



Council of Europe Mission. Conflict Impact with Russia

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Abstract

Over the years, international organizations have played critical roles in the interactions and relationships that develop within the international system between and among states. The Russian Federation joined the Council of Europe in 1996 to strengthen its democratic policies. The nature of Russia’s membership in the Council of Europe is somewhat paradoxical, given how far it strayed from the organization’s objectives and principles. This also includes the organization’s credibility and ability to promote democratic values throughout the Russian Federation by applying the European Convention on Human Rights. In light of the latest developments in the conflict with Russia, the issue of the protection of human rights and fundamental freedoms, on which the Council of Europe is mainly focused, seems to be a key point in the European debate and beyond. This paper summarized all points where the Council of Europe deviated from its principles and objectives. The Council of Europe, among others, has to strengthen its authority and become more resilient to afford future crises. The main question of this paper is directly related to the research strategy which is the first element. The general question of this paper is as follows: Can the mission and purpose of the Council of Europe be considered fulfilled in any case of the existence of this organization?

Keywords: Council of Europe, Russia, European Convention of Human Rights, Statute of the Council of Europe

Introduction

The Council of Europe was created after the Second World War as the most important organization which aimed to prevent the conflicts experienced by strengthening the rule of law (European Youth Center Budapest, 2017). This paper focuses on analyzing the mission of the Council of Europe and its role in the international arena. This mission has been in the interest of many scholars over the years and the actuality of its conflict with Russia. The relationship between the Russian Federation and the Council of Europe remains unclear since Russia returned to the Council in 2019 after a 4-year departure from the organization. The attitude of the Council of Europe towards the Russian reactions questions the credibility of the organization in the international arena. The biggest dilemma pertains to the interpretation of the facts.

Russia's membership in the Council of Europe is viewed with suspicion because of the situation Russia was in at the time of accession. However, it was a very important step towards democracy. This is because, for years, Russia had absolutely refused to submit to any form of international judgment. Despite this indisputable progress, serious questions remain regarding the democratic development of the Russian Federation and the principle of democratization based on the gap between European standards and the reality of Russia (Jean-Pierre Massias, 2007, p.12).

1. Research Methodology

The methodology represents the procedure of data collection, which is used to analyze the data. It refers to the logic that pervades research as a whole with the tools, techniques, and procedures by which the empirical material is analyzed to obtain the results of the scientific research. The following methods have been applied in this scientific paper:

Evolutionary method of legal research which deals with tracing the origin and development of the CoE.

Evolutionary-evaluative method of research which aims to determine the nature and the source of the Russia-CoE relationship so as to establish how everything evolved between them.

Influential method which focuses on studying and understanding the effects that come from laws, institutions or the identification of non-legal factors that affect the legal fact, especially the revolts of the Russian delegates who undoubtedly enjoy interaction with legal facts.

Interpretive methods which analyzes the Russian conflict with the Council of Europe. This approach interprets meaning within a specific context and has a purely complementary function.

The analysis in this paper is based on the inductive research method. Here, the main problem of inductive logic is to determine the truth or falsity of a fact by following the probability of conclusions (Stock, 2009).

2. Council of Europe, Mission and Objectives

The Council of Europe, after the overthrow of communism, became the most suitable international institution to help build the democratic institutions of Europe. Many former communist countries became members of the Council of Europe in full compliance with the standards set by it (Council of Europe Strasbourg, 1998, p.11-1). Founded by the Treaty of London of 1949, it is the promoter of important European conventions, of which the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 plays a special role. The CoE is an organization that deals with a wide range of human rights, as well as with democracy and the rule of law. Through the ECHR and the binding jurisdiction of the European Court of Human Rights, it is the most developed regional human rights regime in the world.

