

# Russia, the Council of Europe and the Future of European Politics

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By 2019, the escalation of the crisis in relations between Russia and the Council of Europe (hereinafter referred to as CoE) reached its apogee. The question of Russia's withdrawal from this oldest authoritative European organization or about its exclusion from it rose to its full height. The long-awaited resolution of the CoE parliamentary body 2277 of April 10, 2019 does not remove it either. The resolution is full of self-praise and proposals for extending its influence to other international and national structures, but does not contain any constructive solutions.

Tensions between Moscow and Strasbourg have always been present. It is difficult to remember the time when they would be cloudless. The conflict has matured for a long time. However, no one could have imagined that it would reach such sharpness and a possible gap.

Such a development of events contradicts the objective needs of Russia and all other European countries. It is fraught with great damage not only to the states of the region, but also to the entire European civilization. In many ways, it is tearing up the already existing pan-European humanitarian and legal space and traditional ties.

The place of Russia is in the CoE, because the Council is a pan-European organization. It unites all countries that are geographically or partly located in Europe, and belong to European culture, history, and European society. Membership in the CoE is Russia's natural choice as not only a Eurasian, Pacific, but also, above all, a European power, which has made a huge contribution to European culture and played a decisive role in its history.

On its turn, in the absence of Russia, CoE in many respects loses its "raison d'être". Without Russia, it will not do anything that the European Union no longer does or does not do in the framework of assistance programs to third European countries that are subject to EU enlargement policies or the Eastern Partnership policy.

So, the CoE crisis has a man-made character. Its origins lie in the frank political mistakes made by Europe, the inadequacy of the policy pursued, the misunderstanding that no one tried to honestly and skillfully overcome.

Let's try to understand these errors, miscalculations and misunderstandings. This is especially important since there is no such task in Russian literature. The overriding goal of the absolute majority of publications is to show what Russia has achieved thanks to its membership in the CoE in terms of state and legal construction and reformatting public relations, that is, in fact, describe what CoE membership has given to the Russian state and society.

Moreover, in the deep stream of publications, very little is said about CoE. The lion's share of books and articles is devoted to the analysis of the European Court of Human Rights (ECtHR), the case law it forms, its impact on law enforcement in the States Parties to the European Convention on Human Rights (ECHR), and whether the authorities of the Russian Federation execute or fail to comply with decisions of the ECtHR. Even about the activities of the international mechanism for monitoring the implementation of ECtHR judgments, which are crucial for the effectiveness of the whole mechanism, is written much less and lapidary.

## **Lesson or deception number 1: the fall of the role and significance of the Council of Europe in European architecture**

In the early 1990s Russia's entry into the CoE was for the ruling elite an absolute imperative. Russian authorities did not want to be left behind by the pan-European processes – and, unlike the EU and NATO, the CoE from the very beginning set out to involve all European states and all European nations. They relied on the CoE to prove that the country is a part of European society with all its values and specifics – the CoE was rightfully considered one of its load-bearing elements.

It was extremely important for them to receive international recognition of their success in building a post-communist political system, forging a democratic society in the country that respects and upholds the ideals of the rule of law and human rights – the CoE is considered a kind of “conscience” of the continent, whose members fully meet the highest criteria.

However, while fighting for membership in the CoE, the Russian leadership proceeded from the fact that the country is joining one of the most influential and respected regional organizations that occupy a prominent, if not leading, place in European architecture. After all, creation of post-war Europe began with the CoE. It was planned to give the Council a supranational character. Nothing came of it. On the other hand, the CoE was assigned to do everything, except for defense issues, turning it into an international organization of general competence.

In addition, important responsibilities in the field of collective security were assigned to the CoE. It was assumed that countries that chose in favor of pluralistic democracy and consistent protection of human rights do not threaten each other — and control over this area was devoted to the CoE. That is, in terms of its status and reputation, the CoE could claim to be considered the main element of European architecture, the very authority that is entrusted to monitor the state of affairs with the basic and most important European values.

Moscow was deceived in its calculations. Yes, before the CoE began to absorb all European nations, all European states, it was quoted almost on a par with the North Atlantic Alliance and the European Communities. The memory of many hours of bickering between Western Europeans and Americans within the framework of the OSCE over who should be put first in the list of Euro-Atlantic structures – CoE or NATO – was still fresh in the memory. In the Euro-Atlantic architecture, a reasonable and rational division of labor was observed: NATO monopolized in its hands issues related to hard power; the EU managed to reign over the economy; everything else was given to the CoE.

