

The Closing Door in Strasbourg

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In response to the invasion of the Russian Federation into Ukrainian territory, the Committee of Ministers (CoM) has [decided](#) yesterday to suspend its rights of representation in the Council of Europe (CoE), the regional organisation in Europe dedicated to the protection of human rights.

Kanstantsin, what is the significance of Russia's invasion of Ukraine for the Council of Europe in light of its history? How do you assess the reactions of the Committee of Ministers?

We are facing an unprecedented situation, because we are confronted with a major violation of international law with a full-scale armed aggression by one member State of the CoE against another member State. In my opinion, none of the previous situations from the recent history is directly comparable: the Nagorno-Karabagh conflict was confined to a specific territory, the previous Armenian-Azerbaijani conflict and the conflict in Yugoslavia took place before their respective accession to the Council of Europe. The Russian annexation of Crimea and the conflict in Donetsk and Luhansk were different in scale and methods of warfare. It is true that the situation in Georgia in 2008 could be considered comparable to some extent, but the context was slightly different and the Council of Europe did not react in the way as in the current situation and the reasons are open to speculation.

What are the general modalities for suspending the rights of representation of a Member State of the Council of Europe? What are the options for the outcome?

The instrument provided for in [Article 8 of the Statute](#) of the Council of Europe is the ultimate sanction that can be imposed on one of its parties. If a Member States has seriously violated the core principles of the CoE in [Article 3 of the Statute](#), the Committee of Ministers may initiate the procedure of suspension of the rights of representation and request the State to withdraw from the CoE. Within the jargon of the Statute, this looks like a temporary measure. But really it is a sign that the CoE is no longer prepared to accept the behaviour of a particular member State unless it completely retracts its actions that caused triggering of Article 8. The legal procedure for the suspension is provided in [Article 8 of the Statute](#) and [Article 26 of the Rules of Procedure of the CoM](#), but the specific modalities are not as clear as it might seem, given that the CoE has (luckily) experienced only one episode in this area.

The procedure of suspension and expulsion can be divided into two parts: Firstly, the triggers that may initiate the procedure and secondly, the response to it. Among the triggers, one could think of a decision of the European Court of Human Rights (ECtHR) in the infringement procedure of Article 46 § 4 ECHR or a report by the PACE describing a particular dire situation of human rights. Already before the

eruption of this war, I have [argued](#) that Russia might not be well suited to be a member State of the Council of Europe and that various elements could have triggered a suspension procedure long ago: its occupation of a territory of another Member State, its support for separatist movements or its failure to comply with the judgments of the ECtHR and cooperate with the CoE. While the CoE had not been prepared to take that step in the past, we have just learned that a clear violation of Article 3 of the Statute can be a trigger in and of itself.

In a second step, the Committee of Ministers needs to take a decision on the response to the trigger. While the required majority has been [debated](#) (p. 452), it is clear that the vote does not have to be unanimous. Otherwise, the State concerned could veto any suspension or expulsion. Once the decision is taken, a letter is sent to the representatives of the concerned State, informing them about the suspension of their rights of representation and – in theory – asking the State to withdraw. From this point on, there are three possible outcomes: First, the State itself can decide to withdraw under [Article 7 of the Statute](#), which will take effect at the end of the financial year. Second, the Committee can decide to expel the State from the CoE under [Article 8 sentence 2 of the Statute](#), with the timing to be determined by the Committee. And finally, given that the decision to suspend is not definitive, the last option is for the State to cease the serious violation that triggered the suspension procedure. In a sense, Article 8 is drafted in a diplomatic manner, by giving priority to the face-saving option of inviting the State to withdraw, while the option of forcible expulsion is subsidiary.

How do you assess the decision of the Committee of Ministers to suspend Russia's rights to representation? What concrete outcome regarding the Russian membership do you expect from this decision?

This is the first time in the history of the CoE that the procedural avenue of [Article 8 of the Statute](#) has formally been triggered. By comparison, the sanctions [adopted](#) by the members of the Parliamentary Assembly in response to the annexation of Crimea in 2014, were limited to certain voting and participation rights of the Russian delegation in the Parliamentary Assembly.

Yesterday's [decision relating to Russia](#) is fundamentally different in terms of the seriousness of the reaction, given that the governments of 42 member States have voted to suspend Russia's rights to representation. This means that these governments no longer want Russia to be represented in the Council of Europe.

In its yesterday's decision the Committee of Ministers [stated](#) that the "channels of communication remain open". For now, it is not entirely clear what that means. I personally take it as a hint by the Committee that it would reconsider its decision if Russia were to withdraw its military forces from the Ukrainian territory. However, Petr Tolstoy, the deputy speaker of the Duma and former PACE vice-president, already [stated](#) that this is not going to happen. In a similar vein, Dmitry Medvedev [called](#) the suspension a "good opportunity" to restore the death penalty in Russia. This statement actually underscores that the current Russian authorities do not share the Council's values if the only reason for not having death penalty was their continued membership in the Council of Europe. So, despite this rhetoric of the Council, I think

that the decision to suspend Russia's rights of representation will effectively result in ending Russian membership, except in the unlikely event of a removal of the troops from Ukraine. Of the three formal options resulting from the Committee's decision – withdrawal by Russia, formal expulsion by the Committee, or a termination of the violation – I personally think a withdrawal is the most likely outcome.