Any European country that recognizes the principles of the rule of law and guarantees the human rights and fundamental freedoms of individuals under its jurisdiction can become a member of the Council of Europe. Its main principles are based on trust, justice, and cooperation between states. The member states becoming part of the Council of Europe agree to become part of a community which is supposedly and practically created on the basis of common principles and values of the states. The powers of the Council of Europe are quite broad and vary according to its bodies. The mission of the Council of Europe goes beyond its competencies, due to the impact it has continuously brought to the societies of different countries. It has launched campaigns on sensitive and important issues, such as child protection, hate speech online, Roma rights, equality and protection of minorities, etc. The Council of Europe helps member states fight corruption and terrorism and undertake the necessary judicial reforms to advance justice. Its group of constitutional experts, known as the Venice Commission, provides legal advice to countries around the world on various legal issues. This assistance are in the form of opinions prepared by the Venice Commission at the request not only of the states but also of the bodies of the Council of Europe (United Nations Special Rapporteur on the Independence of Judges and Lawyer, 2019).

3. The Activity of the Council of Europe in Russia

The Russian Federation became the 39th member state of the Council of Europe on 28 February 1996, following a long road to success in defending human rights thanks to the intervention of the Council of Europe. The

intervention activity in the Russian Federation has been quite extensive and efficient. During the last transition period of 1990-2000, Russia was forced to include in its national legislation dozens of Council of Europe statutes and conventions that go beyond the law of the ECHR. These charters and conventions claimed to strengthen the protection of national minorities in Russia, strengthen local self-government, and increase anti-corruption measures and other ambitious goals in the service of the rule of law and the protection of fundamental human rights and freedoms. Political pressure from the CoE has always been a source of conflict in CoE-Russia relations, which was later interpreted as interference in domestic politics. The 1995 Framework Convention for the Protection of National Minorities, ratified in 1998 in the Russian Federation, provides a monitoring system to assess how the treaty is implemented in the member states (Council of Europe, 1998). An advisory committee adopts recommendations to improve minority protection. Russia ensures the protection of the rights of Russian citizens, including national minorities, facilitates their ethnocultural development and protects linguistic identity, unimpeded access to education, participation in public associations, the use of the mass media, and the exercise of the right to vote. The Council of Europe has provided significant assistance to the Russian Federation in the area of improving Russian legislation to prevent, respond to, and suppress interethnic intolerance or hatred (Council of Europe, 2016).

The Council of Europe uses independent monitoring mechanisms, which assess its adherence to human rights and democratic practices. A concrete form of this monitoring is carried out by the Council of Europe Committee for the Prevention of Torture. Based on its mission according to the program by the Parliamentary Assembly, it conducts previously unannounced visits to the member states of the Council of Europe. These visits take place regularly in detention centers, prisons, police stations, centers for the protection of foreign nationals, etc., in order to assess how people who are deprived of their liberty are being treated. All this helps the Council of Europe to take action if it finds violations in accordance with the European Convention on Human Rights, and it also help these individuals who may be mistreated in these democracies of KiE. The Russian Federation has always expressed its readiness to cooperate in this regard and to allow the Council of Europe Committee for the Prevention of Torture to act within its mission, thus publishing informative reports on the obstacles to an effective investigation up to pursuing cases of torture to ensure the punishment of executors (Tarseeva, 2015). All this is not only an aid to the Russian Federation but also to other CoE member states. It should be noted that the absolute prohibition of torture under Article 3 means that it is not allowed to be used even in time of war.

4. Russian Issues in the ECHR

Table 3.1. European Court of Human Rights, 1959-2020

R U S S I A	Total number of trials from 1959 to 2020	2884
	Trials with at least one violation	2724
	Cases: The right to life - deprivation of life	330
	Cases: The right to a fair trial	935
	Cases: The right to liberty and security	1203

According to statistics published by the European Court of Human Rights, the Russian Federation is the country with the highest number of cases sent for violation of articles of the European Convention on Human Rights to this court (among 47 states that are members of the Council of Europe). Over the years, 2,884 cases have been reviewed, which places Russia as the second country with the most cases tried for violation of ECHR articles. High-profile cases lost by Russia in the Strasbourg Court speak of a necessity that citizens have and a need for "protection" when they cannot find justice in their courts. One of the most common questions that can be asked about this court is: What is the function and role of the European Court of Human Rights in providing individual solutions and changes in Russian domestic legislation? The European Court of Human Rights has always focused on resolving its problems as well as applying sanctions to violating states. It has faced one of the most important and equally difficult challenges that can be presented to this court, namely the issue of the conflict between Ukraine and Russia (Risini, 2018, p. 2).

