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**Politics and Pragmatism: The Constitutional Court of the Russian Federation and Its 20
Years of Engagement with the European Convention on Human Rights**

*Bill Bowring**

Abstract

After the highly controversial YUKOS judgment of 19 January 2017, on 23 May 2017 the Constitutional Court of the Russian Federation (CCRF) delivered a warmly received judgment, in which the provisions of the administrative offences legislation prohibiting stateless persons to challenge the reasonableness of their detention in special detention facilities was found to be unconstitutional. The CCRF was addressed by leading Russian human rights advocates. The judgment referred not only to Article 22 of the Russian Constitution but also to the analogous Article 5 of the ECHR. The judgment paid special attention to case-law: *Guzzardi v. Italy* (1980), *Kemmache v. France* (1994), *Kurt v. Turkey* (1998), *Aleksei Borisov v. Russia* (2015), and *Z.A. v. Russia* (2017), as well as *Alim v. Russia* (2011), *Shakurov v. Russia* (2012) and *Azimov v. Russia* (2013). Indeed, Strasbourg jurisprudence has played a central role in the development of the CCRF's jurisprudence since Russia's ratification of the ECHR in 1998. This article analyses and seeks to explain what in the author's view is the CCRF's serious engagement with a body of pan-European quasi-constitutional law, with which Russian jurists feel surprisingly comfortable and experienced. Is there really a cultural incompatibility between Russian and 'Western' approaches to human rights law?

Keywords: Constitutional Court of the Russian Federation, European Court of Human Rights, Russia

A. Introduction

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The Constitutional Court of the Russian Federation (CCRF) was created (as the Russian Constitutional Court, RCC) in July 1991, a few months before the collapse of the Soviet Union in December 1991.

The Russian Federation (or simply Russia) joined the Council of Europe (CoE) in 1996 and ratified the European Convention on Human Rights (ECHR) in 1998. 2018 marks the 20th anniversary of Russia's membership of the European system for the protection of human rights, a period of intense engagement by Russia with the CoE, the ECHR and the European Court of Human Rights (ECtHR).

In this article, I start by observing that not all scholars have noticed this process or its significance. Second, I outline the engagement of the Soviet Union with international human rights mechanisms and, in particular, the work of the Committee for Constitutional Review (CCR). Even prior to Russia's ratification of the ECHR, the CCRF was given some extraordinarily controversial cases and achieved a high profile, before being suspended by President Boris Yeltsin in late 1993, and I reflect on this period in my second section. Russia's accession to the Council of Europe coincided with the bitter fighting of the First Chechen War, 1994 to 1997, and some of the first cases to be decided against Russia were applications by Chechen victims of Russian violations in the Second Chechen War, which was launched in late 1999 by Vladimir Putin, who was then the Prime Minister of Russia. This is the subject matter of my third section. The resignation of President Yeltsin at the end of 1999 and the start of Mr Putin's leadership of Russia as acting President, then President for two terms, then Prime Minister, and once again President, with perhaps another term starting in 2018, has inaugurated an increasingly authoritarian rule in Russia. In my fourth section, I examine the current high tension between Russia and the Council of Europe: could Russia leave the system?

My overall argument is that Russia has paid close attention to developments in Western European law and legal systems since the nineteenth century. German models formed a large part of the basis for the formulation of Russian legal codes and judicial institutions, and this is particularly true of the CCRF. Furthermore, even prior to ratification of the ECHR, the predecessor of the CCRF, the CCS showed itself to be fully aware of and able to mobilize in its judgment international human

rights instruments and mechanisms. This, in my opinion, is an important reason why there has been such a close engagement between the CCRF and the ECtHR for so long.

B. Is Russia's Membership of the Council of Europe of Any Significance for the Russian Constitutional Court?

In 2012, 14 years after Russia's accession to the CoE, the American scholar and analyst Carla Thorson published a book entitled *Politics, Judicial Process and the Russian Constitutional Court*.¹ The book contains much useful information and gives details about many of the important cases heard by the Court under the chairmanship of Valeriy Zorkin from 1991 to 1993: the first Russian Constitutional Court; the second Russian Constitutional Court under Vladimir Tumanov (1995-1996), followed by Marat Baglai (1997-2003); and the return of Mr Zorkin in 2003. At the age of 75 Mr Zorkin is still Chairman, and the book takes us as far as 2010. In Thorson's view, the record of the CCRF is 'mixed on all fronts'. But she added, correctly:

It has, however, survived for two decades, demonstrating great courage in some instances and great cowardice in others. It has taken on some very high-profile political questions and made some major mistakes, but the court has demonstrated caution, taking quiet, calculated political risks to great effect. With 20 years of hindsight, this court has assumed a greater role in Russian politics than anyone might have expected back in August 1991.²

However, Thorson did not mention the CoE, the ECHR or the ECtHR at all. She did mention the European Union's European Court of Justice in her introduction. Perhaps this is because she was observing from California, nonetheless, even a cursory reading of key judgments of the court since 1998 would have noted references to the Strasbourg system. This is especially odd because she had

¹ C. Thorson, *Politics, Judicial Review, and the Russian Constitutional Court*, 2012. London, Palgrave Macmillan

² *Ibid.*, p. xv.

seen and indeed referred in passing³ to the 2008 book by Alexei Trochev to which I turn in the following, though not his 2009 article.

However, Thorson did note⁴ the fact that the (first) Russian Constitutional Court was rather closely modelled on the German Constitutional Court (*Bundesverfassungsgericht*),⁵ as explained in detail in 1995 by Herbert Hausmaniger.⁶ She observed that "... the constitutional provisions and enabling legislation were designed by respected Russian legal scholars in consultation with representatives from the *Bundesverfassungsgericht*."⁷

Although Thorson for some reason did not notice the CCRF's engagement with the European Court of Human Rights since 1996, it is certain that the close support of their German colleagues, the rich history of German constitutional justice, and the fact that Russia from the late Tsarist period, 1835 to be precise, not only had a continental, Napoleonic, civil law codified legal system, but a Civil Code of 1835, largely reproduced in 1923 with the New Economic Policy of Soviet Russia, drawn mainly from the German model.⁸ Ostroukh pointed out that

[t]he Russian codification of the 1830s fits into the European codification movement of the 18th and early 19th centuries, influenced by the Enlightenment... The sources used by the drafters of the Civil Laws, along with Russian law, were Prussian (ALR

³ *Ibid.*, p. 150 n. 41, 192.

⁴ *Ibid.*, pp. 35-46.

⁵ See, generally, G. Vanberg, *The Politics of Constitutional Review in Germany*, 2005. Cambridge, Cambridge University Press

⁶ H. Hausmaniger, 'Towards a "New" Russian Constitutional Court', *Cornell International Law Journal*, Vol. 28, 1995, p. 349.

⁷ Thorson, 2012, p. 38.

⁸ A. Ostroukh, 'Russian Society and Its Civil Codes: A Long Way to Civilian Civil Codes', *Journal of Civil Law Studies*, Vol. 6, No. 1, 2013, p. 373.

1794), Austrian (ABGB 1810), and French (Code civil 1804).⁹

So it can be no surprise that the Russian scholars and draftsmen were comfortable with the concepts and procedures of their German colleagues.

There is now a great deal of evidence concerning the significance of the ECHR and the jurisprudence of the ECtHR for the CCRF.

In his book, published in English in 2007,¹⁰ Anton Burkov noted that by August 2004 there had been 54 judgments citing the Convention out of a total of 215 judgments since the establishment of the Constitutional Court on 12 July 1991, 166 since Russia's accession to the Statute of the Council of Europe on 28 February 1996, and 116 since the Convention came into force after the date of the deposit of the Russian instrument of ratification on 5 May 1998.¹¹ For comparison, writing in 2016 Pavel Blokhin, chief consultant to the CCRF, observed that in 14 of the 34 Resolutions of the CCRF in 2015 there were references to the ECHR and its Protocols (41%), and in eight of them the case law of the ECtHR was taken into account. In the majority of the cases, these references were not 'decorative' (as is often found in the decisions of lower courts), but substantial, that is, identifying the interpretation of a particular fundamental right.¹²

Burkov criticized the CCRF for its failure to discuss the case law of the ECtHR and for other failings. However, he also noted that the CCRF started to apply the Convention right after Russia's

⁹ *Ibid.*, pp. 375-376.

¹⁰ A. Burkov, *The Impact of the European Convention on Human and Application on Russian Law: Legislation and Application in 1996-2006*, 2007. Stuttgart, ibidem-Verlag

¹¹ *Ibid.*, p. 36. And see S. Kazhlaev, 'O normotvorchestve Konstitutsionnogo Suda Rossiiskoi Federatsii (On the Norm Creation of the Constitutional Court of the Russian Federation)', *Zhurnal Rossiiskovo Pravo (Journal of Russian Law)*, Vol. 9, 2004, p. 26.

