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## Introduction

Russia, Strasbourg, and the paradox of a  
human rights backlash

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### I.1 Introduction

When the Russian State Duma ratified the European Convention on Human Rights (ECHR) in May 1998, it was an event of world historical potential. Here was the continuator state of one of the two competing superpowers of the Cold War that agreed to give up the final word in human rights matters to the European Court of Human Rights (ECtHR), the crown jewel of the Council of Europe (CoE), which had been founded in 1949 as an ideologically designed organization of capitalist Western Europe. The USSR had consistently refused to become subject to any international adjudication, and now Yeltsin's post-Soviet Russia agreed to subject itself to regular human rights supervision by the ECtHR, accepting complaints by Russian citizens and other individuals under its jurisdiction but in principle also by governments of other CoE member states. Until perestroika, the USSR had vehemently argued that human rights belonged exclusively to each government's *domaine réservé*<sup>1</sup>; now, judges from other CoE member states would regularly decide on human rights cases originating from post-Soviet Russia. It was a legal revolution for Russia and no small change for the CoE either. In case symbolic proof was sought for the fact that the Cold War had indeed ended and a transformation favorable to human rights at the heart of the former Cold War adversary was possible, Russia's ratification of the ECHR in 1998 must have been it.

At the same time, Russia's accession to the CoE in 1996 and ratification of the ECHR in 1998 was more like a commitment regarding the

<sup>1</sup> See further A. Adamishin and R. Schifter, *Human Rights, Perestroika, and the End of the Cold War*, Washington, DC: United States Institute of Peace, 2009.

future and less of an acknowledgment for what had already been achieved in terms of democracy and human rights, notwithstanding the adoption of the democratic Constitution of the Russian Federation in 1993. In 1996, both the Russian government and high-level experts of the CoE concluded that, objectively, the Russian Federation did not yet meet the membership criteria of the CoE.<sup>2</sup> Both Strasbourg and Moscow knew that a tremendous amount of work needed to be done in order to achieve a human rights-friendly transformation in Russia. The amount of work ahead was the main reason why it was emphasized that it was better to be inclusive toward the country rather than wait for changes to happen (or perhaps not happen) on their own. Therefore, the main political justification for Russia's accession to the CoE, notwithstanding the country's objective non-readiness, was thought to be that the CoE and the ECtHR would provide both the necessary socialization and outside legal support for carrying out liberal judicial and other reforms in Russia. If the Helsinki Final Act of 1975 had, almost unexpectedly, triggered a certain "Helsinki effect" in the USSR,<sup>3</sup> it was postulated that Russia's membership in the European human rights protection system would cause a positive "Strasbourg effect."

Accordingly, there was a considerable political and historical subtext in Russia's accession to the CoE in 1996 and ratification of the ECHR in 1998. Just as the young Tsar Peter the Great had learned shipbuilding and navigation from the Dutch in Amsterdam in 1697, now post-Soviet Russia, with the help of eminent West European human rights lawyers in Strasbourg, had to learn about the application of human rights, democracy, and the rule of law after the Soviets had for decades rejected Western versions of these concepts.

Some of the political justifications for including Russia in the CoE human rights protection system in 1996/1998, notwithstanding the country's actual non-readiness at the time, seem retrospectively like the liberal Western desire for a *mission civilisatrice*. After all, what could have given a sweeter sense of victory than the former Cold War superpower taking catch-up lessons in human rights, democracy, and the rule of law? These

<sup>2</sup> A. Nussberger, "The Reception Process in Russia and Ukraine," in H. Keller and A. Stone Sweet (eds.) *A Europe of Rights: The Impact of the ECHR on National Legal Systems*, Oxford: Oxford University Press, 2008, p. 603 et seq. at 604; B. Bowring, *Law, Rights and Ideology in Russia: Landmarks in the Destiny of a Great Power*, London: Routledge, 2013, p. 148 et seq.

