



## King's Research Portal

*Document Version*  
Peer reviewed version

[Link to publication record in King's Research Portal](#)

*Citation for published version (APA):*

Henderson, J. E. (in press). Russia's Recent Dealings with the Council of Europe and European Court of Human Rights. *EUROPEAN PUBLIC LAW*, 24(3).

### **Citing this paper**

Please note that where the full-text provided on King's Research Portal is the Author Accepted Manuscript or Post-Print version this may differ from the final Published version. If citing, it is advised that you check and use the publisher's definitive version for pagination, volume/issue, and date of publication details. And where the final published version is provided on the Research Portal, if citing you are again advised to check the publisher's website for any subsequent corrections.

### **General rights**

Copyright and moral rights for the publications made accessible in the Research Portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognize and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the Research Portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the Research Portal

### **Take down policy**

If you believe that this document breaches copyright please contact [librarypure@kcl.ac.uk](mailto:librarypure@kcl.ac.uk) providing details, and we will remove access to the work immediately and investigate your claim.

# Russia's Recent Dealings with the Council of Europe and European Court of Human Rights

Jane HENDERSON\*

## 1 INTRODUCTION

Russia has barely been out of the news since the last Rapport in 2015. In selecting which topic to highlight here, I decided to focus on recent aspects of Russia's relationship with the Council of Europe (CoE) and European Court of Human Rights (ECtHR), because these have extraterritorial implications.<sup>1</sup>

## 2 RUSSIA JOINS THE COUNCIL OF EUROPE AND ACCEDES TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (ECHR)

Our story begins in the 1990s. Russia applied in May 1992 to join the CoE.<sup>2</sup> Detailed membership criteria were specified and agreed to, and in February 1996, despite some misgivings expressed about her suitability,<sup>3</sup> Russia was accepted. The Russian legislature ratified the ECHR on 30 March 1998, going into force in 1 November 1998. This gave individual Russians the right to petition the ECtHR in Strasbourg, provided local remedies had been exhausted. The Russian Constitution adopted in December 1993 had made provision for this by enshrining in Article 46(3) that 'Each shall have the right in accordance with international treaties of the Russian Federation to apply to inter-State agencies for the defence of the rights and freedoms of man if all available intra-State means of legal defence have been exhausted.'<sup>4</sup> Importantly for our story, the Constitution also determined in Article 15(4) that

---

\* Senior Lecturer in the Laws of Eastern Europe, King's College London, The Dickson Poon School of Law.

<sup>1</sup> Very many thanks to Professor Bill Bowring for helpful suggestions and references. Any errors remain the author's.

<sup>2</sup> P. Jordan, 'Russia's Accession to the Council of Europe in Compliance with European Human Rights Norms' *Demokratizatsiya* 11, no. 2 (2003): 281-96, at 284 available at [https://www2.gwu.edu/~ieresgwu/assets/docs/demokratizatsiya%20archive/11-2\\_Jordan.PDF](https://www2.gwu.edu/~ieresgwu/assets/docs/demokratizatsiya%20archive/11-2_Jordan.PDF). See also detailed discussions in B. Bowring, 'Russia's Accession to the Council of Europe and Human Rights: Compliance or Cross-Purposes?', *European Human Rights Law Review* 6 (1997): 628-643; B. Bowring, 'Russia's Accession to the Council of Europe: Four Years on' *European Human Rights Law Review* 4 (2000): 362-79.

<sup>3</sup> See Jordan *supra* n. 2 at 285.

<sup>4</sup> English translation of the Constitution in W. Butler, *Russian Public Law*, 3rd edn (London: Wildy, Simmonds & Hill, 2013) 4-32, at p.11.

