflections on a Remarkable Period' in O Delas (ed), *Liber Amicorum Peter Leuprecht* (Bruylant 2012) 71, section 4.

sanctions, despite the recognition of Russia's blatant non-compliance with its demands.⁸⁹ This 'excessively lenient' approach not only failed to address Russia's 'unquestionable violations'⁹⁰ but also exacerbated institutional integrity within the organisation.⁹¹

Throughout its period of sanctions from the PACE Russia remained bound by the Convention and expected to comply with ECtHR judgments.⁹² However, in 2015, the Russian Duma empowered,⁹³ the Constitutional Court (CC) to declare ECtHR rulings unenforceable if they conflicted with Russia's constitution,⁹⁴ contradicting Article 46 of the ECHR and Article 27 of the VCLT which forbid the use of domestic law to justify non-compliance.⁹⁵ The CC's stance allowed selective non-compliance, especially with politically sensitive cases.⁹⁶

Scholars note Russia's reluctance to enforce rulings, such as those involving the situation in Chechnya, was expected. More surprising was the CM's acceptance of the CC's position in *Anchugov and Gladkov*,⁹⁷ effectively permitting domestic courts to ignore ECtHR

⁸⁹ PACE Report (Doc. 14922, 26 June 2019) 'Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of the Russian Federation' <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28016&lang=en> accessed 12 March 2025.

⁹⁰ See Explanatory Memorandum (n 81) para 80.

⁹¹ Members of the delegations from Georgia, Ukraine, Estonia, Latvia, Lithuania, Poland, and Slovakia warned that the CoE's future is at risk as it loses the trust of the people it aims to protect. See Written Declaration No 689, Doc 14940 (15 October 2019) <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28263&lang=en> accessed 12 May 2025.

⁹² Konstantin Baranov and Yuri Dzhibladz, 'Council of Europe vs Russia: Stay or Go?' (EUObserver, 24 June 2019) <https://euobserver.com/opinion/145235> accessed 30 March 2025.

⁹³ Marina Aksenova and Iryna Marchuk, 'Reinventing or Rediscovering International Law? The Russian Constitutional Court's Uneasy Dialogue with the European Court of Human Rights' (2018) 16 *International Journal of Constitutional Law* 1322; Lauri Mälksoo, 'Russia's Constitutional Court Defies the European Court of Human Rights: Constitutional Court of the Russian Federation Judgment of 14 July 2015 No 21-II/2015' (2016) 12 *European Constitutional Law Review* 377; Filippo Fontanelli and Konstantin Dzehtsiarou, 'Unprincipled Disobedience: The Doctrine of the Russian Constitutional Court after the Yukos Case' (2018) *Yearbook of European Convention on Human Rights* 319.

⁹⁴ See Mälksoo (n 95) 377.

⁹⁵ Giuseppe Martinico, 'Is the European Convention Going to Be "Supreme"? A Comparative-Constitutional Overview of ECHR and EU Law before National Courts' (2012) 23 *European Journal of International Law* 401, 422.

⁹⁶ The Russian CC first used its new powers in *Anchugov and Gladkov v Russia*, ruling parts of the ECtHR judgment on prisoner disenfranchisement unconstitutional. See Sebastián Mantilla Blanco, 'A Backdoor Exit from the European Convention on Human Rights: Russia, the Council of Europe and Article 58(3) ECHR' (Verfassungsblog, 5 April 2022) <https://verfassungsblog.de/a-backdoor-exit-from-the-european-convention-on-human-rights/> accessed 30 March 2025.

⁹⁷ *Anchugov and Gladkov v. Russia*, App nos 11157/04 and 15162/05, 4 July 2013.

decisions and closing supervision prematurely.⁹⁸ By Russia's CoE expulsion, 223 leading judgments remained unenforced, the highest among members.⁹⁹ While Russia often paid just satisfaction, commentators describe this as ritualistic, signalling compliance without reforms.¹⁰⁰ This selective enforcement, dubbed a 'human rights tax,'¹⁰¹ allows Russia to comply with non-political cases while ignoring politically sensitive ones, preserving a façade of adherence.¹⁰²

Russia was a 'challenging' patient. As the outline above suggests, it was clear that Russia resisted the prescribed treatments, unwilling to comply with the necessary reforms. In response, the CoE repeatedly turned to its toolbox, offering exception after exception, and when no suitable remedy was found, it amended its rules to accommodate Russia. The CoE found itself not only struggling to contend with an increasingly hostile Russia but also suffering the repercussions of this relationship, as Russia's continued membership began to have unacceptable implications for the CoE,¹⁰³ eroding the credibility as a guardian of human rights.¹⁰⁴ The dilemma was clear: either accept Russia on its terms, despite the strong case that it no longer belonged in the CoE, or risk losing any chance of holding it accountable.

⁹⁸ CM Resolution CM/ResDH(2019)240, Execution of the judgments of the European Court of Human Rights: Two cases against Russian Federation (25 September 2019) <https://hudoc.exec.coe.int/eng?i=001-196634> accessed 24 February 2025; Gleb Bogush and Ausra Padskocimaite, 'Case Closed, but What About the Execution of the Judgment? The Closure of *Anchugov and Gladkov v Russia*' (EJIL:Talk!, 30 October 2019) <https://www.ejiltalk.org/case-closed-but-what-about-the-execution-of-the-judgment-the-closure-of-anchugov-and-gladkov-v-russia/> accessed 24 February 2023.

⁹⁹ 'New Country Report on the Implementation of Judgments of the European Court of Human Rights in Russia' (European Implementation Network, January 2021) <https://www.einnetwork.org/news-2021/2021/2/5/xjxk31b9ufb71hur8u8mpdhmpill> accessed 30 March 2025.

¹⁰⁰ Mälksoo and Benedek (n 101) 3–25, 6.

¹⁰¹ Sergii Maso, *lecture at Central European University* (Central European University, 17 March 2025).

¹⁰² Bill Bowring, 'Russia's Cases in the ECtHR and the Question of Implementation' in Mälksoo and Benedek (n 101) 188–221.

¹⁰³ Bates et al (n 29) 41.

¹⁰⁴ K Malfliet and S Parmentier (eds), *Russia and the Council of Europe: 10 Years After* (Palgrave Macmillan 2010) 7–32, 26.

2.2 The final chapter of Russia's membership: Voluntary withdrawal or expulsion?

Following Russia's full-scale invasion of Ukraine, the CM took several decisions. On 24 February 2022, the CM, condemning the armed aggression against Ukraine, concluded for the second time in its history, that there had been a 'serious violation' of Article 3, and decided to 'hold an extraordinary meeting with a view to considering taking measures, including under Article 8 of the Statute'.¹⁰⁵

On the next day, it was agreed by the deputies to suspend Russia from its rights of representation in the CoE 'in accordance with Article 8 of the Statute' with the further invitation the SG to notify Russia and provide it with the legal and financial consequences of the decision.¹⁰⁶ It is explicitly mentioned that the decision was made following an exchange of views with the PACE, furthermore, for transparency and fairness, the CM also disclosed the 'trigger' for its decision, clearly referring to its decisions on the situation in Ukraine and Russia's 'serious violation of its obligations under Article 3'.¹⁰⁷ Although there is no consensus on the necessity of the PACE's opinion, the CM did not formally request a separate opinion from the PACE. Nevertheless, it is evident both in its decisions from 24 February¹⁰⁸ and 25 February 2022¹⁰⁹ that they were made in close cooperation with the PACE.

¹⁰⁵ CM 1426bis meeting, 24 February 2022 'Situation in Ukraine' [https://search.coe.int/cm/#{%22CoEIdentifier%22:\[%220900001680a5a1f1%22\],%22sort%22:\[%22CoEValidati onDate%20Descending%22\]}](https://search.coe.int/cm/#{%22CoEIdentifier%22:[%220900001680a5a1f1%22],%22sort%22:[%22CoEValidati onDate%20Descending%22]}) accessed 12 March 2025.

¹⁰⁶ *ibid.* See also CM, Resolution CM/Res(2022)1 on Legal and Financial Consequences of the Suspension of the Russian Federation from its Rights of Representation in the CoE (16 March 2022) <https://rm.coe.int/2022-cm-resolution-1/1680a5b463> accessed 12 April 2025.

¹⁰⁷ CM, Decision CM/Del/Dec(2022)1426bis/2.3 "Situation in Ukraine" [https://search.coe.int/cm/#{%22CoEIdentifier%22:\[%220900001680a5a1f1%22\],%22sort%22:\[%22CoEValidati onDate%20Descending%22\]}](https://search.coe.int/cm/#{%22CoEIdentifier%22:[%220900001680a5a1f1%22],%22sort%22:[%22CoEValidati onDate%20Descending%22]}) accessed 12 March 2025.

¹⁰⁸ CM decided to examine without delay, and in close co-ordination with the PACE and the SG, the measures to be taken in response to the serious violation by the Russian Federation of its statutory obligations as a CoE Member State. CM Decision (n 111).

¹⁰⁹ 'Following an exchange of views with the Parliamentary Assembly in the Joint Committee.' Decision CM/Del/Dec(2022)1426ter/2.3 'Situation in Ukraine – Measures to be taken, including under Article 8 of the Statute of the Council of Europe' (25 February 2022) [https://search.coe.int/cm/#{%22CoEIdentifier%22:\[%220900001680a5a360%22\],%22sort%22:\[%22CoEValidati onDate%20Descending%22\]}](https://search.coe.int/cm/#{%22CoEIdentifier%22:[%220900001680a5a360%22],%22sort%22:[%22CoEValidati onDate%20Descending%22]}) accessed 12 March 2025.

On 10 March 2022, the CM decided to consult the PACE on the potential further use of Article 8.¹¹⁰ The time that passed between the decision to suspend Russia on 25 February and the decision to consult the PACE suggests that the CM gave Russia some time to show its willingness to collaborate on the clear indicators that had needed to be fulfilled mentioned in its decisions from 24 February (urged Russia to ‘immediately and unconditionally cease its military operations in Ukraine’).¹¹¹ However, this did not take place and the violations of principles of the CoE persisted.

On 15 March 2022, PACE issued an Opinion stating that Russia could ‘no longer be a Member State’ of the CoE.¹¹² This Opinion is crucial, as it provides the most detailed explanation, to a certain extent, of the legal basis for expulsion, highlighting the ‘disregard for the very essence of the CoE,’ as enshrined in its Statute.¹¹³ The Opinion further elaborates on a serious breach of Article 3, noting that ‘despite numerous appeals to cease hostilities and comply with international law, the Russian leadership has persisted in its aggression.’ While this aggression appears to be the main ‘trigger’ for invoking the procedure under Article 8, the Opinion also references other actions by the Russian leadership, including the military aggression against Georgia and its subsequent occupation of regions in 2008, the illegal annexation of Crimea, and Russia’s involvement in eastern Ukraine.¹¹⁴ Furthermore, the PACE also mentioned Russia’s failure to implement ‘numerous decisions of the ECtHR’, including interim measures, asking Russia to refrain from military attacks against civilians and civilian objects.¹¹⁵ This combination of factors suggests that a ‘trigger’ can result from a confluence of events. Consequently, PACE opined that the CM should request Russia to immediately

¹¹⁰ CM decision (n 111).

¹¹¹ *ibid.*

¹¹² PACE, Opinion 300 (2022) ‘Consequences of the Russian Federation’s aggression against Ukraine’ (15 March 2022) <https://pace.coe.int/en/files/29885/html> accessed 14 May 2025.