The Council of Europe acknowledged that Russia lacked much of the legal protection mechanisms required for the fundamental protection of human rights; however, Russia was accepted as a member based on the optimistic proposition that *“integration is better than isolation”*; *“cooperation is better than confrontation”* (Futamura & Bernaz, 2014, p. 4). Nonetheless, it seems that this optimistic proposal did not work out due to the relationship between the European Court of Human Rights and the Russian National Court. Under the 1993 Russian Constitution, international treaties became part of the Russian legal system. Consequently, international law would take precedence over national legislation and the Strasbourg judgments in this case were binding. However, this changed over time.

Death penalty policies are not simply shaped by human rights considerations, but are also influenced by the political, social, and cultural factors that are taken into account. This sentence is undoubtedly the most severe sentence that can be executed against an individual, as well as it undoubtedly constitutes a violation of the right to life. Despite differing views, it expresses the application of ‘lex talionis, otherwise known as the law of revenge. It is prohibited by law in all democratic countries because it cannot

be justified despite the serious damage that the criminal offense may have caused. Upon joining the Council of Europe, Russia imposed a moratorium on the death penalty. Thus, one of the absolute requirements of the Council of Europe for all its members is that the death penalty should not be carried out for any criminal offense. Since the moratorium on executions was imposed in August 1996, no further death sentences have been carried out in Russia.

5. The Origin of the Conflict and International Sanctions

The identification of Russians with Ukraine has strong historical, cultural, religious, and economic roots. The Russians regard Kiev as the historical nucleus of the Russian state (Cohen, 2016, p. 234). In 2013, the President of Ukraine, Viktor Yanukovich, decided against the signing of an Association Agreement with the European Union at the Eastern Partnership summit in Vilnius on November 29, sparking large-scale protests in Ukraine (Eurasia Daily Monitor Volume: 10 Issue: 215, 2013). Protests against the government began as peaceful demonstrations in November 2013, but it turned into bloody violence in February 2014. Yanukovich received large financial aid from Russia, which was his firm support. The conflict turned into a long-running rebellion that threatened to divide the country and remained hostage to the Russia-West domination war (Cohen, 2016, p. 234). The conflict erupted with mass protests where, in February 2014, Viktor Yanukovich finally left Kiev after the Ukrainian Parliament voted to acquit him. Russia in 2014 responded by illegally occupying the Crimean peninsula by annexing it (Kuzio, 1997, p. 36-56). The EU, the United States, and other countries imposed sanctions on Russia.

In its 2016 annual report, the Council of Europe did not mention human rights abuses in Crimea because Russia had not allowed its monitors to enter, pointing once again to violations that are unjustified (Melkezerova, 2016). The Council of Europe has always expressed its position on the issue of the Russian conflict over the annexation of Crimea. The Council of Europe has given its full support to the territorial integrity and national unity of Ukraine and strongly condemns the violation by the Russian Federation of the sovereignty and territorial integrity of the country.

There were numerous reactions to the situation in Russia and the annexation of Crimea, where in most cases they were accompanied by sanctions. The sanctions were of such a form as to prevent Russian and Crimean officials and politicians from traveling to different countries, but it was not only that. Sanctions were imposed by the United States, the European Union, and many other countries (Overland & Fjaertoft, 2015). Reactions through sanctions took the form of vice-versa, as Russia responded similarly with sanctions against a large number of important countries, including a complete ban on food imports from the European Union, the United States,

Norway, Canada, and Australia for a period of one year (The New York Times, 2014). The main sanction imposed by the EU against the Russian Federation consisted of “Prohibition of entry into the territory of European Union countries, or transit, of persons responsible for actions that threaten the territory, integrity, sovereignty and independence of Ukraine” (Council Decision 2014/145 / CFSP). Nowadays, still in 2021, sanction was implemented by the European Union and the United States on the Russian Federation. This comes as a result of the reaction to the violations committed, which leads to conflicts that transcend the nature of the Council of Europe and affect a global report of states, further aggravating the current situation (Council of the European Union, 2020). Representatives of these countries stressed that they would lift the sanctions only on one condition which had to be met by the Russian Federation, “Moscow to implement the Minsk Agreement” (Interfax-Ukraine, 2016).