As soon as the CoE began to include “aliens” in its composition, it began to rapidly lose its meaning and influence. It would be difficult to prove that there is a causal relationship between these two processes. But in fact, they coincided, and, accordingly, were interrelated. On the one hand, the concept of democratic security, according to which international control over the functioning of democratic institutions of government and the state with the protection of human rights was thought of as the skeleton of collective security, has lost much in value. Communism has already been crushed and put into junk. There was no need to fight it anymore. A place at the head of the European architecture was confidently occupied by NATO, which is responsible for the entire set of security issues and the organization of the trans-regional order – it no longer had competitors

On the other hand, the economy, in which the EU took the dominant position, has gained decisive importance for the further destinies of the continent. Brussels now needed to “conquer”, to bind to itself the new elites and the population of the former socialist countries primarily by economic methods. It was important for the EU and its Member States to make them similar to themselves from the point of view of the organization of market economy, its debugging and regulation. In addition, in the plans of Western European business it was meant to “master” the economic space of the former socialist countries as soon as possible. It was important for Western companies to capture the assets of industrial and any other enterprises and structures on the cheap; to win a commanding position in rapidly evolving markets, moving to fundamentally different standards; to take advantage of the amazing cheapness of an educated, highly skilled and morally disoriented workforce.

At the same time, the EU has extended its competence to those areas of activity that the European Communities have never engaged in and which before were an absolute law of the CoE. With the addition of Common Foreign Policy and Police and Judicial Collaboration to the European Community, followed by their partial communitarianization, Brussels followed the path trodden by the CoE. He took as a basis a number of conventions, in particular in the criminal law and civil law spheres adopted by the CoE, changed them somewhat, refined and updated them and transformed into the EU directives. The consequences are obvious. The EU Member States could not help losing interest in many of the activities of the CoE, which in many respects have lost any meaning for them. But that's not all. The EU has invaded the CoE's holy of holies – the sphere of the protection of Human Rights and national minorities. The highest achievements of the CoE are the ECHR and the international monitoring mechanism established on its basis, the European Social Charter and the ESC Committee working under the regime of the UN treaties bodies, the Framework Convention for the Protection of National Minorities and the European Commission against Racism and Xenophobia with its country reports and general and special recommendations. Considering that the ECHR and the ESC are external acts, the EU adopted its own Charter of Fundamental Rights overlapping both documents, and then gave it binding force. In parallel with the CoE structures operating in Strasbourg, the EU established its own Human Rights Agency.

Thus, very quickly and naturally, the CoE was shifted to the periphery of the European processes and lost the privileged position that to some extent it occupied in European architecture. Moreover, from an authoritative and very influential organization for all, the CoE has become a body used by some of the states for which it has lost its original meaning and vocation, to adjust the rest of the members to their standards, practices and priorities.

As we see, Moscow was seeking membership in a completely different international organization, and the fact that the CoE degenerated like that was a great disappointment for Russian authorities. By the way, the same fate befell the OSCE, on the need for restructuring and readjustment of which Moscow is tired of insisting.

*Therefore, to overcome the current crisis in relations between Russia and the CoE would not be enough. It should be about restoring the authority of the CoE. Restoring and increasing its influence. Enhancing the role in the discussion and resolution of all the priority problems that worry all countries of the continent. It should be about restoring by common efforts of the place in the European, Euro-Atlantic and Eurasian architecture that it deserves. For this, it will be necessary to partially return to the Organization the previous vocation. Partially – to come up with a new one for her. To make it so that it really takes up the construction of Europe without dividing lines, however utopian it sounds in the current international context. And maybe that's why.*

## **Lesson or deception number 2: the withdrawal of the Council of Europe from the rule-making and standard-setting activities**

In the past, the prestige and special role of the CoE in international affairs was also explained by the fact that the Council concentrated in its hands a very important function of international rulemaking. This function was carried out by it in proactive manner. It extended to all areas of civil / non-military activities: from clarifying the mechanisms for using peaceful means of resolving international disputes – to fighting money laundering and organized crime; from the preservation of cultural values - to cooperation in the field of education; from counteracting social exclusion – to the criminalization of certain reprehensible practices. The Organization's fulfillment of this function met the highest international quality standards. The conventions developed by the CoE (then there were under two hundred, now their number has exceeded 220) set the vector for the development of international practice, international law, and international cooperation for decades to come. They served as a benchmark and reference point not only for Member States, but also for third countries and international organizations.