¹¹³ *ibid.*, para 1.

¹¹⁴ *ibid.*, para 5.

¹¹⁵ *ibid.*, para 8.

withdraw from the CoE, suggesting that in case of non-compliance with the request the CM determine an immediate possible date for Russia to cease to be a Member of the CoE.¹¹⁶

While this thesis does not intend to explore the specific reasoning or the threshold required under Article 3 of the Statute, or the ‘seriousness’ of violations needed to invoke Article 8, it is crucial to recognize that the invocation of Article 8 goes beyond Russia’s current aggression in Ukraine. This is especially evident in the PACE Opinion, which states that ‘the profound breach of trust caused by them fully justifies the further recourse to Article 8.’ This reinforces the notion that for expulsion to occur, a state of crisis is necessary. The crisis must reach a certain level of gravity before expulsion becomes a consideration, with acts of aggression among the examples cited by scholars.¹¹⁷ However, none of Russia’s brutal aggressions including those outlined in the PACE Opinion, resulted in the activation of the procedure outlined in Article 8. Hence, as has been fairly pointed out by Kahn, the recurring use of force has less explanatory value than may first appear to be the case.¹¹⁸

In light of the analysis above, it appears that Russia’s persistent and ongoing breaches of Article 3, including violations of public international law, as well as its ritualistic approach to the ECtHR¹¹⁹, accumulating arguably the highest number of pending leading judgments among all CoE Member States¹²⁰, should have led to its expulsion in 2019, if not earlier. Yet, despite these clear violations, Russia was not expelled. Instead, it was allowed back into the CoE, avoiding ‘Ruxit’ under the moral argument of not depriving Russian citizens of their only means of accessing justice. However, this came at the expense of the CoE’s reputation and

¹¹⁶ *ibid*, para 20.

¹¹⁷ Dzehtsiarou and Coffey (n 44) 447.

¹¹⁸ Jeffrey Kahn, Russia in the Council of Europe: A Difficult Relationship, (Special Issue, Russian Politics 9 (2024) 1-10 <https://brill.com/view/journals/rupe/9/1/rupe.9.issue-1.xml> accessed 2 March 2025.

¹¹⁹ Russia consistently paid just satisfaction, creating the illusion of compliance while disregarding the broader systematic reforms and continuing ‘to live in its own way’, which made Russia arguably a CoE Member State with the highest number of pending leading judgments. See Mälksoo and Benedek (n 101) 3–25, 6.

¹²⁰ European Implementation Network, ‘Implementation of the Judgments of the ECtHR: Russia’ (January 2021) www.einnetwork.org/russia-echr accessed 2 March 2025.

institutional health. PACE's continued engagement with Russia only underscored the deteriorating state of human rights. As post-expulsion reports of the co-rapporteurs for the PACE Monitoring Committee showed, any expectation of genuine change from Russia had been nothing more than chasing a mirage in the desert.¹²¹

What legal considerations, beyond political factors, explain the delayed invocation of Article 8? To address this, one must examine the nuanced difference between the English term '*seriously violated*' and the French '*enfreint gravement*.' While both convey similar meanings, the French version of the provision carries a stronger legal tone. *Gravement* implies severity and systematic character, not just isolated breaches, but serious and sustained violations. This distinction suggests that to trigger Article 8 under the Statute, violations must be substantial in nature. Russia's actions, including non-cooperation, obstruction of judgment execution, and institutional harm, gradually escalated into a pattern of systematic non-compliance. The invasion of Ukraine marked a bifurcation point, not merely as an isolated act, but as the culmination of ongoing grave violations. Thus, legal considerations tied to the wording of the Statute, as well as the cumulative nature of Russia's conduct, help explain the timing the invocation of Article 8.

On the same day as the PACE debate on 15 March 2022, the Russian government, in a move similar to Greece's 1969 exit to save face, formally notified the SG of its withdrawal from the CoE, citing Article 7 and its intent to denounce the ECHR.¹²² This was widely seen as a diplomatic tactic to influence the ongoing PACE discussion on invoking Article 8.¹²³ Political

¹²¹ PACE Information Note, 'State of the parliamentary monitoring procedure for the Russian Federation on 16 March 2022' AS/Mon (2022) (26 April 2022) para 39 <https://assembly.coe.int/LifeRay/MON/Pdf/DocsAndDecs/2022/AS-MON-2022-09-EN.pdf> accessed 14 June 2025.

¹²² CoE, 'Exclusion of the Russian Federation from the CoE and suspension of all relations with Belarus' (17 March 2022) <https://www.coe.int/en/web/ccpe/-/the-russian-federation-is-excluded-from-the-council-of-europe> accessed 12 April 2025; PACE, 'Verbatim Records of the Meeting' (15 March 2022) 18:54–04:01 hrs <https://pace.coe.int/en/verbatim/2022-03-15/pm/en> accessed 12 March 2025.

¹²³ During the 15 March PACE debate, President Tiny Kox noted Russia's notification to withdraw under Article 7 but stressed it did not affect ongoing deliberations. The Assembly was still asked by the CM to opine on

considerations shaped responses, with many in PACE aiming to prevent Russia from leaving on its own terms. For instance, a representative from Ireland, stated: ‘They intend to withdraw by using Article 7. They intend to do that to try and stop, to withdraw *before we push them*, and we must proceed to push them, to expel them. The CM must expel them too, because in expelling them we defend the values of this organisation, we defend the values of Europe,’¹²⁴ framing expulsion as both principled and punitive.

On 16 March 2025, the CM adopted a Resolution on the cessation of the membership of the Russian Federation to the CoE, declaring ‘in the context of the procedure launched under Article 8 of the Statute, that the Russian Federation ceases to be a Member of the CoE as from 16 March 2022’.¹²⁵

Following the CM’s Resolution, Russia continued to frame its departure as a voluntary move under Article 7, denouncing the CM’s actions as ‘lawlessness’ and accusing it of violating procedural rules under Articles 7 and 8. The Russian Foreign Ministry claimed that under Article 8, the CM should have first invited Russia to withdraw voluntarily before expelling it.¹²⁶ While PACE’s Opinion did reference voluntary withdrawal, its urgent tone reflected the severity of the situation, indicating that expulsion, not voluntary withdrawal, had become the only viable option.

The CM’s Resolution, following PACE’s Opinion that Russia’s actions warranted further use of Article 8, clearly adopted the language of expulsion. It is specifically evident in vocabulary such as ‘noted Russia’s communication of its withdrawal’. As clarified earlier, the enforced withdrawal or expulsion under Article 8 can only be activated where a state has not

further measures under Article 8, with the process continuing and concluding that evening. PACE Verbatim Records (n 126) at 18:544:01 hrs.

¹²⁴ PACE Verbatim Records (n 126) at 19:20:04 hrs (Ireland) and at 20:12:50 hrs (Estonia).

¹²⁵ CM Resolution CM/Res(2022)2 on the cessation of the Russian Federation’s membership in the CoE <https://rm.coe.int/0900001680a5da51> accessed 12 March 2025.

¹²⁶ Ministry of Foreign Affairs of the Russian Federation, ‘On Russia’s withdrawal from the CoE (reference material)’ (14 April 2024) https://www.mid.ru/ru/foreign_policy/rso/1834254/ accessed 12 March 2025.

complied with the request to withdraw under Article 7. This suggests that Russia's abrupt withdrawal attempt on 15 March may not have been considered effective.

This also raises the question of whether a state's right to invoke Article 7 is limited once Article 8 has been triggered.¹²⁷ From the perspective of public international law, Member States of an international organization are simultaneously parties to a constitutive treaty. Accordingly, VCLT applies, notably, Article 5, which permits international organisations to govern their internal affairs through specific rules, acting as *lex specialis*. This provision thus ensures that while the VCLT applies by default, it leaves room for the organization's own legal framework to govern certain matters, including membership and withdrawal.¹²⁸

Once the CM triggered Article 8 by suspending Russia's rights, the procedural framework shifted to expulsion. Although the Statute does not explicitly bar a state from invoking Article 7 after Article 8 is in motion, in practice, as I explain above, the CM's broad discretion under Article 8 overrides such an attempt, making a clear institutional determination to treat the two provisions separately, thereby framing Russia's departure as a forced expulsion rather than a voluntary withdrawal. The fundamental distinction between two provisions is critical: Article 7 provides for a voluntary withdrawal initiated by a Member State, whereas Article 8 constitutes an involuntary expulsion mechanism employed by the CoE to sanction states that violate the core principles of the organisation. As Vogiatzis notes, a state cannot invoke Article 7 to avoid the consequences of Article 8.¹²⁹ Thus, Russia's departure was not a

¹²⁷ Jörg Polakiewicz, 'Russia's expulsion from the CoE – Communication to the 62nd Meeting of the Committee of Legal Advisers on Public International Law (CAHDI)' (2022) <https://www.coe.int/en/web/dlapil/-/62nd-meeting-of-the-committee-of-legal-advisers-on-public-international-law-cahdi> accessed 12 March 2025.

¹²⁸ DH Anderson, 'Article 5 Convention of 1969' in Olivier Corten and Pierre Klein (eds), *The Vienna Conventions on the Law of Treaties: A Commentary* (Oxford University Press 2011) vol 1, 94.

¹²⁹ Nikos Vogiatzis, 'No Longer a Member State of the Organisation: The Expulsion of Russia from the CoE and Articles 7 and 8 of the Statute' (Essex Law Research Blog, 31 March 2022) <https://essexlawresearch.uk/2022/03/31/no-longer-a-member-state-of-the-organisation-the-expulsion-of-russia-from-the-council-of-europe-and-articles-7-and-8-of-the-statute/#:~:text=It%20is%20now%20known%20that,Leaving%20aside> accessed 18 April 2025.

voluntary withdrawal under Article 7 but a de facto expulsion under Article 8, despite its attempts to frame it otherwise.

Hence, the CM proceeded with the Article 8 procedure already underway, effectively ‘pushing Russia before it could jump’ by determining that its membership ceased on March 16, 2022. Unlike Article 7, Article 8 imposes no specific timing restrictions. However, some criticism may be directed at the CM, not regarding the validity of Russia’s expulsion, but rather its omission of a formal request for withdrawal under Article 8. Nonetheless, as I argue above, the CM has broad discretion in interpreting and implementing Article 8, particularly given its primary decision-making role.¹³⁰ The steps under Article 8 are not cumulative; thus, the absence of a withdrawal request does not invalidate the expulsion or constitute a legal prerequisite. Russia’s continued presence in the CoE resembled that of a disruptive patient unwilling to heal in this ‘hospital of democracy.’ Its expulsion was not only necessary but essential, as its presence directly contradicted the very *raison d’être* of the CoE.¹³¹

¹³⁰ Schmahl and Breuer (n 25) 137.

¹³¹ Marija Pejčinović Burić, ‘Public Event with the Institute of International Affairs of the University of Iceland, on the Future of Europe’ (Speech, 24 November 2022).

