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**THE RULINGS OF THE EUROPEAN COURT OF  
HUMAN RIGHTS: MODERATING RUSSIAN  
FEDERAL LAW?**

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## **ABSTRACT**

The European Court of Human Rights (ECtHR) is an important unifying element of the membership of the Council of Europe (CoE). Being framed by the postulates of the European Convention on Human Rights (ECHR), its judicial power is instrumental to keep the continent-wide integrative processes effectively going. The ECtHR's rulings are legally binding, and the CoE's members are obliged to execute them accordingly to the procedures in place. However, there is an increasing, in numbers, segment of the CoE's membership that is not considering the ECtHR's rulings in accordance with the legal spirit of the convention. Instead, the situation often generates plenty of law-making activity on a member-country's side, converting its neglecting attitude to the ECtHR into a new law.

This paper is to argue on a degree of interconnectedness existing between the ECtHR rulings and the Russian Federation's current practice on amending its legislation, which leads to disregarding the ECHR by the world's largest country. Suggesting on a principal reason for the Russian side to maintain its current stance towards the ECtHR, this research notes that there could be a situation that a fact of disregarding such an important international Convention by Russia is related to the general permissiveness and impunity of the country, as one of the key actors within the existing international system.

*Keywords:* Russia, European Court of Human Rights, amendments, Council of Europe, neglect attitude.

## **LIST OF ABBREVIATIONS**

CM – Committee of Ministers

CoE – Council of Europe

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

EU – European Union

NGO – Non-Governmental Organization

PACE – Parliamentary Assembly of the Council of Europe

RSFSR – Russian Soviet Federative Socialist Republic

UDHR – Universal Declaration of Human Rights

UN – United Nations

USSR – Union of Soviet Socialist Republics

## INTRODUCTION

Nowadays, a growing number of academically credible sources report on multiple violations of human and individual rights in the Russian Federation (further – Russia). This is also corresponding with a similarly growing trend on a number of Russian citizens who apply for asylum in other states.<sup>1</sup> One of the reasons for the latter interlinked process could arguably be related to the neglecting attitude of Russia to human rights and the rulings of the European Court of Human Rights (ECtHR). Different international non-governmental organizations (NGOs) are claiming that Russia is even more repressive than it has ever been in the post-Soviet era.<sup>2</sup> What is the country's response to such developments and claims? Considering the context, this research work's discussion was moderated by the amendments to the Russian to the Federal law “On enacting amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation” of 14 December 2015 (entered into force on 15 December 2015).<sup>3</sup> The latter amendments<sup>4</sup> are giving the Constitutional Court (CC) of Russia the right to decide if the rulings of the ECtHR are to be enforced or not in case if they are in contradiction with the constitutional law of the Russia<sup>5</sup>.

Only a few scholars from Europe managed to conduct some serious research on the analysis of the above-mentioned amendments of the CC of Russia. One of them is Lauri Mälksoo, who stated that “since the judgement of the Russian Constitutional Court of 14 July 2015, Russia will *de facto* be able to pick and choose which judgements of the ECtHR to oppose and which judgements not to implement”<sup>6</sup>. The principal goal of the thesis is to test an argument on whether or not a certain interlinkage between the ECtHR rulings and Russian Federation's neglecting attitude to the

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<sup>1</sup> Asylum Applications and Refugees from Russia 2000 – 2018. Accessible: <https://www.worlddata.info/europe/russia/asylum.php> (22.03.2020)

<sup>2</sup> Human Rights Watch, Russia. Accessible <https://www.hrw.org/europe/central-asia/russia> (22.03.2020)

<sup>3</sup> Federalniy zakon Rossiskoi Federatsii ot 14 Dekabrya 2015 N 7-FKZ “O vnesenii izmeneniy v Federalniy konstitutsionniy zakon “O Konstitutsionnom Sude Rossiskoi Federatsii” 14.12.2015 [Federal law of the Russia Federation of 14 December 2015 N 7FKZ “About the amendments to the Federal Constitutional law “of Constitutional Court of the Russian Federation” 14.12.2015]

<sup>4</sup> *Ibid.*

<sup>5</sup> European Commission for Democracy through Law (Venice Commission). “Interim Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation”, *Council of Europe*, Strasbourg, 2016, p 13. Accessible: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)005-e) (02.02.2020)

<sup>6</sup> Mälksoo, L; Benedek, W. Russia and the European Court of Human Rights. The Strasbourg Effect. *New York: Cambridge University Press*, 2018, p 25

ECtHR exists, representing a major barrier for setting up positive cooperation between Russia and, for example, the European Union (EU). There could be, however, a situation that a fact of disregarding an international treaty by Russia is related to the general permissiveness and impunity of the country, as one of the key actors within the existing international system. In order to test the argument, the following set of research questions is outlined:

1. **What is the historical and legal background of the concept of “human rights” from the Russian Empire via the Soviet Union to the Russian Federation?**
2. **What are the declared reasons for the amendments to the Federal law?**

The first part of the following thesis will provide a brief historic overview on human rights development in Russian, from the times of the Russian Empire to the period when Russian Federation was the nation of the state within the Union of Soviet Socialistic Republics (further – the Soviet Union of the USSR), and then - to the contemporary Russian state. Methodologically, legal discourse analysis of constitutions and domestic laws plays a crucial role in determining the way on – how modern Russia is being developed in regards to human rights protection. During the first part of the thesis, the author will briefly describe the legislative system of the Russian Empire and the most significant reforms initiated by the Alexander II, which are considered by the different scholars the most significant step ever made towards the Westernization of the Russian Empire. Secondly, this paper will describe the correlation between human rights of the USSR and the Universal Declaration of Human rights (UDHR), with all the controversies between *de jure* what was written in a version of the Constitution of the USSR and *de facto* what was common practice in the country. Considering the fact, that the following chapter is more representative, meaning that the historical representative tool of qualitative analysis will be used.<sup>7</sup>

The second chapter starts from the overview of the Council of Europe (CoE) and groundbreaking achievements of the organization in terms of human rights protection and strengthening the rule of law. Then this research is to concentrate on the current issues of the ECtHR as a continent-wide judicial body and critique of its activities in different organizations. A part of this chapter will focus on the process of joining the CoE by Russia and commentaries issued by different law associations, claiming that Russia was not fully ready to be a member of the organization, due to

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<sup>7</sup> Klotz, A., Prakash, D. “Qualitative Methods in International Relations. A Pluralist Guide”. *Palgrave Macmillan*, New York, 2008, p 80-85.

incompliance with the CoE standards.<sup>8</sup> The ongoing incompliance is still present, especially it is visible via statistical analysis of the number of rulings against Russia, where Russia holds the second place<sup>9</sup>. The same chapter is to disclose the events prior to the adoption of the amendments to the Federal law of Russia<sup>10</sup> such as annexation of Crimea, exclusion from the Parliamentary Assembly of the Council of Europe (PACE), loss in a high-profile case in the ECtHR. During the analysis of high-profile cases, the process-tracing methodology was widely used.<sup>11</sup> At the end of the chapter, a range of current ECtHR-associated events are given overview, including critique of the organization from some of the CoE membership.