6. Suspension by the Council of Europe

The Council of Europe would respond to repeated violations by Russia. The CoE Parliamentary Assembly suspended Russia's voting right due to the issue of annexation of Crimea by the end of 2014 (Parliamentary Assembly, 2014). The reasoning given by the Council of Europe was that the role and participation of the Russian Federation in the conflict in Eastern Ukraine, as well as the ongoing illegal annexation of Crimea, was in complete contradiction with the Statute of the Council of Europe (Parliamentary Assembly, Resolution 2034 (2015) Final version). As a result, the Parliamentary Assembly of the Council of Europe strongly condemned Russia's violation of Ukraine's sovereignty and territorial integrity. At the same time, the Assembly stressed the need to continue the dialogue with the Russian Federation, including its obligations and respect for the values and principles of the Council of Europe which cannot be violated.

With the opportunity offered for dialogue, the Assembly thus did not cancel the credentials of the Russian Federation but made a temporary suspension of them until the end of the 2014 session. This includes the voting rights of the Russian delegation, as well as its right to be represented in the Bureau, the Presidential Committee, and the Standing Committee of the Council Assembly, including the right to take part in election observation missions (Parliamentary Assembly, 2014). Based on this, the Parliamentary Assembly of the Council of Europe defended the idea that the Russian and Ukrainian authorities should fully and transparently investigate any reports of human rights violations and war crimes committed by their own citizens (Parliamentary Assembly, Resolution 2034 (2015), Point 9). The Parliamentary Assembly has taken the right position because by violating the sovereignty and territorial integrity of Ukraine, the Russian Federation has

thus created a threat to stability and peace in Europe. In case of non-reaction of organizations or states to the issue of Crimea and the conflict with the CoE of Russia, they would bring great steps towards an international existential danger.

The focus on human rights, rule of law, democracy, and peaceful cooperation between them makes the Council of Europe, as a regional international organization, to be particularly inclined to consider the departure of a member state as the last resort envisaged. Sanctions are imposed in order for the member states of the organization to comply with its normative obligations. In other words, a state may be required to leave it only if there is no other way to encourage or compel it to fulfill its obligations. The fact that the possibility of suspending and removing a state from the organization itself, which is provided for in the Statute, speaks of the legitimacy that the Council of Europe has (Wilfred Jenks, 2009, p. 160). This also makes it impossible for the deported state not to challenge the decision or strike it for illegality. However, the international organization should use this sanction only as the last tool and only after carefully considering all the relevant factors for the departure of the member state. Nonetheless, it is not entirely clear what kind of evidence an international organization must produce to substantiate its decision to suspend or remove a member state. In an organization as the Council of Europe, it is important for its members to share their common values and to be actively and continuously engaged in achieving the goals of the organization and the nature of the organization.

7. The Russian Threat to the Council

To protest the decision taken by the Assembly, the delegates abandoned the latter, leaving before the vote on the resolution was held (The Guardian, 2014). Since then, the Russian delegation has boycotted the plenary sessions of the Parliamentary Assembly, justifying that they will boycott the sessions until Russia is fully and unconditionally restored to its rights (The Guardian, 2014). What further escalated the conflict situation between Russia and the CoE was the fact that in 2017, Russia suspended its payment to the Council of Europe (a payment which is mandatory for every member state of the Council of Europe for the progress of the organization) (Viacheslav Volodin, 2017). This budget consists of the contributions made to the Council of Europe in proportion to the population and economic level of the member states, including the development it undergoes. The contribution of the members of the Council of Europe is used and serves the whole organizational structure of the CoE. States can also contribute by making voluntary contributions to the Council of Europe budget, thus helping and supporting work programs in various fields. Russia is one of the six main donors to the

Council of Europe's budget, along with France, Germany, Italy, Turkey, and the United Kingdom (Council of Europe Portal, 2020).