¹² P. Blokhin, 'Dvoinoi yubilei. Konstitutsionnoye pravosudie na sluzhbe prav cheloveka (Double Jubilee. Constitutional Justice in the Service of Human Rights)', *Sravnitelnoye konstitutsionnoye obozreniye (Comparative Constitutional Review)*, № 2 (111) 2016 117, at 119.

accession to the Statute of the Council of Europe and long before the Convention's ratification: a total of three judgments and one dissenting opinion had cited the Convention. He remarked that since the Convention at that time was not yet legally binding for the Russian Federation, the citation of the Convention could be seen as having a 'subsidiary' character to 'enrich the court's argument'.¹³

In 2008, in his magisterial and comprehensive examination of the work of the CCRF in its, by then, 16 years of existence,¹⁴ Alexei Trochev was able to assert that "... this Court has frequently surprised the powerful players and anticipated crucial policy changes...",¹⁵ that

... Russia's rulers largely obeyed because the [CCRF] justices have managed to convince them that compliance is their only option in order to avoid an international embarrassment, as Russians are increasingly petitioning the [ECtHR]...,¹⁶

and "... the aggressive reliance on European human rights standards was crucial for the [CCRF] in waging its battles against the Supreme Court and the High *Arbitrazh* Court."¹⁷

In 2009, Trochev reflected further on the impact of the ECtHR on Russia¹⁸ and started with the bold assertion that it is "... the most popular court in Russia today."¹⁹ He added,

¹³ Burkov, 2007, p. 36.

¹⁴ A. Trochev, *Judging Russia: Constitutional Court in Russian Politics 1990-2006*, 2008. Cambridge, Cambridge University Press,

¹⁵ *Ibid.*, p. 289.

¹⁶ *Ibid.*, p. 291.

¹⁷ *Ibid.*, p. 299.

¹⁸ A. Trochev, 'All Appeals Lead to Strasbourg? Unpacking the Impact of the European Court of Human Rights on Russia', *Demokratizatsiya*, Vol. 17, No. 2, 2009, p. 145, and at *University of Wisconsin Law School Legal Studies Research Paper Series Paper No. 1082*, available at:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1421342 (last accessed 4 January 2018).

¹⁹ *Ibid.*, p. 145.

[t]he [CCRF] displays the most stable and positive attitude towards the ECtHR within the Russian judicial system²⁰... The [CCRF] refers to jurisprudence concerning not only Russia, but also other member states of the [ECHR] and, thus, underscores the universal binding effect of the decisions.... Sometimes, the ECtHR jurisprudence serves as the “last straw” in helping secure the majority opinion on a divided bench and in resisting political pressure’.²¹

And there is much more. For all his cogent criticism, Trochev left his reader in no doubt as to the importance of the ECtHR and ECHR for the CCRF.

In 2010, Anton Burkov published a much more substantial text, in Russian, based on the PhD, supervised by Professor David Feldman, which he successfully defended at Cambridge University.²² The foreword was provided by none other than the outstanding Russian judge from 1999 to 2012 at Strasbourg Anatoliy Kovler. Judge Kovler stated:

The incorporation of the European Convention into the legal system of the Russian Federation and the necessity of the application by the national courts of the Convention itself, and also the precedents given by the European Court, are confirmed by the rulings of the highest courts of the Russian Federation. First and foremost are the many Resolutions and Decisions of the [CCRF], in which are to be found the reflection of the practice of application of the Convention to the widest spectrum of legal problems²³

Burkov concluded somewhat optimistically. He noted that the UK had taken 50 years (from 1950 to 2000) to incorporate the Convention. The Russian Federation had taken positive steps in the first 10

²⁰ *Ibid.*, p. 157.

²¹ *Ibid.*, p. 158.

²² A. Burkov, *Konventsiiya o zashchite prav cheloveka v sudakh Rossii (The Convention on Human Rights in the Courts of Russia)*, 2010. Moscow, Wolters Kluwer

²³ *Ibid.*, p. iv.

years of membership of the [CoE]. The Russian Constitution contains a whole catalogue of human rights and also the principle of direct application of norms of international law in the national legal system. There were positive signals, demonstrating that the practice of the courts is slowly changing, and that judges are beginning to apply the Convention, as it is understood in the practice of the ECtHR. "It remains to remind all institutions, including the judges, to play their part in complying with their obligations under article 1 of the Convention."²⁴

Finally, for the purposes of this section, I turn to the monograph written by Mr Zorkin himself, *The Civilisation of Law and the Development of Russia*, published in 2016.²⁵ He observed that when Russia ratified the ECHR, it accepted its norms as legal standards in the formulation of which it had not taken part. Nevertheless, he insisted that while, according to Article 15(4) of the Constitution of 1993, the ECHR took precedence over all Russian legislation, it was not capable of overruling the Constitution itself. Only the CCRF has the power to interpret the Constitution. In a passage of some 15 pages,²⁶ Zorkin referred to the problems to which I turn later in this article, with frequent references to Russia's sovereignty²⁷. But he also asked that:

my thesis is not to be taken as doubt in the competence of the application in Russian practice of the Convention or of the decisions of the ECtHR. Ratifying the Convention, we not only recognised, that in Russia fundamental values in the sphere of human rights are related to the values of Europe. We at the same time joined in the development of the international legal sphere, gaining the enormous experience of resolving those problems, the regulation of which Russian has only begun to absorb. We must not and do not have the right to refuse

²⁴ *Ibid.*, p. 308.

²⁵ V. Zorkin, *Tsivilizatsiya prava i razvitiye Rossii (The Civilisation of Law and the Development of Russia)*, 2016. Moscow, NORMA

²⁶ *Ibid.*, pp. 145-160.

²⁷ See B. Bowring, 'What's in a Word: "Sovereignty" in the Constitutional Court of the Russian Federation', *Russian Journal of Communication*, Vol. 7, No. 3, 2015, p. 1.

either those values or the use of such experience.²⁸

C. The Origins of the Russian Constitutional Court

There was no judicial oversight of the Soviet Constitutions of 1936 and 1977. There was indeed a Supreme Court with jurisdiction concerning civil and criminal law, but no jurisdiction concerning the Constitution itself. Article 153 provided,

[t]he Supreme Court of the USSR is the highest judicial body in the USSR and supervises the administration of justice by the courts of the USSR and Union Republics within the limits established by law.²⁹

The limits of its powers were established in the following way:

Article 6. The leading and guiding force of the Soviet society and the nucleus of its political system, of all state organisations and public organisations, is the Communist Party of the Soviet Union. The CPSU exists for the people and serves the people.

The Communist Party, armed with Marxism-Leninism, determines the general perspectives of the development of society and the course of the home and foreign policy of the USSR, directs the great constructive work of the Soviet people, and imparts a planned, systematic and theoretically substantiated character to their struggle for the victory of communism.

All party organisations shall function within the framework of the Constitution of the USSR.³⁰

Judges were all members of the Communist Party and reported regularly to their local Party bodies.

It was, therefore, a momentous break with Tsarist and Soviet legal tradition when constitutional

²⁸ Zorkin, 2016, p. 157.

²⁹ Constitution of the Union of Soviet Socialist Republics, 1977, Chapter 20, available at: www.departments.bucknell.edu/russian/const/77cons07.html#chap20 (last accessed 11 January 2018).

³⁰ Constitution of the Union of Soviet Socialist Republics, 1977, Chapter 1, available at: www.departments.bucknell.edu/russian/const/77cons01.html#chap01 (last accessed 11 January 2018).

review first emerged.³¹ On 11 March 1985, the Politburo of the Communist Party of the Soviet Union elected Mikhail Gorbachev General Secretary. He was 54 years old. At the 27th Congress of the CPSU in February 1986, he announced new policies of *glasnost* ('openness'), *perestroika* ('restructuring'), *demokratizatsiya* ('democratization') and *uskoreniye* ('acceleration' of economic development). In place of Marxism–Leninism, there was a turn to 'common human values'.³²

D. The Committee for Constitutional Supervision

In December 1988, Gorbachev proposed the creation of a Committee for Constitutional Supervision (CCS) of the USSR, the forerunner of the Constitutional Court of the Russian Federation. On 23 December 1988, the law 'On constitutional supervision in the USSR' was adopted. According to the 19th All-Union Conference of the CPSU in 1988, the CCS had "the goal of guaranteeing the strictest correspondence of laws and Government decrees with the Constitution of the USSR." It started work in April 1990.

Decisive steps had already been taken since 1988 towards a greater respect for international law. On 10 February 1989, the Presidium of the Supreme Soviet passed a Decree recognizing the compulsory jurisdiction of the UN's International Court of Justice (ICJ) with respect to six human rights treaties, including the 1948 Genocide Convention and the 1984 Convention against Torture.³³ This Decree reversed the reservation entered by the USSR when ratifying the Genocide Convention, refusing the compulsory jurisdiction of the ICJ, which led to one of the most important early advisory

³¹ See B. Bowring, *Law, Rights and Ideology in Russia: Landmarks in the Destiny of a Great Power*, 2013, Chapter 8, 'Human Rights in the Yeltsin Period', p.140. Abingdon, Routledge

³² M. Gorbachev, *Perestroika i novoye mishleniye dlya nashei strany i dlya vsevo mira (Perestroika and New Thinking for Our Country and the Whole World)*, 1987. Moscow, Politizdat, and at <http://newchron.ru/prcv/Publ/Gorbachev/perestroika.htm> (last accessed 6 June 2018)

³³ Reported in 1989 (4) *Interights Bulletin*; the other treaties were the 1949 Convention for the Suppression of Traffic in Persons; the 1952 Convention on Political Rights of Women; the 1965 Convention on the Elimination of Racial Discrimination; and the 1979 Convention on the Elimination of Discrimination against Women.

opinions of the ICJ, the *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* opinion of 28 May 1951.³⁴

The USSR had always ratified UN human rights treaties, but with no intention that they should apply within the Soviet Union, much less that there should be the possibility of interference in internal affairs.

During its short existence, the CCS heard 29 cases. Some of these were of considerable significance, demonstrating the seriousness with which the CCS took human rights.