3. CASE STUDY: JURISDICTIONAL AND PROCEDURAL IMPLICATIONS OF RUSSIA'S EXPULSION FROM THE COE FOR ECTHR

This final chapter builds upon the legal and contextual analysis developed in the preceding chapters and turns to the Court's jurisprudential engagement with the consequences of Russia's expulsion from the CoE. It begins by examining the legal framework governing the withdrawal of a state from the Convention. The analysis then proceeds from this general legal foundation to a focused consideration of the jurisdictional and procedural challenges that have emerged in the post-expulsion context, including the absence of a national judge, systemic non-cooperation and non-execution of judgments by Russia. These issues are critically assessed concerning the Court's evolving institutional and doctrinal responses. The chapter concludes by presenting and analysing empirical case law data that suggests a shift in the Court's post-expulsion jurisprudence vis-à-vis the Russian Federation.

3.1 Legal framework of a state's withdrawal from the ECHR

As noted earlier, upon withdrawal, a state's membership in the CoE is terminated, along with all rights and obligations deriving from that status. This termination extends to the state's position under treaties concluded within the CoE's framework, including the ECHR.¹³² Unlike many other international human rights treaties, the ECHR contains an express withdrawal clause in Article 58. Historically, however, Article 58 has received comparatively limited scholarly and judicial attention relative to other procedural and jurisdictional provisions of the Convention.

¹³² Article 59(1) ECHR.

It is apt to distinguish that expulsion from a multilateral treaty is a separate legal act from withdrawal, even though both ultimately result in the severance of a state's treaty obligations. Although Article 58 of the ECHR is titled 'Denunciation,' the term technically refers to a state's formal notification of intent to withdraw, whereas 'withdrawal' encompasses the entire process of terminating treaty obligations. Article 58 comprises four paragraphs. Paragraph 1 sets procedural conditions: a state must have been party to the Convention for at least five years, with a six-month waiting period before denunciation takes effect. Paragraph 2 safeguards continuity by preserving a state's responsibility for violations committed before withdrawal becomes effective, a feature Schwelb rightly emphasizes as preserving rights post-withdrawal.¹³³ Paragraph 3 provides that any state ceasing to be a CoE member also automatically ceases to be a party to the ECHR, a clause that textually applies to both withdrawals and expulsions. Accordingly, a state may cease to be a party to the ECHR through three avenues: voluntary denunciation under Article 58(1); withdrawal from the CoE under Article 7 of the Statute (which triggers Article 58(3)); or expulsion under Article 8 of the Statute, which likewise leads to the cessation of ECHR obligations under Article 58(3).

An ambiguity arises, in the third paragraph of Article 58, specifically the phrase 'under the same conditions.' As discussed in Chapter One of this thesis, Article 7 of the CoE Statute stipulates that withdrawal takes effect at the end of the financial year following notification. This creates a potential misalignment with the six-month notice period required under Article 58(1), depending on when the denunciation is communicated. The interaction between Article 8 of the Statute and Article 58 of the ECHR is thus of central importance to this thesis. However, the *travaux préparatoires* offer limited guidance on this issue. They do not elaborate on how Article 58 should be interpreted in light of expulsion, how adjudication of pending cases would

¹³³ In 1973, Schwelb noted it was widely accepted that states should not use treaty withdrawal to justify or enable human rights violations. See Egon Schwelb, 'The Law of Treaties and Human Rights' (1973) 16 *Archiv des Völkerrechts* 1, 26 <https://www.jstor.org/stable/40797577> accessed 12 May 2025.

proceed following denunciation, or, crucially for this analysis, how expulsion from the CoE affects a state's obligations under the ECHR.

Human rights treaties fundamentally differ from reciprocal agreements, as they are designed not merely to establish mutual obligations but to impose binding commitments on State Parties based on the recognition and protection of universal rights.¹³⁴ In this regard, Article 60(5) of the VCLT introduces a significant exception, stipulating that the principle of termination or suspension of a treaty due to a breach does not apply to 'treaties of a humanitarian character'.¹³⁵ This provision is particularly relevant to the institutional identity of the CoE, as it underscores the distinct nature of human rights treaties, which are premised on the protection of rights that transcend bilateral or reciprocal considerations. In the case of expulsion, as opposed to merely concealing a breach, the expulsion serves a dual function: it draws public attention to the gravity of the violation and reinforces the foundational values of the treaty regime. The act of expulsion, therefore, acts not merely as a legal remedy but as a declaratory statement that underscores the indivisibility of human rights and the non-negotiable commitment to safeguarding them within the framework of the CoE.

3.2 Preserving institutional identity by creating an anomaly: The Court's interpretation of Article 58

The CM made it clear that the suspension of the Russian Federation's rights of representation within the CoE on 25 February 2022 did not affect Russia's rights and obligations under the ECHR.¹³⁶ However, Russia's subsequent expulsion from the CoE on 16 March 2022 had significant legal implications: on the very day of expulsion, the ECtHR

¹³⁴ Matthew Craven, 'Legal Differentiation and the Concept of the Human Rights Treaty in International Law' (2000) 11 *European Journal of International Law* 489.

¹³⁵ Shortly after the VCLT was finalized, the ICJ in its Namibia Advisory Opinion confirmed that treaty termination or suspension for breach is a general principle of international law, except where explicitly excluded or for humanitarian treaties under Article 60(5). *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion), 1971, ICJ Rep 16, para 96.

¹³⁶ CM Resolution (n 107).

suspended the examination of all applications against Russia.¹³⁷ At that time, it remained uncertain whether the ECHR would continue to apply to Russia following its expulsion. Shortly thereafter, on 22 March 2022, the ECtHR adopted a Resolution clarifying its mandate post-expulsion.¹³⁸ In this Resolution, the Court addressed interpretation regarding the termination of obligations under Article 58 of the Convention. Before delving into the complexities surrounding Article 58, it is apt to note that, as early as 15 March 2022, the Secretariat of the CM had prepared a confidential Memorandum concerning the legal and financial consequences of the cessation of membership under Article 8 of the Statute.¹³⁹ Although Secretariat memoranda are not legally binding on the CM, they are nonetheless highly influential interpretative instruments. In this Memorandum, the Secretariat suggested that the ECHR would continue to apply to Russia for a six-month period following its expulsion, a position that likely influenced the Court's subsequent interpretation of Article 58.

In its Resolution of 22 March 2022, the Court subtly reaffirmed that the procedure under Article 8, namely, the expulsion of the Russian Federation, had effectively taken place. The Court's language reflects a distinction in its approach: in acknowledging Russia's simultaneous notification of its withdrawal from the CoE and intention to denounce the Convention, it employed the term 'noting,'¹⁴⁰ whereas in relation to other instruments adopted by CoE bodies, such as the decisions of the CM, the PACE, and the Court itself, it used the stronger phrase 'having regard to.'¹⁴¹ This divergence in terminology reveals a deliberate

¹³⁷ ECtHR, Resolution on the Consequences of the Cessation of Membership of the Russian Federation to the CoE in Light of Article 58 of the ECHR (22 March 2022) https://www.echr.coe.int/documents/d/echr/Resolution_ECHR_cessation_membership_Russia_CoE_ENG accessed 1 April 2025.

¹³⁸ *ibid.*

¹³⁹ CM(2022)70 Legal and Financial Consequences of the Cessation of Membership in the CoE Under Article 8 of Its Statute (15 March 2022 Memorandum on 'Consequences of the Aggression of the Russian Federation Against Ukraine' https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a5d7d3 accessed 1 April 2025.

¹⁴⁰ *ibid.*

¹⁴¹ *ibid.*

calibration: while the Court recognized Russia's declared intent to denounce the Convention, it anchored its approach primarily in the 15 March 2022 Memorandum from the CM Secretariat and its Resolution of 16 March 2022. In the Court's reading, these actions effectively marked both a *de jure* and *de facto* expulsion.

The Court's Resolution formally declared that Russia would cease to be a High Contracting Party to the Convention as of 16 September 2022.¹⁴² Until that date, the Court would retain jurisdiction over acts or omissions attributable to Russia that could constitute violations of the Convention.¹⁴³ In so doing, the Court lifted the suspension of proceedings it had imposed on 16 March 2022 under Rule 9 §1 of the Rules of Court. The CM echoed this position in its own Resolution of 23 March 2022.¹⁴⁴

By setting a six-month transitional period before Russia's effective withdrawal, the Court effectively barred Russia from using the expulsion as an escape hatch to immediately evade its Convention obligations. Yet, this decision, while procedurally pragmatic, was not without controversy. Blanco argued that it reflected a thinly motivated and potentially inconsistent interpretation of the applicable termination provisions.¹⁴⁵ Moreover, it exposed deeper structural vulnerabilities in the design of the Convention's denunciation mechanism, which appeared ill-equipped to handle a forced departure of this magnitude. In short, what might have seemed a neat procedural solution in fact laid bare the fragility of the ECHR system when confronted with unilateral withdrawals under political pressure.

¹⁴² *ibid* para 1.

¹⁴³ *ibid* para 2.

¹⁴⁴ CM, Resolution CM/Res(2022)3 'On Legal and Financial Consequences of the Cessation of Membership of the Russian Federation in the Council of Europe' <https://rm.coe.int/resolution-cm-res-2022-3-legal-and-financial-conss-cessation-membershi/1680a5ee99> accessed 1 April 2025.

¹⁴⁵ Kanstantsin Dzehtsiarou, 'The Range of Solutions to the Russian Cases Pending before the European Court of Human Rights: Between "Business as Usual" and "Denial of Justice"' (ECHR Blog, 16 August 2022) <https://www.echrblog.com/2022/08/the-range-of-solutions-to-russian-cases.html> accessed 12 February 2025.

The Resolution reveals that the Court chose to apply the six-month transitional period stipulated in Article 58(1) of the Convention to the circumstances of Russia's expulsion, an event ostensibly governed by Article 58(3). Neither the CM nor the Court itself offered a detailed justification for this interpretive move. Consequently, the legal soundness of the Court's decision ultimately hinges on the construction of Article 58, and the proper understanding of the scope and operation of paragraph 3. Dzehtsiarou and Helfer identify at least three possible interpretations of Article 58(3) ECHR.¹⁴⁶

The first interpretation posits that the 'conditions' referenced in paragraph 3 encompass those set out in both paragraphs 1 and 2. On this reading, the Convention continues to bind the expelled State for an additional six-month transitional period following expulsion, mirroring the procedural safeguards, notice and a cooling-off period, applicable to voluntary denunciation.¹⁴⁷

A second interpretive approach suggests that paragraph 3 refers exclusively to paragraph 2. On this reading, expulsion results in the immediate cessation of the expelled State's obligations under the Convention. In other words, the Court's jurisdiction would be confined to violations that occurred prior to the date of expulsion, with no continuing application of the Convention beyond that point¹⁴⁸.

A third and more institutionally grounded interpretation holds that the 'conditions' referred to in Article 58(3) relate to the cessation of membership in the CoE itself. Under this view, the relevant conditions are those prescribed by the Statute of the CoE and implemented by the CM as the organization's executive body. Consequently, the Committee's Decision of

¹⁴⁶ Kanstantsin Dzehtsiarou and Laurence Helfer, 'The Range of Solutions to the Russian Cases Pending before the European Court of Human Rights: Between "Business as Usual" and "Denial of Justice"' (ECHR Blog, 16 August 2022) <https://www.echrblog.com/2022/08/the-range-of-solutions-to-russian-cases.html> accessed 12 February 2025.

¹⁴⁷ *ibid.*

¹⁴⁸ *ibid.*

16 March 2022, which effected Russia's immediate expulsion, would have simultaneously and automatically severed Russia's status as a High Contracting Party to the Convention.¹⁴⁹ Thus, expulsion would act not as a drawn-out process but as a guillotine, instantaneously severing Russia's treaty obligations.