Russia was counting on work in such a CoE. Saw the CoE like that. From participation in such activities hoped to get the most part of dividends arising from membership. And these hopes also did not come true. As soon as the CoE absorbed the countries of Eastern and Southeastern Europe, it sharply slowed down in terms of standard-setting activities and switched to providing technical assistance to the “new recruits” in mastering the basics of democracy, the rule of law and the protection of Human Rights. The program of the Organization's activities approved by Strasbourg annually was divided into two parts. More weighty has become associated with technical assistance. Soon, it began to take away from CoE a predominant part of the time and effort, because it was additionally financed by the EU and the member states from its voluntary donations. As a result, there were almost no time and forces left for the implementation of other activities. No wonder that also in this respect the EU soon pushed the CoE far to the periphery. The standard-setting role of the Council, by and large, is a thing of the past. Separate bursts of activity, as in the case of personal bio-rights and regulation of the Internet, did not make the weather anymore. Moreover, the abnormal situation that arose was transmitted from year to year despite the fact that the “recruits” had long ago mastered all the basics and didn't need the original “educational programs” any more. Execution of such programs could have been easily entrusted to national and international non-governmental organizations that have “matured “and gained experience.

From the point of view of common sense and the objective need of the CoE Member States to move forward, rather than stagnate, the situation was aggravated by two more blocks of factors. Firstly, the CoE rushed to strengthen the system of control over the observance by states of obligations arising from membership and participation in various conventions, and overdid it. As a result, the Organization's mechanism has become too heavy. Budget funds have become systematically lacking: the money increasingly went to the implementation of international control over the preservation of what has already been achieved, rather than development. Constantly renewable attempts to simplify and rationalize the system of international monitoring of the fulfillment by states of their obligations turned out to be too timid. They lacked perseverance. The innovations undertaken in this area have done little.

Secondly, the desire of the EU and the majority of its member states to limit the Organization's agenda only to the issues of serving the ideals of democracy, the rule of law, and the protection of Human Rights caused even more damage to the multidimensional nature of the CoE activity. From the point of view of Brussels, it seemed

quite logical. The EU was already engaged in doing all other things. It long ago ousted the CoE from those fields of activity that were of interest to its Member States. In order to “educate” and pull up to itself the “peripheral” countries the truncated thematic “triad” was quite enough.

All Moscow’s efforts to convince the partners that the repetition of the past is becoming more and more meaningless, that the national traditions and specifics deserve a much more respectful attitude, that cooperation in Europe needs something else, have failed. Russians couldn’t impose their point of view on the EU because of the fact that the EU countries have a numerical majority in the Council, and didn’t want to go to the conflict and the gap until recently.

Thus, in terms of content, the CoE turned out to be in order of magnitude less valuable and useful organization for Russia than it could have been. But this is the fault, rather, of the circumstances: the CoE was the victim of the reformatting of the European space, the evolution of the EU and the unwillingness of Brussels to release Strasbourg to “free swimming”.

*Consequently, after overcoming the crisis in relations between Russia and the CoE or, better, in parallel with this, all the leading international players, all CoE countries and the Organization itself need to be constructive in addressing the threefold task. First of all once again assign rule-making as the main and leading activity of the CoE. Second, rid it of ballast assistance programs and technical assistance (immediately or in stages). Think about how to reassigned them to countries and NGOs, if there is any need for them at all. Third, radically review the agenda of the Organization. Recognize that Europe is facing fundamentally new challenges of populism, radicalism, migration pressure, reviving the old man-hating ideology in the new forms, degradation of representative democracy, getting used to the police regime and total control over the personal sphere through modern information and communication technologies, unpreparedness of European States to challenges of a new round of technological revolution and its consequences. Give priority to all these and other topical issues. Put their solution at the head of the CoE rule-making. In general, to turn the Council into a political and legal platform for building a new Europe and Greater Eurasia without dividing lines that organically combine different mechanisms of cooperation, interaction, integration and the formation of common spaces of various configurations that do not contradict each other.*

### **Miscalculation or lesson number 3: the disastrous consequences of Russia’s unwillingness to fight for the role of the leader of the Council of Europe**

As negative as the “drying out” of the CoE’s area of responsibility was the fact that Russia apparently made a strategic mistake by taking a “conciliatory” position regarding the Council and the policies pursued towards it by the EU and its Member States.