Here are a few examples. First, in the *Unpublished Laws Case* of 29 November 1990 the CCS ruled that all unpublished USSR regulations (there were many such 'secret' laws) violated international human rights standards and would lose their force unless published within three months.³⁵ Second, in the *Right to Defence Counsel Case*, the CCS (petitioned by the Union of Advocates) decided that the USSR law of 10 April 1990 on reforms to the criminal law, which restricted the right to defence counsel, violated both the Constitution and international standards. Third, in the *Ratification of the Optional Protocol Case* (4 April 1991), in a move which put the USSR ahead of the UK and the USA, the CCS requested the Supreme Soviet to secure ratification by the USSR of the First Optional Protocol to the UN International Covenant on Civil and Political Rights (ICCPR).³⁶ The USSR had ratified the ICCPR – in 1973 – but not the Protocol, which enables individual complaints to the UN Human Rights Committee. There was a commendably prompt and positive response. On 5 July 1991, the Supreme Soviet adopted two resolutions acceding to the Optional Protocol and recognizing the jurisdiction of the HRC.³⁷ Fourth, in the *Dismissal on Attainment of Pensionable Age Case*, the CCS considered the USSR Presidium Decree amending labour law by

³⁴ Available at: www.icj-cij.org/docket/files/12/4283.pdf (last accessed 11 January 2018).

³⁵ *Vedomosti Syezda Narodnikh Deputatov SSSR i Verkhovnoy Sovyeta SSSR* 1990 No. 50, p. 1080.

³⁶ *Vedomosti SSSR*, 1991 No. 17, 502; see also *Sovetskaya Iustitsiya* I 23 December 1991, p. 17.

³⁷ *Vedomosti SSSR*, 1991 No. 29, 842, p. 843.

adding as a ground for termination by the employer “attainment by the worker of pensionable age with entitlement to old age pension.”³⁸

Finally, there was the *Residence Permit Case* of 11 October 1991, where the CCS decided that *propiska*, the Soviet system of registration and residence permit, plainly contradicted the right to freely move around and to choose one’s place of residence, which is to be found in several international human rights treaties, but was not then part of the Soviet Constitution (although it was in Article 21 of the USSR Declaration of the Rights and Freedoms of Man adopted on 5 September 1991). This is an issue that has continued to exercise the CCRF.

Further significant steps taken before the collapse of the USSR included the publication of the *Conception of Judicial Reform*, published on 24 October 1991 after several years’ work, by Sergei Pashin,³⁹ Sergei Vitsin, Tamara Morshchakova⁴⁰ and others, and the enactment on 22 November 1991 of the Declaration of the Rights and Freedoms of the Person and Citizen by the Supreme Soviet of the RSFSR.

E. The First Russian Constitutional Court

The Law of the RSFSR on the Constitutional Court of the RSFSR, drafted by Sergei Pashin, was signed

³⁸ *Vedomosti SSSR*, 1991 No. 17, p. 501.

³⁹ He was born in 1962 and was from 1990 to 1996 the leading expert on judicial reform at the legal department of the President’s Administration, and introduced the first experiment in jury trial in nine regions of Russia in 1993. Following his fall from grace and dismissal, was twice (being once dismissed and reinstated) dismissed as a judge of the Moscow City Court and is now a leading scholar and critic of Russian constitutionalism and the Constitutional Court.

⁴⁰ She was born on 28 March 1936. From 1958 to 1991 she was a senior legal researcher and professor. She was elected a justice of the Constitutional Court on 29 October 1991 and from February 1995 to April 2002 she was Deputy Chairman of the Court. An amendment to the Law on the Constitutional Court enacted in January 2001 forced her to retire by reason of age. Many consider that this was a deliberate ploy to remove her, in view of her independent and principled stance.

by President Yeltsin on 12 July 1991.⁴¹ Pashin was only 29 years of age. Thirteen judges were elected by the Congress of People's Deputies of the RSFSR on 30 October 1991. The judges elected Valeriy Zorkin (born 1943) as their Chairman.⁴² Zorkin has proved to be a great survivor and is Chairman of the CCRF at the time of writing, in 2018 .

The RCC started work in January 1992. Pashin commented that the law represented “an important guarantee of the right of the citizen to judicial protection.” He wrote that the provisions of the new law were based on Chapter 4, Article 93 of the German Constitution, which provides that the Federal Constitutional Court considers cases “by way of petition on constitutionality, which may be laid by any person considering that one of his basic rights has been infringed by the state power.”⁴³ Article 32 of the Constitution of the RSFSR, as amended in April 1992, stated that universally accepted human rights norms have precedence over the laws of the RSFSR and have direct effect.⁴⁴

From 6 July 1992 to 30 November 1992, the RCC was occupied by the *Case of the Communist Party*, which did not produce the hoped for (by the applicants) definitive condemnation of the Communist Party, a Russian Nuremberg, but instead in a compromise decision ruled that President Yeltsin rightly dissolved the highest bodies of the Party, but also ruled that the Party could continue to exist at the local level.⁴⁵ The Communist Party of the Russian Federation is still the only significant

⁴¹ J. Henderson, ‘The First Russian Constitutional Court: Hopes and Aspirations’, in R. Müllerson, M. Fitzmaurice & M. Andenas (Eds.), *Constitutional Reform and International Law in Central and Eastern Europe*, 1998, p. 105, at 111. Leiden, Martinus Nijhoff Publishers

⁴² R. Sharlet, ‘Chief Justice as Judicial Politician’, *East European Constitutional Review*, Vol. 2, 1993, p. 32.

⁴³ S. Pashin, *Konstitutsionniy sud Rossii: obrashchatsya mogut vsye* (The Constitutional Court of Russia: All May Apply), *Sovetskaya Iustitsiya*, 2 January 1992.

⁴⁴ G. Van Den Berg, ‘Human Rights in the Legislation and the Draft Constitution of the Russian Federation’, *Review of Central and East European Law*, Vol. 18, 1992, p. 197.

⁴⁵ J. Henderson, ‘The Russian Constitutional Court and the Communist Party Case: Watershed or Whitewash?’, *Communist and Post-Communist Studies*, Vol. 40, No. 1, 2007, p. 1.

opposition party organized in every region of Russia.

However, prior to July 1992 the RCC rendered significant decisions. In its very first case, decided on 14 January 1992, the *Formation of the Ministry of Security and Internal Affairs* case,⁴⁶ it held that President Yeltsin's Decree of 19 December 1991 merging the KGB and the *militia* (police) was unconstitutional. President Yeltsin backed down, albeit reluctantly.

F. The 'Constitutional Coup' of October 1993, and the Second Constitutional Court

The Court was suspended by Yeltsin on 7 October 1993, after he tore up the 1978 Constitution, disbanded parliament and finally shelled the White House, the seat of the parliament.⁴⁷ The Court had sat all night following Yeltsin's decree of 21 September 1993 and held that his actions violated the Constitution. As Trochev puts it, "[i]n response to the Court's finding that Yeltsin had violated the constitution, Yeltsin shelled the parliament's building and suspended the RCC by Decree 1612 of 7 October 1993."⁴⁸

A draft Constitution of the Russian Federation was published on 10 November 1993. In Trochev's view, the entrenchment of the Federal Constitutional Court was the result of a bargain struck between Yeltsin, the judges of the (suspended) RCC, the other federal courts, and regional authorities. The draft Constitution was sent for review by the Council of Europe's Venice Commission for Democracy through Law⁴⁹; the Commission supported a separate court with broad constitutional

⁴⁶ 1-P-U/1992; the text of all judgments and decisions is to be found at

www.ksrf.ru/en/Decision/Judgments/Pages/default.aspx (last accessed 11 January 2018).

⁴⁷ J. Henderson, *The Constitution of the Russian Federation: A Contextual Analysis*, 2011, p. 78. London, Bloomsbury

⁴⁸ Trochev, 2008, p. 75; and Decree No. 1612 of 7 October 1993, SAPP (*Sobranie Aktov Prezidenta i Pravitelstva Rossiskoi Federatsii*), no. 41, 1993, item 3921.

⁴⁹ CDL(1994)011-e: Opinion on the Constitution of the Russian Federation adopted by popular vote on 12 December 1993, available at: [www.venice.coe.int/webforms/documents/?pdf=CDL\(1994\)011-e#](http://www.venice.coe.int/webforms/documents/?pdf=CDL(1994)011-e#) (last accessed

review powers and easy access.⁵⁰

The constitutional referendum was held on 12 December. There were well-founded suspicions that ballot boxes had been stuffed to ensure a legitimate mandate.⁵¹ The official result was that 54.8% of the electorate had voted, and of those 58.4% had approved the Constitution, which came into force on 24 December 1993. There was the following provision for the Constitutional Court:

Article 125

1. The Constitution Court of the Russian Federation consists of 19 judges.
2. The Constitution Court of the Russian Federation upon requests of the President of the Russian Federation, the Council of the Federation, the State Duma, one fifth of the members of the Council of the Federation or of the deputies of the State Duma, the Government of the Russian Federation, the Supreme Court of the Russian Federation and the Higher Arbitration Court of the Russian Federation, the bodies of legislative and executive power of the subjects of the Russian Federation shall consider cases on the correspondence to the Constitution of the Russian Federation of:
 - a. the federal laws, normative acts of the President of the Russian Federation, the Council of the Federation, the State Duma, the Government of the Russian Federation;
 - b. the constitutions of republics, charters, and also the laws and other normative acts of the subjects of the Russian Federation adopted on the

13 January 2018).

⁵⁰ Trochev, 2008, p. 79, n. 88.