The first interpretation appears to have been embraced by both the Court and CM, as evidenced notably in the Secretariat's 15 March Memorandum mentioned earlier. In that document, the Secretariat endorsed a construction of Article 58 whereby expulsion is functionally assimilated to voluntary withdrawal: in either scenario, the State ceases to be a Party to the Convention six months after the expulsion or withdrawal becomes effective.¹⁵⁰ The expulsion process, far from severing the Convention bond instantaneously, unfolds through a gradual unwinding of obligations, ensuring an orderly legal disengagement.¹⁵¹ Thus, the Court's approach effectively collapses the distinctiveness of paragraph 3 by assimilating notification of withdrawal or expulsion from the CoE to a notice of denunciation under the Convention. In doing so, the ECtHR charted a novel course in the interpretation of Article 58(3). Traditionally, scholarly opinion has treated Article 58(3) as establishing an autonomous pathway for the termination of a State's obligations under the Convention, a route separate and distinct from the voluntary denunciation procedure articulated in Article 58(1).¹⁵² On this reading, paragraph 3 has been regarded as a *lex specialis*, a self-contained and more specific mechanism triggered exclusively when a State severs or is severed from its ties to the CoE.

¹⁴⁹ *ibid.*

¹⁵⁰ Kanstantsin Dzehtsiarou and Laurence Helfer, 'Russia and the European Human Rights System: Doing the Right Thing ... but for the Right Legal Reason?' (EJIL: Talk, 29 March 2022) <https://www.ejiltalk.org/russia-and-the-european-human-rights-system-doing-the-right-thing-but-for-the-right-legal-reason/> accessed 1 April 2025.

¹⁵¹ CM Memorandum (n 144).

¹⁵² Kanstantsin Dzehtsiarou, 'The Closing Door in Strasbourg: An Interview on the Council of Europe's Suspension Decision' (Voelkerrechtsblog, 26 February 2022) <https://voelkerrechtsblog.org/the-closing-door-in-strasbourg/> accessed 30 April 2025.

Furthermore, the Court's interpretation extends the temporal application of the Convention in a manner that raises questions about its compatibility with the overall structure and logic of the ECHR system. As mentioned earlier, the rules governing the termination of a State's obligations under Article 58(3) are anchored not within the Convention itself, but in the Statute, in particular, Articles 7 and 8. The text of Article 58(3) supports this reading: it provides that Convention obligations 'shall cease to have effect' once a State is no longer a Member of the CoE, suggesting immediate and automatic termination, without any transitional period akin to that envisaged under Article 58(1). However, by interpreting the provision differently, the ECtHR introduces the possibility of an anomaly: a situation where an expelled State, which has not yet met the five-year membership requirement under Article 58(1), would remain bound by the Convention despite its departure from the CoE. Such a scenario risks unsettling the principle enshrined in Article 59(1), namely, that only Members of the CoE may be Parties to the Convention.¹⁵³

Support for the *lex specialis* reading of Article 58(3) ECHR can also be found in linguistic interpretations. In particular, the French version of the Convention uses the phrase '*sous la même réserve*', which can reasonably be understood as referring exclusively to paragraph 2, that is, to the continued responsibility for violations committed prior to the termination of Convention participation.¹⁵⁴ This reading reinforces the idea that the *lex specialis* interpretation does not affect a State's responsibility for past breaches: under Article 58(2), States remain accountable for violations that occurred before their exit. Adopting this approach enables a clearer legal structure, where the Statute of the CoE governs the termination of membership and Convention obligations, while Article 58(2) maintains liability for prior conduct. Furthermore, Article 58(3) serves as a targeted exception to the five-year minimum

¹⁵³ U Karpenstein and F Mayer, *Convention for the Protection of Human Rights and Fundamental Freedoms: ECHR Commentaries* (3rd edn, LexisNexis ARD ORAC 2022) Article 58.

¹⁵⁴ Dzehtsiarou and Helfer (n 155).

participation rule laid down in Article 58(1), allowing the immediate end of Convention obligations following expulsion. Additionally, under the *lex specialis* approach, the six-month transitional period of Article 58(1) does not apply to expulsions under Article 58(3). Instead, the termination of obligations aligns with the timeline determined by the Statute. Depending on the circumstances, this could lead either to a shorter or, occasionally, a longer period of continued Convention protection than the fixed six months provided under Article 58(1).

In cases of voluntary withdrawal, as I explain in the Chapter One, the applicable provision is Article 7 of the Statute of the CoE. Under this framework, withdrawal becomes effective at the close of the financial year following the lapse of a six-month notice period. Consequently, the effective withdrawal date under Article 7 often stretches beyond the six-month transitional window envisioned by Article 58(1) ECHR. There exists, however, one narrow exception: when a State submits its notice of withdrawal during the third quarter of the financial year. For example, a notification issued on 20 August would culminate in an effective withdrawal on 31 December, just over four months later, thereby shortening the transition period below the six months prescribed by the ECHR. This acceleration does not occur when notification is given during the final quarter (October to December), where the withdrawal is deferred to the end of the subsequent financial year, thus potentially extending the State's Convention obligations significantly. The case of Greece, as explained earlier, provides a telling illustration: after notifying its withdrawal from the CoE on 12 December 1969, its exit from the Organisation only became effective in December 1970. By contrast, its denunciation of the Convention, notified simultaneously, took effect much earlier, on 13 June 1970, showing that under the Statute, the procedural clock for withdrawal ticks more slowly.

When notice is given during the first two quarters of the year, the Statute once again produces a transition period exceeding six months. Thus, had Russia's departure in March 2022 been treated as a voluntary withdrawal under Article 7, its effective cessation would have

occurred only on 31 December 2022, thereby extending its obligations under the Convention by an additional three months compared to the six-month period set by Article 58(1) ECHR. In this scenario, the *lex specialis* approach would have prolonged, rather than curtailed, the temporal protection afforded by the Convention.

In contrast, expulsions under Article 8 of the Statute operate according to an entirely different rhythm. Here, the CM wields broad discretionary power to determine the effective date of termination, a power that, under Article 58(3) ECHR, reverberates directly onto the Convention. In effect, the CM plays a central role in determining the temporal scope of a State's obligations under the Convention: it may choose either to prolong a State's obligations or to allow an expedited exit, abruptly lowering the shield of Convention rights.

The expulsion of Russia from the CoE revealed the structural challenges inherent in the current framework. Where the CoE seeks to sanction a State with immediate expulsion, the *lex specialis* interpretation of Article 58(3) would dictate that the State's Convention obligations cease immediately as well. Thus, immediate expulsion would result in the immediate cessation of Convention protections, without any transitional period. As I will discuss further, this outcome underscores a fundamental tension: the CoE's sanctioning power, while essential to uphold the Organisation's foundational values, may also have the unintended consequence of abruptly removing human rights protections for individuals within the expelled State's jurisdiction, precisely at a moment when such protections may be most urgently needed.

The decision to expel Russia, as analysed in the Chapter Two, represented a fundamental political act: ensuring that Russia's departure was framed as a sanction rather than allowing it the political advantage of a voluntary withdrawal. In doing so, however, the CoE was compelled to navigate the rigid and arguably ill-adapted framework of Article 58(3) ECHR, a provision, as elaborated earlier, that fails to account for the special nature of human rights

treaties, which are founded not upon reciprocity between states but on the imperatives of the protection of human dignity.

On January 17, 2023, the Court ruled for the first time, confirming its jurisdiction to hear cases lodged against Russia. In its Grand Chamber judgment *Fedotova and others v. Russia*, the Court affirmed its jurisdiction over the case, as the events leading to the alleged violations of the Convention occurred before September 16, 2022. The legal basis for this ruling is found in Article 58(2), in conjunction with Articles 58(1) and 58(3). As stated in the judgment: ‘It appears from the wording of Article 58, and more specifically the second and third paragraphs, that a State which ceases to be a Party to the Convention by virtue of the fact that it has ceased to be a Member of the CoE is not released from its obligations under the Convention in respect of any act performed by that State before the date on which it ceases to be a Party to the Convention.’¹⁵⁵ The Court reiterated this stance on jurisdiction on 24 January, 2023, in two additional Grand Chamber judgments, *Kutayev v. Russia*¹⁵⁶ and *Svetova and Others v. Russia*.¹⁵⁷

Hence, the Court chose to grant an additional six-month period for victims and individuals subject to Russia's jurisdiction to lodge their applications with the Court. While this decision is broadly recognized as politically and morally justifiable, it is equally important to engage with theoretical constructs derived from social identity theory to critically assess the legal underpinnings of the Court's approach. Through the lens of social inquiry, this perspective offers valuable insight into the Court's decision to adopt this specific interpretation, which diverges from the traditionally upheld and well-recognized *lex specialis* approach under Article

¹⁵⁵ *Fedotova and Others v. Russia*, App no 40792/10 and 2 others, 17 January 2023, para 71.

¹⁵⁶ *Kutayev v. Russia*, App no 17912/15, 24 January 2023.

¹⁵⁷ *Svetova and others v. Russia*, App no 54714/17, 24 January 2023, paras 26-28.

58(3). This choice can be understood in light of the Court's institutional identity, which may influence its interpretative approach.

The institutional identity of international organizations can be discerned through their foundational documents, particularly provisions concerning the admission of new Members and the expulsion of existing ones, which delineate the boundaries between the organization and other international groups.¹⁵⁸ The CoE was established with the explicit aim of countering the growing threat of totalitarianism and forging a collective political identity for European states, one that would set them apart from Nazism and Communism.¹⁵⁹ The institutional identity of the CoE has long been anchored in its fight against totalitarianism, which initially led to Russia's admission despite its misalignment with the CoE's core values. This decision was also driven by a moral desire to 'rehabilitate' Russia, as I explain in the Chapter One, an attempt to draw it out from the long shadow of its Soviet past and integrate it into a community governed by democratic principles, aiming to integrate a former authoritarian giant into a responsible Member of the European legal and political order. This perspective remained evident even in the years leading up to Russia's expulsion. As the SG of the CoE warned in 2017, 'It would really be very, very bad if Russia was to leave(..)because the Convention and court has been so important for Russian citizens,' identifying the imminent loss of access to the ECtHR for individuals as one of the key institutional challenges.¹⁶⁰

However, as I argue in the Chapter Two, the CoE institutional identity faced a critical bifurcation with the onset of Russia's full-scale invasion of Ukraine, an act that not only

¹⁵⁸ Moshe Hirsch, *Social Identity, International Groups, and International Law*, in *Invitation to the Sociology of International Law* (Oxford, 2015; online edn, Oxford Academic, 17 December 2015) 17 <https://doi.org/10.1093/acprof:oso/9780199688111.003.0004> accessed 30 March 2025.

¹⁵⁹ Steven Greer, *The ECHR: Achievements, Problems and Prospects* (Cambridge University Press 2006) 56; A W Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford University Press 2004) 348.

¹⁶⁰ Neil Buckley, 'Russia Tests CoE in Push to Regain Vote' (*Financial Times*, 26 November 2017) <https://www.ft.com/content/3cccaf92-d12c-11e7-b781-794ce08b24dc> accessed 29 March 2025.

seriously violated the organisation's foundational principles but also transgresses the social and political boundaries that define the CoE as a 'club of democracies' and a lighthouse for human rights. Russia's expulsion, therefore, was not merely punitive, but became a necessary reaffirmation of the CoE's institutional identity. As SG Burić aptly stated, 'To have kept Russia within our Organisation [after 2022] would have strained our credibility past the breaking point(..)And *some lines* simply cannot be crossed.'¹⁶¹ This sequence of events underscores how the social boundaries that define the CoE's institutional identity were ultimately and unmistakably crossed, undermining the legitimacy and institutional health of the organisation. This breach ultimately led to Russia's expulsion.

