
Russia and the Council of Europe: Ten Years Wasted?



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Summary

In 1996, the Russian Federation joined the Council of Europe both in spite of and owing to its democratic failings. Accession was, in fact, seen as a step toward democratic conversion. Ten years on, as the Council is presided by Russia for the first time, an initial appraisal can be made, using the following question as a guideline: to what extent has the Council of Europe influenced Russia, and to what extent has Russia—taking into account observed regressions—modified the current nature of the Council?

Introduction

Relations between the Russian Federation and the Council of Europe (CoE) are marked by a profound contradiction, first visible when the country joined the Council in 1996 and subsequently when it took over the Chairmanship of the Council's Committee of Ministers ten years later. On the one hand, Russia's accession in 1996 was seen as the natural recognition of its European identity and as an encouraging and productive factor of its democratic transition. On the other hand, Russia's democratic divisions in 1996 and its recent regressions—which are indisputably far more problematic—during its Chairmanship of the Council, weaken the Council's authority.

The development of Russia-CoE relations remains profoundly paradoxical: while supposedly consolidating its alignment to values upheld by this institution—indeed Russia's accession has had a certain influence on its conduct—it has neither averted nor prevented democratic regression. In this context, the Russian Chairmanship raises two key issues, first in regard to the presence of a Member State at the heart of the CoE which is "out of step" in terms of values, and second in regard to the credibility and capability of this very institution to spread democratic values and perpetuate its role as guarantor of human rights.

Accession Conditions: A Gamble on the Future

Under President Boris Yeltsin, Russia filed an application for accession to the Council of Europe for the first time in May 1992, after the Russian Federation's Parliament obtained special guest status from the Parliamentary Assembly in January 1992. Although inquiries into the state of democracy in the country arose as it acceded in 1996, several "worrying developments (...), which reflect a clear reversal of the trend toward liberalization which prevailed when Russia filed her request for membership"¹ appeared in the interim. Among these "politically worrying developments" were the dissolution of Parliament "by artillery fire" in October 1993; the tightening of Russia's foreign policy (following the replacement of Andrey Kozyrev, the minister of foreign affairs, by Yevgeny Primakov in January 1996); the success of nationalist and neo-communist parties in legislative elections in 1995; and the side-lining of Sergei Kovalev, the Chairman of the President's Human Rights Commission and Human Rights Commissioner for the Russian parliament, publicly opposed to Russia's military involvement in Chechnya. Finally, Moscow's reticence to ratify agreements on disarmament that had already been signed and its increasing bellicosity toward former Soviet Republics were put forward as evidence to highlight Russia's significant handicaps regarding the Council of Europe's democratic requirements. The war in Chechnya, which greatly damaged Russia's image and caused Russia's accession process to be suspended (decision of 2 February 1995), clearly counts among these factors.

In 1996, few doubted that "Russia is still far from being a democratic state complying with the criteria of a constitutional state in which laws, rules and basic human rights are mostly respected."² Certain representatives also warned against the danger of "opening the doors of the Council of Europe, which has the institutional responsibility to defend human rights and the rule of law, to a country that leaves much to be desired in these respects."³

¹ Quoted from the Italian delegate, Mr. Caputo. All quotations concerning debates regarding Russia's entry to the Council of Europe are extracted from "Russia's request for membership of the Council of Europe (25 January 1996)", in Council of Europe—Parliamentary Assembly. Official Report. 1996 ordinary session (First Part). 22-26 January 1996. These reports are available at <www.ena.lu/mce.cfm>.

² Quoted from the Hungarian delegate, Mr. Szalay, *idem*.

³ Quoted from the Italian delegate, Mr. Caputo, *idem*.

However, these reservations did not lead to the rejection of Russia's candidacy. On the contrary, it was accepted under the banner of a twofold argument, combining geopolitical pragmatism and democratic hope. In fact, the majority of speakers supported Russia's candidacy, evoking the interests of Europe and the impossibility of marginalizing such an important state, whose European roots should supposedly "attract" toward Western values.⁴ This attempt at integration was also followed in the name of the Council's specific interests as an international organization.⁵ Finally—and this argument was systematically used in the debates concerning criticism of Russia's democratic maturity—the willingness and democratic progress achieved since the fall of the Soviet Union had to be taken into consideration, beyond the 1996 situation. In other words, Russia was admitted in the name of an "up-and-coming" democracy and the risks entailed in its possible isolation, even if the decision was made without any real enthusiasm.