The old-timers of the CoE, to put it bluntly, were by no means eager to admit Russia as a member of the Organization. Still, in the past, Russia was the main and dominant strategic opponent. Moscow got used to dominate and dispose. Traditionally, Russian state overthrew the blanket and sought recognition of its status and leadership role. The original members of the Council did not want this to happen again in the framework of the CoE.

It turned out that their fears were not justified. Having joined the CoE, Russia was satisfied with the status of the “main payer”, which Germany, Great Britain, France and Italy had, and “calmed down” on this. Moscow did not show any particular activity in the CoE. For this, there were weighty reasons. Taking into account the fact that the CoE was mainly concerned with legal and humanitarian issues and was “sharpened” to serve the ideals that only Western Europe had been promoting in the past, Russia wanted to become just and simply the same country as everyone else.

In addition, it seemed somewhat ridiculous and naive to insist on more, bearing in mind that in the 1990s hardly anyone could call Russia a leader and benchmark in the field of democratic construction, the rule of law and the protection of Human Rights. By the way, almost no one in Russia had a systemic knowledge about CoE, about what it does and what its potential is. The Ministry of Foreign Affairs paid much more attention to NATO, the EU and the OSCE. The remaining ministries and departments knew only that part of the activities of the CoE, which belonged to their area of responsibility. Non-profit organizations were practically not interested in other aspects of its activity, except for social and Human Rights. There was simply no one to prepare and lobby a strategy of reformatting the CoE to the needs of Russia and intercepting the initiative in it. Separate staged and polemical publications could not influence the dominant approaches.

In the 1990s, when Russia only entered, then was getting acquainted with the CoE, the above reasoning logic was to some extent justified. In the 2000s, and even more so in the 2010s such logic became completely untenable. But inertia acted. Stereotypes were formed both within the country and with all other members of the CoE, which turned out to be extremely difficult to break. Moreover, any attempts by Moscow to seize the initiative were purposefully extinguished. Perhaps, if Moscow pursued a more “offensive”, proactive and tough policy in the CoE, this would have prevented the current crisis in relationship. Even during its chairmanship in the CoE, Russia did not manage to reverse the situation. Moscow has shown that it can effectively manage the Organization. Its potential is significantly higher than in many other countries or even most. She is able to orient the CoE to the solution of large and urgent tasks. No one can compare with it in the number of events held and the returns from them. In addition, Moscow has convincingly proved that it is not important for it to promote its own preferences, for which the chairmanship is quite suitable, but to seek and defend pan-European interests. Nevertheless, all the successes of Moscow almost instantly were consigned to oblivion. It did not manage to build an initiative policy line in relation to the CoE. Or did not consider it necessary.

Taking advantage of the fact that Russia did not do this, others, so that Moscow even potentially could not play the first violin in the CoE and beyond, relied on Russia's systemic “blackening”. With their credo they proclaimed the discrediting of everything that Russian authorities do, of their domestic and foreign policy, national legislation and law enforcement practice. Every step taken by them, every speech and statement of officials or, on the contrary, their absence, which was given a biased and tendentious interpretation, was examined through a magnifying glass. Others needed to neutralize even the possibility of a bloc of European States under Russia auspices.

From the very beginning, a great deal of work was carried out with the aim of shaping the image of Russia as an eternal “Loser” in the sphere of democratic construction, the rule of law and the protection of Human Rights. As a “non-democracy” and “under-democracy” or “imitation democracy”. Imperial power stuck in post-communist transit and resisting the most obvious things. The country that you need to drag, ponder, constantly monitor and educate. Society for which systematic violations are the norm, not the exception. (Yes, Moscow gave too many reasons for criticism. Russian politicians to some extent contributed to the emergence of such an image. But it's no excuse for Moscow's ill-treatment. To settle scores with your newfound partner doomed everyone to remain in captivity of confrontation, prevent overcoming its rudiments, create new obstructions on the way of building a common future).