Generally-recognised principles and norms of international law and international treaties of the Russian Federation shall be an integral part of its legal system. If other rules have been established by an international treaty of the Russian Federation than provided for by law, the rules of the international treaty shall apply.<sup>5</sup>

Both articles are in entrenched chapters which cannot be amended by the Russian legislature, but might only be changed through a Constitutional Convention, for which currently the requisite Federal Constitutional Law (FCL) has not yet been adopted.<sup>6</sup>

Russia's decision to join the CoE had a wealth of consequences beyond acceding to ECtHR jurisdiction: for example, it also necessitated a 'demilitarisation' of the whole penitentiary system, shifting it from the jurisdiction of the Ministry of Interior to the Ministry of Justice, major changes to criminal procedure and removal of the death penalty.<sup>7</sup> The required reforms were no small feat. In a speech given at King's College London in 2002, the then Deputy Minister of Justice (who had previously been Head of the Russian Prison Administration) Iuri Kalinin stated that, 'In the five years after Russia joined the Council of Europe, more than 2,300 Federal Laws were passed, both new ones and amendments as well as additions to previously existing laws.'<sup>8</sup> And that did not cover everything; effective abolition of the death penalty has been achieved through CCRF rulings rather than amendment of the Criminal Code.<sup>9</sup>

Since accession, Russia's relationship with both the CoE and the ECtHR has not been smooth. This brief Rapport will not attempt to catalogue all the various difficulties, but will concentrate on some significant recent developments.

### 3 DISPUTES ABOUT SUBSIDIARITY

---

<sup>5</sup> *Ibid.* in W. Butler, *Russian Public Law*, 3rd edn (London: Wildy, Simmonds & Hill, 2013) 4-32, at 7.

<sup>6</sup> Further details on Federal Constitutional Laws in J. Henderson, *The Constitution of the Russian Federation* (Oxford: Hart Publishing, 2011) at p.81, 174-6.

<sup>7</sup> See discussions in Bowring (2000) *supra* n. 2.

<sup>8</sup> Iu. Kalinin, 'The Russian Penal System: past, Present and Future', p.9 available at [http://www.antoniasella.eu/nume/kalinin\\_russian\\_penal\\_system.pdf](http://www.antoniasella.eu/nume/kalinin_russian_penal_system.pdf).

<sup>9</sup> The 1996 Criminal Code has five crimes for which the death penalty is available. The CCRF ruled in February 1999 that until jury trial was available throughout Russia, the death penalty could not be applied. In November 2009 the Supreme Court requested clarification from the CCRF as to whether the death penalty would be reinstated once jury trial was generally available, as the last region – the Chechen Republic – would get juries from 1 January 2010. The CCRF ruled that the death penalty moratorium would be extended indefinitely. See, 'The Abolition of the Death Penalty and Its Alternative Sanction in Eastern Europe: Belarus, Russia and Ukraine' 26-8 (Penal Reform International 2012) available at <https://www.penalreform.org/wp-content/uploads/2013/05/Eastern-European-research-Death-Penalty-Alternative-Sanctions-ENGLISH-March-2012.pdf>.

On 15 December 2015 amendments to the FCL on the Constitutional Court of the Russian Federation (CCRF)<sup>10</sup> came into force which gave the CCRF a significant, but very imprecise, power.<sup>11</sup> Under revised Article 3(3-2) the CCRF:

on the application of a federal agency of state power... when considering complaints against the Russian Federation in an interstate agency for the protection of the rights and freedoms of man on the basis of an international treaty of the Russian Federation decides the issue of the possibility [*vozmozhnost'*] of implementing the decision of the international agency.<sup>12</sup>

The meaning of 'possibility' in this context was not defined. Two mechanisms are established for appealing to the CCRF such an interstate agency decision. An appeal can be brought by Russian federal agency responsible for handling the nation's interests in international court cases; alternatively, the President or Russian government can appeal.<sup>13</sup> Bowring notes that 'the State *Duma*'s own lawyers had expressed concerns as to the legality of the amendments'<sup>14</sup> in the light of Article 15(4) of the Russian Constitution (cited above), the 1998 federal law ratifying the ECHR, and a binding Ruling of the Russian Supreme Court's Plenum of 27 June 2013 on how to apply the ECHR. Bowring also points out that CoE Secretary General, Thorbjørn Jagland, was more measured than some others commenting on the new provision; he expressed willingness to wait and see how the CCRF used its power in a specific case.<sup>15</sup>

---

<sup>10</sup> *Federalnyi zakon Rossiiskoi Federatsii ot 14 Dekabria 2015 N 7-FKZ 'O vnesenii izmenenii v Federal'nyi konstitucionnyi zakon "O Konstitutsionnom Sude Rossiiskoi Federatsii"'* available at <https://www.rg.ru/2015/12/15/ks-site-dok.html>.