In reality, this accession is based on a fundamental misunderstanding between Russia and the CoE regarding the significance of integration, which can be summed up in two short interrogations: "Where do Europe's interests lie?" and "What are the interests of democracy?"⁶ Retrospectively, the speeches made by Russian representatives portend this misunderstanding. It is useful to recall the declarations made by Mr. Abdulatipov⁷ who highlighted the Chechens' exclusive responsibility in the conflict taking place and the pacifying role of the Russian army, while Vladimir Zhirinovski launched vicious attacks against the West. The misunderstanding increased at the outbreak of the second war in Chechnya. In fact, the elected President, Aslan Mashadov, was not able to stabilize the situation in the Republic after the Khasavyurt agreement (31 August 1996) put an end to the first war. Sharia law was introduced in February 1999, and hostage-takings multiplied. In August 1999, Chechen commandos entered the territory of the Republic of Dagestan. This intrusion, followed by a series

⁴ The French delegate, Mr. de Lipkowski, said, that "when the Soviet Union collapsed, Russian diplomacy turned resolutely away from confrontation and toward trusting co-operation with the West, in the hope of joining our various organizations. (...) It has the supremely humiliating impression of being left to cool its heels in the waiting room, while some of its former satellites—which have actually made less headway toward democracy—are allowed into the Council of Europe before it. Double standards. (...) These frustrations are fuelling ultra-conservative propaganda, based on the old idea of the enemy without, and the result of this will be confrontation, not co-operation", Council of Europe—Parliamentary Assembly. Official Report, *op. cit.*

⁵ According to Mr. de Lipkowski, "Russia's joining will give our organization a new impetus and authority. We shall be the only pan-European organization (...) We shall be the only forum for dialogue embracing all countries of a Europe whose divisions we shall have at last healed," Council of Europe, Parliamentary Assembly. Official Report, *op. cit.*

⁶ As formulated by Mr. Masseret, French member of the Parliamentary Assembly of the Council of Europe. "Russia's Request for Membership of the Council of Europe (25 January 1996)", in Council of Europe—Parliamentary Assembly. Official Report, *op. cit.*

⁷ Ramazan Abdoulatipov, originally from Dagestan, was a member of the State Duma in 1996, after having sat on the Federation Council (of which he was Vice-President from 1993 to 1995). Today, having been Vice-President in Primakov's government, he is the Russian ambassador to Tajikistan.

of apartment buildings explosions in Russia, triggered the second war in Chechnya.

The Parliamentary Assembly of the CoE reacted by voting a series of resolutions condemning the conduct of the Russian army. A delegation from the Assembly, headed by Lord Judd, went to the North Caucasus in March 2000. Its members expressed that they were "deeply disturbed by the distress and the trauma suffered by civilians as a result of indiscriminate and disproportionate use of force by the Russian military."⁸ The delegation called for an immediate cease-fire to be respected by both sides; free access for humanitarian organizations to the area; immediate negotiations to begin on a political solution to the conflict with the elected Chechen representatives; as well as thorough investigations in cooperation with international representatives of all alleged violations. As Russia did not respect the main political requirements (immediate cease-fire and opening of political negotiations), the Assembly recommended the Council of Ministers suspend Russia's membership of the CoE and withdraw the Russian delegation's right to vote in April 2000 (a situation which lasted until January 2001).

The withdrawal of its voting right provoked violent reactions from the Russian side. The Russian delegation (except for three deputies from right-wing liberal parties Yabloko and the Union of Right Forces (SPS), including Kovalev) marked the disruption conspicuously by walking out of the Council's meeting hall. The Minister of Foreign Affairs expressed his astonishment and regret as well as fears of a further degradation of CoE-Russia relations. Feeling misunderstood and accused of being solely responsible for the outbreak of the new war, the Russians denounced the CoE's unilateral approach. Reciprocal grievances, accusatory rhetoric, exchanges of sharp, even violent words, and threats to suspend Russian contributions arose at that point. This rupture will never be fully healed .