For this purpose, a specially tailored technique was used. Sanctions were imposed on Moscow in the framework of the CoE in the form of biased monitoring of compliance with the obligations Russian authorities had to assume as a condition for entry. Although in respect of countries such as Latvia and Estonia, for example, it was discontinued. In order to make monitoring permanent and prevent its termination, the list of initial claims against

Moscow was systematically replenished with new ones, both real, which could be removed in principle, and purely evaluative, and therefore speculative. For any reason or for no reason at all, Moscow was accused of actions contrary to European standards, the adoption of laws violating them or unfair law enforcement. These charges were invariably followed by investigations, visits, preparation and discussion of reports.

In addition, a political construct was put into circulation, according to which a large number of complaints submitted against Russia to the ECtHR, and the fact that it surpasses all others in this extremely negative indicator and is the leading “client” of the ECtHR, is an obvious confirmation of the Human Rights misfortune in Russia. The fact that in terms of the number of cases brought against Russia per capita, it lags significantly behind many other CoE countries, was deliberately ignored. Another extremely important nuance consisted in the fact that Russia’s ability to have its own opinion on almost any issue of the European agenda, whether it concerned Baltic countries infringements of national minorities rights or the criminal nature of the bombing of Serbia, was explained in the framework of the CoE as a prove that on all of them everyone is keeping up and Moscow is not.

As further developments have shown, Russian politicians, parliamentarians, diplomats and experts should have been much more tough, uncompromising, consistently speaking out against all this nonsense, distortion, contrived accusations, the use of double standards. However, for the time being, Moscow did not want and did not consider it necessary to go to the conflict. It seems that this conciliatory policy and unwillingness to spoil relations ultimately have led to a conflict, a very deep one, maybe even fatal.

*Therefore, to overcome the current crisis in relations between Moscow and Strasbourg is half the battle. It is in the interests of Russia, the CoE, and Europe as a whole to go much further and agree that the Russian vision of the necessary evolution and readjustment of the CoE will be studied in the most benevolent vein and will eventually be reflected in the Organization’s official policy. For its part, the Russian authorities should develop a full-fledged strategy for activities in the CoE, the implementation of which would allow the country to receive a greater return on membership in the Organization and ensure recognition of Moscow’s leading role in determining its current and future agenda and main orientations. This could make it possible to further turn it into one of the supporting structures of the formation of the emerging Greater Eurasia. Naturally, the preparation and implementation of such a strategy would imply that Russia, all its state structures and representatives will sharply intensify their work on all the files administered and transferred to the CoE.*

#### **Error or lesson number 4: the inadmissibility of any condoning infringement of the principle of equality in the activities of the CoE and its main bodies**

The feeling that it will be a special, partial and often even frankly prejudicial attitude towards them in the CoE, the Russian authorities should have felt even by the procedure of joining the Organization. They showed the greatest possible openness; fulfilled all the requests of the reporters on Russia; gave them access to all centers of detention and other places reporters insisted on visiting. CoE representatives were not denied anything.

In response, Russia was faced with the fact that the procedure for the consideration of its application for membership in the CoE took two years, not half a year, as was the case with other candidates for membership (because, as the CoE insisted, Russia is so big: a whole continent). On top of that, the report on Russia made an unexpected and unacceptable conclusion that Russia, Russian legislation and law enforcement practice did not meet the high standards of the Organization, although no one authorized its authors to

draw such or any other conclusion. Then, in connection with the first Chechen war, consideration of the Russian application was frozen.

Later, in order to unfreeze it, the President of the Russian Federation, the head of the Government and the chairmen of both chambers of the Federal Assembly addressed Strasbourg and the leaders of European countries with an open letter, which gave official assurances that Moscow would strictly follow all CoE standards. An extensive review was attached to the letter, which explained in detail how the problems of bringing Russian legislation and practice into compliance with CoE standards would be solved.