⁵¹ Henderson, 2011, p. 79; and W. Slater, 'Russia's Plebiscite Bon a New Constitution', *Radio Free Europe/Radio Liberty Research Report*, Vol. 3, No. 3, 21 January 1994, pp. 1, 4.

issues under the jurisdiction of the bodies of state authority of the Russian Federation or under the joint jurisdiction of the bodies of state authority of the Russian Federation and the bodies of state authority of the subjects of the Russian Federation;

- c. the treaties concluded between the bodies of state authority of the Russian Federation and the bodies of state authority of the subjects of the Russian Federation, the treaties concluded between the bodies of state authority of the subjects of the Russian Federation;
- d. international treaties and agreements of the Russian Federation which have not come into force.

3. The Constitution Court of the Russian Federation shall resolve disputes on jurisdiction matters:

- a. between the federal bodies of state authority;
- b. between the bodies of state authority of the Russian Federation and the bodies of state authority of the subjects of the Russian Federation;
- c. between the higher bodies of state authority of the subjects of the Russian Federation.

4. The Constitution Court of the Russian Federation, upon complaints about violations of constitutional rights and freedoms of citizens and upon court requests shall check, according to the rules fixed by the federal law, the constitutional of a law applied or subject to be applied in a concrete case.

5. The Constitution Court of the Russian Federation, upon the requests of the President of the Russian Federation, the Council of the Federation, the State Duma, the Government of the Russian Federation, the bodies of the legislative power of the

subjects of the Russian Federation, shall give its interpretation of the Constitution of the Russian Federation.

6. Acts or their certain provisions recognized as unconstitutional shall become invalid; international treaties and agreements not corresponding to the Constitution of the Russian Federation shall not be liable for enforcement and application.

7. The Constitution Court of the Russian Federation, upon the request of the Council of the Federation, shall provide a conclusion on the observance of the fixed procedure for advancing charges of treason or of another grave crime against the President of the Russian Federation.

Preparation of the draft law for a new Constitutional Court started on the date of the referendum, which was also the day of election of both houses of the new legislature, the Federation Assembly. A group of judges and members of the court's secretariat once again used German constitutional review as a model and sent their draft to the State Duma on 29 January 1994.

The Court did not sit again until February 1995; Trochev gives details of the highly complex process of arriving at an agreement as to the text of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," which was signed by President Yeltsin on 21 July 1994 and came into force on its publication on 23 July 1994, and appointing the judges.⁵² To Yeltsin's credit, Valeriy Zorkin and his colleagues continued to sit in the reconstituted court, but the number of judges was increased from 13 to 19.

G. Accession to the Council of Europe

Russia acceded to the CoE on 28 February 1996.⁵³ Russia accepted the obligations placed upon it in

⁵² SZ RF no. 13 (1994), item 1447. Trochev, 2008, p. 83.

⁵³ This is taken from Chapter 8, 'Human Rights in the Yeltsin Period', pp. 140-173, in B. Bowring (Ed.), *Law,*

the Parliamentary Assembly (PACE) Opinion 193 (1996) of 25 January 1996,⁵⁴ confirmed in the Committee of Ministers Resolution No. 96/2.⁵⁵ Paragraph 7 of the PACE Opinion set out 12 respects in which Russia was already seeking to conform with the fundamental principles of the Council of Europe. Under Paragraph 10 of its Opinion, PACE noted that “the Russian Federation shares fully its understanding and interpretation of the commitments entered into as spelt out in paragraph 7, and intends...,” followed by a detailed list of 25 commitments.

In my view, the main reason the Communist and nationalist majority in the State Duma voted in favour of accession to the CoE and ratification of the ECHR was the fact that following the collapse of the USSR some 25 million ethnic Russians and Russian speakers were living outside the borders of the Russian Federation, and the CoE was seen as offering a comprehensive framework of opportunities for their protection.

Of the more than 200 treaties promulgated by the CoE, Russia has, as of 27 December 2017, signed and ratified 63 treaties, has signed but not ratified 16, and has not signed 130.⁵⁶

H. Ratification of the ECHR⁵⁷

On 28 February 1998, the State Duma of the Russian Federation voted to ratify the ECHR. A total of 294 (65.3%) deputies voted for, only 11 (2.4%) voted against, and there were 2 (0.4%) abstentions. Thus, 305 of the deputies voted, but many members failed to vote at all. The upper chamber of the

Rights and Ideology in Russia: Landmarks in the Destiny of a Great Power, 2013, p. 175 et seq.

⁵⁴ Available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=13932&lang=en> (last accessed 29 December 2017).

⁵⁵ Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168062e4fa (last accessed 2017).

⁵⁶ Available at: www.echr.coe.int/Documents/CP_Russia_ENG.pdf (last accessed 13 January 2018).

⁵⁷ B. Bowring, ‘Russia’s Accession to the Council of Europe and Human Rights: Compliance or Cross-Purposes?’, *European Human Rights Law Review*, Vol. 6, 1997, p. 629; B. Bowring, ‘Russia’s Accession to the Council of Europe and Human Rights: Four Years On’, *European Human Law Review*, Vol. 4, 2000, p. 362.

Russian parliament, the Federation Council, approved this decision on 13 March 1998, and the federal law of the Russian Federation 'On ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols to it' entered into force on 30 March 1998. The ECHR itself entered into force for Russia on 1 November 1998.⁵⁸ In this way, Russia fulfilled one of the most important commitments that it made on accession to the Council of Europe.

I. Early Judgments against Russia

Russia soon began to answer to the European Court of Human Rights in respect of issues that affected the foundations, indeed the good faith, of the Russian legal order. Three defeats for the Russian Federation illustrate this predicament. In the case of *Gusinskiy v. Russia*,⁵⁹ lodged in 2001 and decided in 2004, the Court held that the restriction of the applicant's liberty permitted under Article 5 §1 (c) was applied not only for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence, but also for alien reasons, namely to intimidate him in commercial transactions. Thus, Russia had violated not only Article 5, but also Article 18.⁶⁰ In the other decision, the Court involved itself in Russia's external policy and extraterritorial reach. In *Ilascu and Others v. Moldova and Russia*,⁶¹ lodged in 1999 and decided in 2004, the majority of the Grand Chamber of the Court found that Russia rendered extensive political, military, financial and economic support to Transdnistria amounting to 'effective control' over the region and, therefore, exercised de facto jurisdiction that came within the meaning of Article 1 of the Convention.

⁵⁸ It should be noted that on the same day the state Duma voted, by an even larger majority, to ratify the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment (CPT).

⁵⁹ Application no. 70276/01, judgment of 19 May 2004.

⁶⁰ Which provides: 'The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.'

⁶¹ Application no. 48787/99, judgment of 8 July 2004.

Finally, on 24 February 2005 the first six Chechen applicants against Russia won their applications to Strasbourg. They were represented at an oral hearing before the Court in October 2004 by the author of this article, with colleagues from the European Human Rights Advocacy Centre. The applicants made allegations of grave human rights violations committed during the early months of the present Chechen conflict. These cases were submitted in April 2000 by the Moscow-based 'Memorial' Human Rights Centre and arose from the events in Chechnya in October 1999 to February 2000. These were the cases of *M. Ch. Isayeva, Yusupova and Bazayeva v. Russia*,⁶² complaining of the aerial bombardment by Russian forces on 29 October 1999 of a refugee column seeking to leave Grozny, in which Isayeva's children were killed, Isayeva and Yusupova were wounded, and Bazayeva's property was destroyed; *Z. A. Isayeva v. Russia*,⁶³ complaining of the aerial bombardment on 4 February 2000 in which her son died; and *Khashiev and Akayeva v. Russia*,⁶⁴ complaining of the killing of their relatives by federal forces on 20 January 2000. The cases were all declared admissible in December 2002. This is the Court's 'fast track'. On 1 July 2005, the Committee of the Grand Chamber rejected Russia's application for an appeal, and the process of enforcing the judgment and its consequences began in the CoM.

J. ECtHR Case Law in the CCRF

The whole case law of the ECtHR became, in 1998, part of Russian law, and is, as already noted, frequently cited in Russian courts. Even before 1998 there were cases on individual human rights in which the RCC had relied on international standards.

One of the first post-1998 cases in which the CCRF deployed the case law of the ECtHR was the *Jehovah's Witnesses Case*, judgment of 23 November 1999.⁶⁵ The CCRF referred to *Kokkinakis v.*

⁶² Application nos. 57947/00, 57948/00 and 57949/00.

⁶³ Application no. 57950/00.

⁶⁴ Application nos. 57942/00 and 57945/0.

⁶⁵ No 16-P (1999), available at: <http://doc.ksrf.ru/decision/KSRFDecision30316.pdf>, in English

*Greece*⁶⁶ and *Manoussakis v. Greece*⁶⁷ (without discussing the facts or reasoning of those cases) as well as to the Resolution of the Parliamentary Assembly of the Council of Europe (PACE) on ‘Sects and new religious movements’⁶⁸. The CCRF upheld the specific complaints of the Jehovah’s Witnesses and an Adventist Church, but also upheld the right of the Russian government to control the activities of similar religious bodies.⁶⁹

In one of the most striking judgments following ratification of the ECHR, the CCRF achieved a significant breakthrough in the implementation of international jurisprudence. This was the case of *V. I. Maslov*, decided on 27 June 2000.⁷⁰ The case concerned the constitutionality of Articles 47 and 51 of the Criminal Procedural Code, and the issue at stake was the right to defence counsel following detention. According to the Code, a person in detention as a ‘suspected person’ or an ‘accused’ was entitled as of right to the presence of a defender. But this was not the case for a person brought to a police station to be interrogated as a ‘witness’, even though attendance was compulsory, and might well lead to transformation into a suspect or accused.