Prior to concluding remarks, the third chapter represents the analysis of all the findings, offering a discussion of the claim as well as probable reasoning behind the amendments to the Federal law and the future outcomes. Additionally, this paper will be demonstrating existing controversies in the Constitution and the Federal law of Russia. Intriguingly, current behavior of Russia is casting doubt on the superiority of the ECtHR, consequently provoking other CoE member states to act against the rulings of the ECtHR

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<sup>8</sup> Mälksoo, L; Benedek, W. Russia and the European Court of Human Rights. The Strasbourg Effect, *Supra nota*, 6, p. 59 - 62

<sup>9</sup> European Court of Human Rights. Violations by Article and by State 1959 – 2019. Accessible: [https://www.echr.coe.int/Documents/Stats\\_violation\\_1959\\_2019\\_ENG.pdf](https://www.echr.coe.int/Documents/Stats_violation_1959_2019_ENG.pdf) (06.02.2020)

<sup>10</sup> Federalniy zakon Rossiskoi Federatsii, *supra nota* 3.

<sup>11</sup> Beach, D. “Process-Tracing Methods in Social Sciences”, 2017. Accessible: <http://politics.oxfordre.com/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-176> (16.03.2020)



# 1. HISTORY OF HUMAN RIGHTS DEVELOPMENT: A 'RUSSIAN DIMENSION'

Apart from almost eternal philosophical concerns, a socio-political drive on recognizing human rights as a legal concept became noticeable from the 1920s. The most influential event that actually led to the development of human rights was World War 2.<sup>12</sup> Terrifying consequences of the latter became a catalyst to the rethinking of the value of individuals and the future of humankind. In order to prevent future wars, on 10 December 1948, the United Nations (UN) adopted the UDHR.<sup>13</sup> The 30 articles of the latter were aimed to cover the minimum rights that every human being who lives on this planet might claim, despite race, sex, color, religion or any other difference occurring.<sup>14</sup>

Until the middle of the 1920s no universal rights, equally spreading on every human being, existed. It is worth mentioning that the constitution of the United States before 1866 was only applicable to its citizens while leaving foreigners and black people unprotected.<sup>15</sup> However, the main articles of the UDHR were already partly present in the constitutions of different member states of the UN even before the actual adoption of the UDHR.

## 1.1. A serf or a slave?

Along the whole history of Russia, should a question on where such a history be commencing is put aside, there was always a conflict between the elite and the regular folks. During the ruling of Ivan the Terrible, by 1580, it became clear that the state is heading towards the direction to enslave free peasants, due to absolute defeat during the Livonian War and further economic crisis. Peasants were the only source out of which some income could be generated; consequently, the primary aim of the state was to establish a means of controlling and forcing peasants to work. Slavery and

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<sup>12</sup> United Nations, Universal Declaration of Human Rights. 10.12.1948

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> Cole, D. "Are Foreign Nationals Entitled to the Same Constitutional Rights As Citizen?". *Georgetown University Law Center, USA, 2003, p 374-375. Accessible: <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1302&context=facpub> (12.03.2020)*

exploitation of people became a basis of governmental policy for decades further. Situation worsened dramatically in 1649 after a special amendment (called *Ulozhenie*) was adopted to legal code, which bind peasants and their future ancestors to be under exact landowner.<sup>16</sup> The latter amendments were the final step into accomplishing transformation of the state. The ascendance to the Throne of Peter the Great proclaimed a new era of Russian development. Transformations that Peter the Great brought were made by using brutal force, violence and absolute subject to the will of the Tsar. Repressions have become a key element of pressure and control over people, despite their social status. When it comes to peasants then in accordance with Tsar's decision, taxes were increased which put an even heavier chain on peasants and serfs' necks. Newest tax reforms erased a line between being serf and slave.<sup>17</sup> Moreover, forced labor during the creation of St. Petersburg cost more lives, than previous wars.<sup>18</sup> The climax in the governmental development in the middle of XVIII century became the manifesto on freedom of the nobility<sup>19</sup>, which exempted nobility and landowners from compulsory military service, thus giving the absolute rule over peasants and serfs. Scholars almost mutually evaluate this period as negative in terms of economic, political and human development, additionally the presence of power, dominance and impunity (over peasants) spoiled landowners.<sup>20</sup>

## 1.2. Emancipation of serfdom in the Russian Empire

The first steps in the development of human rights in the Russia Empire are dated as of 1861 when Alexander II declared his emancipation reform and release of serfdom.<sup>21</sup> The reform became the first and the most important act of liberalization and a great step-forward to human rights development. The latter reforms are mostly considered to be positive among different scholar, some of them also state that “the abolition of serfdom was a watershed, a turning point in Russian

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<sup>16</sup> Paxton, J. “Law, Crime and Punishment. In: Imperial Russia”. *Palgrave Macmillan*, London, 2001, p 160 – 162

<sup>17</sup> Basu-Zharku, O.,I. “The Reign of Peter the Great”. *Inquiries Journal/Student Pulse vol 3*, 2011. Accessible: <http://www.inquiriesjournal.com/articles/1660/the-reign-of-peter-the-great> (06.05.2020)

<sup>18</sup> *Ibid.*

<sup>19</sup> Jones, E., R. “Emancipation of Russian Nobility, 1762 – 1785”. *Princeton University Press*, New Jersey, 1973, p 39 – 41. Accessible: [https://books.google.ee/books?hl=en&lr=&id=IwJ-BgAAQBAJ&oi=fnd&pg=PR5&dq=The+Manifesto+on+Freedom+of+the+Nobility&ots=HHdL-5-TBC&sig=mzXqXTp6fXOixfxi5X8hOJ6kUSk&redir\\_esc=y#v=onepage&q=39&f=false](https://books.google.ee/books?hl=en&lr=&id=IwJ-BgAAQBAJ&oi=fnd&pg=PR5&dq=The+Manifesto+on+Freedom+of+the+Nobility&ots=HHdL-5-TBC&sig=mzXqXTp6fXOixfxi5X8hOJ6kUSk&redir_esc=y#v=onepage&q=39&f=false) (06.05.2020)

<sup>20</sup> Crisp, O. “Studies in the Russian Economy Before 1914”. *The Macmillan Press LTD*, New York, 1976, p 9-11

<sup>21</sup> Moon, D. “The Abolition of Serfdom in Russia: 1762 – 1907”. *Routledge*, New York, 2014, p 3

history”<sup>22</sup>. Important aspect in that matter is the fact that Alexander II declared emancipation of serfdom even before the USA made a similar move to free slaves.<sup>23</sup> Needless to admit, that society at that time was not ready for such a dramatic and rapid change, moreover at some point that reform made more harm than positive impact. The above-mentioned reform did not lead to simultaneous change, however, created a positive environment for a long-lasting, continuous termination of serf practices on the territory of the Russian Empire.