At the same time, the expulsion of a State from the CoE creates a significant legal grey zone. When a state is expelled its obligations under the Convention, as I explain earlier, are terminated with effect from a particular date. Consequently, any future violations committed after that date are no subject to the international investigation, legal sanction, or supervision by the CoE. This legal vacuum can be exploited by the expelled state, which runs directly counter to the original aims of the CoE. The President of the ECtHR, in her speech of 27 January 2023, reinforced the gravity of this dilemma, emphasizing that a State should not be able to take advantage of its expulsion from the CoE to evade accountability for violations of the Convention. She further underscored the importance of preserving jurisdiction in such cases, particularly given that some raise issues of considerable significance for Russia's responsibility under international law.¹⁶²

In this precarious context, the Court advanced with the original objective of safeguarding human rights firmly in mind, even if doing so required an interpretation that, as I

¹⁶¹ Burić (n 135).

¹⁶² Síofra O'Leary, 'Speech by Síofra O'Leary, President of the European Court of Human Rights' www.echr.coe.int/Documents/Speech_20230127_OLeary_JY_ENG.pdf accessed 12 March 2025.

argue earlier, stretched the Convention's ordinary operation. By adopting this approach, the Court may have, in some respects, conflicted with the broader design of the Convention, however, it reaffirmed the institutional identity of the CoE and the Court's overarching mandate. The concern regarding the erosion of democratic values within the CoE Member States spurred in part by the rise of authoritarian regimes that directly challenged the authority of the ECtHR, underscores the importance of this institutional stance.¹⁶³

In effect, the Court sought to mitigate the oddity produced by Article 58, since the mechanics of expulsion replicate the risks that Article 60(5) of the VCLT was designed to avoid. The commentary on Article 60 emphasizes that the termination of a treaty due to breach must not incentivize reprisals against individuals protected under that treaty.¹⁶⁴ Thus, by preserving the victims' ability to bring claims against Russia for violations occurring before 16 September 2022, the Court ensured that their grievances could still be heard, recorded, and adjudicated. This approach ultimately aligns with the CoE's foundational mission of promoting and protecting human rights, reinforcing its institutional identity even amidst unprecedented political rupture. This tension is explicitly acknowledged in the Court's Resolution of 22 March 2022, where it declared that 'the object and purpose of the Convention, as an instrument of human rights protection, call for an interpretation and application of its provisions so as to ensure practical and effective protection to those subject to the High Contracting Parties' jurisdiction.'¹⁶⁵

However, the Russian authorities refused to recognize the ECtHR's interpretation of Article 58 and did not accept the continued application of the Convention for a six-month transitional period. Instead, they maintained that the Convention had ceased to apply to Russia

¹⁶³ Emre Turkut, 'The Venice Commission and Rule of Law Backsliding in Turkey, Poland and Hungary' (2021) 2 *ECHR Law Review* 209.

¹⁶⁴ Dzehtsiarou and Helfer (n 155).

¹⁶⁵ ECtHR Resolution (n 142).

as of 15 March 2022. In addition, the Russian authorities announced that they would only enforce ECtHR judgments that had entered into force prior to 15 March 2022. In a press release issued by the Russian Ministry of Foreign Affairs, the interpretation of Article 58 adopted by the CM and the ECtHR was dismissed as ‘ungrounded,’ with the Russian authorities asserting that, de facto the ECtHR had lost jurisdiction over Russia. The press release further argued that ‘without membership in the CoE, membership in the ECtHR is impossible.’¹⁶⁶ Subsequently, on 11 June 2022, the President of the Russian Federation signed into law a Federal Act stipulating that Russia would only recognize and enforce judgments of the ECtHR that had entered into force prior to 15 March 2022.¹⁶⁷ In the aftermath of the 11 June 2022 legislation, numerous amendments were made to Russia’s domestic legal framework, systematically removing references to the ECtHR from national laws. Further solidifying this shift, Federal Law No. 43-FZ, adopted on 28 February 2023, formally declared that the Convention should be regarded as having ceased to apply to the Russian Federation as of 16 March 2022, rather than the actual termination date.¹⁶⁸ Nevertheless, the ECtHR consistently emphasized that its ability to determine its own jurisdiction is a fundamental component of the Convention’s protection system. By acceding to the Convention, States Parties undertook obligations not only in relation to the Convention’s substantive guarantees but also its procedural framework, including Article 32, which grants the Court exclusive competence to rule on questions of its jurisdiction. Accordingly, the Court held that its jurisdiction could not be affected by unilateral

¹⁶⁶ Ministry of Foreign Affairs of the Russian Federation (n 130).

¹⁶⁷ Federal Law of the Russian Federation No 183-FZ of 11 June 2022 ‘On Amendments to Certain Legislative Acts of the Russian Federation’ concerning the non-execution of ECtHR judgments entered into force after 15 March 2022 <https://www.consultant.ru/law/hotdocs/75720.html> accessed 14 June 2025.

¹⁶⁸ Federal Law No 43-FZ of 28 February 2023 ‘On the Termination of International Treaties of the CoE in Relation to the Russian Federation’ https://www.consultant.ru/document/cons_doc_LAW_440539/ accessed 1 April 2025.

domestic measures aimed at limiting its competence in pending cases, such as those embodied in the above-mentioned legislation.¹⁶⁹

3.3 The Office of the Russian judge: The Court's application of Rule 29

While the determination of the date of Russia's departure resolved one jurisdictional issue, it left several other significant questions pending before the Court, most notably, how to proceed in circumstances where the Office of the elected judge in respect of Russia had ceased to exist, and how to address the consequences of non-cooperation and non-execution.¹⁷⁰

Before addressing these issues, it is apt to note that various potential scenarios had been identified by Bates and Dzehtsiarou. These included, first, the 'business as usual' model, whereby the Court would continue adjudicating all pending cases against Russia falling within its jurisdiction as if the expulsion had not occurred.¹⁷¹ Second, the 'pick and choose' model, under which the Court would selectively pursue a limited number of leading cases¹⁷². Third, a 'radical model' was envisaged, involving a complete suspension of proceedings against Russia or even the striking out of all pending applications.¹⁷³

Pursuant to Article 20 of the Convention, the Court must consist of a number of judges equal to that of the High Contracting Parties. Consequently, when a State ceases to be a Member of the CoE, the judge elected in respect of that State must also vacate their position. In the case of Russia, this meant that the recently elected Russian judge continued to hear cases until 16

¹⁶⁹ ECtHR, 'Annual Report 2023' (2023) 70 <https://www.echr.coe.int/d/annual-report-2023-eng> accessed 1 April 2025.

¹⁷⁰ ECtHR, 'Latest rulings by the European Court set out the procedure for future processing of applications against Russia' (Press Release, 3 February 2023) <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7559628-10388013&filename=Future%20processing%20of%20applications%20against%20Russia.pdf> accessed 12 March 2025.

¹⁷¹ Bates et al (n 29) 203.

¹⁷² *ibid* 208.

¹⁷³ *ibid* 209.

September 2022, after which point they were no longer a permanent Member of the Court. According to Article 26(4) of the Convention, the judge elected in respect of the Contracting Party concerned sits as an *ex officio* Member of the Chamber and the Grand Chamber. Therefore, the most important cases against the Russian Federation could not be heard in the absence of the Russian judge. Thus, the issue of how to comply with Article 26 of the Convention arose immediately upon Russia's departure. In the absence of a permanent judge, paragraph 4 of Article 26 of the Convention allows the President of the Court to select an *ad hoc* judge from a list submitted by the respondent state.

The judgments in *Kutayev* and *Svetova* offer further clarification on this procedural complexity. In *Svetova*, the Court elaborates that there was no longer a valid list of *ad hoc* judges who could be eligible to participate in cases where the Russian Federation was the respondent, thus complicating the procedural framework for such cases.¹⁷⁴ In both cases, the Court further addressed the issue of appointing an *ad hoc* judge. It explained that, by letter dated 8 November 2022, the parties were notified that the President of the Section intended to appoint one of the sitting judges of the Court to act as an *ad hoc* judge for the examination of the case, applying by analogy Rule 29(2) of the Rules of Court. Rule 29 allows the President of the Chamber to appoint an elected judge to serve as an *ad hoc* judge when a judge elected in respect of the Contracting Party concerned is either unavailable, withdraws, or is exempted from participation. The Russian Government was informed that this approach would be applied to other cases against Russia that the Court remained competent to examine. The Government was invited to provide comments on this arrangement by 22 November 2022 but failed to submit any response.¹⁷⁵

¹⁷⁴ *Svetova* (n 162) paras 8-1.

¹⁷⁵ *Svetova* (n 162) para 11, *Kutayev* (n 161) para 8.

A noteworthy aspect of this situation lies in the fact that the Rules of Court do not provide specific guidance on the ‘inability’ of a judge to sit in the Chamber. While Rule 29 addresses the withdrawal of a judge, it does not account for the withdrawal of an entire state or its judicial office from the Court. Given the unprecedented nature of Russia’s expulsion, the Rules of Court were unable to offer clear direction on this issue. This lack of clarity likely prompted the Court in *Kutayev* and *Svetova* to apply Rule 29 by analogy in its decision to appoint an elected judge as an ad hoc judge. Consequently, the ECtHR proceeded to appoint an ad hoc judge from the sitting Members of the Chamber.¹⁷⁶ Furthermore, even prior to the departure of the Russian judge, the ECtHR had employed a similar approach in cases where Judge Lobov had recused himself.¹⁷⁷ This approach undertaken by the Court fits into the overall institutional identity of the CoE described earlier, with the overarching aim of preventing negative consequences for the entire system of human rights adjudication.

Even if an ad hoc judge were appointed to replace the Russian judge, it remained unclear whether the Russian government would participate in the proceedings. Respondent states are typically expected to submit factual and legal arguments to refute or explain the allegations made against them, a process Russia had engaged in prior to its expulsion. However, should Russia refuse to participate in subsequent cases, the Court might be compelled to issue default judgments, further complicating the pursuit of justice and highlighting the limitations of the judicial process in the absence of full cooperation from the respondent state.¹⁷⁸

¹⁷⁶ *Svetova* (n 162) para 12.

¹⁷⁷ *Ecodefence and others v. Russia* App no 9988/13, 14 June 2022.

¹⁷⁸ *Dzehtsiarou and Helfer* (n 155).

3.4 Non-cooperation: Adjudicating cases in the absence of Russia

Although the ECtHR resolved the jurisdictional issue and the question regarding the absence of a Russian judge, this stance is clearly not shared by Russia, as explained earlier. Bates and Dzehtsiarou have suggested that, regardless of the outcome of any pending cases, Russia will almost certainly not comply with any findings made by the Court.¹⁷⁹ By the end of 2022, there were 16,750 pending applications from Russia.¹⁸⁰ Neither the CM nor the ECtHR in their communications were explicit as to how the Court would deal with the issue of non-cooperation by Russia. Consequently, several questions remained at that point regarding the pending cases against Russia.