The CCRF not only referred to Article 14 of the ICCPR and Articles 5 and 6 of the ECHR, but also cited the jurisprudence of the ECtHR. The cases – six in all – to which they referred were

www.ksrf.ru/en/Decision/Judgments/Documents/1999%20November%2023%2016-P.pdf (last accessed 13 January 2018).

⁶⁶ Application no. 14307/88, judgment of 25 May 1993.

⁶⁷ Application no. 18748/91, judgment of 26 September 1996.

⁶⁸ Recommendation 1178 (1992), available at: www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15212&lang=en (last accessed 13 January 2018).

⁶⁹ D. Hoffman, “In Russia”, *Washington Post*, 24 November 1999, available at: https://www.washingtonpost.com/archive/politics/1999/11/24/in-russia/1a205d3f-1332-4549-9441-08efb411ffc6/?utm_term=.37f456416510 (last accessed 13 January 2018).

⁷⁰ No 11-P (2000), available at: <http://doc.ksrf.ru/decision/KSRFDecision30320.pdf> (last accessed 13 January 2018).

Quaranta v. Switzerland,⁷¹ *Imbrioscia v. Switzerland*,⁷² *John Murray v. United Kingdom*,⁷³ *Deweere v. Belgium*,⁷⁴ *Eckle v. Federal Republic of Germany*,⁷⁵ and *Foti and Others v. Italy*.⁷⁶

The legal reasoning in *Maslov* demonstrates that not only the ICCPR and ECHR, but the jurisprudence of the ECtHR were now integral parts of the Russian legal system. This was further shown not only by the constant reference to the Convention in the latest legal commentaries and textbooks, but also by the fact that every judge in Russia had received the two-volume collection of the 100 leading cases decided by the European Court of Human Rights, published in 2000, together with a comprehensive CD-ROM.⁷⁷ The first two volumes of cases of the Constitutional Court (edited by Judge Morshchakova) appeared. The first, containing the jurisprudence of the years 1992 to 1996, was published in 1997; and the second, containing the jurisprudence of the CCRF from 1997 to 1998, reached the bookshops in April 2000.⁷⁸

However, even though the CCRF is, as noted above, modelled on the Federal Constitutional Court of Germany (the Russian justices have all spent time in Germany besides visiting many other sister courts), the Russian Court had not by 2000 begun to refer to the jurisprudence of the Karlsruhe Court, or indeed the other new constitutional courts of Hungary, Poland and other former Soviet and

⁷¹ Application no. 12744/87, judgment of 24 May 1991.

⁷² Application no. 13972/88, judgment of 24 November 1993.

⁷³ Application no. 18731/91, judgment of 8 February 1996.

⁷⁴ Application no. 6903/75, judgment of 27 February 1980.

⁷⁵ Application no. 8130/78, judgment of 15 July 1982.

⁷⁶ Application nos. 7604/76, 7719/76, 7781/77, 7913/77, judgment of 10 December 1982.

⁷⁷ *European Court of Human Rights. Collected Decisions in Two Volumes*, 2000.

⁷⁸ For an assessment in 2006, see M. Baitin, 'O yuridicheskoi prirode reshenii Konstitutsionnovo Suda RF (On the Legal Nature of the Decisions of the Russian Constitutional Court), No. 1 (2006), *Gosudarstvo i Pravo (State and Law)*, No. 5, available at: www.law.edu.ru/doc/document.asp?docID=1234304 (last accessed 4 January 2018).

Eastern European states. Nevertheless, the Russian Court has itself increasingly developed a precedent-based jurisprudence for the purpose of Russian domestic law, in which European Court cases are an important source of binding precedents.

K. Putin in Power

From 2000 to 2003, President Putin expressly referred to himself as following in the footsteps of the great reforming Tsar Aleksandr II and his law reforms of 1864.⁷⁹ Putin too presided over the creation of a system of justices of the peace; the introduction of jury trial throughout Russia with the exception of Chechnya; an enhanced judicial status; and a much reduced role for the prosecutor in criminal and civil trials. I have analysed Putin's speeches and the events of this period elsewhere.⁸⁰ However, the initial phase of legal reform from 2000, which included the enactment of radical new procedural codes, came to a definitive end in late 2003, simultaneously with the arrest of Mr Khodorkovsky and the destruction of YUKOS.

A very important development in 2003 followed the decision of the CCS referred to earlier and concretized the fact that in accordance with the 1993 Constitution, generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. If other rules have been established by an international treaty of the Russian Federation than provided for by law, the rules of the international treaty shall apply. The apotheosis of this new relationship seemed to have truly arrived with the Resolution of the Plenum of the Supreme Court of the Russian Federation of 10 October 2003. The Resolution was entitled 'On application by courts of general jurisdiction of the commonly recognised principles and norms of the

⁷⁹ Bowring, 2013, Abingdon, Routledge Chapter 3.

⁸⁰ B. Bowring, 'Russia in a Common European Legal Space. Developing Effective Remedies for the Violations of Rights by Public Bodies: Compliance with the European Convention on Human Rights', in K. Hober (Ed.), *The Uppsala Yearbook of East European Law 2004, 2005*.

international law and the international treaties of the Russian Federation'.⁸¹ The Supreme Court consulted widely in composing this Resolution: participants in the discussion included justices of the RCC, Judge Kovler, at that time the Russian judge at the ECtHR, and other experts.

This Resolution was followed on 27 June 2013 by the Resolution 'On Application of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and Protocols thereto by Courts of General Jurisdiction'.⁸² Paragraph 2 of the Resolution states:

2. As follows from Article 46 of the Convention, Article 1 of Federal Law of 30 March 1998 no. 54-FZ On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto (hereinafter – “the Federal Law on Ratification”), the legal positions of the European Court of Human Rights (hereinafter – “the European Court” and/or “the Court”) contained in the final judgments of the Court delivered in respect of the Russian Federation are obligatory for the courts.

In order to effectively protect human rights the courts take into consideration the legal positions of the European Court expressed in its final judgments taken in respect of other States which are parties to the Convention. However this legal position is to be taken into consideration by court if the circumstances of the case under examination are similar to those which have been the subject of analysis and findings made by the European Court.

However, from 2003 onwards relations between Russia and the CoE became increasingly strained.⁸³

Russia began to lose a number of high-profile cases in the Strasbourg Court. In May 2004, in

⁸¹ In English available at: www.vsrfr.ru/en/files/16426/ (last accessed 13 January 2018).

⁸² In English available at: www.vsrfr.ru/en/files/16427/ (last accessed 13 January 2018).

⁸³ B. Bowring, 'The Russian Federation and the Strasbourg Court: The Illegitimacy of Sovereignty?', in K. Ziegler, E. Wicks & L. Hodson (Eds.), *The UK and European Human Rights: A Strained Relationship?*, 2015, p. 415. London, Bloomsbury

*Gusinskiy v. Russia*⁸⁴ the Court held that Russia had acted in bad faith in using the criminal justice system to force a commercial deal, by arresting the TV magnate. In July 2004, in *Ilaşcu and Others v. Moldova and Russia*⁸⁵ the majority of the Grand Chamber of the Court found in a controversial ruling that Russia had rendered support to Transdniestria, which broke away from Moldova, amounting to 'effective control'.⁸⁶ The first six Chechen applicants against Russia won their applications to Strasbourg in February 2005.⁸⁷ In April 2005 in *Shamayev and 12 others v. Russia and Georgia*,⁸⁸ the Court condemned Russia for deliberately refusing to cooperate with the Court despite diplomatic assurances.

Under Putin, Medvedev, and now Putin again, the human rights situation in Russia has continued to deteriorate. Russia has found itself again (the first case was the 2002 case of *Burdov v. Russia*⁸⁹) subject to the new 'pilot judgment' procedure of the ECtHR. On 10 January 2012, the ECtHR delivered a pilot judgment against Russia in the case of *Ananyev and Others v. Russia*.⁹⁰ Mr Ananyev was held in the Smolensk remand prison IZ-67/1 from 20 January to 23 March 2007. During his two

⁸⁴ *Gusinskiy v. Russia*, ECHR, Application no. 70276/01, judgment of 19 May 2004, 41 EHRR 17.

⁸⁵ *Ilaşcu and Others v. Moldova and Russia*, ECHR, Application no. 48787/99, judgment of 8 July 2004 (2004) 40 EHRR 1030.

⁸⁶ See for a discussion of this and later judgments, B. Bowring, 'Geopolitics and the Right to Education, and Why 'No Person' is in Fact a Child', *Child and Family Law Quarterly*, Vol. 26, No. 2, 2014, p. 196.

⁸⁷ *Isayeva, Yusupova and Bazayeva v. Russia*, Application nos. 57947/00, 57948/00, 57949/00, judgment of 24 February 2005 (2005) 41 EHRR 847. These applicants were represented, from 2000, by me and my colleagues from the European Human Rights Advocacy Centre, which I founded, in partnership with the Russian human rights NGO 'Memorial', with €1 million EU funding, in 2002.

⁸⁸ *Shamayev and 12 others v. Russia and Georgia*, ECHR, Application no. 36378/02, decision of 12 April 2005, ECHR 2005-III.

⁸⁹ Application no. 59498/00, judgment of 7 May 2002.