However, even with this Strasbourg was not satisfied. Russia's admission to the CoE was conditioned by a longest unprecedeted list of requirements that Moscow has undertaken to fulfill. Part of the list was quite logical and reasonable and completely coincided with Moscow's intentions on reforming national legislation, improving it and speeding up state institutions development. However, some requirements were either demand-speculative (such as restitution, return of Romanian gold, etc.) or deliberately general and vague, which was later used to exert political pressure on Russia as a member of the CoE and invent new claims (of course, "for its own good", in order to "force forward"), and consolidate Russia into the positions of a country that can and is allowed both justifiably and absolutely groundlessly to blame for any and all sins and shortcomings: unacceptable pressure on neighboring countries, use of the term "near abroad" and of energy weapons, clampdown on freedom of the press and the opposition, holding insufficient fair elections, etc. It is characteristic that as soon as Russia joined the CoE, it received a special procedure on Chechnya. And already in the post-Yeltsin period, sanctions were introduced for the first time against the delegation of the Federal Assembly in the CoE Parliamentary Assembly.

Russia also experienced great difficulties with the General Secretariat of the CoE. A significant part of its employees saw in the membership of Russia new opportunities for building a prosperous Europe and for their personal career growth. But a third (!) of the General Secretariat signed a letter with a categorical demand not to lower the high standards of the Organization and not to accept Russia in the CoE. Therefore, in solving the most simple and everyday issues that depended on the General Secretariat, there were often unjustified difficulties. Programs of assistance to Eastern Europeans and countries of the former USSR were written in such a way as to take their execution out of the control of the common bodies of the CoE with Russian participation. The natural obligation of the Organization to ensure equal representation in the General Secretariat of citizens of the Russian Federation, in proportion to its contribution to the budget, has never been fulfilled.

Nevertheless, Russia invariably placed cooperation in the framework of the CoE above small political squabbles. Moscow pursued a purely constructive line in CoE and in relation to CoE. It lobbied for a positive and diversified agenda. It did everything to preserve a culture of working out solutions that could satisfy all countries. It calmly and purposefully used the potential of the Organization to defend her principled foreign policy positions and promote legal and institutional reforms within the country.

However, since the deployment of information war against Russia starting from 2012 and later of sanctions war, and the return of NATO and the EU to the policy of deterrence and confrontation, the continuation by Moscow of the former conciliatory policy in the CoE without its deep correction and addition to it of entirely new elements has become completely insufficient. Under fundamentally different international conditions, carrying out of the previous conciliatory policy turned into a deliberately losing one way game, fraught for Russia with unjustified losses.

Earlier the Committee of Ministers, the only main body of the CoE, vested with the authority to make binding decisions, worked in the spirit of searching for mutually

acceptable approaches and mutual understanding and tried to avoid any actions that violate the general balance of interests and are incompatible with the consensus culture and “family” traditions of the CoE. Now the atmosphere in it has changed. It sounded statements and declarations from the distant past, which, as it seemed, Europe left behind. Prepared documents acquired a one-sided focus. Objectivity has given way to value judgments. Bare accusations have replaced the search for optimal, benevolent, realistic approaches.

As for the CoE Parliamentary Assembly, it managed to place on Russia responsibility for all the negative processes in Europe and, in particular, rising tensions, militarization, the Crimea, events in the South-East of Ukraine, victims, casualties and hostilities. Not content with this, the PACE, as it became customary to it, introduced sanctions against the delegation of the Federal Assembly. Its members were denied the right to vote, the right to participate in elected and statutory governing bodies, the right to join the missions sent by the Assembly. In response, the delegation of the Federal Assembly habitually “slammed the door”.

Under previous international conditions, Russian parliamentarians would limit themselves to this. In an environment where the line of confrontation in NATO and EU policies triumphed over the line of cooperation in Europe, they considered that a conciliatory position regarding biased discriminatory measures was inappropriate and defeatist. Parliamentarians represent the people. Lowering the rights of representatives of the people is equivalent to lowering the rights of the people themselves. This is not parliamentarians, but the whole country and all Russians, who were deprived of the right to vote. This is unacceptable. Unnatural. It is a violation of the basic principles of everything: democracy, international law, international cooperation, non-discrimination, equality of nations. To consider the infringement of the rights of parliamentarians as a private matter is wrong. The whole Organization should be responsible for unfriendly, hypocritical, illegal, unacceptable actions of the Assembly.