Ten years on, misunderstandings persist and grievances continue to be voiced in a context renewed by Vladimir Putin's coming to power in 2000 and the Russian Chairmanship of the CoE.

⁸ Findings of the Council of Europe Parliamentary Assembly mission to Moscow and North Caucasus, 13 March 2000, <<http://assembly.coe.int/ASP/Press/StopPressVoir.asp?CPID=1008>>.

1996-2006: Progression, Stagnation or Regression?

The assessment, ten years on, is quite mitigated. In a recent declaration, several non-governmental organizations (NGOs) summed up the situation, estimating that "although [it] has made considerable progress (...) Russia has failed to follow up on a number of other commitments it made, when becoming a member of the Council..."⁹

The Russians, for their part, have acknowledged this situation and have tried to provide the necessary explanations. They thus stress that two-thirds of the 25 commitments made in 1996 have been honored.¹⁰

Konstantin Kosachev, Head of the Russian delegation to the CoE's Parliamentary Assembly, stated that Russia had voluntarily made more commitments than any other state in terms of highly "romantic expectations" in the first half of the 1990s. This phase corresponded with the illusion of a "mechanical transfer of standards, norms and regulations from an enlightened Europe to Russian soil," sufficient for creating democracy in Russia.¹¹ Moreover, he emphasized that accession to the CoE, even with such demanding requirements, was a key element of the ruling class' electoral campaign and seeking of international legitimacy. In the end, certain commitments would be outside the field of CoE competence (such as the complete withdrawal of Russian contingents from Moldova in 1999). According to Kosachev, this "surplus" of commitments meant that Russia had been "played a dirty trick", incapable of honoring these commitments for reasons that did not depend on its goodwill.

In terms of actual progress—directly pertaining to the impact of CoE integration—the implementation of the European Convention for the

⁹ Amnesty International, Center for the Development of Democracy and Human Rights, Center "Demos", Human Rights Center Memorial, Civic Assistance Committee, International Helsinki Federation for Human Rights, Moscow Helsinki Group, and Union of Committees of Soldiers' Mothers of Russia. Public statement, 19 May 2006, *AI Index: EUR 46/028/2006*, available at: <<http://web.amnesty.org/library/Index/ENGEUR460282006?open&of=ENG-RUS>>.

¹⁰ According to Russia, progress made includes, in particular, an imposed moratorium on the death penalty; a law transferring the supervision of the prison system to the Ministry of Justice; the introduction of a new penal code in 1997; the nomination of a national representative for human rights; and the nomination of a Russian judge to the Court in Strasbourg, etc.

¹¹ Interview of K. Kosachev by the *Parlamentskaya Gazeta* [Parliamentary Newspaper], 1 July 2005, <www.duma-er.ru/pubs/pubs/pubs/pubs/9909>.

Protection of Human Rights and Fundamental Freedoms is indisputably one of the most significant elements of Russia's evolution. Following Russia's accession, Russian citizens have been able to petition the European Court of Human Rights (ECHR) in Strasbourg directly. Moreover, Russia is the country with the most complaints filed against it in the Strasbourg Court, with 10,583 complaints recorded in 2005, ahead of Poland (5,033 complaints in 2005). In 2005, 17% of pending decisions involved Russia, ahead of Turkey (13% of pending requests).¹²

The Court in Strasbourg's judgments condemning Russia for violation of the Convention can have a political impact. Even if the decisions are not always executed immediately, they mean that files cannot be "buried." Thus, in the *Ilașcu* case regarding the abuse of security services,¹³ the Parliamentary Assembly of the CoE denounced Russia's inaction and the absence of "conclusive results regarding the reparation of wrongs done to the plaintiffs while carrying out investigations into this abuse."¹⁴ In fact, two years after the judgment, two of the four plaintiffs were still imprisoned in Transnistria, a separatist region of Moldova supported by Russian authorities.