⁹⁰ *Ananyev and Others v. Russia*, Applications nos. 42525/07 and 60800/08, 55 EHRR 18.

months' stay, he was accommodated in a cell that measured 15 square metres and featured 13 sleeping places. He had less than 1.25 square metres of personal space and the number of detainees significantly exceeded the number of sleeping places available. This was, the Court held, inhuman and degrading treatment, violating Article 3 of the Convention.

The CoE continued to monitor Russia's progress or lack of it in complying with the undertakings it gave on accession in 1996. On 14 September 2012, PACE published the latest report of its Rapporteurs on 'The honouring of obligations and commitments by the Russian Federation',⁹¹ covering the previous 7 years from 2005. The Rapporteurs considered that the lack of independence and the interconnected question of the lack of confidence of the public in the judiciary were the main problems in the Russian judicial system.

The Rapporteurs were particularly struck by events at the Constitutional Court:

327. In a 2009 interview with the Spanish newspaper, *El País*, Constitutional Court Judge Vladimir Yaroslavtsev claimed that the presidential executive office and security services had undermined judicial independence in Russia. In October 2009, the Constitutional Court, in an unprecedented motion, accused Mr Yaroslavtsev of "undermining the authority of the judiciary" in violation of the judicial code and forced him to resign from the Council of Judges.

328. Judge Anatoly Kononov, who has frequently dissented from decisions taken by the majority of the court, in his interview to *Sobesednik*, supported Mr Yaroslavtsev, claiming that there was no independent judiciary in Russia. Mr Kononov was forced to step down from the Constitutional Court on 1 January 2010, seven years ahead of schedule.

These were two of the most hardworking, intelligent and independent judges on the Constitutional

⁹¹ Doc. 13018, available at: assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=18998&Language=EN (last accessed 20 March 2018).

Court.

L. Konstantin Markin v. Russia – Strasbourg versus St Petersburg

This is a positive example of a fruitful ‘judicial conversation’ between the ECtHR and the CCRF.

On 7 October 2010, the Chamber of the ECtHR gave judgment in the case of *Konstantin Markin v. Russia*, a controversial case concerning violations of Article 14 (discrimination) with Article 8 (respect for family and private life), denying a serving male officer leave to look after his children, which would have been available to a female officer.⁹² The Chamber strongly criticized the ruling of 15 January 2009 of the CCRF.

On 29 October 2010, Judge Zorkin, Chairman of the CCRF, wrote a long article in the *Rossiiskaya Gazeta* entitled ‘Limits of Compromise’, stating that

[L]ike any other European state, Russia must fight as much for the preservation of its sovereignty, as for the careful relationship with the European Convention, and defence of its sovereignty against inadequate, doubtful decisions.⁹³

He added:

The principles of state *sovereignty* and the supremacy of the Constitution in the legal system of Russia lie at the foundation of its constitutional system. The Convention as an international treaty of Russia is a component part of its legal system, but it is not higher than the Constitution ... Each decision of the European Court is not only a legal but a political act. When such a decision is taken in the interests of the protection of the rights and freedoms of the citizen and the development of our country, Russia will always precisely obey it. But

⁹² *Konstantin Markin v. Russia*, no. 30078/06, Chamber (First Section) judgment of 7 October 2010; Grand Chamber judgment of 22 March 2012, 56 EHRR 8.

⁹³ V. Zorkin, ‘*Predel ustupchivosti* (The Limits of Compromise)’, *Rossiiskaya Gazeta* No. 5325 (246), 29 October 2010, available at: www.rg.ru/2010/10/29/zorkin.html (last accessed 14 January 2018).

when it or another decision of the Strasbourg court is doubtful from the point of view of the goal of the European Convention on Human Rights and moreover in a direct fashion concerns national *sovereignty*, and fundamental constitutional principles, Russia has the right to work out a defence mechanism against such decisions.

Precisely through the prism of the Constitution the problem of the relationship between orders of the CC and the ECtHR must also be worked out ... Like any other European state, Russia must fight as much for the preservation of its *sovereignty*, as for the careful relationship with the European Convention, and defence of its *sovereignty* against inadequate, doubtful decisions. [*emphasis added*]

On 18 November 2010, the Strasbourg Court communicated to Russia the *United Opposition case*,⁹⁴ in which complaints were made about the 2003 elections. Judge Zorkin complained that the Court's decision was 'connected with political reasons' and said, "[n]ot all decisions of the ECtHR are obligatory for execution, in particular, those concerning *sovereignty*" (emphasis added). This was followed by heated exchanges with Jean-Paul Costa, the ECtHR's then president, and others at the Thirteenth International Constitutional Justice Forum in St Petersburg in November 2010.⁹⁵ At this Forum, Mr Zorkin declared that Russia could even leave the ECHR because of the threat posed to its sovereignty.⁹⁶

Mr Zorkin sought juridical support from the reasoning of the German Constitutional Court in its 2004 *Görgülü* judgment,⁹⁷ which at the time was a cause of concern to the then president of the ECtHR Luzius Wildhaber, who interpreted the decision as denying binding force to ECtHR judgments

⁹⁴ www.newsru.com/arch/russia/18nov2010/zorkin.html (last accessed 14 January 2018).

⁹⁵ Available at: www.loc.gov/lawweb/servlet/lloc_news?disp3_1205402410_text (last accessed 20 March 2018).

⁹⁶ Available at: www.ej.ru/?a=note&id=10609# (last accessed 20 March 2018).

⁹⁷ Decision of 14 October 2004, reg. nr. 2 BvR 1481/04, available at: www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2004/10/rs20041014_2bvr148104.html (last accessed 13 January 2018).

and setting a bad example with counterproductive effects in other countries.⁹⁸ And in his recent monograph mentioned earlier,⁹⁹ Mr Zorkin continues to set great store by the *Görgülü* judgment, which is no surprise, given the very close ties between German and Russian constitutional justice.

However, before the confrontation between Strasbourg and St Petersburg had the chance to really come to a head, the *Markin* case was referred at Russia's request to the Grand Chamber of the ECtHR, and on 22 March 2012 the Chamber's judgment was upheld, but this time with no overt criticism of the Constitutional Court.¹⁰⁰

Armed with the Grand Chamber judgment, Mr Markin returned to the Russian courts, and on 30 January 2013 the Leningrad Okrug Military Court applied to the CCRF to decide the issue arising from the fact that in Russian law the judgments of the CCRF and the ECtHR appeared to be of equal status. The CCRF gave judgment on 6 December 2013.¹⁰¹ Mr Markin received his compensation and is now in practice as an advocate.

M. A Breakdown in Relations after 2013?¹⁰²

⁹⁸ *Der Spiegel* 47/2004, 14 November 2004: 'Kritik für Deutschland, Lob für die Türkei', available at: www.spiegel.de/politik/deutschland/eu-gerichtshof-fuer-menschenrechte-kritik-fuer-deutschland-lob-fuer-die-tuerkei-a-327801.html (last accessed 13 January 2018): 'Der Präsident des Europäischen Gerichtshofs für Menschenrechte, Luzius Wildhaber, hat die Bundesregierung und das Bundesverfassungsgericht kritisiert. Die Tatsache, dass Entscheidungen des europäischen Gerichtshofes häufig als nicht bindend für deutsche Gerichte betrachtet würden, zeuge von mangelndem europäischen Verantwortungsbewusstsein'.

⁹⁹ Zorkin, 2016.

¹⁰⁰ *Konstantin Markin v. Russia*, Application no. 30078/06, Grand Chamber judgment of 22 March 2012.

¹⁰¹ Published in the *Russian Gazette* on 18 December 2013, available at: www.rg.ru/2013/12/18/ks-dok.html (last accessed 14 January 2018). See also for an assessment in 2013, S. Kyazev, 'Konstitutsionnii Sud v pravovoi sisteme Rossiiskoi Federatsii (The Constitutional Court in the Legal System of the Russian Federation)', *Zhurnal Rossiiskovo Pravo (Journal of Russian Law)*, Vol. 12, 2013, p. 5.

¹⁰² See B. Bowring, 'Russian Cases in the ECtHR and the Question of Implementation', in L. Mälksoo &

On 14 December 2015, President Putin signed the Federal Law ‘On enacting amendments to the Federal constitutional law on the Constitutional Court of the Russian Federation’.¹⁰³ One headline on the day of signature read, “Putin approved a law permitting the non-implementation of decisions of the European Court of Human Rights.”¹⁰⁴ The Law came into force on its publication on 15 December 2015 in the *Russian Gazette*.¹⁰⁵ It amends Article 3(3) of the Federal Law of the Constitutional Court so as to give the Court the jurisdiction to decide the question on the possibility (*vozmozhnost*) of implementing the decision of an international organ for the protection of the rights and freedoms of the person; the Court can declare ‘possibility’ or ‘impossibility’.

The word ‘possibility’ is not defined. I will turn to its deployment in the Court’s Resolution of 14 July 2015 in the context of the judgment of the ECtHR in *Anchugov and Gladkov v. Russia* of 14 July 2013,¹⁰⁶ the Russian *Hirst v. UK*,¹⁰⁷ and the *Yukos* judgment.

The response of some observers was apocalyptic in tone: this was the end of Russia’s participation in international law. Halya Coynash wrote on 2 December 2015 under the headline, “Russia Moves to legislate impunity from international law,” that “there seems every reason to

W.Benedek (Eds.), *Russia and the European Court of Human Rights: The Strasbourg Effect*, 2018, p. 188.