<sup>11</sup> For a thorough and nuanced analysis see B. Bowring, 'Russian cases in the ECtHR and the question of implementation' 188-221 in *Russia and the European Court of Human Rights: The Strasbourg Effect* (L. Mälksoo & W. Benedek eds., Cambridge University Press 2017). A preview of a draft version of this chapter was of enormous assistance for this section of the Rapport.

<sup>12</sup> Author's translation of text of law *supra* n. 10.

<sup>13</sup> 'Russian *Duma* Allows Constitutional Court to Override International Court Orders' *The Moscow Times* 4 Dec. 2015 available at <https://themoscowtimes.com/news/russian-Duma-allows-constitutional-court-to-override-international-court-orders-51090>.

<sup>14</sup> *Supra* n. 11, citing A Pushkarskaya, 'Duma staff lawyers have criticised the amendments to the law on the CC on the conditions of non-implementation of the decisions of the ECtHR' *Kommersant* 1 Dec. 2015 available at <http://www.kommersant.ru/doc/2866415>.

<sup>15</sup> Bowring *supra* n. 11, citing [https://www.coe.int/en/web/porta/news-2015/-/asset\\_publisher/9k8wkRrYhB8C/content/russia-s-new-law-on-the-constitutional-court-jagland-a-solution-should-be-possible-](https://www.coe.int/en/web/porta/news-2015/-/asset_publisher/9k8wkRrYhB8C/content/russia-s-new-law-on-the-constitutional-court-jagland-a-solution-should-be-possible-).

The CCRF gave its first judgment in such a case in April 2016.<sup>16</sup> The issue was the possibility of implementing the ECtHR judgment of 4 July 2013 in the case of *Anchugov and Gladkov v. Russia*<sup>17</sup> condemning a blanket ban on prisoners' voting rights (aptly characterised by Bowring as 'the Russian *Hirst v UK*').<sup>18</sup> Russia has a particular problem with the adverse judgment as the Russian Constitution specifically stipulates in Article 32(3) that 'Citizens deemed by a court to lack dispositive legal capacity, and also maintained in places of deprivation of freedom by judgment of a court, shall not have the right to elect and to be elected.'<sup>19</sup> As with the Article quoted in section 2 above,<sup>20</sup> this article is in one of the entrenched chapters, so that arguably to change Russian law to take into account the 2013 ECtHR judgment condemning the blanket ban would be inconsistent with the Russian Constitution. Indeed on 15 June 2015 a group of deputies from the Russian State *Duma* took a case to the CCRF to get a ruling on the constitutionality of, *inter alia*, Article 1 of the 1998 Law on Ratification of the ECHR, on the grounds that it 'obliged Russian organs of legislative, executive and judicial power, to unconditionally implement judgments of the ECtHR, even in cases where such judgments contradicted the Constitution'.<sup>21</sup> On 14 July 2015 the CCRF issued a resolution (*postanovlenie*) that the legislation in question was compatible with the Constitution.<sup>22</sup> However, as Bowring presciently phrases it, the CCRF 'laid the basis' for the amending law set out at the beginning of this section, by suggesting that the Court might review in a concrete case the issue of incompatibility with the Russian Constitution of a ECtHR judgment.

In March 2016, the CoE's European Commission for Democracy through Law, usually known as the Venice Commission,<sup>23</sup> published its Interim Opinion on the amendments to the FCL on the CCRF.<sup>24</sup> The Final Opinion followed in June.<sup>25</sup> Paragraph 4 of its Introduction explained that:

---

<sup>16</sup> No. 12- II/2016, 19 April 2016.

<sup>17</sup> Applications nos. 11157/04 and 15162/05, judgment of 14 July 2013.

<sup>18</sup> Bowring *supra* n. 11. *Hirst v the United Kingdom (No 2)* [2005] ECHR 681, Application no. 74025/01, Judgment (Grand Chamber) of 6 October 2005

<sup>19</sup> Butler *supra* n. 4, at p.9.

<sup>20</sup> *Supra*, text to n. 5

<sup>21</sup> Bowring *supra* n. 11.

<sup>22</sup> No. 21-P.