As a major donor, Russia enjoys several advantages over other CoE member states. This situation as it can be understood was quite serious for the Council of Europe as the Russian share in the overall budget was quite significant. The Council of Europe suffered a reduction of 10% of its annual budget. Russia's claims were binding on the Council of Europe to adapt its request. According to Russia, the resumption of the payment would take place only if the Council of Europe agreed to completely abolish the mechanism of imposing sanctions on the delegations of member states. All this was totally contrary to Article 3 of the Statute of the Council of Europe, for the spirit of cooperation that should exist between the member states and the Council itself. Such claims, with a boldness of demands, affect Russia's credibility if it really wants to be part of the Council of Europe or wants to underestimate the CoE's role in the international arena. Russia, as a member of the Council of Europe, should strengthen its support for the Council's policies, not fight them.

In 2018, the Russian Federation threatened to leave the international organization. Its arguments were that by not being able to vote in the Parliamentary Assembly, it could not participate in the elections of key Council of Europe officials, such as judges at the European Court of Human Rights and the Secretary-General, thus exercising political pressure on the Council of Europe to lift sanctions imposed on the Russian Federation (Netherlands Helsinki Committee, 2019). As of January 2016, there was no delegation of the Russian Federation to the Parliamentary Assembly of the Council of Europe. From the moment the Russian delegates decided not to participate in the Assembly anymore, no sanctions were directed against them. The non-participation in the Parliamentary Assembly was a decision of the Russian delegation, completely free and of their full will, despite the request to be part of the sessions of the Assembly for the years 2016-2019. The Parliamentary Assembly should have taken measures to impose internal sanctions on countries such as the Russian Federation, in order to prevent such incidents of the same nature in the future of the Council of Europe.

The effectiveness and legitimacy of the Council of Europe could be compromised if its member states do not implement international law or the co-operation agreement with the CoE and thus seek its removal or threats as it happened with Russia. The Council of Europe was hit by a budget crisis and was forced to freeze some of its projects as well as change some procedural rules. A concrete example was the case of removing the translation of the Parliamentary Assembly's work into any language and limiting it to only those languages that are the main contributors to the Council of Europe budget (Parliamentary Assembly, 2018). They were also forced not to publish numerous reports which have an informative role for the citizens of CoE

member countries and anyone interested (Parliamentary Assembly, 2018). However, this was not only a consequence for the Council but also for the people who work for the Council of Europe. As a result of the budget limit, hundreds of employees were forced to leave their jobs as it could not be afforded by the CoE.

The Parliamentary Assembly of the Council of Europe voted with 118 votes in favor and 62 against to restore Russia's voting rights, which were suspended in 2014. Despite the majority, what is understood from these figures is that a large number of countries were opposed to Russia's actions, which is beyond the policy of these states and their relations with Russia. The Ukrainian delegates left in protest during this vote (BBC News, 2019).

8. Risk over CoE Authenticity

The conflict situation created between the Council of Europe and Russia attracted great international attention. This attention was accompanied by criticism of the Council of Europe and the reaction of its Parliamentary Assembly to the situation with the Russian Federation. Such criticisms were mainly related to the role of the Council of Europe in the international sphere and the risk that could follow such a step as the readmission of Russia to its bay. The Council of Europe, if it is to maintain its credibility, cannot allow a country to violate its own rules through the Parliamentary Assembly. Russia, by taking a decision such as non-payment of financial obligations to the Council of Europe, is violating the rules it has accepted since it joined the organization. The precedent set in this case directly affects the Council of Europe and its veracity. However, financial concerns likely motivated the decision to allow Russia to return. The budget crisis puts pressure on the work of the Council of Europe, but it is not the only driving force.

Russia has not taken any sanctions and this may indicate a "fear" of the Council of Europe not to remove Russia from the organization. So, it is apparently a strategy to make Russia part of it again (staying at peace with it), and it is also setting a precedent which is quite dangerous for the Council of Europe. This is because other countries with financial power for the Council of Europe can threaten to leave the organization to meet some possible requirements or conditions that they want to meet. Certainly, through this way, the organization risks the purpose of its creation and loses credibility in the millions of people who need its existence and functioning.