### **1.3. Legacy of the Union of the Soviet Socialist Republics in terms of human rights**

Decades later, the political and financial crisis of World War I led to the fall of the monarchy, moreover, during the following civil war Russian nobility was executed amass, deprived of rights and expelled from the country.<sup>24</sup> The new government proclaimed the Decree Abolishing Classes and Civil Ranks in 1917<sup>25</sup>, which upstands the proletariat and peasantry over other classes. According to the above-mentioned decree, the main idea of the state was to establish equality both political and economical for people, overcoming social and national inequality, the prohibition of labor exploitation and protection of the weakest social groups. At the very first glance, these changes in legislation were a great step forward into strengthening human rights and putting individuals and their human rights above all the others. The first Constitution of the Russian Soviet Federative Socialist Republic (RSFSR) of 1918 had the primary article including Declaration of Rights Of The Working and Exploited People<sup>26</sup>. On paper, the document set out rights to the usage of land, participation in elections, freedom of conscience, freedom of expression, freedom of association and several others.<sup>27</sup> Rights and freedoms were granted to all workers, regardless of gender, race or nationality. At the same time, the fact that the granted rights were only meant for workers significantly limited the rights of peasants and fully deprived any rights of ousted nobility,

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<sup>22</sup> Eklof, B., Bushnell, J., Zakharova, L. “Russia’s Great Reforms, 1855 – 1881”. *Indiana University Press*, the United States of America, 1994, p 19.

<sup>23</sup> Lynch, M. “The Emancipation of the Russian Serfs, 1861. Michael Lynch takes a fresh look at the key reform of 19<sup>th</sup> century Russia”. *History Today*, 2003. Accessible: <https://www.historytoday.com/archive/emancipation-russian-serfs-1861> (05.05.2020)

<sup>24</sup> Braithwaite, R. “Former People: The Last Days of the Russian Aristocracy by Douglas Smith – review”. *The Guardian* (2012). Accessible: <https://www.theguardian.com/books/2012/nov/18/former-people-russian-smith-review> (16.03.2020)

<sup>25</sup> Wade, A.R. “The Russian Revolution, 1917”. *Cambridge University Press*. New York, 2000, p 270 - 271

<sup>26</sup> Declaration of Rights of the Working and Exploited People, 03.01.1918

<sup>27</sup> *Ibid.*

which were still on the territory of Russia a mass. As a result, the concept of human rights was declaratively based on the socio-political interests of workers, instead of every citizen equally.<sup>28</sup> Rights and freedoms of individuals were considered not as naturally granted and inherent, but as granted from the government and in anytime government might deprive these rights of the person if they are damaging interests of the socialistic revolution.<sup>29</sup>

#### 1.4. The collapse of the Soviet Union

In the period from 1922 until 1991, Russia was the union-binding as well as largest part of the USSR. When the Soviet Union collapsed in 1991<sup>30</sup>, it became a symbol of capitalist victory over socialism – additionally, dissolution of the latter proclaimed a new era for Russian citizens in terms of liberalization and democratization on all spheres of life. It could be argued that the fall of the Soviet Union was inevitable due to many aspects such as economic crisis, the wide scale reforms (*perestroika*) to which the humongous state was not ready, growing discontent of the population, collapse of the old ideologies. In a way, the future dissolution of the Soviet Union and ideology of collectivization were not predicted by many, but some scholars and practitioners could see it happening. One of them was Leon Trotsky, one of the two main leaders of the Bolshevik revolt in 1917 – the exiled revolutionary, who criticized Stalin and called for a new revolution to overthrow the solidified Stalin’s dictatorship, predicted the total collapse of the Soviet Union in his seminal work published in 1937.<sup>31</sup> Trotsky criticized economic policy of the USSR claiming that bureaucracy is one of the reasons why the Soviet Union is far away behind capitalists Western states.<sup>32</sup> Overall, Trotsky not only predicted the upcoming World War II, but also partly described the exact reasons for the future collapse of the Soviet Union. At the same time, being and always

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<sup>28</sup> Lambelet, D. “The Contradiction between Soviet and American Human Rights Doctrine: Reconciliation through Perestroika and Pragmatism”. 1989. Accessible: [https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1744&context=faculty\\_scholarship](https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1744&context=faculty_scholarship) (02.03.2020)

<sup>29</sup> Schapiro, L. “The Origin of the Communist Autocracy: Political Opposition in the Soviet State First Phase 1917 – 1922”. *The Micmillan Press LTD*, London, 1955, p 175 - 178

<sup>30</sup> Beissinger, R., M. “Nationalist Mobilization and the Collapse of the Soviet State”. *Cambridge University Press*, United Kingdom, 2002, p 382 - 387

<sup>31</sup> Trotsky, L. “The Revolution Betrayed: What is the Soviet Union and where is it Going?”. *Labor publications*, Detroit, 1991. Accessible: [https://books.google.ee/books?hl=en&lr=&id=hiCYS9Z3IDoC&oi=fnd&pg=PR9&dq=The+Revolution+Betrayed:+What+Is+the+Soviet+Union+and+Where+Is+It+Going%3F&ots=BhjAUdqMut&sig=aXrggAYLXd2tZmcR\\_QB8BT8SiRA&redir\\_esc=y#v=onepage&q=dissolution&f=false](https://books.google.ee/books?hl=en&lr=&id=hiCYS9Z3IDoC&oi=fnd&pg=PR9&dq=The+Revolution+Betrayed:+What+Is+the+Soviet+Union+and+Where+Is+It+Going%3F&ots=BhjAUdqMut&sig=aXrggAYLXd2tZmcR_QB8BT8SiRA&redir_esc=y#v=onepage&q=dissolution&f=false) (29.04.2020)

<sup>32</sup> *Ibid.*, p 39 - 42

remaining a ruthless Bolshevik, Trotsky was never very vocal on any human rights-related topic in the context of the Soviet Russia or, later, the USSR.

Radical reforms have started years prior to the actual date of collapse of the Soviet Union, the reforms are known as *uskorenije* (speeding up), *perestroika* (restructuring), and *glasnost* (openness). In the period from 1985 to 1987, the latter set of reforms were proposed by Mikhail Gorbachev (General Secretary of the Communist Party of the Soviet Union) and aimed to restructure the economy and social policy of the Soviet Union.<sup>33</sup> Scholars Worldwide almost mutually name the same reasons for the failure of *perestroika* namely economic insolvency of the Soviet Union, problems of the elite and loss in faith.<sup>34</sup> By the end of the 1980s, it became clear that the USSR cannot be modernized. The ideology that was instilled by the Bolsheviks rested only on fear and military forces. Partially, writers and journalists have made a great impact by discrediting and damaging the idols of communism, which became fatal for the whole system. As an example, Aleksandr Solzhenitsyn, Varlaam Shalamov, and Andrei Sakharov revealed plenty of truth about a high number of political prisoners, human rights violations, and other distinguishing features of the Soviet Union, including the existence of the forced labour working camp under the so-called *Gulag*.<sup>35</sup> By different estimates repressions caused more than 61,000,000 deaths, usually people were sent to forced labour working camps without trial and investigation.<sup>36</sup> Another important figure in the history of the USSR was Andrei Sakharov, who actively advocated for termination of nuclear weapon tests and further usage of nuclear power in a peaceful way.<sup>37</sup> Besides scientific activity of Sakharov, he received the Nobel Peace Prize for significant contribution into human rights and peace establishment in the USSR and criticized Soviet government for military entry into Afghanistan.<sup>38</sup> For Sakharov's anti governmental activity he was deprived of all governmental awards and sent into exile.