It must also be highlighted that, beyond Russia's political reluctance to implement certain decisions, there are sometimes internal obstacles that slow down the implementation of the Court's decisions: this is the case with custody detention, for example, or legal security issues and the overall efficiency of the legal system. However, following the *Kalashnikov v. Russia* decision on 15 October 2002, in which Russia was condemned for violating article 5 paragraph 3 (excessive length of detention) and article 6 paragraph 1 (excessive duration of the diligent penal procedure against the plaintiff), Russia was forced to adopt a series of measures (amending the penal code and the code of penal procedure), which enabled the number of people remanded in custody to be reduced and conditions of detention to be improved.

The influence of Strasbourg can also be seen by the incorporation of *Convention for the Protection of Human Rights and Fundamental Freedoms* clauses in Russian law, and Russian courts' acknowledgment of legal precedents set in Strasbourg. Thus, the Russian Constitutional Court often uses the Convention of 1950 as an interpretative instrument for Russian constitutional laws. The principles carried by the Convention thus serve as points of reference. In addition, although the Russian Constitutional Court is not legally bound by the jurisprudence of the European Court, it frequently refers to the European Court to pass judgment. By way of example, in a case regarding freedom of religion (23 November 1999), Russia's Constitutional Court directly referred to an ECHR decision from 25 May

¹² European Court of Human Rights, Statistics analysis 2005, available at <www.echr.coe.int/NR/rdonlyres/7E3511A4-2688-4DCC-B730-2AAAA7B17E59/0/COURT_n1779556_v1_analyse_statistiques_2005__publique_.pdf>.

¹³ The case of *Ilașcu et al. v. Moldova and Russia*, 48787/99, judgment of 8 July 2004.

¹⁴ Press release from the Parliamentary Assembly of the Council of Europe—552(2006) of 2 October 2006.

1993, *Kokkinakis v. Greece*. Consequently, ECHR jurisprudence is a "non-negligible constructive force."¹⁵ In this regard, the progressive propagation of European standards and the convergence of legal regulations are promoted.

At the same time, a "democratizing" impact can be observed in the cooperation between other bodies of the Council of Europe and Russian representatives. The Venice Commission—an advisory body affiliated with the CoE, which offers assistance, advice and "constitutional first-aid" to individual states—including the examination of constitutional and legislative texts—has thus provided recommendations. In May 2004, the President of the Russian Constitutional Court asked the Venice Commission to give advice on a draft constitutional bill.

However, alongside this indisputable progress, serious queries remain regarding Russian democratic development and the very principle of democratization, as the gap between European standards and the reality of Russian policy is far from being bridged. These queries were expressly voiced by the key NGO players implicated in the defense of human rights in Russia: according to the conclusions reached by these organizations, "the government's respect of fundamental human rights and freedoms, particularly in terms of political freedoms, has considerably reduced in Russia in recent years".¹⁶

Two particular issues are the object of virulent criticism: Chechnya and capital punishment. The Russian Federation has fallen behind on these matters, despite having made binding commitments when acceding in 1996.

In fact, the North Caucasus is a region where a very high number of infringements of fundamental rights are still registered. As stipulated in the wording of Russian accession, the procedure—interrupted in February 1995 due to the conflict in Chechnya—was only resumed "on the grounds that Russia was henceforth committed to finding a political solution and that alleged and documented human rights violations were being investigated".¹⁷ Yet, according to the NGOs, Russian troops continue to indulge in unjustified pre-trial detentions, disappearances and extra-judicial executions in an "overwhelming climate of impunity."¹⁸

Several complaints are currently being examined by the ECHR, such as the successive disappearances of Said-Hussein and Said-Magomed Imakaiev. Despite denials and contradictory statements from Russian authorities, and the refusal to produce documents requested—on the grounds that they are state secrets—the enquiry has nevertheless progressed and has established Russia's responsibility. Said-Magomed Imakaiev's wife, who filed an appeal for the disappearance of her son and

¹⁵ M.-E. Baudoin, *Justice constitutionnelle et transition démocratique [Constitutional Justice and Democratic transition]*, Presses universitaires de Clermont-Ferrand / LGDJ, Clermont-Ferrand, 2005.