<sup>23</sup> See 'The Commission's activities' available at

[http://venice.coe.int/WebForms/pages/?p=01\\_activities&lang=EN](http://venice.coe.int/WebForms/pages/?p=01_activities&lang=EN).

<sup>24</sup> 'Interim Opinion on the amendments to the FCL on the CCRF' available at

[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)005-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)005-e)

<sup>25</sup> 'Final Opinion on the Amendments To The Federal Constitutional Law

On The Constitutional Court' available at

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)016-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)016-e)

As the Russian authorities had been unable to host the working group to discuss the amendments prior to the March session, the opinion was adopted as an interim one and it was agreed that a final opinion would be prepared for the June session.<sup>26</sup>

Paragraph 13 of the report noted:

The Court [CCRF] considered that it was entitled, as an exceptional case, to disagree (with the ECtHR) but that it was ready to search for a lawful compromise within the limits of what the Russian constitution allows. The Court pledged to adopt a responsible and restrained approach to the solution of the question of the implementation of the judgments of the European Court of Human Rights.<sup>27</sup>

However, we should also note Paragraph 28: ‘If it is admissible that the question of the compatibility with the Constitution of an execution measure of general character be brought before the Constitutional Court, the same cannot be said for individual measures, especially in case of orders to pay just satisfaction.’<sup>28</sup>

The Venice Commission stated in Paragraph 33:

While it seems clear that the Constitutional Court [CCRF] has not spared its efforts to avoid a conflict with Strasbourg, which is to be welcomed, the Venice Commission maintains its recommendation to remove new Article 1044 paragraph 2 and Article 106 part 2 of the Federal law on the Constitutional Court.<sup>29</sup>

In Paragraph 45 in its final Conclusion, the Venice Commission made recommendations to render the 2015 amendments compatible with international standards. These recommendations have not been taken up Russia.

#### 4 THE YUKOS SHAREHOLDERS’ CLAIM

---

<sup>26</sup> *Ibid* at p. 3.

<sup>27</sup> *Ibid* at p. 5.

<sup>28</sup> *Ibid* at p. 9.

<sup>29</sup> *Ibid* at p. 10.

There have been a number of cases brought to the ECtHR as a result of the convictions of Mikhail Khodorkovsky and fellow YUKOS executive Platon Lebedev, and the dismemberment of YUKOS as a company.<sup>30</sup> Here we will concentrate on one: the claim brought by YUKOS shareholders for compensation.

In 2007 the shareholders had filed a claim with the Permanent Court of Arbitration (PCA) in The Hague; in 2009 the PCA agreed to hear the case, and subsequently in July 2014 ruled in the shareholders favour that ‘Yukos was the object of a series of politically-motivated attacks by the Russian authorities that eventually led to its destruction’<sup>31</sup> and said they should receive 50 billion USD compensation, plus 60 million USD as 75 per cent of their legal fees. On 20 April 2016 this was overturned on appeal to the Hague District Court, to Russia’s relief.<sup>32</sup> There may yet be an appeal.<sup>33</sup>

But there was another claim, in a different court. The shareholders also approached the ECtHR, claiming ECHR breaches, in particular the right to fair trial, in the 2000 Russian taxation case against YUKOS. Application was made in 2004 to the ECtHR; by 2009 the Court had declared admissibility and eventually heard the case in March 2010. The decision handed down in 2011 vindicated the applicants, and time was given for the parties to settle. The judgment became final in March 2012 when the Grand Chamber of the ECtHR refused further appeal. Eventually, on 31 July 2014 the ECtHR ruled that Russia should pay the claimants 1.86 billion euro in compensation and 300,000 euro in court fees.<sup>34</sup> This was the

---

<sup>30</sup> For an ‘account of the rise and fall of YUKOS and the fate of its former chief Mikhail Khodorkovsky’ (as characterised in a review by M Pieper in *Europe-Asia Studies* 67 no 4 (2015): 678-679, available at DOI: 10.1080/09668136.2015.1033192), see R. Sakwa, *Putin and the Oligarch. The Khodorkovsky–Yukos Affair* (London & New York, NY: I.B. Tauris & Co., 2014). For an impressively perceptive summary of events and assessment of the ECtHR judgments see L. Groen, ‘The “Yukos Affair”. The Russian Judiciary and the European Court of Human Rights’ *Review of Central and East European Law* 38 (2013): 77-108.