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<sup>33</sup> Boettke, J., P. "Why perestroika failed. The Politics and Economics of Socialist Transformation". *The Routledge*, New York, 1992, p 2-3. Accessible: [https://econfaculty.gmu.edu/pboettke/pubs/Why\\_Perestroika\\_Failed.pdf](https://econfaculty.gmu.edu/pboettke/pubs/Why_Perestroika_Failed.pdf) (30.04.2020)

<sup>34</sup> *Ibid.*

<sup>35</sup> Solzhenitsyn, A. "The Gulag Archipelago, 1918-1956: an experiment in literary investigation". *Harper & Row*, New York, 1974.

<sup>36</sup> Rummel, J., R. "Death By Government". *Transaction Publishers*, New Jersey, 1994, p 80 - 83

<sup>37</sup> Clines, X.,F. "Andrei Sakharov, 68, Soviet 'Conscience', Dies". *The New York Times*, 1989. Accessible: <https://www.nytimes.com/1989/12/15/obituaries/andrei-sakharov-68-soviet-conscience-dies.html> (18.05.2020)

<sup>38</sup> Sakharov, A. "Peace, Progress, Human Rights". *Nobel Lecture*, 1975. Accessible: <https://www.nobelprize.org/prizes/peace/1975/sakharov/lecture/> (18.05.2020)

## 1.5. Theory and Reality

During the preparation for the adoption of the UDHR,<sup>39</sup> it became clear that ideologically Soviet Union views are completely opposite of Western states. While, during the voting for the UDHR adoption, eight member states abstained from voting, including communist nations, that were ‘ruled’ by the Kremlin and, predominantly, Muslim states.<sup>40</sup> The actual reason for abstaining from voting was several articles, which the USSR would not accept, such as freedom of movement, freedom of expression and freedom of association.<sup>41</sup> These articles were in contradiction with Stalin’s regime. Taking into the account the Constitutions of the Soviet Union of 1936<sup>42</sup> and 1977<sup>43</sup>, where, on paper, the Soviet citizens were granted a great number of rights. In accordance with the 1936 Constitution of the Soviet Union (known in history as the so-called Stalin’s Constitution), chapter X article 125 grants the citizens of the Soviet Union freedom of speech, press, and assembly.<sup>44</sup> *De facto*, however, censorship in the Soviet Union was absolute and ideological in its nature. The best example illustrating the statement is the fact that, in 1921, the Soviet government created the General Directorate for the Protection of State Secrets in the Press (*Glavlit*)<sup>45</sup> and the scope of responsibilities of the latter was the control over book publications. The idea was to investigate whether or not the books were in compliance with Soviet politics and the content of the books were not posing any possible harm to the government and the political regime. Interestingly enough, during the entire Russia-associated history, there was always an agency established to control publications.

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<sup>39</sup> United Nations, Universal Declaration of Human Rights, *supra nota* 12

<sup>40</sup> Nelsson, R. “UN adopts Universal Declaration of Human Rights – archive, December 1948”. *The Guardian* (2018). Accessible: <https://www.theguardian.com/law/from-the-archive-blog/2018/nov/28/un-adopts-universal-declaration-human-rights-paris-1948> (04.01.2020)

<sup>41</sup> UNA-NCA Human Rights Committee. “The UN, Human Rights and Russia: Part II”, 23.05.2018. Accessible: <http://www.unanca.org/news-events/news/1133-the-un-human-rights-and-russia-part-ii> (02.03.2020)

<sup>42</sup> Konstitutsiya (Osnovnoy Zakon) Soyuz Sovetskikh Sotsialisticheskikh Respublik, 07.10.1977 [Constitution (basic law) of the Union of the Soviet Socialist Republics]

<sup>43</sup> *Ibid.*

<sup>44</sup> Constitution of the Soviet Union, 05.12.1936

<sup>45</sup> Yegorov, O. “Soviet censorship: How did the USSR control the public?”. *Russia Beyond*, 2017. Accessible: [https://www.rbth.com/arts/history/2017/06/27/soviet-censorship-how-did-the-ussr-control-the-public\\_790892](https://www.rbth.com/arts/history/2017/06/27/soviet-censorship-how-did-the-ussr-control-the-public_790892) (02.03.2020)

## 2. RUSSIA AND THE COUNCIL OF EUROPE

As the positive aftermath after the adoption of the UDHR<sup>46</sup>, was the establishment of the CoE in 1949.<sup>47</sup> The idea behind the establishment of the latter is to strengthen unity between the CoE and the EU member states in order to protect and promote the ideals, and principles of human rights dominance and to cooperate in the field of economic and social development.<sup>48</sup> In accordance with Treaty No.001 of Statute of the CoE, the above-mentioned aims will be achieved through the CoE organs via discussions and conducting agreements, and by joint action in economic, scientific, administrative, social and legal matters, so as by protecting and developing human rights and fundamental freedoms.<sup>49</sup>

The most successful achievement of the CoE in terms of protecting human beings is the adoption of the European Convention on Human Rights (ECHR) in 1950.<sup>50</sup> The ECHR was meant to protect political freedoms and human rights on the territory of Europe.<sup>51</sup> In accordance with the ECHR, every state that ratified the convention ought to protect and follow the human rights granted to every person.<sup>52</sup> Moreover, the ECHR proclaimed the creation of the European Court of Human rights (ECtHR) as the highest judicial body to handle the claims of individuals whose rights were violated by the residence state.<sup>53</sup>

Since the establishment of the CoE<sup>54</sup> and adoption of the ECHR<sup>55</sup> several crucial changes in the field of protecting human rights were reached by expanding the convention with different protocols. One of them is the prohibition of death-penalty on the whole territory of the CoE member states in accordance with the protocol No.6 adopted in 1983<sup>56</sup> and protocol No.13 adopted in 2003.<sup>57</sup> Where the latter prohibits the death penalty in all circumstances without exceptions.

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<sup>46</sup> United Nations, Universal Declaration of Human Rights, *supra nota* 12.

<sup>47</sup> Petaux, J. Democracy and Human Rights for Europe: The Council of Europe's Contribution, *Council of Europe Publishing*, France, 2009, p 12

<sup>48</sup> Council of Europe, Statute of the Council of Europe, Treaty No.001. 05.05.1949

<sup>49</sup> Petaux, J. (2009), *supra nota* 47, p 45

<sup>50</sup> Convention For The Protection Of Human Rights And Fundamental Freedoms And Protocol, 04.11.1950

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

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> United Nations, Universal Declaration of Human Rights, *Supra nota* 12.

<sup>55</sup> Convention For The Protection Of Human Rights And Fundamental Freedoms And Protocol, *Supra nota* 50.

<sup>56</sup> European Convention of Human Rights, Protocol No. 6 to the convention for the protection of human rights and fundamental freedoms concerning the abolition of the death penalty, 28.04.1983

<sup>57</sup> European Convention of Human Rights, Protocol No. 13 to the Convention for the protection of human rights and fundamental freedoms, concerning the abolition of the death penalty in all circumstances, 01.07.2003

Additionally, every state joining the CoE agrees that an independent mechanism of control will check and evaluate, whether or not, democracy standards and the ECtHR rulings are executed.<sup>58</sup> The body that controls and supervises the execution of the ECtHR rulings is the Committee of Ministers (CM) in accordance with Article 46 of the Protocol No.11.<sup>59</sup> As of today, the CoE is focused on the legal matters, maintenance of borderless Europe, protection, and promotion of human rights, and supervising of the member states.<sup>60</sup> The CoE is not interfering into economical or military politics, while fully concentrated on people's wellness.<sup>61</sup>

## 2.1. The European Court of Human rights and its imperfections

The ECtHR is an international judicial institution, whose jurisdiction is covering matters related to the interpretation of the convention, interstate affairs, and claims of individuals, on the territory of the CoE member states that ratified the ECHR.<sup>62</sup> The ECtHR is the final step and the highest judicial body, whose decisions are above any domestic legislation of the CoE member states (that ratified the ECHR).