Cambridge, Cambridge University Press

¹⁰³ Федеральный закон Российской Федерации от 14 декабря 2015 г. N 7-ФКЗ О внесении изменений в Федеральный конституционный закон “О Конституционном Суде Российской Федерации” (*Federalniy zakon Rossiiskoi Federatsii ot 14 Dekabrya 2015 N 7-FKZ “O vnesenii izmeneniy v Federalniy konstitutsionniy zakon “O Konstitutsionnom Sude Rossiiskoi Federatsii”*).

¹⁰⁴ Available at: <http://newsru.com/russia/15dec2015/podpisa.html> (last accessed 14 January 2018).

¹⁰⁵ Available at: www.rg.ru/2015/12/15/ks-site-dok.html (last accessed 14 January 2018).

¹⁰⁶ Application nos. 11157/04 and 15162/05.

¹⁰⁷ *Hirst v. the United Kingdom (No 2)* [2005] ECHR 681, Application no. 74025/01, judgment (Grand Chamber) of 6 October 2005.

suspect that the law will be invoked whenever Moscow does not wish to comply with international law.”¹⁰⁸ The headline of the commentary by Vladimir Kara-Murza of Mikhail Khodorkovsky’s *Open Russia*, writing on 24 December 2015 in *World Affairs Journal*, was “Putin ‘Outlaws’ European Justice in Russia.”¹⁰⁹

Last week, Vladimir Putin signed a law that effectively banishes international legal norms from Russian territory and denies Russian citizens access to European justice. The measure, overwhelmingly passed in both houses of Russia’s rubber-stamp Parliament, gives the Constitutional Court –whose chairman, Valery Zorkin, recently called for “transforming the legal system in the direction of military harshness” – the right to ignore rulings by the European Court of Human Rights by declaring them “non-executable.”

On 19 December 2015, Philip Leach and Alice Donald wrote under the headline “Russia Defies Strasbourg: Is Contagion Spreading?”¹¹⁰ This was a reference to their article of 21 November 2013, “Hostility to the European Court and the Risks of Contagion,”¹¹¹ which focused not on Russia but on the United Kingdom’s position. They quoted the former president of the European Court Sir Nicolas Bratza, who had expressed his concern about the risks of contagion:

There is a risk of this attitude in the UK to judgments of the Court negatively impacting on other states and complaints being made of double standards ... [which] could result in a

¹⁰⁸ Available at: <http://khpg.org/en/index.php?id=1449011289> (last accessed 14 January 2018).

¹⁰⁹ Available at: www.worldaffairsjournal.org/blog/vladimir-kara-murza/putin-%E2%80%98outlaws%E2%80%99-european-justice-russia (last accessed 14 January 2018).

¹¹⁰ Available at: www.ejiltalk.org/russia-defies-strasbourg-is-contagion-spreading/ (last accessed 14 January 2018).

¹¹¹ Available at: <http://ukhumanrightsblog.com/2013/11/21/hostility-to-the-european-court-and-the-risks-of-contagion-philip-leach-and-alice-donald/> (last accessed 14 January 2018).

wider refusal to implement ECtHR judgments across the Council of Europe. (p. 176)

And they referred to the Commissioner for Human Rights of the CoE Nils Muižnieks, who suggested in a memorandum to Nick Gibb MP that

continued non-compliance would have far-reaching deleterious consequences; it would send a strong signal to other member states, some of which would probably follow the UK's lead and also claim that compliance with certain judgments is not possible, necessary or expedient. That would probably be the beginning of the end of the ECHR system, which is at the core of the Council of Europe.¹¹²

Their fears of 'contagion' seemed to be confirmed by the new Russian law. In their view, it did not "simply concern the relationship between the Strasbourg Court and the domestic courts (reflecting, for example, the long-standing debate in the UK about the implications of Section 2 of the Human Rights Act)."¹¹³ It went, they asserted, much further than that. It denied the enforceability of ECtHR judgments as regards the Russian state altogether, thereby purporting to extinguish the effect of Article 46 of the ECHR, unprecedented in the history of the European human rights regime.

The response of the CoE was more measured. On 15 December 2015, the Secretary General of the CoE Thorbjørn Jagland said:

it will be up to the Constitutional Court of Russia to ensure respect for the Convention if it is called upon to act under the new provisions. The Council of Europe will only be able to assess

¹¹² N. Muižnieks, 'Observations for the Joint Committee on the Draft Voting Eligibility (Prisoners) Bill', 10

October 2013, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2933800&SecMode=1&DocId=2062696&Usage=2> (last accessed 13 January 2018).

¹¹³ Available at: <http://ukhumanrightsblog.com/2013/11/21/hostility-to-the-european-court-and-the-risks-of-contagion-philip-leach-and-alice-donald/> (last accessed 14 January 2018).

Russia's compliance with its obligations when and if a specific case arises. The compatibility of Strasbourg judgments with the national constitutions has been examined in some other member States. So far, countries have always been able to find a solution in line with the Convention. This should also be possible in Russia.¹¹⁴

N. The Russian *Hirst*?

However, on 19 April 2016 the CCRF rendered a judgment¹¹⁵ in which it examined the question of the possibility of executing the judgment of the European Court of Human Rights of 4 July 2013 in the case of *Anchugov and Gladkov v. Russia* in accordance with the RF Constitution.¹¹⁶

There were *amicus curiae* briefs before the Russian CC arguing that the problem could be resolved by interpreting the RF Constitution, rather than seeking to amend it, which the CCRF cannot do. The CCRF, with three powerful dissents, disagreed and held that in 1998, when Russia ratified the ECHR, there was no case law under Article 3 of Protocol 1 (right to democratic elections) prohibiting a 'blanket ban' on prisoners' voting. Otherwise, ratification would have contradicted the RF Constitution. However, the CCRF suggested that by an amendment to the criminal law persons detained in Russian 'open prison' correctional colonies could be reclassified so that they do not fall

¹¹⁴ Available at: www.coe.int/en/web/secretary-general/news/-/asset_publisher/EYIBJNjXtA5U/content/russia-s-new-law-on-the-constitutional-court-jagland-a-solution-should-be-possible-/16695?desktop=true (last accessed 13 January 2018).

¹¹⁵ No. 12-П/2016, 19 April 2016.

¹¹⁶ For an early analysis, see Marina Aksenova, 'Anchugov and Gladkov Is Not Enforceable: The Russian Constitutional Court Opines in Its First ECtHR Implementation Case', 25 April 2016, available at: http://opiniojuris.org/2016/04/25/anchugov-and-gladkov-is-not-enforceable-the-russian-constitutional-court-opines-in-its-first-ecthr-implementation-case/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+opiniojurisfeed+%28Opinio+Juris%29 (last accessed 29 January 2017) – this article has very useful links.

within Article 32(2) of the RF Constitution. If this was done, Russia would in effect implement the ECHR's judgment. The CCRF emphasized the priority of international law, especially the ECHR, over Russian domestic law, while insisting that it is the final judge in issues concerning the RF Constitution.¹¹⁷

The ECtHR has nevertheless attempted to maintain good relations with Russia. On 6 December 2016, it was reported that the IX Congress of Judges of the Russian Federation had been addressed by Guido Raimondi, the president of the ECtHR.¹¹⁸ According to the report, he was careful to sidestep difficult issues and praised the Russian authorities for the fact that they were implementing the decisions of the ECtHR. He approvingly observed that Russia was no longer the main source of complaints to the Strasbourg Court. Mr Raimondi also praised the practice of reversing sentences in connection with violations of Article 6 of the ECHR on the right to a fair trial. And in the work of the CCRF, he was attracted by the way in which it interwove the practice of the ECtHR in its decisions.

As to the problems in relations between Russia and the ECtHR, he preferred to pass them by, selecting to "look at the picture as a whole." He did not mention, for example, that on 15 December the Russian CC was to consider the question of the possibility of implementing the judgment of the ECtHR as to paying €1.8 billion to the former shareholders of Yukos. In fact, the question of noncompliance with this judgment was soon to be considered by the Committee of Ministers.¹¹⁹

¹¹⁷ See J. Haak, 'Constitutional Court of the Russian Federation, Decision from 19 April 2016, No. 12-P/16. An Assessment from a German Point of View', *Journal of Siberian Federal University. Humanities & Social Sciences*, Vol. 6, 2017, p. 845.

¹¹⁸ Available at:

https://zakon.ru/discussion/2016/12/06/predsdatel_espch_pohvalil_rossiyu_za_ispolnenie_reshenij_suda__o_tkrytie_devyatogo_sezda_sudej_prosh (last accessed 14 January 2018).

¹¹⁹ Available at: <http://kommersant.ru/doc/3162703> (last accessed 14 January 2018).

Also, he did not call to mind that on 16 November 2016 the RF Supreme Court had overturned the sentence in the *Kirovles* case concerning the opposition leader and fighter against corruption Aleksei Navalny.¹²⁰ Mr Navalny did not agree with the RF Supreme Court's decision that there must be a retrial, considering that the ECtHR had ruled that there was no criminal element in his activities.¹²¹

O. The *Yukos* Case – Has Russia Finally Decided against Strasbourg?

The long-awaited judgment in the *Yukos* case was delivered on 19 January 2017.¹²² Once again, the Court was furnished with, and accepted for consideration, expert *amicus curiae* briefs. On 30 November 2016, Kanstantsin Dzehtsiarou of Liverpool University and Maxim Timofeyev of the European Humanitarian University in Vilnius submitted their 18-page *amicus* brief,¹²³ and on 7 December 2016 the Institute for Law and Public Policy provided a closely argued 33-page brief, drafted by Grigoriy Vaipan, arguing against a finding of 'impossibility', both warning of damage to the

¹²⁰ Available at:

https://zakon.ru/discussion/2016/11/16/prezidium_vs_otpravil_delo_kirovlesa_na_novoe_rassmotrenie__posle_resheniya_espch_o_narushenii_prav_ (last accessed 14 January 2018).