<sup>31</sup> S. Simkin, ‘The Yukos settlement: an insider’s view into the largest arbitration award in history’ 10 March 2015 *Harvard Law Today* available at <https://today.law.harvard.edu/the-yukos-settlement-an-insiders-view-into-the-largest-arbitration-award-in-history/>.

<sup>32</sup> See S. Shuster, ‘Why a Win in a Dutch Court Is Making Vladimir Putin So Happy’ *Time* 20 April 2016 available at <http://time.com/4301475/russia-appeal-case-yukos-the-hague/>. Details of judgment at <http://deepink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2016:4230>. See also ‘Dutch Court Quashes Multibillion-Dollar Award For Yukos Shareholders’ *Radio Free Europe/Radio Liberty* 20 April 2016 available at <http://www.rferl.org/content/dutch-court-yukos/27685808.html>.

<sup>33</sup> See C. Williams, ‘Yukos oil battle flares up 13 years after Putin's Kremlin crushed critic Khodorkovsky’ *The Telegraph Online (UK)* 21 May 2016 available at <http://www.telegraph.co.uk/business/2016/05/21/yukos-oil-battle-flares-up-13-years-after-putins-kremlin-crushed/>; C. Stockford, ‘Yukos saga continues as Russia bound by provisional application of Energy Charter Treaty’ *Lexology* 22 Feb. 2017 available at <https://www.lexology.com/library/detail.aspx?g=055cd19b-8b4f-476a-8523-a686921222ac>; ‘Former Yukos Shareholders Give up Claims on Russian Assets in Belgian’ *Tass* 2 Nov. 2017 available at <http://tass.com/economy/973950>. See also M. Eckel ‘In U.S. Court, Yukos Shareholders Try New Tactic: Go After The Lawyers’ *Radio Free Europe/Radio Liberty* 30 June 2017 available at <https://www.rferl.org/a/russia-yukos-arbitration-shareholders-baker-botts-court-ruling/28588682.html>.

<sup>34</sup> ‘Russian Justice Ministry ready to ask Constitutional Court to clarify ECHR judgment on Yukos – minister’ *Interfax Russia & CIS Business and Financial Newswire* 22 Oct. 2015 available through Westlaw.

largest award of damages ever made by the ECtHR but substantially less than the 37.98 billion euro originally claimed, allowing Russia's deputy justice minister to claim that Russia was not a loser in the proceedings.<sup>35</sup>

Unsurprisingly, no payment was forthcoming. On 15 June 2015, after Russia had missed the deadline to submit a compensation plan to the CoE, the CoE Committee of Ministers issued a final reminder. However, also on 15 June 2015 as noted in the previous section the group of *Duma* deputies appealed to the CCRF with a query about the constitutionality of Russia applying ECtHR rulings. On 14 July 2015 the CCRF pronounced that in principle ECtHR judgments could be enforced in Russia, but only if they did not contradict the Russian Constitution. However, this ruling did not specifically address YUKOS shareholders' compensation case. That was left to a later proceeding initiated by the Russian Ministry of Justice in October 2016, asking the CCRF to check the constitutionality of the ECtHR ruling obliging Russia to pay the nearly 1.9 billion euros to the former YUKOS shareholders. Media reported on 11 November 2016 that the CCRF would begin the case on 15 December.<sup>36</sup> The hearing was behind closed doors.<sup>37</sup> An amicus brief was submitted by the Institute for Law and Public Policy, presented to the Court by a very impressive young lawyer, Grigorii Vaipan.<sup>38</sup> The CCRF decision was announced on 19 January 2017.<sup>39</sup> In the meantime, in December 2016 the CoE Committee of Ministers had again called on Russia to comply with the ECtHR ruling.<sup>40</sup>

Two of the sixteen CCRF judges gave separate opinions, but the majority concluded, applying the power discussed in the previous section, that payment of the sum deemed by the ECtHR to be due to the former YUKOS shareholders was (constitutionally) 'impossible'. The main justifications were that the CCRF had earlier deemed the prosecution of YUKOS for tax evasion was constitutional (because the Court decided that the statute of limitations did not apply to wrongdoers); in the historical context of the economic uncertainty of 1990s it was

---

<sup>35</sup> 'Russia no loser in Europe's Yukos case - deputy justice minister' *Itar-Tass World Service* 22 Oct. 2015 available through Westlaw.