When it comes to the effectiveness of the ECtHR, then in accordance with the official statistics, the total number of judgements from 1959 – 2019 equals 22,535.<sup>63</sup> The statistical data is showing the number of total violations from state to state, where the latter data also gives an overview on which exact articles were violated. In accordance, with the official statistics, Turkey is leading in a number of total judgements (3 645 judgements or 16%), then Russia (2 699 judgements or 12%) and third place hold Italy (2 410 judgements or 11%).<sup>64</sup>

ECtHR is being criticized among the CoE member states. The main critique in that matter is the fact that the ECtHR is swamping with cases and it cannot on time and effectively manage with its

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<sup>58</sup> Convention for the protection of human rights and fundamental freedoms as amended by protocols No.11 and No.14, 04.11.1950

<sup>59</sup> *Ibid.*

<sup>60</sup> Council of Europe, Objective and mission. Accessible: <https://www.coe.int/en/web/sarajevo/objectives-mission> (04.02.2020)

<sup>61</sup>

<sup>62</sup> European Court of Human rights, Guide on Article 1 of the European Convention on Human rights, Obligation to respect human rights – concepts of “jurisdiction and imputability”. 2019. Accessible: [https://www.echr.coe.int/Documents/Guide\\_Art\\_1\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_1_ENG.pdf) (17.05.2020)

<sup>63</sup> European Court of Human rights, Violations by Article and by State 1959 – 2019, *supra nota* 9.

<sup>64</sup> *Ibid.*



primal functions. Which leads to serious backlogs and delays in executing judgments. Cases that require immediate reaction are put into a queue for 2 up to 4 years. That fact lowers the degree of security of human rights and freedoms guaranteed by the European Convention on Human Rights. The problem of ECtHR with a backlog occurred after East and Central Europe states joined the Council of Europe. To be more precise, when countries with the background of weak respect of human rights joined and as an aftermath the number of incoming cases significantly increased.

In order to solve the issue, several member states and societies proposed the ways to reform the ECtHR.<sup>65</sup> The latest official proposal was made by the Council of Bars and Law Societies of Europe on 28.06.2019.<sup>66</sup> Needless to mention, that dozens of similar proposals were made earlier, for example in 2012 Open Society Justice Initiative of Britain made a proposal on how to set up work of ECtHR more effectively and divide cases by their priority.<sup>67</sup>

The most common aspect of the reform is to delegate authority from ECtHR to national courts of CoE member states and to let national courts handle the cases in order to significantly lower the backlog.<sup>68</sup> The positive aspect in that matter is that it would strengthen the country's sovereignty. On the other hand, applying the latter proposal would create a risk that member states would keep on implementing their domestic practice, which is in contradiction with the ECtHR practice. Moreover, the reason why the applicant went into ECtHR is exactly that the national court's decision is in contradiction to ECtHR and the applicant wants to dispute the national court decision in the Supreme Court.<sup>69</sup> Making the vast majority of proposals facing the same controversy over and over again.

For the context, it is worth mentioning that some changes in the ECtHR were already adopted, such as Protocol Np. 14 (entry into force on 01.06.2010)<sup>70</sup>. Protocol 14, article 27 dramatically fastened the process of sorting pending cases whether a case is admissible or not. The article allows

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<sup>65</sup> Open Society Justice Initiative, "Q & A: Reform of the European Court of Human rights", 2012. Accessible: <https://www.justiceinitiative.org/uploads/a958f000-d342-49a4-b26a-cd53ee450d57/echr-reform-qanda-4-3-12-2.pdf> (24.01.2020)

<sup>66</sup> Council of Bars and Law Societies of Europe, CCBE Proposals for reform of the ECHR machinery. Accessible [https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/PD\\_STRAS/PDS\\_Position\\_papers/EN\\_20190628\\_CCBE-Proposals-for-reform-of-the-ECHR-machinery.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/PD_STRAS/PDS_Position_papers/EN_20190628_CCBE-Proposals-for-reform-of-the-ECHR-machinery.pdf) (12.01.2020)

<sup>67</sup> *Ibid.*

<sup>68</sup> Open Society Justice Initiative, *Supra nota* 65.

<sup>69</sup> Steering Committee for Human Rights. "Reforming the European Convention on Human Rights: a Work in Progress". *Council of Europe Publishing*, Strasbourg, 2009, p 202-204. Accessible: <https://www.echr.coe.int/librarydocs/dg2/isbn/coe-2009-en-9789287166043.pdf> (07.04.2020)

<sup>70</sup> *Ibid.*

a single judge to declare inadmissible or strikeout of the Court's list, where such a decision can be taken without further examination. While before protocol 14 there was always three-judges formation, who were deciding whether or not the case is acceptable.

## **2.2. Russian incompliance with the Council of Europe standards**

In 1992, the government of Russia showed its wish to be invited to the CoE and declared its wish to follow the principles of the rule of law and respect of human rights and fundamental freedoms.<sup>71</sup> Different European scholars and practitioners are still arguing regarding the legality of Russian joint to the CoE. On the one hand, Russia has contributed to democratization and tendencies were showing positive changes. On the other hand, the political and legal order in the country was not in compliance with the CoE standards.<sup>72</sup> Moreover, Russia was criticized for its troops remaining present on the territory of Moldova, additionally, the government of Russia launched military operations against Chechen, which does not only violate the CoE principles, but other international standards.<sup>73</sup> Despite the above-mentioned, after re-voting and the fact that progress in terms of following the CoE standards was present, Russia was accepted to join the CoE in 1996. However, ever since Russia joined the CoE, Russia still largely ignores the obligations to protect human rights and improvements it made are minor.<sup>74</sup> In accordance with an Amnesty International report, people in Russia are still being tortured in prisons, detained without any legal grounds and almost fully deprived of the right of a fair trial.<sup>75</sup> Furthermore, Russian judicial system has been set up in the way that it can easily suppress any political enemy to the existing regime by having “the right person” as a national judge elected directly by the government.<sup>76</sup>

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<sup>71</sup>Mälksoo, L; Benedek, W. Russia and the European Court of Human Rights. The Strasbourg Effect, *Supra nota*, 6, p. 59

<sup>72</sup> Croft, S., Redmond, J., Rees, G.W., Webber, M. The Enlargement of Europe. *Manchester University Press*, New York, 1999, p 147 - 148

<sup>73</sup> *Ibid*, p 148

<sup>74</sup> Amnesty International. “The Russian Federation. Denial of Justice”. *Amnesty International Publications*, London, 2002, p 9 – 11. Accessible: <https://www.refworld.org/pdfid/3dc25f734.pdf> (07.04.2020)

<sup>75</sup> *Ibid*, p 23 - 27

<sup>76</sup> Parliamentary Assembly. “Documents. Working papers. 2005 Ordinary Session (Third part)”. *Council of Europe Publishing*, Strasbourg, 2005, p 52 – 53. Accessible: [https://books.google.ee/books?id=mKDGClgjd0c&pg=PA52&redir\\_esc=y#v=onepage&q&f=false](https://books.google.ee/books?id=mKDGClgjd0c&pg=PA52&redir_esc=y#v=onepage&q&f=false) (06.04.2020)

## 2.3. Events prior to the adoption of the amendments to the Federal Law of Russia

Further chapter plays an important role as it gives an overview of prerequisites prior to the amendments to the Federal Law.<sup>77</sup> The author reviews several important events, where Russia is directly involved starting from high-profile court cases, which were brought to the ECtHR; military intervention on the territory of the neighboring state and further exclusion from PACE.