The executive branch agreed with this logic and arguments and imposed retaliatory sanctions on the entire CoE: first, it reduced the contribution to the Organization’s budget by one third, then, since it had no effect, it completely stopped paying. An additional and very weighty argument to the Russian authorities was given by the opinion of the COE legal adviser. It stated that the CoE Charter does not provide for the possibility of discrimination of member states or their representatives on a national basis. The statute does not endow PACE with such powers. Accordingly, PACE committed a violation of the Charter in respect of the delegation of the Federal Assembly.

But if so, then PACE committed a violation against the Russian Federation as a whole. It must be terminated. The relevant PACE resolutions are declared invalid or not valid from the moment of adoption. The Russian Federation and the delegation of the Federal Assembly representing the Russians are restored in their rights.

The position taken by the Russian authorities, in the end, is very clear and concise: stopping the violation and restoring the delegation of the Federal Assembly in its rights is not enough. The rules of procedure of the Parliamentary Assembly should be modified in such a way as to exclude the possibility of introducing arbitrary discriminatory restrictions.

Only such a position, as with all other discriminatory practices that violate the principle of equality and equality, should have been taken by the Russian establishment not nearly 20 years after joining the CoE, but from the very beginning. For your rights you need to be able to fight. You should protect them under any circumstances.

And for this, Russian authorities, parliamentarians, representatives, experts must work in the CoE, as in other international organizations, tirelessly. Take part in all discussions on any questions, both related to the Russian Federation, and, it seems, in no way directly

related to it. Since in fact there are no such questions. Everything that is being done in Europe, what is happening in each of the European countries, affects Russia as one of the leaders of Greater Eurasia, as an integral part of European society.

*Therefore, if Moscow and Strasbourg succeed in overcoming the current crisis, preventing its recurrence and bringing the CoE to the trajectory of sustainable constructive cooperation will be possible only if the reasons for the crisis have been eliminated. Accordingly, Moscow, the EU and third countries will have to agree on fundamentally new rules of the game in Europe. Their essence is to erect insurmountable barriers to the use of information warfare, ideological struggle and unfair political competition tools against any of the CoE members as the basis of true, not fake, collective security on the continent, and come up with procedural and institutional guarantees that any invented fears and accusations will be translated into the plane of friendly mutually beneficial co-creation, and not confrontation and spitefulness.*

#### **Misunderstanding or lesson number 5: there are no sacred cows – an initiative creative rethinking of previous experience is required**

Another fault line in relations between Moscow and Strasbourg was the increasingly energetic judicial rule-making activity of the ECtHR. It led to the formation of case law, which in some part is far from the original meaning of the ECHR, as well as general international law and national law of individual States-parties.

The ECtHR made an enormous contribution to the modern understanding of international Human Rights law. The ECtHR added to the unprecedented efficiency of the regional system for the protection of Human Rights. It completed the original text of the ECHR and the multiple protocols to it with a variety of new meanings and an interpretation that gave the individual rights of the individual a complex character; convinced the states of the correctness and legitimacy of the basic concepts of the interpretation of the ECHR developed by him, including: the teleological approach, the Convention as a “living developing organism”, a continuing offense, the effective use of individual rights; turned Human Rights law into a kind of international or at least European constitutional law.

All this was done by the ECtHR on the basis of and in the development of the mandate that was given to him by the participating States. They appointed him an ECHR Cerberus and gave a monopoly on the interpretation and application of the provisions of the ECHR. It was left to its discretion when and to what extent to go on with judicial activism, judicial rulemaking. Convention States-parties themselves admitted that the ECHR has a framework nature, and its actual reading and concretization are completely dependent on the case law the ECtHR forms. This case law is an ECHR in action. The ECHR does not exist in isolation from the law enforcement practice of the ECtHR. The ECHR and case law form a coherent whole.

States-parties themselves legalized a large-scale and at times arbitrary expansion of the competence of the ECtHR. Contrary to the letter and spirit of the ECHR, they allowed him to prescribe to the national authorities what changes to make to the current legislation in the interests of a quick and timely solution of the systemic and structural problems it reveals. They themselves instructed him not to be content with merely stating whether the provisions of the ECHR were violated or not, but to prompt the national authorities what they need to do to remedy the situation.