<sup>36</sup> 'Russia's Constitutional Court to consider implementing ECHR decision on Yukos case' *Itar-Tass* 11 Nov. 2016 available through Westlaw.

<sup>37</sup> 'Russian Constitutional Court completes hearings on Yukos, judgment to be elaborate at meeting behind closed doors – chairman' *Interfax Russia & CIS General Newswire* 15 Dec. 2016 available through Westlaw.

<sup>38</sup> See his presentation to the CCRF (in Russian) at <https://www.youtube.com/watch?v=pxX46p2Xuqc&feature=youtu.be&t=3h28s>, and the ILPP reports for 15 December 2016 available at [http://ilpp.ru/en/news/events/2016/12/15/events\\_703.html](http://ilpp.ru/en/news/events/2016/12/15/events_703.html) and 19 January 2017 available at [http://ilpp.ru/en/news/events/2017/01/19/events\\_718.html](http://ilpp.ru/en/news/events/2017/01/19/events_718.html).

<sup>39</sup> For thorough comment and assessment, see Bowring *supra* n. 11.

<sup>40</sup> 'Council of Europe calls on Russia to comply with 1.9 ruling in favor of YUKOS' *Financial Services Monitor Worldwide* 10 Dec. 2016 available through Westlaw.



correct that the Russian government should seek to ensure fair tax payments; and YUKOS had acted in bad faith and should have foreseen the government actions to recoup the tax. Giving just compensation to the former shareholders in what was seen by the CCRF to be a tax avoidance scheme would be unconstitutional and therefore not possible.<sup>41</sup>

The two dissents in part drew on the amicus brief mentioned above. Judge Vladimir Yaroslavtsev, a serial dissenter,<sup>42</sup> asserted the CCRF contradicted the principle of legality and had exceeded its competence.<sup>43</sup> Judge Aranovskii was scathing of the Court's reasoning, and 'Like Vladimir Yaroslavtsev, Judge Aranovskii considers it "inadmissible" to consider the request of the Ministry of Justice in the Constitutional Court about the possibility not to comply with the ECHR decision in the YUKOS case.'<sup>44</sup> He also concluded that as the ECtHR had not named those to whom money was owed, there was no one to whom compensation should be paid.<sup>45</sup>

The CCRF's decision obviously pleased the Russian authorities, and fitted in with the general mood of Russia wanting to assert its sovereignty and exceptionalism.<sup>46</sup> The CoE did not give up hope that nevertheless there would be some payment; on 13 March Anna Pushkarskaya reported in *Kommersant* that;

the Committee of Ministers of the Council of Europe has criticised Russia for non-fulfillment of the ECHR [ECtHR] rulings on the Yukos case, particularly, the Constitutional Court ruling allowing the Russian authorities not to pay 1.9bn-euro compensation to former Yukos shareholders. The Committee of Ministers expects Russia to compensate at least legal costs to Yukos representatives.<sup>47</sup>

This has not happened, and through 2017 the relationship between Russia and the CoE has deteriorated.

---

<sup>41</sup> See M. Timofeyev, 'Money Makes the Court Go Round: The Russian Constitutional Court's Yukos Judgment' 26 Jan. 2017 cited in Bowring supra n. 10 and available at

<http://verfassungsblog.de/money-makes-the-court-go-round-the-russian-constitutional-courts-yukos-judgment/>.

<sup>42</sup> See J. Henderson, 'Tenure and Discipline Developments in Russia' *European Public Law* 17, no. 1 (2011): 1–10 at p. 2 for an earlier example of Yaroslavtsev speaking out.

<sup>43</sup> See A. Pushkarskaya, '*V dele IuKOSa poiaviloc' osoboe mnenie*' *Kommersant* 23 Jan. 2017, p. 3 available at <https://www.kommersant.ru/doc/3200190>.