The veracity of the Council of Europe is not threatened by external forces, but by the actions of the member states of the Council itself. This is a threat which runs counter to the values based on the Council of Europe and which are a fundamental condition of membership. The Council of Europe's most serious dilemma is directly related to its conflict with Russia. The Council of Europe was between two options, both of which were dangerous

and with negative results. The first option and risk is related to the choice of readmission of Russia by accepting its terms, and thus "betrays" its principles and values. The second option and risk is related to the choice of Russia to leave the organization permanently due to the violations committed and threats against it, which puts the country in total danger of the existence of the organization due to the importance of the financial contribution of the Russian Federation to the Council. Placing a balance between these two dilemmas makes it extremely difficult to arrive at a solution.

Conclusion

In the research conducted to better understand the Council of Europe, it was concluded that the establishment of the CoE was a very important step in helping to build the democratic institutions of post-communist Europe. This is due to the promotional role of European culture in achieving a wider union between member states, where the focus is on their common traditions of political freedom and on the principles and objectives of the rule of law and democracy.

The importance that the CoE has for each of its member states is indisputable. Russia's continued membership of the Council of Europe opens up opportunities for better protection of human rights. Another dangerous consequence of Russia's departure could be the return of the death penalty to the Russian Federation, as it was never formally abolished but was placed under a moratorium in 1996 as a precondition for CoE membership. Since then, the death penalty has not been used in Russia. When it comes to resolving the Russia-Ukraine conflict, Russia's withdrawal from the CoE cannot push Russia to reverse the annexation of Crimea or push for the implementation of the Minsk Agreements. On the contrary, it aggravates many things because without any restrictions of the country's membership in the CoE, the situation could escalate further.

High-profile cases lost by Russia in the Strasbourg Court speak to a need for "protection" for Russian citizens when they cannot find justice in their courts. Russia must continue to be part of the Council of Europe, despite their conflicting relations, which also raise doubts about what the future holds for them. If Russia leaves the Council of Europe, it will remove a tool for millions of its citizens to protect their rights and freedoms and reduce attention to violations that may occur within the country. Other problems may arise on the horizon for Russia and the Council of Europe as long as Russia still has time to strengthen its internal judicial system and better adapt to the implementation of the ECHR.

Russia's withdrawal from the Council could have serious consequences for the CoE as well as for Russia itself. It remains unquestionably unique among all CoE member states in responding to what it

perceives as direct interference in internal affairs. Russia's increasingly strained relationship with the CoE raises the question of whether Russia really wants to remain a member, and indeed wants its citizens to enjoy their rights in accordance with the law. The Council of Europe, always intervening to avoid and prevent violations by Russia, is carrying out its mission, but does this not call into question the will of the Russian Federation? Political pressure from the CoE has always been constant and a source of conflict in CoE-Russia relations, which is also interpreted as interference in domestic politics. Furthermore, the Council of Europe is not only concerned with the protection of human rights, but also with other and broader forms of cooperation. Russia, if left, could lose influence and increase its isolation by denying itself the right to participate in important Council of Europe decisions.

The mission and purpose of the Council of Europe can be considered fulfilled for the largest sphere of action of this organization, but the novelty of the conflict with Russia has raised major questions on doubts about its veracity. An organization that plays a key role in the fight against discrimination, does it not in itself stand discriminatory? This is when Russia claims to leave the CoE under threat. One of the reasons why the CoE does not want this departure and accepts Russia's return to the organization is because Russia is the largest financier of the Council of Europe. The Council of Europe should have acted against the Russian Federation and that failure to react made people to think about the veracity of the organization. On the other hand, they made people to think that if it had acted and removed the Russian Federation from the Council, it would have admitted so openly that it could not cooperate with a member state of it. As a result, it was damaging its reputation as an organization and its strength in the international arena was called into question. Although the organization is not responsible for the reactions of member states, it remains responsible for the way it will react when faced with such a conflict situation. Conflict situations, various dilemmas and assumptions about possible solutions lead to the conclusion that the truthfulness, credibility, and the effectiveness of the Council of Europe will always be a question mark, as long as its focus and importance is high.

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