Pursuant to the 18th Annual Report of the CM from 2024, Since March 2022, the Russian authorities ceased *all* communication with the CoE in respect of implementation of the judgments of the Court, and they have chosen not to participate in the CM Human Rights meetings.¹⁸¹ Moreover, in all judgments against Russia adjudicated from January 2024 to March 2025, the Court specifically noted the government's failure to participate in the proceedings. In these judgments, it is explicitly mentioned that the Russian authorities failed to submit their observations.

In *Svetova*, the Court concluded that the cessation of a Contracting Party's membership in the CoE does not relieve that state from its duty to cooperate with the Convention bodies. This duty persists as long as the Court retains competence to examine applications concerning acts or omissions that could constitute a violation of the Convention, provided that such acts occurred prior to the date on which the respondent State ceased to be a party to the Convention. Since the events at issue in the case occurred before 16 September 2022, and the Court remained

¹⁷⁹ Bates et al (n 29) 188.

¹⁸⁰ ECtHR, 'Analysis of statistics 2022', 7 www.echr.coe.int/Documents/Stats_analysis_2022_ENG.pdf, accessed 10 April 2025.

¹⁸¹ ECtHR, 'Annual Report 2024' (2024) 165 <https://www.echr.coe.int/documents/d/echr/annual-report-2024-eng> accessed 1 April 2025.

competent to consider the application, the respondent government's failure to engage with the proceedings did not preclude the Court from continuing its examination of the case.¹⁸²

This decision suggests that the Court opted for a 'business as usual' approach, proceeding with its usual procedures despite the exceptional circumstances surrounding Russia's expulsion. However, this course of action invites fair criticism, particularly concerning the potential compromise of the principle of equality of arms. This principle, firmly embedded in the Court's jurisprudence, ensures that each party is afforded a reasonable opportunity to present its case under conditions that do not place it at a substantial disadvantage relative to the opposing party.¹⁸³ As such, concerns have been raised about the legitimacy of adjudicating cases with only one party's submissions,¹⁸⁴ noting that the absence of the respondent state's engagement could undermine the fairness of the process.¹⁸⁵ Moreover, the absence of the Russian judge further exacerbates this issue, as the Convention's stipulation that a national judge should sit on the bench presupposes that such a judge would offer insights into the legal and factual context of the respondent state. The absence of this perspective may create a gap in the Court's ability to fully appreciate the nuances of the case, thus impairing its capacity to make an informed and balanced judgment. In this regard, the Court's decision to proceed with its usual practices, while understandable from a procedural standpoint, nonetheless raises critical questions about the legitimacy and depth of the judicial process under such extraordinary conditions.

While concerns about potential violations of the principle of equality of arms are valid, particularly in a situation akin to a judicial orchestra performing without key instruments, such as the participation of the Russian judge and government, the more fundamental question of

¹⁸² *Svetova* (n 162) para 31.

¹⁸³ *Bulut v. Austria*, App no 17358/90, 22 February 1996, para 47.

¹⁸⁴ Kirill Koroteev, 'Moving on in Strasbourg' (Verfassungsblog, 2022) <https://verfassungsblog.de/moving-on-in-strasbourg/> accessed 12 April 2025.

¹⁸⁵ *Bates et al* (n 29) 204.

whether a more effective alternative exists remains a pressing issue for continued scholarly debate. The ECtHR is not the first international court to grapple with such a dilemma. The International Court of Justice (ICJ) has previously addressed situations in which respondent states failed to engage in their defence. In accordance with Article 53 of the ICJ Statute, the Court has the authority to examine the merits of a claim in the absence of the respondent state and to ascertain whether the claim is well-founded in fact and law, a practice it has employed on multiple occasions.¹⁸⁶ The approach adopted by the ECtHR in post-expulsion cases appears to mirror this rationale. This principle was clearly articulated by the ICJ in *Nicaragua* case, where the Court ruled that a state's non-appearance does not negate its status as a party to the dispute, and it remains bound by the final judgment rendered in the case.¹⁸⁷ While the ECtHR has not explicitly underscored the principle of acquiescence (*qui tacet consentire videtur*), it is a well-established principle of international law, signifying that a state's voluntary abstention from participation in proceedings entails acceptance of the legal consequences of that choice.¹⁸⁸ Although not expressly articulated, it is evident that the Court has drawn on this reasoning in its approach to cases involving Russia.

Yet, has the ECtHR truly adhered to the 'business as usual' approach? Academic commentary based on the available data from 16 September 2022 to 16 March 2023, suggested that the Court may have modified its approach to cases involving Russia, despite the absence of any official statement regarding such a shift.¹⁸⁹ The Court's 2023 Annual Report, however, contains indications of such a shift, particularly in terms of prioritization and differentiated

¹⁸⁶ *Corfu Channel case (UK v Albania)*, 1949, ICJ Rep 4, ICJ Press Communiqué No 49/26 (15 December 1949) <https://www.icj-cij.org/sites/default/files/case-related/1/11885.pdf> accessed 12 May 2025; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, 1986, ICJ Rep 14 para 29 <https://www.icj-cij.org/public/files/case-related/70/070-19860627-JUD-01-00-EN.pdf> accessed 16 May 2025.

¹⁸⁷ *Nicaragua (n 194)* para 28.

¹⁸⁸ Nuno Sérgio Marques Antunes, 'Acquiescence' (September 2006) *Max Planck Encyclopedias of International Law* <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1373> accessed 12 May 2025.

¹⁸⁹ Bates et al (n 29) 207.

handling. It notes that ECtHR ‘will continue to address Russian applications. In line with the impact strategy, the handling of these cases will be *differentiated*, considering the significance of the legal issues at hand and whether well-established case law exists in the relevant area.’ Furthermore, the report highlights that ‘Eight pending inter-State cases concerning Russia remain a *priority* for the Court,’ reaffirming the Court's ongoing commitment to prioritizing and processing these cases.¹⁹⁰

To assess whether this prioritisation persisted in practice, a comparative analysis was conducted. From 16 September 2022 to 16 September 2024, the Court delivered 696 judgments, comprising 649 by committee, 44 by Chamber, and 3 by the Grand Chamber. In comparison, from 16 September 2020 to 16 September 2022, the Court issued 486 judgments, 371 by committee, 113 by Chamber, and 2 by the Grand Chamber. The comparative analysis of ECtHR jurisprudence, as demonstrated in Chart 1, reveals a discernible increase in the invocation of Article 10 (Freedom of expression) and Article 11 (Freedom of assembly and association), indicative of an intensified suppression of dissenting voices, particularly those of independent media, civil society actors, protestors, and members of the LGBTQI+ community. Notably, there is a corresponding rise in Article 8 (Right to respect for private and family life) violations, largely attributable to the expansion of state surveillance practices, misuse of personal data, gender identity-based discrimination. Article 14 (Prohibition of discrimination) is increasingly cited in conjunction with substantive rights violations, suggesting a growing judicial recognition of identity-based repression, especially targeting sexual minorities and human rights defenders.

The post-expulsion emergence and escalation of Articles 34 and 18, concerning obstruction of the right of individual application and the misuse of Convention rights for ulterior

¹⁹⁰ ECtHR 2023 Report (n 176) 11.

political purposes, are particularly significant, as they underscore a pattern of deliberate state interference with the functioning of the Court and the suppression of political opposition. While Articles 3, 5, and 2 continue to feature prominently, reflecting the persistence of systemic failures in preventing torture, arbitrary detention, and unlawful killings, the relative decline in references to Article 1 of Protocol No. 1 (P1, Protection of property) suggests a shift in the landscape. This trend reflects the diminished prioritization of economic rights in the Russian context, as the Court's jurisprudence increasingly responds to the escalating deterioration of civil and political rights.

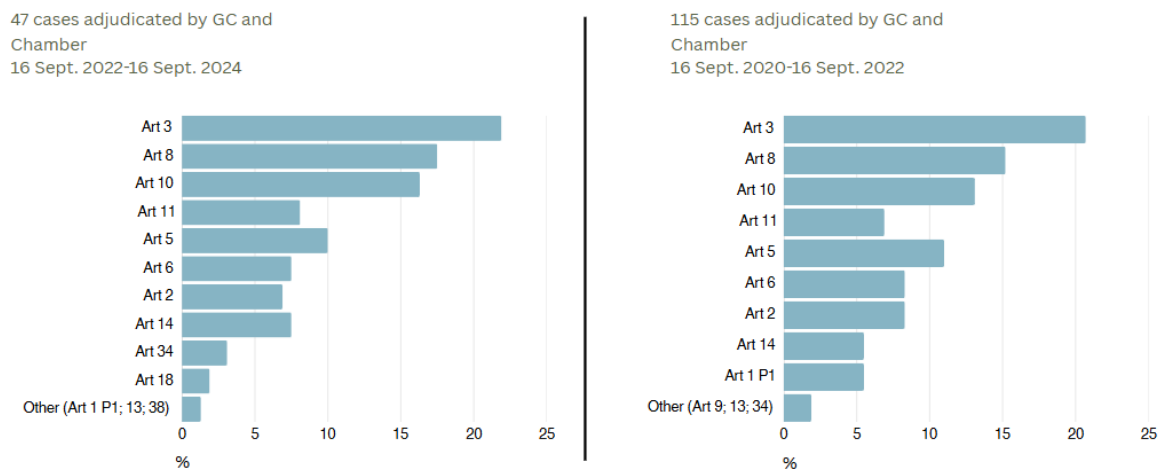


Figure 1 Frequency of Article Invocations in ECtHR Judgments against Russia (16 Sept. 2020-16 Sept. 2024)

An examination of communicated cases during the same periods offers a deeper insight into the Court's evolving strategic and procedural orientation vis-à-vis Russia. Between 16 September 2022 and 16 September 2024, the ECtHR communicated 434 cases against Russia. In comparison, 224 cases were communicated between 16 September 2020 and 16 September 2022. Table 2 illustrates that in 2020-2022 the most frequently raised rights in communicated cases against Russia were the Right to a fair trial (Article 6), Right to respect for private and family life (Article 8), Right to an effective remedy (Article 13), Prohibition of torture (Article 3), and Right to liberty and security (Article 5). In 2022-2024, the most frequently raised rights in communicated cases are still Right to fair trial (Article 6), Right to liberty and security

(Article 5), Freedom of assembly and association (Article 11), Prohibition of torture (Article 3), and Right to respect for private and family life (Article 8). Notably, right to an effective remedy (Article 13) no longer ranked among the top five, while freedom of assembly and association (Article 11) surged to the forefront.

There is dramatic increase in issues Article 11 (Assembly and Association) 700%. Data collected from the specified dates indicates 390% surge in cases involving Article 5 (Liberty, security). Furthermore, around 216% sharp increase in judicial fairness issues under Article 6 (Fair trial). The doubling of communicated cases concerning torture (Article 3) by over 120%. 386% increase in cases challenging Russia's misuse of legal strictions on rights under Article 18 (Restriction on rights). And steady increase in communicated cases concerning Article 10 (Freedom of expression) of 64%. And 300 increase in communicated cases concerning Article 17 (Abuse of rights).