¹⁶ Council of Europe—Parliamentary Assembly. Official Report, *op. cit.*

¹⁷ Opinion No. 193 (1996) on Russia's request for membership of the CoE, available at: <<http://assembly.coe.int/documents/AdoptedText/ta96/EOP193.HTM>>.

¹⁸ Public statement, Friday 19 May 2006, *AI Index: EUR 46/028/2006*, available at: <<http://web.amnesty.org/library/Index/ENGEUR460282006?open&of=ENG-RUS>>.

her husband, successfully obtained Russia's condemnation, along with 100,000 euros for material and moral damages as well as legal and court expenses.¹⁹

The second subject giving rise to much criticism is the Russian attitude toward the death penalty. In fact, even though a moratorium on the death penalty is in effect and no execution has taken place since 1996,²⁰ the Russian government has still not ratified the sixth Protocol of the European Convention regarding the abolition of the death penalty. This "inaction" is even more incomprehensible given that Russia indicated a precise schedule for the adoption of this measure (three years) in a letter dated 18 January 1995, signed by the four highest figures of authority in the state (President Boris Yeltsin, Prime Minister Viktor Chernomyrdin, President of the State Duma Ivan Rybkin, and President of the Federation Council Vladimir Shumeyko). The Council of Europe has always made the abolition a fundamental condition of membership. In May 2001, Lord Russel-Johnston (President of the Parliamentary Assembly) made a solemn declaration to recall its fundamental nature and to regret declarations made by high-ranking Russian officials in favor of suspending the moratorium and resuming capital punishment. It must be stated that, in this area, the situation may even develop quite rapidly. Indeed, the basic principle underpinning the moratorium was the fact that the death penalty could not be applied in Russia due to holes in the legal system (since not all subjects of the Federation have civil juries), and only Chechnya still fails to meet this condition. As civil juries are to be set in place in this Republic soon, the moratorium risks being abolished. It must here be reminded that more than 950 people are currently benefiting from the moratorium: for 697 people, the death penalty was replaced by life imprisonment in five high-security prisons; for 211, by sentencing to 25 years' imprisonment; and for 51 people, by 15-20 years' imprisonment.²¹

Russian public opinion is largely against the abolishment of the death penalty. A survey by FOM (Russian Public Opinion Foundation) of 23 February 2006 indicates that 74% of Russians defended the death penalty (compared with 80% in 2001) and only 15% are opposed. Fifty-six percent believe that Russia made a mistake in introducing the moratorium in 1996, and 28% that Russia was right to do so. A full 63% believe that capital punishment should be re-introduced, while only 4% believe that it should be removed definitively, and 23% believe that the moratorium should be kept without capital punishment being legally abolished.²² Overall, the population is in favor of the death penalty, even in cases of corruption and economic crimes. Capital punishment also has the support of representatives of the Russian elite. In March 2002, over 100 people representing the spheres of culture and science (including Nobel Prize winner Zhores Alferov and

¹⁹ Judgment of 09/11/2006, available at: <<http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionSimilar=9645663&skin=hudoc-fr&action=similar&portal=hbkm&Item=1&similar=englishjudgement>>.

²⁰ The last death penalty sentence was carried out in September 1996.

²¹ RIA Novosti, 27 May 2006, <www.rian.ru/review/20060527/48700838.html>.

²² <<http://bd.fom.ru/report/map/d060817>> (in Russian).

academic Leonid Abalkin) addressed a letter to Putin, demanding that he waive the moratorium for particularly serious crimes, indicating that it had been introduced "against the will of the people under political pressure from the West."²³ The Duma is against ratification (namely, political parties LDPR, KPRF, *Rodina*, except *Edinaya Rossya*, which is very divided on the subject). The issue was raised with renewed force following the Beslan crisis, where a commando *boevik* (militant), Nurpashi Kulaev, had survived. The Supreme Court of North Ossetia-Alania recognized that the terrorist deserved capital punishment but, because of the moratorium, he was sentenced instead to life in a high-security prison.