As such, the suspension of Russia's rights to representation does not have any impact on Russia's membership within the Council of Europe or its status as a party to the Convention. What would be the consequences of a withdrawal from the Council of Europe?

Should Russia decide to withdraw from the Council of Europe under [Article 7 of the Statute](#), its membership would cease at the end of the financial year. In theory, the procedure for denouncing the Convention under [Article 58 ECHR](#) is distinct from withdrawing from the CoE and takes effect after a six months' notice. But the end of membership in the Council of Europe means that the Convention no longer applies to this party ([Article 58 § 3 ECHR](#)). So, two scenarios are possible: either Russia separately denounces the Convention with a six months' notice, meaning that it will cease to apply to Russia even before its withdrawal, or the Convention will cease to apply the moment the withdrawal becomes effective. However, as long as a particular State is party to the Convention, the general rule is that the Court can deal with complaints in relation to the territory under this State's jurisdiction. This means that before the denunciation becomes effective, Russia is still bound by the Convention ([Article 58 § 2 ECHR](#)) and applications concerning human rights violations in Russia can still reach the Court. Obviously, the Court has jurisdiction over everything that is happening right now in Ukraine and Russia. From a rather pragmatic perspective, however, it is doubtful whether Russia would even bother to engage with the Court's judgments after the end of its membership, and it is hardly possible to predict how the Court would deal with applications.

In the face of the lack of implementation of ECtHR judgments, there have already been calls for some time for Russia to be suspended or expelled from the Council of Europe. What consequences does the decision to take this step now entail for the Russian people?

We are witnessing a period of significant reconstruction of the European human rights landscape. Putin's decision to [invade Ukraine](#) and the Committee's decision to suspend will have long lasting consequences for millions of stakeholders. In the past, as the relationship became increasingly [fraught](#), two and a half reasons were usually put forward in favour of maintaining Russia within the Council of Europe: First, that the Council would provide an avenue for multilateral negotiations – which might cease to exist with yesterday's decision.

Second, Russian human rights organisations have supported Russia remaining in the CoE because it implied the ability of Russian people to complain directly to the ECtHR, which was in some cases their only hope for justice. While we have seen complaints that have been very effective, such as the [interim measures](#) in the [Navalnyy case](#). However, over the last twenty years we have seen a steady [decline](#) of the Rule of law and democracy in [Russia](#). Although these individual applications

might have brought relief to some Russian individuals, they couldn't make a change on a fundamental and strategic level. Against the backdrop of the "meta-function" of the Court of embedding human rights in the national legal system, the [deterioration](#) of human rights in Russia proved that the Court was unable to effectively exercise this function vis-à-vis Russia. Therefore, although the protection of individuals' rights is a strong and serious argument for maintaining Russia within the Council, I don't believe that it outweighs the crossing of red lines by the Russian authorities.

Finally, as a "half" argument, the discussion on a possible suspension had also been influenced by the fact that Russia is a major contributor to the budget of the CoE. When the Russian delegates to the PACE were [sanctioned](#) in the aftermath of the annexation of Crimea, the Russian Federation stopped paying their fees, which was an issue for the financial stability of the CoE.

What impact does this decision of suspension have on the question of the legitimacy of the Council of Europe?

The presence in the CoE of States persistently violating the core values affects, in my view, the legitimacy of the Council of Europe more than the current decision to suspend Russia's rights of representation. All member States have some problems with some human rights, but of course it is a question of degree and red lines, raising political rather than legal questions. Russia's invasion of Ukraine is causing massive harm, devastation and – as a result – human rights violations. Therefore, I think that it was an important and correct decision from the point of view of legitimacy of the Council of Europe.

The only instance in which a Member State has withdrawn from the Council of Europe concerns the withdrawal of Greece under military rule, after a coalition of Member States had filed interstate applications. The fact that the Council of Europe had taken a strong stance through the action of its Member States is considered by some commentators to have reduced the scale of the human rights violations during the dictatorship and to have facilitated Greece's return to democracy. Do you see parallels with the current situation in Ukraine and in Russia?

It remains to be seen whether the suspension decision will bring about changes beyond the symbolism. I don't think that it will convince Russia to pull back its troops, it won't have immediate effect on this situation on the ground. However, the fact that Russia is not part of the family of European States is sending a very strong message, both for the Council of Europe and for the Russian people.

However, I wouldn't overestimate the impact of this gesture either. As for Greece, the circumstances in the 1960s were very specific. Nobody knows whether Greece would have returned to the Council of Europe, if the military regime hadn't changed. In the case of Russia, there would have to be a significant and rapid political change for Russia to return. I am not convinced that the suspension decision will be a decisive reason for these political changes, but it might have some impact. In my view, the suspension is an important signal for the Ukrainian people, but I wouldn't

expect an immediate and significant change in the Russian politics as a result of this decision.