Article (right)	16 Sept. 2020-16 Sept. 2022 mentions in numbers (GC and Chamber Cases)	16 Sept. 2022-16 Sept. 2024 mentions in numbers (GC and Cases)	Change in %
Art. 6 (Fair trial)	102	322	+216%
Art. 5 (Liberty/security)	53	260	+390%
Art. 11 (Assembly/Association)	28	226	+707%
Art. 3 (Torture)	65	144	+122%
Art. 8 (Private/Family Life)	91	98	+7.7%
Art. 18 (Restrictions on rights)	14	68	+386%
Art. 10 (Expression)	47	77	+64%
Art. 17 (Abuse of rights)	3	12	+300%
Discrimination (Art. 14)	43	36	-16%
Art. 4 (Slavery/Forced labour)	1	6	+500%
Art. 7 (No punishment without law)	10	26	+160%

Art. 9 (Freedom of religion)	8	5	-37.5%
P1-1 Property rights	31	32	+3.2%

Figure 2 Changes in ECtHR Article Invocation in Communicated Cases Against Russia (16 Sept. 2020-16 Sept. 2024)

*The most frequently raised rights (by keyword mentions).

Source: Author's compilation based on data from HUDOC.

Although the communicated cases encompass a broad spectrum of rights, the predominant themes are political repression, restrictions on civil society, and the consequences of Russia's conduct in Ukraine. A significant proportion of these cases pertain to Alexei Navalny¹⁹¹ and his associates, individuals classified as political prisoners, participants in anti-war protests and individual demonstrations opposing the war in Ukraine, as well as actions targeting so-called 'undesirable organisations' and 'foreign agents.' Additionally, many cases arise from alleged offences committed under Russian jurisdiction in Crimea, and from opposition rallies, protests against issues including but not limited to pension reforms, anti-corruption initiatives, and environmental activism. Thus, data suggests a potential shift in the Court's approach, marked by a more selective and impact-driven case management strategy.

According to the most recent data available as of April 2025, Russia still ranks second, after Turkey, among the countries with the highest number of cases before the Court.¹⁹² However, it must be acknowledged that the number of pending applications concerning Russia decreased in 2024 and 2025¹⁹³ compared to 2023,¹⁹⁴ leading to a significant reduction in Russia's caseload, almost halved, from 16,730 to 8,200, following Russia's expulsion.¹⁹⁵

¹⁹¹ Alexei Navalny (1976–2024) was Russia's leading opposition figure and anti-corruption activist. Founder of the Anti-Corruption Foundation, he was a vocal critic of President Putin, repeatedly jailed on politically motivated charges. He died in Russian custody in 2024.

¹⁹² ECtHR 2024 Report (n 189) 6.

¹⁹³ According to the statistics published by the Court, 8,200 applications are pending against Russia as of March 2025. ECtHR, Statistical reports, Statistics monthly 2025, ECHR <https://www.echr.coe.int/statistical-reports> accessed 10 March 2025.

¹⁹⁴ 12,450, ECtHR 2023 Report (n 176) 6.

¹⁹⁵ 8,150, ECtHR 2024 Report (n 189) 6.

A significant number of cases have been processed through the Chamber and Committee formations, often utilizing simplified procedures such as the ‘well-established case-law fast-track’ method.¹⁹⁶ The nature of the cases indicates a strategic prioritization of more time sensitive and high-impact political issues. This aligns with the Court's broader impact strategy, which focuses on differentiating the handling of cases based on the significance of the legal issues at hand and the existence of well-established case-law outlined in its 2023 Annual Report.¹⁹⁷

Thus, the data suggests that the Court did not adopt a radically new approach but rather employed a hybrid strategy, blending elements of the ‘business as usual’ model with a selective prioritization approach. This model involves choosing a number of leading cases, including inter-state disputes, politically sensitive cases, and those highlighting structural legal issues in Russia. Therefore, the Court’s approach appears to be one of measured continuity, with a focus on prioritizing cases of significant legal and political impact while maintaining a level of operational consistency, notably reducing its backlog of pending applications against Russia twice.

It is clear that radical model would have represented a more expedient and immediately available solution for the ECtHR. The Court could have suspended the adjudication of all applications against Russia under Article 37(1)(c) of the ECHR, which grants the Court wide discretion to strike out any application when the continuation of its examination is no longer justified. This would have allowed the Court to decide that, given the current circumstances, delivering judgments would have no meaningful impact and that the applications should be removed from the list of pending cases. However, as previously discussed, despite having this legal tool, one that would have saved significant resources for the Court and alleviated the

¹⁹⁶ ECtHR 2023 Report 2023 (n 176), 94.

¹⁹⁷ *ibid*, 192.

criticism of selective adjudication and violations of the principle of ‘equality of arms’, the Court chose a path aligned with its institutional identity. By adopting this ‘middle ground’ position, as described by President O’Leary,¹⁹⁸ the Court navigated the challenge of maintaining its identity as the ‘judicial branch of what is, in essence, a peace project,’¹⁹⁹ refusing to tolerate the crossing of its boundaries by Russia, while simultaneously preserving its moral obligation to the victims. This approach allowed for a compromise by continuing to offer moral satisfaction to the victims, ensuring that the Court acknowledged the violations of their rights, even in the face of Russia’s non-participation and non-cooperation.

3.5 Pragmatism and the non-execution of judgments

As previously discussed, the Russian authorities have adopted an interpretation of the ECHR that diverges significantly from that of the Court. From the Russian perspective, the Convention ceased to apply as of 15 March 2022, and compliance with judgments is understood to be sufficiently achieved through the payment of monetary compensation alone exclusively in roubles and to accounts within Russian banks until 1 January 2023, without the need for any additional individual or general measures.²⁰⁰ In the view of the Russian authorities, their obligations under the Convention have thus been conclusively terminated.²⁰¹

¹⁹⁸ Síofra O’Leary, ‘Exchange of Views with the Committee of Ministers’ (Speech, 13 April 2023) www.echr.coe.int/documents/d/echr/speech_20230413_oleary_exchange_views_committee_ministers_coe_bil accessed 12 April 2025.

¹⁹⁹ ECtHR 2023 Report (n 176) 5.

²⁰⁰ Federal Law (n 173).

²⁰¹ On 8 June 2022, the Committee of Ministers reaffirmed its supervisory role over cases involving Russia, despite the impending Russian law on non-execution. It recalled its March 2022 invitation for Russia to engage in execution discussions, refused by Russia, and confirmed it would continue receiving information from NGOs. The CM urged Russia to honour its international obligations, including executing ECtHR judgments. CM decision CM/Del/Dec(2022)1436/A2a - 1436th meeting (DH), June 2022 - Preparation of the next meeting - a. cases pending against the Russian Federation (10 June 2022) [https://search.coe.int/cm/#{%22CoEIdentifier%22:\[%220900001680a6cfe8%22\],%22sort%22:\[%22CoEValidati onDate%20Descending%22\]}](https://search.coe.int/cm/#{%22CoEIdentifier%22:[%220900001680a6cfe8%22],%22sort%22:[%22CoEValidati onDate%20Descending%22]}) accessed 12 April 2025.

On 8 December 2022, the CM of the CoE adopted a strategy concerning the execution of judgments against Russia. This approach, characterized by a pragmatic acknowledgment of the prevailing political reality, recognizes that any cooperation with Russia is unlikely under the current regime. Accordingly, the strategy underscores the importance of engaging with Russian civil society actors and other international organizations to which Russia remains a party.²⁰² Furthermore, in accordance with the Strategy, a public register of just satisfaction has been established and will be regularly updated, particularly with respect to the default interest accrued²⁰³. This ensures that both the outstanding issues and the sums due remain under close public scrutiny and are accessible to the CM in light of any future developments.

As part of the CM's strategy, the SG of the CoE sent a letter to the Minister of Foreign Affairs of Russia on 9 December 2022. The letter detailed the CM's quarterly human rights meetings, and the decisions adopted, including interim resolutions, while urging the full and effective implementation of the judgments rendered by the Court.²⁰⁴

The Russian Ministry of Foreign Affairs responded to the letter, condemning the approach taken by the CoE as 'megaphone diplomacy' and criticizing the CoE's decision to make the letter public,²⁰⁵ making it clear that it was unwilling to engage with the CoE's demands for the implementation of the judgments. Afterward, the SG sent *eight* additional letters, four in 2023 and four in 2024. These letters were largely identical to the one sent on 9 December 2022, reiterating the absence of any communication from the Russian authorities and urging

²⁰² CM, Strategy paper regarding the supervision of the execution of cases pending against the Russian Federation (8 December 2022) https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a91beb accessed 12 April 2025.

²⁰³ *ibid.*

²⁰⁴ SG, Letter to the attention of Sergey Lavrov, Minister of Foreign Affairs of the Russian Federation, (Strasbourg, 9 December 2022) <https://rm.coe.int/letter-for-the-attention-of-mr-sergey-lavrov-minister-for-foreign-affa/1680a956f6> accessed 12 April 2025.

²⁰⁵ 'Comment by Foreign Ministry spokeswoman Maria Zakharova on the letter from the Secretary General of the CoE Marija Pejcinovic Buric to Foreign Minister Sergey Lavrov' www.mid.ru/ru/foreign_policy/news/1843582/?lang=En accessed 12 April 2025.

the implementation of the judgments rendered by the Court.²⁰⁶ As of April 2025, it is likely that the Russian authorities have continued their cessation of all communications with the CoE. According to the Register of just satisfaction, as of April 2025, the total just satisfaction amount due is €2,067,004,239, and the total amount due, including default interest, is €2,855,210,968 for individual cases. Furthermore, in inter-state cases, Russia's debt amounts to €159,043,598.27.²⁰⁷ As of April 2025, the ECtHR has not received any payments from Russia concerning a total of 1,658 cases.²⁰⁸ Approach undertaken by the CM has been subject to criticism by Koroteev who argues that the CM risks positioning itself as a 'silent idle observer' in the face of widespread and continuing violations of the Convention.²⁰⁹ It is widely accepted among academics and supported by available data, none of the judgments delivered after 15 March 2022 are likely to be executed, including those concerning just satisfaction.²¹⁰

Emtseva argues, albeit with a degree of resignation, that the ECtHR now functions almost symbolically in relation to Russian cases.²¹¹ However, while the Court's judgments may no longer lead to enforcement in the traditional sense, this characterization overlooks the substantive role it continues to play. Based on available empirical research, it is evident that although Russia's expulsion from the CoE has negatively impacted human rights lawyers and

²⁰⁶ Letters from the SG Ms Marija Pejčinović Burić to the Minister for Foreign Affairs of the Russian Federation <https://www.coe.int/en/web/execution/letters-sg> accessed 12 March 2025.

²⁰⁷ Register of just satisfaction concerning the Russian Federation [https://www.coe.int/en/web/execution/register?p_l_back_url=%2Ffr%2Fgroup%2Fexecution%2F%7E%2Fcontrol_panel%2Fmanage%3Fp_p_id%3Dcom_liferay_layout_admin_web_portlet_GroupPagesPortlet%26p_p_lifecycle%3D0%26p_p_state%3Dmaximized%26p_p_mode%3Dview%26_com_liferay_layout_admin_web_portlet_GroupPagesPortlet_tabs1%3Dpages%26_com_liferay_layout_admin_web_portlet_GroupPagesPortlet_privateLayout%3Dfalse%26_com_liferay_layout_admin_web_portlet_GroupPagesPortlet_displayStyle%3Dmiller-#{'%22265909585%22:\[0\]}](https://www.coe.int/en/web/execution/register?p_l_back_url=%2Ffr%2Fgroup%2Fexecution%2F%7E%2Fcontrol_panel%2Fmanage%3Fp_p_id%3Dcom_liferay_layout_admin_web_portlet_GroupPagesPortlet%26p_p_lifecycle%3D0%26p_p_state%3Dmaximized%26p_p_mode%3Dview%26_com_liferay_layout_admin_web_portlet_GroupPagesPortlet_tabs1%3Dpages%26_com_liferay_layout_admin_web_portlet_GroupPagesPortlet_privateLayout%3Dfalse%26_com_liferay_layout_admin_web_portlet_GroupPagesPortlet_displayStyle%3Dmiller-#{'%22265909585%22:[0]}) accessed 12 April 2025.

