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### Backlash to the European Court of Human Rights: The Case of Russia

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# Backlash to the European Court of Human Rights: The Case of Russia

Cole Kovarik & Dr. Courtney Hillebrecht

Undergraduate Create and Research Experience Fund



## Introduction

Since the end of World War II, the international community has forged human rights accountability systems that have since become increasingly important. The good work done by these international tribunals has come under threat more and more by a process of backlash called tribunal capture, or “the politics of states and individual political leaders seeking to undermine the tribunals by working within the judicialized and legalized landscape of international human rights law” (Hillebrecht). The European Court of Human Rights (ECtHR) is no exception; since its foundation, it has been largely utilized. However, lack of compliance with its rulings remains to be and underlying problem. Russia, a key member state of the institution, has historically demonstrated cases of systematic noncompliance with rulings of the ECtHR, and continues to do so. This study examined the relations between Russia and the COE since the widely condemned annexation of the Crimean Peninsula in 2014 in order to better understand the processes and ongoing ramifications of tribunal capture.

## Data Collection

Four methods of data collection were used for this project:

- Online reports (judgements, press releases, annual reports, statistical reports, etc.) from the official websites of the entities of the Council of Europe were utilized
- Newspapers and records obtained through the UNL libraries and electronic databases were analyzed
- Reports published on the official websites of NGOs such as Human Rights Watch and Amnesty International were used
- Secondary sources from scholarly databases such as JSTOR and Academic Search Premier were analyzed

## Results

A political battle between the COE and Russia ensued:

- Committee of Ministers (CM) condemned annexation of Crimea
- Parliamentary Assembly of the Council of Europe (PACE) suspended voting rights of the Russian delegation
- Duma responded, boycotting PACE altogether
- Duma empowered its Constitutional Court to undermine ECtHR rulings
- Duma suspended financial contributions to COE budget, causing the organization a grave financial crisis
- PACE reformulated protocols to respond to unruly states
- PACE reinstated voting rights of Russian delegation
- Duma resumed financial contributions

## Relations Between Russia and the Council of Europe

A timeline of major developments



## Conclusion & Discussion

The exchanges between Russia and the Council of Europe since the annexation of Crimea have demonstrated how states can seriously undermine the work of international tribunals. The Assembly itself has recognized a weakening respect for the Organization's Statute and acknowledged its own failure in overcoming the crises (Resolution 2277 2019). The division between the CM and PACE concerning Russian involvement was highlighted in Resolution 2277 and led the organization to change its rules of procedure when responding to situations in which a member State violates its statutory obligations. It remains unknown what concrete leveraging mechanisms will be employed in such cases, as the ability of PACE to strip unruly states of their voting rights was revoked in Resolution 2287 (PACE resolution 2287 2019), and as the resolution reinstated Russia's voting rights, it is unclear if, and when, a replacement sanction will be put into place as the condemned situation between Russia and the Ukraine persists.

Perhaps even more alarming is the 2016 domestic empowerment of the Russian Constitutional Court to declare rulings of international tribunals 'non-executable', purporting that the Russian constitutional legal order supersedes the European conventional system. It is difficult to analyze what exactly this matter means in a larger context, beyond a codified defiance of the binding nature of ECtHR judgements, as there has been little application of this amendment. This mechanism remains to be a tool in the Duma's 'back pocket', undermining the authority and credibility of the organization. It could be fruitful to further examine this case within the literature on margin of appreciation.

An analysis of civil society mobilization within this context was not included in the scope of this project. However, recurring themes of analyzed data indicated strong responses from Russian human rights organizations and the European youth sector. Though the impact of the political and budgetary crisis on the operations of these actors was palpable, the effects of their mobilization remain unclear. Examination of the horizontal network that precipitated during the crisis and any successes or failures associated with it would help to better understand the role that civil society actors play in instances of tribunal capture.

## Russia and COE Pressure Actions



## References

- Hillebrecht, Courtney. *International Human Rights Courts and Criminal Tribunals: The Politics of Backlash*. University of Nebraska-Lincoln "Strengthening the Decision-Making Process of the Parliamentary Assembly Concerning Credentials and Voting." 2019.
- PACE Affirms Its Members' Rights 'to Vote, to Speak and to Be Represented in the Assembly and Its Bodies.' 2019. Parliamentary Assembly of the Council of Europe. News. <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=7534&lang=2&cat=8#> (September 23, 2019).