### 2.3.1. High-profile court cases

From the very beginning of Vladimir Putin's first period as President of Russia it became clear that his views do not match with the view of Boris Yeltsin. The very first political victim of the regime became Vladimir Gusinsky, who was accused of theft of governmental property in approximate 10 million USD. Gusinsky, before his detention, was criticizing Putin's regime and decisions. In scope of his critique fell the Chechen wars-associated crimes, widespread poverty on Eastern parts of Russia and upcoming non-democratic changes in Russia.<sup>78</sup> Due to the fact, that Gusinsky owed Media-Most holding (including, by far the most popular TV channel in Russia at that time, NTV) he could have disclose all the crimes, Putin made his move towards depriving of such an opportunity and forced businessman to sell controlling stake of shares to *Gazprom*.<sup>79</sup> Before the actual imprisonment, Gusinsky ran out of the country to find protection in Spain, in which he succeeded. Spain refused to extradite the exile media tycoon and took him as a refuge of political regime. In 2004 ECtHR for the first time in history agreed that Russian prosecution claim was filed for a political purpose.<sup>80</sup>

The suppression of political foes and dissenting people kept on growing. The further case shows the consequences related with nationalization of property belonging to opposition-friendly citizens. OAO Neftyanaya Kompaniya YUKOS v. Russia<sup>81</sup> became the most controversial and

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<sup>77</sup> Federalniy zakon Rossiskoi Federatsii, *supra nota* 3.

<sup>78</sup> Tremlett, G. "Putin is Out to Get Me, Says Media Tycoon. Gusinsky Gains His Freedom But Loses His Empire". *The Guardian*, 2001. Accessible: <https://www.theguardian.com/world/2001/apr/24/russia.gilestremllett> (07.05.2020)

<sup>79</sup> The Economist. "Bertelsmann and other Stiftungs: New chapter". 2001. Accessible: <https://www.economist.com/taxonomy/term/34/%20This%20article%20originally%20said%20that%20the%20late%20Emilio%20Bot%C3%83%C2%ADn%20had%20struck%20a%20deal%20which%20allowed%20his%20daughter?page=272&page%5Cu003d513=> (07.05.2020)

<sup>80</sup> GUSINSKIY v. RUSSIA, Application no. 70276/01, ECtHR, 2004

<sup>81</sup> OAO Neftyanaya Kompaniya YUKOS v. Russia, Application no. 14902/04, ECtHR, 2014

financially costly case ever brought to the ECtHR. The case made a significant impact on the political and business environment on the territory of Russia. The claim of the plaintiff stated that Russian authorities on purpose led the company to bankruptcy by adopting tax laws aimed to damage Yukos (one of the biggest oil companies in Russia at that time). The PACE agreed<sup>82</sup> that circumstances of prosecution of Yukos executives were politically motivated. Executives were prosecuted for direct financial support of opposition parties and individuals against the current regime. Despite the fact that ECtHR did not agree, that prosecution from Russian side was politically motivated and agreed, that tax avoidance schemes were present in the business model of Yukos. The ruling was still in favor of Yukos and its investors. In accordance with the court decision of 2014 Russia was obliged to pay 1,9 billion euro to shareholders.<sup>83</sup> The further appeal to the grand chamber of ECtHR against ruling was rejected and ECtHR recommended Russia together with the CoE establish a plan on how to cover just satisfaction.<sup>84</sup> However, constitutional court of Russia by referring to the amendments to the federal law<sup>85</sup> overruled ECtHR decision to pay compensation in 2017 claiming the ruling is in contradiction with existing constitution of Russia and the only possible way to pay compensation is when there would be found additional property of the Yukos, which would be sold to cover the expenses in favor of ECtHR ruling.<sup>86</sup>

### 2.3.2. Military intervention in Ukraine and its consequences

Another challenge to international peace organizations appeared as Russia expressed its aggression and invaded sovereign territory of Ukraine in 2014. The invasion has started from taking control over Crimean parliament building by unidentified individuals who were later acknowledged as Russia's military units.<sup>87</sup> Then on 18 March 2014, Russia proclaimed incorporation of Crimea, which both Ukrainian Government and the UN General Assembly considered as invalid due to

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<sup>82</sup> Parliamentary Assembly. "The circumstances surrounding the arrest and prosecution of leading Yukos executives". 2004. Accessible: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17293&lang=en> (07.05.2020)

<sup>83</sup> Buckley, N. "Moscow ordered to pay Yukos shareholders €1.9bn". *Financial Times*, 2014. Accessible: <https://www.ft.com/content/5927a632-18a3-11e4-a51a-00144feabdc0> (07.05.2020)

<sup>84</sup> Reuters. "Top Rights Court Rejects Russia's Appeal Over Yukos Compensation". 2014. Accessible: <https://www.reuters.com/article/russia-yukos/top-rights-court-rejects-russias-appeal-over-yukos-compensation-idUSL6N0U04J620141216> (07.05.2020)

<sup>85</sup> Federalniy zakon Rossiskoi Federatsii, *supra nota 3*.

<sup>86</sup> Buckley, N. "Russian Court Overrules Strasbourg on Yukos Award. Moscow Should Not Pay €1.9bn Damages Awarded by European Human Rights Court". *Financial Times*, 2017. Accessible: <https://www.ft.com/content/e2bc9f30-de5b-11e6-86ac-f253db7791c6> (07.05.2020)

<sup>87</sup> International Criminal Court. Report on Preliminary Examination Activities 2017, p 19 - 20. Accessible: [www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE\\_ENG.pdf](http://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf) (17.05.2020)

non-compliance with democratic standards and violation of international treaties.<sup>88</sup> Overall, the situation in the Eastern part of Ukraine worsened as the Ukrainian government lost control over Donetsk, Luhansk and some regions about these major cities, which later proclaimed their independence from Ukraine and expressed their will to join the territory of Russian Federation.<sup>89</sup>

When it comes to the armed conflict in Donetsk and Luhansk oblasts, international organizations, together with a great number of states, accuse Russia of aggression and escalating conflict in Ukraine for the usage of regular army, special troops and rebels against civilians.<sup>90</sup> In the light of the fact, that Russia's behavior is in contradiction with CoE and international peace agreements, Russia's voting rights, right to be represented and right to participate in election observation missions in PACE suspended in 2014.<sup>91</sup> In addition to the exclusion from PACE several other sanctions imposed from the EU, NATO and the United States in response to Russian aggression.<sup>92</sup> The first wave of sanctions included freezing of bank accounts and assets; visa restrictions for people that were included in special lists; strict restrictions of non-cooperation with legal entities or private people that are in restriction lists.<sup>93</sup> As Russia kept on expanding aggression and supporting pro-Russian collaborators in Ukraine, sanctions were strengthening respectively. Russian response followed by implementing counter-sanctions banning high-profile American politicians and further embargo on imports of different products including dairy, vegetable and other edible products.<sup>94</sup>