²⁰⁸ Information relating to payment awaited or information received incomplete <https://www.coe.int/en/web/execution/payment-information> accessed 12 April 2025.

²⁰⁹ Kirill Koroteev, 'Non-execution of Strasbourg Judgments against Russia: the Case for a Trust Fund' (2024) 9(1) *Russian Politics* 121 <https://doi.org/10.30965/24518921-00901006> accessed 10 April 2025.

²¹⁰ Bates et al (n 29) 213.

²¹¹ Julia Emtseva, 'The Withdrawal Mystery Solved: How the European Court of Human Rights Decided to Move Forward with the Cases against Russia' (EJIL: Talk!, 8 February 2023) <https://www.ejiltalk.org/the-withdrawal-mystery-solved-how-the-european-court-of-human-rights-decided-to-move-forward-with-the-cases-against-russia/> accessed 12 April 2025.

their clients within the country, and has diminished broader respect for human rights domestically,²¹² the ECtHR has consistently provided moral satisfaction to victims in Russia throughout its entire period of membership in the CoE. Even before the expulsion, as demonstrated by empirical research, the Court played a crucial role in offering victims a sense of justice, one that transcended material compensation.²¹³ This moral dimension remains central to the Court's role post-expulsion, as it persists in documenting the historical facts of human rights violations, ensuring that such events cannot be erased from history, similar to judgments concerning violations during the Chechen war.²¹⁴ A study conducted in this context highlighted the perspective of a lawyer representing applicants in the first Chechen case, who emphasized that the judgments provided not only a confirmation of the 'incontrovertible truth' of the atrocities faced by the victims and their families, but also the opportunity to receive moral justice.²¹⁵

Furthermore, as Simmons notes, the efficacy of human rights treaties often lies not in their ability to directly shape state behaviour, but in their capacity to empower groups within states to mobilize for change.²¹⁶ In the context of Russia, human rights organizations long recognized the supplementary value of ECtHR victories beyond mere compliance. They strategically utilized Strasbourg litigation as part of broader efforts to advocate for domestic reform.²¹⁷ While, given the current state of affairs in Russia, it is highly unlikely that any meaningful internal resistance could emerge, and Russia's persistent noncompliance underscores the regime's blatant disregard for international legal obligations, the Court's work

²¹² Ariella Katz Miller, 'Cost of Expulsion, Dissent and Human Rights in Russia' (2024) 9(1) *Russian Politics* 100 <https://doi.org/10.30965/24518921-00901005> 5.

²¹³ *ibid.*, 18-19.

²¹⁴ Malfliet and. Parmentier (n 108) 33-42, 38.

²¹⁵ Bill Bowring, 'The Crisis of the European Court of Human Rights in the Face of Authoritarian and Populist Regimes' in A Kent (ed), *The Future of International Courts* (Routledge 2019) 76-93, 78; Malfliet and Parmentier (n 108) 179-80.

²¹⁶ Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press, 2009) 150-54.

²¹⁷ Miller (n 220) 23.

may nonetheless be seen as partially symbolic but not merely symbolic. While symbolic action is often associated with gestures lacking tangible consequence, the post-expulsion judgments of the ECtHR against Russia provide moral, psychological, and historical validation that transcends mere appearances. Even in the absence of enforcement, these judgments contribute to truth-telling, preserve the historical record, and affirm the dignity of victims.

CONCLUSION: DISABLING THE GUILLOTINE FOR THE TRUE VICTIMS OF RUSSIA'S EXPULSION

This thesis has explored the persistent and uneasy dilemma embedded in the CoE's relationship with the Russian Federation since its anomalous accession: the choice between accommodating a non-conforming Member State, thereby straining the normative and institutional coherence of the Organisation or confronting that non-conformity at the risk of extinguishing what little space remained for legal accountability. This foundational tension has reverberated throughout the Court's jurisprudential posture toward Russia, shaping both its restraint and its resolve.

Building on the legal framework governing membership termination and the historical trajectory of Russia's participation in the CoE, this thesis has demonstrated how the CM's decision to expel Russia represented a pivotal political act. Repeated violations of the Organisation's foundational norms by Russia gradually eroded the CoE's institutional integrity. In response, the CoE, privileging integration over isolation, resorted to the full extent of its procedural flexibility, offering derogations, exceptions, and ultimately amending its own rules to accommodate Russia. The full-scale invasion of Ukraine, however, marked a critical bifurcation point, after which continued accommodation was no longer possible. What transpired amounts to both a *de jure* and *de facto* expulsion, one that was necessary to preserve the CoE's institutional identity and its social boundaries as an international organisation. Russia's expulsion was not only a legal necessity, but also a normative imperative, a response to the failure of the CoE's model of 'therapeutic admission' and a reaffirmation of its foundational identity as a peace project, while a voluntary withdrawal would have fundamentally contradicted the Council's *raison d'être*.

What crystallises in this thesis is that, by performing a politically necessary act, the CM effectively delegated the resolution of complex jurisdictional and procedural questions to the Court. Chief among these challenges was the risk of a ‘guillotine effect’ under Article 58(3) of the Convention, whereby immediate expulsion would result in the abrupt cessation of Russia’s Convention obligations. This scenario created a significant legal grey zone, one that Russia actively sought to exploit, potentially leaving countless victims without access to justice.

In response, the Court adopted a carefully balanced, middle-ground approach. It sought to preserve its institutional identity as the judicial branch of a peace project, maintaining its moral commitment to victims as a ‘lighthouse of human rights.’ This approach is rooted in the legacy of ‘therapeutic admission’, the idea that reintegration through law can serve as a response to past authoritarianism. Accordingly, the Court’s post-expulsion decisions, both jurisdictional and procedural reflect this logic.

For example, in addition to affirming victims’ continued right to bring claims for violations occurring prior to 16 September 2022, the Court addressed the institutional vacuum created by the absence of a Russian judge by interpreting Rule 29(2) of the Rules of Court by analogy. It also invoked the principle of acquiescence, a well-established doctrine in international law, to address Russia’s non-cooperation, thereby enabling the Court to proceed with adjudication in spite of the respondent state’s obstruction.

A comparative analysis of the Court’s case law, including both judgments and communicated cases, across the two periods (16 September 2020–2022 and 16 September 2022–2024) reveals a discernible evolution in its approach to Russia. The data suggests a shift towards a more selective and impact-driven case management strategy, with the Court prioritising cases that implicate civil and political rights over those concerning economic rights. This strategic prioritisation reflects a model of measured continuity: while adapting to the post-

expulsion context, the Court has remained committed to operational consistency and normative clarity.

Despite possessing legal tools to suspend adjudication altogether, a step that would have conserved significant institutional resources, the Court chose not to abandon its role. Even at the risk of criticism regarding selective adjudication or potential violations of the principle of equality of arms, it remained aligned with its foundational identity. The model adopted by the Court, therefore, reflects a conscious affirmation of its role as the guardian of the Convention system.

While this approach may be criticised as merely symbolic, given Russia's complete disengagement from the CoE and its institutions, this thesis contends that the Court continues to serve a crucial function. It offers victims a form of justice that transcends material remedies. The moral dimension remains central to the Court's post-expulsion role: by documenting violations and rendering authoritative judgments, it preserves the historical record and affirms the dignity of victims, much like its earlier jurisprudence concerning the Chechen wars. Even in the absence of enforcement, these judgments resist erasure and contribute to truth-telling, rendering the Court's work not only symbolically resonant but substantively meaningful.

Finally, Russia's expulsion from the CoE presents a fundamental legal dilemma: a state subjected to sanctions for serious human rights violations and subsequently expelled from the CoE is no longer bound by one of the most significant human rights treaties. Miller contends that while it is difficult to definitively assess the state of human rights in Russia had the country not been expelled from the CoE, it is evident that in the absence of the ECtHR, human rights in Russia deteriorated significantly. In relation to the ongoing war in Ukraine, the expulsion may have had unintended consequences, exacerbating the situation rather than alleviating it. With the intensification of domestic repression and minimal avenues for recourse to international

justice, critics of the war within Russia found themselves increasingly isolated. Dissenters were left to confront a perilous and unequal battle, resisting Russia's military agenda largely without external legal support. Ultimately, it is human rights defenders and victims who will bear the daunting and arduous task of steering Russia toward a future marked by greater respect for human rights, both domestically and internationally.²¹⁸ Thus, the true victims of this sanction are not the Putin regime, but the individuals most in need of protection of the Convention.

Now, with the CoE failing to confront the issue head-on, it is seemingly impossible, at least for the time being, to envision Russia fulfilling its obligations to enforce judgments, including paying satisfaction. Although alternative proposals exist to address this matter, such as the establishment of a claims commission to adjudicate damages and compensate victims of the 2022 Russian invasion, using funds frozen under sanctions,²¹⁹ or creating a trust fund under the CoE's legal purview²²⁰, the ECtHR will now likely find itself fulfilling a new role. This role entails merely constituting a historical record of what transpired under Russia's jurisdiction before 16 September 2022, particularly in relation to post-2022 events.

Finally, the question is whether this is truly a 'new' role. In his concurring Opinion in *Novaya Gazeta*, Judge Pavli reflected on the ECtHR's case law against Russia over the past two decades, describing it as 'a sad chronicle of incremental but systematic shrinking of democratic spaces' within the country. He critically questioned whether the Court had sufficiently acknowledged this trend and whether it could have done more to address the erosion of democratic freedoms.²²¹

²¹⁸ Miller (n 220) 100-120, 40.

²¹⁹ Chiara Giorgetti, Markiyan Kliuchkovskyi and Patrick W Pearsall, 'Launching an International Claims Commission for Ukraine' (EJIL: Talk!, 20 May 2022) <https://www.ejiltalk.org/launching-an-international-claims-commission-for-ukraine/> accessed 12 April 2025.

²²⁰ Koroteev, (n 217) 121-134.

²²¹ Concurring Opinion of Judge Pavli para 7. *Novaya Gazeta and others v. Russia* App nos 35023/13 and 25657/15 10 January 2023.

I, argue, however, that rather than adopting a radical posture that might have cast a significant portion of Europe into a ‘legal grey zone’ for decades,²²² the Court pursued a course that is deeply consistent with its institutional identity. The Court’s approach recognizes that the true victims of Russia’s expulsion from the CoE are not the Putin regime, but individuals now deprived of access to the ECtHR, which for many had represented their final and only hope for justice. For a significant number of individuals subject to the jurisdiction of the Russian Federation, the Court was perceived as ‘their court,’²²³ its loss is deeply disempowering.

In this context, the Court has mobilised every available legal and procedural mechanism and effectively jammed the blade of the guillotine, ensuring that Russia cannot sever its obligations under the Convention and exploit its departure to escape accountability for its human rights violations.

²²² PACE Verbatim Records 22 January 2019 (afternoon), <https://pace.coe.int/en/verbatim/2019-01-22/pm/it> accessed 12 April 2025.

²²³ Miller (n 220) 6.

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