<sup>44</sup> A. Pushkarskaya, '*Rossia mogla ne platit' i bez sanktsii KS opublikovano btoroe osoboe mnenie po delu IuKOSa*' *Kommersant* 26 Jan. 2017 available at <https://www.kommersant.ru/doc/3201542>.

<sup>45</sup> *Ibid.*

<sup>46</sup> See e.g. M. Antonov, 'Conservatism in Russia and Sovereignty in Human Rights' *Review of Central and East European Law* 39 (2014): 1-40.

<sup>47</sup> 'Council of Europe criticises Russia over Yukos' *BBC Monitoring Summary of Russian Press* 13 March 2017. available through Westlaw.

In June 2017 it was reported on the website of the Russian Foreign Ministry that Foreign Minister Sergei Lavrov had told the CoE Secretary General Thorbjorn Jagland in a telephone conversation that Russia had decided to suspend payment of the final third of Russia's contribution to the 2017 CoE budget.<sup>48</sup> The sum involved is 11 million euros.<sup>49</sup> Russia, along with France, Great Britain, Germany, Italy and Turkey, is one of the main contributors to the Council of Europe's budget, which covers the cost of PACE, the Committee of Ministers, the Congress of Local and Regional Authorities, and the ECtHR. The total amount of contributions to the CoE was given as 260 million euros annually, of which Russia normally accounted for about 10 per cent.<sup>50</sup> Media reported the speaker of the State *Duma* Viacheslav Volodin asserting that Russia's refusal to pay was in response to anti-Russian sanctions, and the withheld instalment would be paid once the rights of Russia's PACE delegates were fully restored.<sup>51</sup>

The 'anti-Russian' sanctions referred to here were imposed by PACE on Russia following Russia's inclusion of Crimea in 2014.<sup>52</sup> A resolution was adopted condemning Russia's actions, which were described by PACE as an annexation, and in January 2015 the Russian delegation to PACE had its voting rights suspended (not for the first time).

In contrast, *RT*<sup>53</sup> reported that Valentina Matvienko, the speaker of the upper chamber of the legislature, the Federation Council:

---

<sup>48</sup> 'Rossiia priostanovila uplatu vznosa v biudzhet Soveta Evropy' *ONK.RF* 1 June 2017 available at <http://onk.su/news/5276.html>; 'Rosssiia priostanovila uplatu vznosa v biudzhet Soveta Evropy' *Kommersant* 30 June 2017 available at <https://www.kommersant.ru/doc/3341549>.

<sup>49</sup> M. Ozerova, 'Russia wants to punish PACE with rouble' *Moskovsky Komsomolets BBC Monitoring Former Soviet Union* Summary of Russian press for 7 June 2017, available via Westlaw, reported that according to State *Duma* speaker Vyacheslav Volodin, Russia has decided not to pay the third part of the 2017 PACE membership fee worth about 11m euros. Meanwhile, the PACE has claimed not to have received an official note about it from the Russian authorities.

<sup>50</sup> E. Grobman, 'Rossiia ostavila Sovet Evropy bez chlenskogo bznosa' *Kommersant* 6 June 2017 available at <https://www.kommersant.ru/doc/3318820>.

<sup>51</sup> *Ibid.*

<sup>52</sup> For a detailed critique, see A Jonsson Cornell, 'Russia's Annexation of Crimea – a Violation of Russian Constitutional Law?' *The Uppsala Yearbook of Eurasian Studies* I (2016): 263-8.

<sup>53</sup> Formally *Russia Today*, widely seen as a source of pro-Russia propaganda; see B. Nimmo, 'Question That: RT's Military Mission' *AtlanticCouncil's Digital Forensic Research Lab* 7 Jan. 2018 available at <https://medium.com/dfrlab/question-that-rts-military-mission-4c4bd9f72c88>.

emphasized that the ongoing spat between Russia and PACE was not about one particular conflict or incident, but over the general rules of granting or restraining the rights of national delegations.