Sanctions and embargo caused financial difficulties in both EU states and Russia. By different estimates, sanctions created a significant gap in GDP of every state involved.<sup>95</sup> However, time

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<sup>88</sup> United Nations. General Assembly. Resolution adopted by the General Assembly on 27 March 2014. Accessible: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/68/262](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262) (17.05.2020)

<sup>89</sup> International Criminal Court. Report on Preliminary Examination Activities 2017, *supra nota* 87, p 21- 22

<sup>90</sup> Sayapin, S., Tsybulenko, E. "The Use of Force against Ukraine and International Law. Jus Ad Bellum, Jus In Bello, Jus Post Bellum". *T.M.C. Asser Press*, Hague, 2018, p 125 – 132.

<sup>91</sup> Parliamentary Assembly. Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation. *Council of Europe*, 2014. Accessible: <http://www.assembly.coe.int/LifeRay/APCE/pdf/Communication/2014/20140410-Resolution1990-EN.pdf> (12.05.2020)

<sup>92</sup> Sayapin, S., Tsybulenko, E. "The Use of Force against Ukraine and International Law. Jus Ad Bellum, Jus In Bello, Jus Post Bellum", *supra nota* 90, p 289 - 292

<sup>93</sup> Dreyer, I., Popescu, N. "Do sanctions against Russia work?". *European Union Institute for Security Studies*, 2014. Accessible: [https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief\\_35\\_Russia\\_sanctions.pdf](https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief_35_Russia_sanctions.pdf) (12.05.2020)

<sup>94</sup> Zykov, K. "Putin's Counter-Sanctions Cost Russians \$70 Per Person Every Year

The food embargo is hitting Russian consumers to the tune of almost \$10 billion a year, new research shows". *The Moscow Times*, 2019. Accessible: <https://www.themoscowtimes.com/2019/10/29/putins-counter-sanctions-cost-70-person-a67947> (12.05.2020)

<sup>95</sup> Fritz, O., Christen, E., Sinabell, F., Hinz, J. "Russia's and the Eu's sanctions: economic and trade effects, compliance and the way forward". *European Parliament's Committee on International Trade*, Belgium, 2017, p 8-

goes by and it is now clear that Russia is not having much financial difficulty and already adopted to restrictions. Referring to Tsybulenko and Kelichavyi, economic sanctions are not an obstacle for Russia to proceed with aggression further.<sup>96</sup> What is about the CoE? The first to give up was PACE, who restored Russian membership in 2019 and obligated Russia to resume mandatory payments to the budget.<sup>97</sup> Different journals and politicians criticize PACE for allowing Russia to return.<sup>98</sup> Nevertheless, the issue is much deeper as it may seem. Worth to mention, that PACE budget is fully made of membership payments, where Russia's contribution plays significant role, the latter fact gives Russia additional pressure point.<sup>99</sup> Another problem comes from the fact that, once Russia leaves PACE, that would mean that citizens of Russia will be left on their own against the government. Different experts and scholars were proposing different ways of preventing Russia from coming back to PACE<sup>100</sup>, but they all face the same dilemma, how to protect human rights of Russian citizens?

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12. Accessible: [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/603847/EXPO\\_STU\(2017\)603847\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/603847/EXPO_STU(2017)603847_EN.pdf) (12.05.2020)

<sup>96</sup> Sayapin, S., Tsybulenko, E. "The Use of Force against Ukraine and International Law. Jus Ad Bellum, Jus In Bello, Jus Post Bellum", *supra nota* 90, p 290

<sup>97</sup> Parliamentary Assembly. "Strengthening the decision-making process of the Parliamentary Assembly concerning credentials and voting". *Council of Europe*, 2019, p 6. Accessible: <http://semanticpace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnVlG1sL1hSZWYvWDJILURXLWV4dHluYXNwP2ZpbGVpZD0yNzcyNSZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRClBVC1YTUwyUERGLnhzbA==&xslparams=ZmlsZWlkPTI3NzI1> (12.05.2020)

<sup>98</sup> BBC. "Ukraine fury as Russia gets back Council of Europe voting rights". 2019. Accessible: <https://www.bbc.com/news/world-europe-48755606> (12.05.2020)

<sup>99</sup> Naychuk, A. "Russian delegation in PACE: Is it a display of financial diplomacy". *New Eastern Europe*, 2020. Accessible: <https://neweasterneurope.eu/2020/03/23/russian-delegation-in-pace-is-it-a-display-of-financial-diplomacy/> (12.05.2020)

<sup>100</sup> Tenzer, N. "Is Russia blackmailing the Council of Europe?". *Euobserver*, 2018. Accessible: <https://euobserver.com/opinion/142849> (12.05.2020)

### 3. DISCUSSION

Throughout the first part of the chapter, this paper will discuss possible consequences of the amendments<sup>101</sup> to the judicial integrity of CoE member states. Then this paper concentrates on a hypothetical discussion of the alternative development scenario of PACE, when Russia would have been excluded. The third part touches current controversies between enforced federal law and the constitution of Russia.

#### 3.1. Consequences of Russian amendments for ECtHR supremacy

It is hard to overestimate the contribution of ECtHR to the protection of human rights. The fact that more and more people are forwarding their claims to ECtHR yearly is showing significant level of trust to the highest judicial body of the CoE. Along with an increasing number of claims, the number of non-executed decisions per state grows proportionally. The rule of law demands that all court decisions to be enforced immediately, fully and efficiently. However, lately more and more CoE member states are casting doubt on ECtHR supremacy. Non-content with ECtHR is expressed by every possible means, not only by prolonged failure to execute ECtHR rulings. Switzerland initiated a voting to grant domestic laws priority over international law, which fortunately to ECtHR failed in 2018.<sup>102</sup> The attitude between the ECtHR and the United Kingdom is fragile, especially in the light of contradiction of ECHR convention and UK constitution in terms of prisoners' right to vote.<sup>103</sup> Despite the fact that except Russia no other CoE member state has really adopted something similar that Russia did, there are already present signs of non-content with Strasbourg.

#### 3.2. Alternative scenario for PACE development

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<sup>101</sup> Federalniy zakon Rossiskoi Federatsii, *Supra nota 3*.