However, at some point, the ECtHR ceased to reckon with the fact that it was created by the participating States; that they are the source of its legitimacy and all its powers; they determine what and how he should do. The ECtHR exists for them, and not vice versa. It should not and is not entitled to go beyond the limits set by them.

This framework, at a minimum, consists of: subsidiarity (meaning that the main responsibility for ensuring Human Rights lies with the states themselves, whom the ECtHR only helps); the discretion of the states (implying that they, taking into account their traditions and national specifics, decide how to implement the provisions of the ECHR and act when the full consensus on the content of a particular right of an individual on the continent has not yet formed); constitutional traditions, the interpretation of which can only be given by constitutional courts or equivalent to them highest courts of the States-parties. The Strasbourg Court should not forget that upon ratification of the ECHR, the States committed themselves to respect the Human Rights that are written in the Convention, in their current reading, and not pre-thought or voluntarily established by its authority. The Strasbourg Court is not an international body for the resolution of political disputes between states: this area is taboo for its deliberation.

No one has ever, under any circumstances, authorized the ECtHR to interfere in resolving international conflicts, to speak out about what is required to resolve them, and to indicate whether the countries involved in them act in conformity with what is due, let alone powers guaranteeing respect for a truce and/or a cease-fire. No one has ever, under any circumstances, allowed him to rewrite history and, most importantly, the results of the Second World War, speak out about these results and give them its own interpretation. As well as to interfere in the States-parties internal political processes.

Starting with the case of Ilascu against Moldova and Russia and the case of Kononov against Latvia, the ECtHR went against these “golden” rules. In one case, the ECtHR whitewashed the actions of the central authorities of Moldova in the Transnistrian conflict and blamed the possible violation of the ECHR in the self-proclaimed republic on Russia under the pretext that it allegedly exercised real sovereignty over this territory at that time.

In the other, it supported the conviction of a fighter against fascism being at the command of a partisan detachment, who had been falsely convicted by the highest national court for the war crimes he had not committed, thereby turning the conclusions of the Nuremberg Tribunal on its head.

Subsequently, referring to its previous judicial decisions, which are at least controversial, the ECtHR continued to impose responsibility on Russia for any violation of Human Rights in Transnistria. Now the ECtHR substantiated its purely value judgment, which has no basis in any of the existing legal systems in the world, by a conclusion that, in its opinion, Moscow exerts a decisive influence on this Moldavian territory, and without the support of M

From the point of view of elementary logic, the legal positions developed by the ECtHR lead the situation with the protection of Human Rights in the territories of the self-proclaimed republics into a dead end. The ECtHR proclaims that there should be no gray areas in which the ECHR would not operate, but in fact creates them. It proceeds from the fact that its decisions must necessarily be executed, but approves such decisions, the very possibility of execution of which is inevitably linked to the violation of the sovereignty of states and existing international law.

The way out is prompted by the practice of pragmatic international recognition of acts and actions of local and other authorities of Northern Cyprus and the same Transnistria. For the ECtHR, such acts and actions do not exist – they are akin to the “original sin”, since under the current international law the self-proclaimed republics themselves do not exist: they are unrecognized. In accordance with current international practice, by contrast, they are quite legitimate. This includes notaries’ acts, marriage certificates, court orders, certificates of education, driving licenses, and etc.

It is obvious that the ECtHR took unreasonable, dubious, sometimes even extremist position on complaints of certain types only because States-parties avoid a close dialogue

with the Strasbourg Court and abstain from codifying the changing international human rights law, and from developing guidelines that international justice should follow. At the 2018 Copenhagen conference in the framework of the Interlaken process, the States-parties made a very necessary attempt to embark on a revision of the previous, not justified approaches. Frightened by an even greater degree of undermining the already shaky prestige of the ECtHR, they retreated under pressure from Human Rights organizations. Final documents initially prepared by them were emasculated. But they can and must be taken as the basis for coordinating the next steps.

*Thus, overcoming the crisis in relations between Moscow and Strasbourg should not be limited only to political issues concerning the reorganization of the CoE and its reformatting. It could introduce the judicial activism of the ECtHR within the acceptable framework established by the States and launch the long overdue process of codifying international Human Rights law.*

Such development, which demonstrates that all five lessons described above have been learned, will benefit all European nations. It will make it possible not only to save the CoE, but also to strengthen it qualitatively, clarify its vocation and give it a second wind.



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