‘No one has the right to restrict the powers of any national delegation, because its representatives are elected by the citizens of their country and then delegated to PACE in order to represent their nation.’<sup>54</sup>

Matvienko is clearly trying to give a legalistic spin to what appears to everyone else to be a ‘tit-for-tat’ response to PACE—and the ECtHR. As a Reuters report in June 2017 noted, ‘Moscow has also been angered by a number of rulings by the European Court of Human Rights ... The court said last year that Moscow had violated the European Convention in all but six of its 228 judgments in Russian cases.’<sup>55</sup>

## 7 CONCLUSION

This brief rapport has omitted discussion of many other areas where the ECtHR has recently criticised Russia, for example in relation to fairness of the elections;<sup>56</sup> gay rights;<sup>57</sup> the conviction of anti-corruption activist Alexei Navalny;<sup>58</sup> and of Bolotnaia Square protester Nikolai Kavkazsky,<sup>59</sup> to name but a few. There is now discussion of the serious (and unwelcome) possibility that Russia will withdraw—or be expelled—from the Council of Europe. Sadly, relations are so strained that as Russian lawyer Karinna Moskalenko commented in October 2017, ‘Expelling us from the Council of Europe means depriving

---

<sup>54</sup> ‘Russia to resume Euro council payments only if ‘discrimination’ ends – senior senator’ *RT* 3 July 2017 available at <https://www.rt.com/politics/395122-russia-to-resume-payments-to/>.

<sup>55</sup> J. Stubbs, A. Osborn & D. Solovyov, ‘Russia suspends payments to Council of Europe over Crimea row’ *Reuters* 30 June 2017 available at <http://www.reuters.com/article/us-russia-council-of-europe-payments-idUSKBN19L23A?il=0>.

<sup>56</sup> V Kara-Murza, ‘Russia’s Election Was Rigged—And This Time It’s Official’ *World Affairs* 6 June 2017 available at <http://www.worldaffairsjournal.org/blog/vladimir-kara-murza/russia%E2%80%99s-election-was-rigged%E2%80%94and-time-it%E2%80%99s-official>.

<sup>57</sup> T. Batchelor, ‘European court rules Russia’s “gay propaganda” law encourages homophobia’ *Independent Online (UK)* 21 June 2017 available at <http://www.independent.co.uk/news/world/europe/russia-gay-propaganda-law-discriminatory-homophobia-european-human-rights-court-rules-echr-a7798926.html>.

<sup>58</sup> ‘Human Rights Court Says Navalny Unfairly Convicted In “Yves Rocher Case”’ *Radio Free Europe/Radio Liberty* 17 October 2017 available at <https://www.rferl.org/a/aleksei-oleg-navalny-yves-rocher-case-echr-unfairly-convicted/28799784.html>.

<sup>59</sup> ‘European Court Orders Russia To Pay Compensation To Bolotnaya Protester’ *Radio Free Europe/Radio Liberty* 28 November 2017 available at <https://www.rferl.org/a/russia-european-court-orders-compensation-bolotnaya-protester-kavkazsky/28884123.html>.

Russians of protection; not expelling us means destroying it'.<sup>60</sup> It is difficult to maintain optimism about Russia's future in what was once seen as a common European home.<sup>61</sup>

---

<sup>60</sup> K. Moskalenko, 'Expelling us from the Council of Europe means depriving Russians of protection; not expelling us means destroying it' *Rights in Russia* 26 Oct. 2017 available at <http://www.rightsinrussia.info/russian-media/theinsider>.

<sup>61</sup> Thoughtful and extremely interesting analyses of Russia's relationship with its European counterparts from a roundtable held in Graz on 28 April 2017 pick up on some of these issues. See B. Harzl and A. Mickonyte, 'Russia's Stand-Off with Europe: Contemporary Legal Dilemmas at the Meeting of the RCEEL Editorial Board' *Review of Central and East European Law* 42 (2017): 251-62. For a somewhat more optimistic assessment, see B. Bowring, 'Does Russia have a human rights future in the Council of Europe and OSCE?' in *Shifting Power and Human Rights Diplomacy: Russia* 53-63 (D. Lettinga & L. van Troost eds., 2017 Amnesty International Netherlands) available at [https://www.academia.edu/31979697/Shifting\\_Power\\_and\\_Human\\_Rights\\_Diplomacy\\_Russia?auto\\_accept\\_coauthor=true](https://www.academia.edu/31979697/Shifting_Power_and_Human_Rights_Diplomacy_Russia?auto_accept_coauthor=true).