<sup>102</sup> The Federal Council of Switzerland. Self-determination Initiative 25.11.2018. Accessible: <https://www.admin.ch/gov/en/start/documentation/votes/20181125/self-determination-initiative.html> (15.05.2020)

<sup>103</sup> European Union Committee. 12<sup>th</sup> Report of Session 2015 – 16. “The UK, the EU and British Bill of Rights”. *House of Lords*, 2016, p 27 – 29. Accessible: <https://publications.parliament.uk/pa/ld201516/ldselect/ldecom/139/139.pdf> (15.05.2020)

The PACE has faced the biggest dilemma ever. On the one hand, restoring all rights of Russia would create a controversy in PACE regulations, cause additional discontent of other member states and give a clear signal to Russia that annexation of Crimea went without punishment. On the other hand, excluding Russia from PACE and further exclusion from the CoE will cause irreparable harm to human rights protection making Russian citizens unprotected in front of the government. What could have happened if Russia would be excluded from PACE? Assuming that Russia's membership in PACE terminated and further exclusion from CoE follows:

Firstly, that would create a precedent that never happened before, when a state's membership terminated due to incompliance with international regulations. The precedent would definitely reflect in a bad way on every state (especially member states of the EU) tearing apart European integrity and destroying its legacy. Due to growing interest to separatist movement in the EU and perspective of being fully independent would divide not only unions and coalitions, but also separatists would rip apart whole states into pieces. Recent example of separatism in the EU happened in 2017, when Catalan proclaimed its autonomy and independence by referendum.<sup>104</sup> Years later a referendum was held in the United Kingdom that put an end to its presence as an EU member.<sup>105</sup> Different experts and scholars are giving disappointing estimates especially if a new trade agreement with the EU will be aimed to punish the UK for leaving.<sup>106</sup>

Secondly, membership in PACE and CoE is a pressure tool on Russia, but once Russia leaves any of latter organizations it may refuse to follow UDHR and/or adopt domestic laws to fully prevail over international treaties. Possibly death penalty moratorium might be terminated and Russian citizens deprived of ECtHR might, speculatively, return to an age of 'great terror'. Thirdly, exclusion would create a great financial gap in the budget of the PACE. As Russian population is the biggest among other CoE member states, its annual fees are about 10% of the whole budget of

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<sup>104</sup> Jones, S. "What is the story of Catalan independence – and what happens next?". *The Guardian*, 2019. Accessible: <https://www.theguardian.com/world/2019/oct/14/catalan-independence-what-is-the-story-what-happens-next> (14.05.2020)

<sup>105</sup> Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (Text with EEA relevance). Accessible: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020D0135&from=EN> (14.05.2020)

<sup>106</sup> Dhingra, S., Ottaviano, G., Sampson, T., Reenen, V.,J. "The consequences of Brexit for UK trade and living standards". *London School of Economics and Political Science*, London, 2016, p 3 - 5. Accessible: [http://eprints.lse.ac.uk/66144/1/\\_lse.ac.uk\\_storage\\_LIBRARY\\_Secondary\\_libfile\\_shared\\_repository\\_Content\\_LSE%20BrexitVote%20blog\\_brexit02.pdf](http://eprints.lse.ac.uk/66144/1/_lse.ac.uk_storage_LIBRARY_Secondary_libfile_shared_repository_Content_LSE%20BrexitVote%20blog_brexit02.pdf) (14.05.2020)



the PACE. However, that would be the least of the problems, which could be solved just by increasing membership fee for other member states.

### 3.3. Existing controversy between Federal Law and Constitution of Russia

The analysis of Russian federal law and constitution has revealed the existing controversy between two latter legal documents. The amendments to the federal constitutional law<sup>107</sup> are in direct contradiction with Russian constitution. The latter amendments allow the Constitutional Court of Russia to personally decide, whether to follow ECtHR decision or not. Final decision to follow or not ECtHR judgment could be implemented, if ECtHR's ruling contradicts with the state's constitution.<sup>108</sup>

Where the controversy actually comes from? When Russia ratified the ECHR in 1998, Russia automatically bound itself into a recognition that ECHR jurisdiction is standing above any domestic laws. Claim that ECHR is above domestic laws is also documented in article 1 of the Federal Law of Russia.<sup>109</sup> Additionally, article 46, paragraph 1 of ECHR states: "The High Contracting Parties undertake to abide by the final judgement of the Court in any case to which they are parties"<sup>110</sup>.

Moreover, years before the adoption of the ECHR, Russian constitution already had an article where Russia agreed that international treaties and agreements should be a part of its legal system. The Constitution of Russian of 1993 Article 15, paragraph 4: "The Universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation

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<sup>107</sup> Federalniy zakon Rossiskoi Federatsii, *Supra nota* 3.

<sup>108</sup> Roudik, P. "Russian Federation: Constitutional Court Allows Country to ignore ECHR Rulings", *Global Legal Monitor*, 18.05.2016. Accessible: <https://www.loc.gov/law/foreign-news/article/russian-federation-constitutional-court-allows-country-to-ignore-echr-rulings/> (14.01.2020)

<sup>109</sup> Federalni zakon ot 30 marta 1998 goda N 54-FZ "O ratifikacii konvencii o zashite prav cheloveka I osnovnis svobod I protokolov k nei", 20.02.1998 [Federal law of 30 March 1998 year N 54-FZ "About the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and additional protocols]

<sup>110</sup> European Commission for Democracy through Law (Venice Commission). "Interim Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation", *supra nota* 5, p 13.

establishes other rules than those envisaged by law, the rules of the international agreement shall be applied”<sup>111</sup>

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<sup>111</sup> The Constitution of the Russian Federation, adopted on 12.12.1993. Accessible: <https://rm.coe.int/the-constitution-of-the-russian-federation-was-adopted-on-december-12-/168071d2f4> (26.12.2019)

## CONCLUSION

In conclusion, this thesis has shown the development of human rights concept throughout the Tsar period and up to modern Russia, including current Russian attitude to international organizations and difficulties international organizations are facing in the 21st century. The aim of this thesis was to detect a correlation between the ECtHR rulings and neglecting attitude to the latter rulings by Russian Federation. One of the crucial findings was that Russian enforced federal law and constitution are in direct contradiction between one another, this fact needs to be taken into account for future research as it will lead to significant impact on policymaking process among CoE member states.

Applying legal discourse and process tracing methodologies in this paper were crucial in understanding and determining the correlation between Soviet Union concept of human rights and modern Russia's. However, together with legal discourse analysis, historiography methodology was used in order to develop and expand the first part of the thesis, by citing and referring to historical documents and scholars. While process tracing was used to analyze interconnections and events prior to the amendments. Historically, the rights of peasants and serfs in the Russian Empire were not considered as a topic to discuss, and thus the rights of the latter were out of the scope of the development. The negligence attitude to peasants together with an overall growing number of non-content among intimidated has led to revolution and put an end to the Tsar era. Time goes by and a relatively similar neglecting attitude to individuals and their rights led to the collapse of the USSR.

During the process of conducting this paper, it became clear that not many researches were made regarding Russian amendments to federal law. This research has successfully found controversies of Russian Federal law and constitution. Moreover, this paper theoretically drags an example of PACE alternative scenario development in case of Russian exclusion from the organization. The consequences of exclusion would have probably led to revolution, especially considering the fact, that Russian history is full of revolutions.

Finally, the analysis of all the findings has shown that there are a number of CoE member states and related organizations who have expressed their dissatisfaction with both ECtHR and PACE. The situation is worsening in the light of growing separatist movements in the EU and wide scale non-content with unfair rulings of the ECtHR and weak position of PACE on the global arena.

Furthermore, among other CoE member states who are mostly silent, there is Russia who came to set its own rules and instill its own views on international treaties. This paper has given enough evidence to consider that Russian behavior and feel of impunity is not only casting doubt on the superiority of international treaties but also inspiring other members of international organizations to follow their example.

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