¹²¹ *Navalny and Ofitserov v. Russia*, Application nos. 46632/13 and 28671/14, judgment of 23 February 2016. The Russian courts had found the applicants guilty of acts indistinguishable from regular commercial activities. In other words, the criminal law had been arbitrarily construed to the applicants' detriment. The courts had failed to address Mr. Navalny's arguable allegation that the reasons for his prosecution were his political activities. Available at: <http://hudoc.echr.coe.int/eng?i=001-161060> (last accessed 14 January 2018).

¹²² See <https://rg.ru/2017/01/19/reg-szfo/konstitucionnyj-sud-rf-vynes-reshenie-po-delu-iukosa.html> (last accessed 14 January 2018). Text of the judgment with the two dissenting judgments available at: <http://doc.ksrf.ru/decision/KSRFDecision258613.pdf> (last accessed 14 January 2018).

¹²³ This is to be found on the website of the Russian CC at www.ksrf.ru/ru/Sessions/Documents/Yukos_Zaklyucheniye_30_11_2016.pdf (last accessed 14 January 2018).

reputation and authority of the Russian CC.¹²⁴

In his dissenting opinion, Judge Yaroslavtsev argued that the Russian CC's judgment contradicted the principle of legality and by taking on the function of a legislator exceeded its competence.¹²⁵ Judge Aranovskiy concluded,

[b]ut taking the judgment as a whole, the court does not find a correct basis for its decision, and, shifting its coordinates, loses itself in a general series of political, administrative and financial considerations, which are not equal to legal reasoning.

On 21 January 2017, the co-rapporteurs of the Monitoring Committee for the Russian Federation of PACE expressed their deep concern at the Russian CC judgment.¹²⁶ They reiterated that the full implementation of the judgments of the ECtHR is a legal commitment to which the Russian Federation has subscribed under the ECHR. They added:

Unconditionally honouring the Convention is an obligation incumbent on all member States and it is therefore unacceptable that Russia would not enforce a judgment of the European Court of Human Rights. The Russian authorities should therefore consider implementing the recommendation of the Venice Commission of the Council of Europe that the authorities consider revising the constitutional provisions at odds with the implementation of the ECtHR judgment. One cannot accept a selective implementation of the ECtHR's judgments.

¹²⁴ Available at:

http://ilpp.ru/netcat_files/userfiles/Litigation_Treinings/Amicus/8_YUKOS_Amicus%20Curiae%20Brief_07-12-2016.pdf (last accessed 14 January 2018).

¹²⁵ And see A. Pushkarskaya, 24 January 2017, *Kommersant*, available at: www.kommersant.ru/doc/3200196 (last accessed 14 January 2018).

¹²⁶ Available at: www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6484&lang=2&cat=9 (last accessed 14 January 2018).

As Maxim Timofeyev, the co-author of one of the *amicus* briefs, commented on 26 January 2017,¹²⁷ this was the first time the apex court of a CoE member state concluded that it should not pay just satisfaction. He summarized three main reasons given by the Russian CC for its decision.

First, the Russian CC noted that both the prosecution of the company for tax evasion and subsequent enforcement proceedings were based on legal provisions that it earlier had found in compliance with the RF Constitution. Second, the Russian CC relied on the historical context of the 1990s, the ‘economic uncertainty’, and the fact that the Russian state was seeking to take special measures to defeat the tax avoidance strategies of Yukos and to pay for social welfare. If the government had decided to apply the statutory time-bar in the Yukos case, it would have acted in contradiction with the RF Constitution, which requires the state to ensure the payment of taxes by every person as required by the principles of equality and fairness. Third, the Russian CC emphasized that Yukos was acting in bad faith by using tax avoidance schemes. Yukos should have foreseen the government’s actions. Thus, payment of just compensation from the Russian budget to the shareholders of a company that was involved in vast tax avoiding activities would be contrary to the constitutional principles of equality and fairness.

On this reasoning, execution of the ECtHR judgment on just satisfaction was not possible. In Timofeyev’s view, this judgment only deepened the distance between Russia and Strasbourg and increased the chances of escalating the confrontation even farther.

The response of the ECtHR has so far been more muted. On 26 January 2017, Mr Raimondi addressed the annual press conference of the ECtHR and answered a question concerning the *Yukos* judgment of the CCRF. His answer has not been published by the court but can be seen and heard on

¹²⁷ M. Timofeyev, ‘Money Makes the Court Go Round: The Russian Constitutional Court’s *Yukos* Judgment’, available at: <http://verfassungsblog.de/money-makes-the-court-go-round-the-russian-constitutional-courts-yukos-judgment/> (last accessed 14 January 2018).

the Court's website.¹²⁸ Mr Raimondi made the point that enforcement of judgments is not a matter for the ECtHR but for the CoM, which had the *Yukos* case under review.

His remarks were greeted with enthusiasm by Russia. The official Russian news agency TASS announced that "Strasbourg court chief says Russia fulfils 95% of court's rulings. Russia's judicial authorities generally demonstrate their full readiness for cooperation with the Strasbourg court, the ECHR president said."¹²⁹

TASS quoted Mr Raimondi as follows¹³⁰:

Very much positive can be said about relations with the Russian Federation. The Court has excellent relations with the Russian judicial authorities. I made a visit to Russia in late 2016 and held quite fruitful negotiations, in particular, with Chairman of the Supreme Court Mr. Lebedev and Chairman of the Constitutional Court Mr. Zorkin. They have big willpower to cooperate with the ECHR and with the Council of Europe as a whole. We could state with Chairman Lebedev that the Supreme Court is carrying out excellent work for preparing judges and we know that Russia has a large judge corps, which depends on the Supreme Court's preparation programs. In most cases, up to 95% of our court's decisions are fulfilled duly in Russia and this is a positive aspect in Russia's relations with the ECHR.

At the time of writing, therefore, it is too soon to say what the final result will be. But it must be noted that Russia did not seek to appeal the *Yukos* judgment of the ECtHR to the Grand Chamber,

¹²⁸ Available at: <https://vodmanager.coe.int/cedh/webcast/cedh/2017-01-26-1/lang> (last accessed 30 January 2017).

¹²⁹ Available at: <http://tass.com/world/927460> (last accessed 14 January 2018). For a different point of view, see <http://kommersant.ru/doc/3202083> (last accessed 14 January 2018).

¹³⁰ I have checked this against the Court's webcast note 132.

and some years have passed.¹³¹ It is unlikely that the Committee of Ministers will accept that Russia should not make proper arrangements to pay the amount of just satisfaction ordered by the ECtHR.

P. Conclusion

The 20th anniversary of Russia's ratification of the ECHR is to be celebrated, and as has been seen, the CCRF and the entire Russian legal and judicial systems have undergone significant change and evolution as a result of the engagement of Strasbourg.¹³² However, Russia is now moving in an increasingly authoritarian direction, with a frontal assault on civil society, especially human rights defenders, through the *Foreign Agents* law,¹³³ which was upheld in a highly controversial judgment of the CCRF, with some powerful dissents.¹³⁴ Russia has now suspended its payments to the COE as a

¹³¹ See I. Marchuk, 'The Tale of Yukos and of the Russian Constitutional Court's Rebellion against the European Court of Human Rights', AIC *Osservatorio Costituzionale*, p. 1, available at:

www.osservatorioaic.it/download/_rNqUPZ7lCzoX8S2kDDq8rd_vfJT0AMXT3K31xgeAYY/marchuck-aksenova-definitivo.pdf (last accessed 14 January 2018).

¹³² For a current Russian assessment by one of the judges of the CCRF, see N. Bondar, 'The Constitutional Court of the Russian Federation in the National and Supranational Systems of Jurisdictional Bodies: Cooperation and Competition', *Kutafin University Law Review*, Vol. 4, No. 1, 2017, p. 4. And for a fascinating investigation of the way in which the CCRF and its staff have learnt to negotiate the Court's survival under an authoritarian regime, see I. Grigoriev, 'Law Clerks as an Instrument of Court-government Accommodation under Autocracy: The Case of the Russian Constitutional Court', *Post-Soviet Affairs*, Vol. 34, No. 1, 2018, p. 17. See also T. Prikhod'ko, 'The Judgments of the European Court of Human Rights as Sources of Standards of Rights and Freedoms of Man and Citizen in the Russian Federation', *Journal of Siberian Federal University. Humanities & Social Sciences*, Vol. 7, 2017, p. 1101.

¹³³ See J. Hamlett, 'The Constitutionality of Russia's Undesirable NGO Law', *UCLA Journal of International Law and Foreign Affairs*, Vol. 21, 2017, p. 246.

¹³⁴ Judgment of 8th April, 2014 No. 10-II/2014, English translation available at: www.ksrf.ru/en/Decision/Judgments/Documents/2014%20April%208%2010-P.pdf (last accessed 14 January 2018).

protest against the sanctions imposed on the Russian delegation's attendance at PACE, and may, as Mr Jagland fears, 'crash out' of the system.¹³⁵

¹³⁵ Available at: <https://www.politico.eu/article/russia-may-crash-out-of-council-of-europe-says-rights-chief/>
(last accessed 14 December 2018).