President Putin does not wish to settle this issue himself. In February 2006 at a meeting with journalists, he declared that he was personally against the death penalty, but that he had to take the public and the deputies' opinion—which he knew was negative—into consideration.²⁴

In addition to these two subjects crucial to the CoE, criticism also abounds in regard to Russian criminal law. The public prosecution authority needs to be reformed so that the *Prokuratura* conforms to democratic standards: in fact, close subordination of the Prosecutor General (the Russian equivalent of the Attorney General) to the executive branch is incompatible with the principle of the separation of powers. For the associations defending human rights this lacuna is even more detrimental, given that it entails a strong reticence on the part of Russian authorities to cooperate with organizations such as the European Committee for the Prevention of Torture (CPT). In fact, although CPT inspectors often have access to detention zones (even if the CPT interrupted an inspection in Chechnya on 1 May 2006 after it was denied access to the village of Tsenteroy), Russia is still opposed to the publication of this Committee's reports.

Finally, the last series of comments concerns the respect of fundamental rights and democratic principles: at the point when it began presiding the Council of Europe, Russia under Vladimir Putin was in a considerably regressed situation compared with its situation in 1996. Not only were commitments made when it acceded not fully met, but regulations and political practices regarding the exercise of power in 2006 were less democratic than those of 1996, even though Russia had been admitted in the hope of democratic progression.

No matter how real this "democratic regression of Russia" is, it must nevertheless be qualified. The continuity between the Yeltsin and Putin mandates cannot be ignored: both have acted within a presidential institution, which has held great power since 1993. Since the Russian constitution came into force, there has been no real institutional, political or legal opposition force to counterweight the presidential authority.

²³ *Rossia spolzaet v bezdnu* [Russia Speeds Toward the Abyss]. Open letter from politicians, scientists, military personnel, and Russian artists to Putin, March 2002, <<http://news.pravda.ru/politics/2002/03/08/38048.html>>.

²⁴ Meeting with Spanish journalists, official site of the Russian President <www.kremlin.ru/text/appears/2006/02/101129.shtml>.

Nevertheless, since Putin's election, certain reforms (restructuring of political parties and the electoral law; considerable reforms to Russian federalism; a law concerning the control of NGOs; the creation of a Public Chamber) and certain practices (tighter control of the media) have further strengthened the President's weight, thereby increasing the concentration of power.

In June 2005, these issues were at the heart of a bitter debate in terms of the Parliamentary Assembly's report on the Russian Federation's honoring of the obligations and commitments it made in 1996.²⁵ The report particularly highlighted the extent to which the vertical reinforcement of power undermined the system of checks and balances, indispensable for the normal functioning of a democracy. More specifically, the Parliamentary Assembly denounced "a situation (...) clearly incompatible with the basic democratic principle of the separation of power between legislative and executive bodies."²⁶ The Russians, for their part, see most of their contested political reforms as merely conforming to the practices of certain European countries (such as the new procedure for selecting governors, which was analyzed by the Venice Commission and finally recognized as conforming to the federalism models within Europe). As far as the Russian party is concerned, talk of democratic regression stems from subjective analysis and opinions promoted by the Baltic States, Poland, Ukraine and Georgia.²⁷

"Democratic regression", therefore, is not perceived as such by Russia, where, on the contrary, the elite and the population believe they are living in an era of improved economic and political living conditions. From this viewpoint, Russia's relation to the CoE can be used as a gauge of its transition. Russia's involvement must be understood as reflecting its overarching desire for multilateral diplomacy, manifested by its systematic pursuit of international organizations. The CoE, therefore, is part of Moscow's search for recognition and international respectability, which began in the Yeltsin era. The Kremlin is absolutely not considering the possibility of quitting this organization (even if marginal voices, such as Duma Deputy Nikolay Pavlov of the *Rodina* party, suggest so). For Russia is very self-conscious of its image abroad: while using multilateral fora to alter its partners' evaluation criteria, it is always asserting its specificity. In fact, it is frequently heard from the Russian side that the problems encountered are unprecedented, and that it would consequently be counter-productive to apply imported models. After the disappointments of the 1990s, Russia, finding new strength as an energy power, is now bent on asserting its national values above all else. The term "sovereign democracy" (coined by Vladislav Surkov, Deputy Chief of the presidential administration and discrete Kremlin ideologist)²⁸ sums up the two sides of Russian democracy

²⁵ Resolution 1455 (2005) on the honoring of obligations and commitments by the Russian Federation made in 1996,
<<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta05/eres1455.htm>>.

²⁶ *Ibid.*

²⁷ Interview with K. Kosachev, *op. cit.*

²⁸ V. Surkov, "Nacionalisatsia budutcheho: paragrafy pro suverennyu demokratiyu" [Nationalization of the Future: Paragraphs on Sovereign Democracy], *Ekspert*, no. 43, November 2006.

in a nutshell: democratic values are neither contested nor rejected, but subordinated to national interests. This logic is based on the refusal to undergo foreign supervision and meddling. Yet the decisions of the CoE are seen as such in Russia, and are thus a source of irritation and misunderstanding. These tensions are also found in relations between Russia and the EU, embodied by the debate over interests and values. The Russian Chairmanship of the Council of Europe has re-ignited this uneasiness all the more since the Russian party has not concealed its intention to "readjust", or even "de-politicize" (according to Kosachev's words) this organization, which, in the eyes of Russian authorities, has become a channel of political pressure used by "certain countries" to "teach others a lesson."²⁹

²⁹ <www.droits-fondamentaux.prd.fr/codes/modules/articles/article.php?idElem=949489183>.

A Council of Europe Undermined from the Inside?

In the course of the debate over accession, a certain number of speakers believed that Russia would have a positive effect on the CoE. According to them, Russia's presence was to endow the Council with European geographical credibility and renew its stature: "turning Russia down would greatly reduce the CoE's role. Many of its members are on the waiting list to join the European Union—so much so indeed, that the Council is in danger of turning into a branch office or a human rights museum. (...) On the other hand, Russia's joining will give our organization a new impetus and authority."³⁰ At the time of the Russian Chairmanship, certain representatives began openly evoking a negative effect and—above all—the potential risks the Chairmanship could entail regarding the functioning and redefinition of Council objectives. In fact, Russia acceded to the Chairmanship without fulfilling all its commitments, without applying certain decisions of the European Court (for example in the Ilaşcu case), and remaining the only country in the CoE where capital punishment has not yet been legally abolished.

These real or supposed concerns (which are also reminders of certain critical Russian statements made toward the Council in particular by Zhirinovski during the accession debate) reflect a persistent misunderstanding between the Council and Russia, as both are undergoing profound identity crises.

The Russian Chairmanship has presented a list of priorities.³¹ Although overall these priorities seem to subscribe to a continuation of the Council's actions (reinforcing national human rights protection mechanisms; developing human rights education; protecting minorities; developing public participation), some were interpreted as a desire to re-direct the institution.

According to its Minister of Foreign Affairs, Sergei Lavrov, Russia's argument is that the Council of Europe has not always proven to be equitable, as it employs "double standards" in assessing the democratic development of certain states. For example, "the extremely high attention

³⁰ Russia's Request for Membership of the Council of Europe (25 January 1996), *op. cit.*

³¹

<[https://wcd.coe.int/ViewDoc.jsp?Ref=PR293\(2006\)&Sector=secDC&Language=lanEnglish&Ver=original&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE](https://wcd.coe.int/ViewDoc.jsp?Ref=PR293(2006)&Sector=secDC&Language=lanEnglish&Ver=original&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE)>.

paid to the presidential elections held in Belarus on 19 March is in striking contrast to the lack of any substantial interest for the parliamentary elections to take place on 7 October in Latvia, where tens of thousands of so-called 'non-citizens' are deprived of voting rights."³² In the face of criticism from the Parliamentary Assembly—reproaching Russia for not adapting its relations with Belarus to take into account the country's degree of development (or rather regression) in terms of reforms—Russia replies that this argument impinges upon its internal affairs, emphasizing the fact that the Council of Europe is acting beyond its mandate.

In its attempt to "readjust", Russia is trying to shift the emphasis placed on the defense of human rights (which is precisely the core of the Council's activity and credibility, in relation to the EU for instance) toward less sensitive subjects: the creation "of a common European legal space to protect individuals from modern-day challenges," education, culture, illegal migration, human trafficking, transnational criminality, etc. It emphasizes areas where it feels it is in a strong position, such as combating terrorism.³³ It is seeking to "return this institution to its fundamental function" as described in the statutes, ignored for "political reasons", such as the rights of minorities.³⁴ The mention of minorities' rights (given Russia's recurring grievances against the Baltic States and concerns over the status of the Russian language in Ukraine) reflects Moscow's desire to use its Chairmanship to blunt its partners' political pressure.

Similarly, a certain number of remarks (made by Lavrov and Kosachev) regarding Russia's contribution to the Council's budget can be seen as equally indicative. Moscow estimates that its participation is too high in comparison with that of other states (10% or 14% of the budget, according to sources). This topic is all the more controversial given that it had already been brought up in 2001, when Russia was suspended for six months owing to repeated human rights violations in Chechnya. This attitude, sometimes likened to blackmail on Russia's part against the Council of Europe, is borne out by the balance of political power, which is currently establishing itself.

³² Speech by S. Lavrov as Chair of the Committee of Ministers of the Council of Europe, 4 October 2006.

<http://www.coe.int/t/dc/files/pa_session/oct_2006/20061004_disc_lavrov_EN.asp?>.

³³ Priorities detailed in Lavrov's speech, *op. cit.*

³⁴ Interview with K. Kosachev, *op. cit.*

Conclusions

Ten years on, the dialectic has remained the same as that of 1996, when Russia first acceded. The Council of Europe is still torn between the political and geographical urge not to exclude Russia, and its fundamental principles based on the respect of human rights and democratic standards. This ongoing dilemma raises a very pertinent question. Although the argument of the "up-and-coming" democratization of Russia was acceptable in 1996, taking into account the difficulties encountered and the headway made since, this line of argument is much less acceptable today: frequent stumbling blocks between Russia and the CoE regarding human rights can no longer be ignored in the name of a better future. In reality, they represent two different conceptions of democracy and its principles, which should preside over relations between the Council and the Member States. In the end, beyond Russia, it is clearly the issue of the CoE's credibility which is at stake, due to its difficulty to face up to all violations by certain Member States of its fundamental principles. When Russia acceded to the Chairmanship, several articles were published in the Western press to highlight this incapacity to denounce such indulgence.³⁵

To conclude, solutions capable of easing these antagonisms must be sought.

From now on it will not be a matter of excluding Russia from the Council of Europe (the backlash would be too destabilizing for the Council and for democracy in Russia, fuelled internally by anti-Western discourse). The ECHR remains, in fact, the only means by which matters in Chechnya can be investigated. Nor is it very logical to ignore the very foundations of the action of the CoE in the name of a European *realpolitik*. The credibility of this institution requires both the reaffirmation of these foundations as well as the application of equal severity toward all failing Member States.

³⁵ See, in particular, criticisms on the report by Alvaro Gil-Robles (Commissioner for Human Rights to the CoE), judged too complacent toward Russia: "The report by Alvaro Gil-Robles is particularly striking owing to its propensity to manage the Russian authorities. Whether naively or unconsciously, it suggests, for example, distributing an 'explanatory brochure listing fundamental rights and describing situations and problems most likely to arise' to all inmates in police custody or on remand, where bad treatment is rife. This is what, according to the report, could 'constrain police and avoid the temptation, if any, to use violence'," M. Jégo, "Le Conseil de l'Europe dynamité par la Russie" [The Council of Europe Dynamited by Russia], *Le Monde*, 1 July 2005.

Once this is the case, relations between Russia and the CoE must be re-thought. This would imply a form of “small steps” policy, whereby each one of Russia’s advancements, however small, should be highlighted, encouraged and developed, in order to avoid giving Russia the impression (or the argument) of perpetually being the accused. At the same time, the CoE would be wise to constantly reaffirm its fundamental principles--notably as expressed in the CEDH--as well as all the progress Russia has yet to make, in order to bring the country’s words and actions in line with them.