<sup>3</sup> See D. C. Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*, Princeton, NJ: Princeton University Press, 2001.

were the values based on which the West waged the Cold War in the first place. Seen in this way, it was almost a religious story of Saul wanting to become Paul. The argument and widespread hope in 1996/1998 was that, although post-Soviet Russia was still quite far from being “there,” with the help of the CoE and the ECtHR it would have a chance to get “there” eventually.

Twenty years have passed since then, and Russia is still far from being “there.” Rather, instead of the desired approximation with liberal democracies in Western Europe, Russia’s membership in the CoE and acceptance of the jurisdiction of the ECtHR have not been able to prevent a backlash in terms of democracy and human rights in the country. It is a matter of debate as to when exactly the backlash started, but in any case it has been present for about half the time of Russia’s participation in the ECtHR. Taking stock of Russia’s performance in the CoE and the ECtHR in 2010, Katlijn Malfliet and Stephan Parmentier concluded that Russia had become “increasingly reluctant to learn democracy and human rights” and increasingly played the role of the spoiler.<sup>4</sup> They even asked whether the CoE had let in a Trojan horse, or an undercover subversive member.<sup>5</sup>

Today, and concerning the ECtHR in particular, the Russian government in most (but not all) cases established by the Strasbourg Court pays compensation to individual victims of human rights violations. However, in terms of the bigger picture, it is by now a widespread view of human rights experts and foreign diplomats that the overall human rights situation in Russia has become worse and legislative amendments have been used to tighten the screws.<sup>6</sup> One would be forgiven for thinking that the Russian government has started to use its membership in the CoE,

<sup>4</sup> K. Malfliet and S. Parmentier (eds.), *Russia and the Council of Europe: 10 Years After*, London: Palgrave Macmillan, 2010, pp. 3, 11.

<sup>5</sup> *Ibid.*, p. 10.

<sup>6</sup> See the multiple references to Russia in the Report by the Secretary General of the CoE, *State of Democracy, Human Rights and the Rule of Law. A Security Imperative for Europe*, CoE, 2016, at pp. 5, 6, 10, 57–60, 66–67, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680646af8>. See further, e.g., European Commission for Democracy through Law (Venice Commission), Opinion on the Federal Law No 54-FZ of 19 June 2004 on Assemblies, Meetings Demonstrations, Marches and Picketing of the Russian Federation, 20 March 2012, [www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282012%29007-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282012%29007-e); Opinion on Federal Law No 121-FZ on Non-commercial Organisations (“Law on Foreign Agents”), On Federal Laws No 18-FZ and No 147-FZ and on Federal Law No 190-FZ on Making Amendments to Criminal Code (“Law on Treason”), 27 June 2014; Human Rights Watch, Russia. “Events of 2015,” [www.hrw.org/world-report/2016/country-chapters/russia](http://www.hrw.org/world-report/2016/country-chapters/russia); Freedom House, “Freedom in the World 2016. Russia,” <https://freedomhouse.org/report/freedom-world/2016/russia>.

and especially being under the jurisdiction of the ECtHR, as indulgences were used by certain people in medieval Europe – by paying money for one’s sins one can actually keep committing them or perhaps even committing more of them. In 2010, Malflijet and Parmentier postulated that Russia was using the CoE (presumably accepting the ECtHR as a necessary evil) as a political forum for its own foreign policy.<sup>7</sup>

Thus, at the beginning of our book stands a certain paradox: while Russia’s accession to the ECHR almost twenty years ago was meant to assist making the human rights situation in the country gradually better, the overall situation has become much less optimistic over the past decade. This is also reflected in the practice of the ECtHR, where Russia is among the “bad boys” both qualitatively and quantitatively: cases against it are numerous and many of them concern violations of core rights enshrined in the ECHR. The nature of a number of Russian human rights cases at the ECtHR and the repetitiveness of some of these cases has been such that it is difficult to avoid the question whether the Russian government still respects the ECHR as a binding international treaty or not. Moreover, there is a strengthening ideological countermovement in Russia to aspects of the ECHR as interpreted by the ECtHR, represented by prominent government and parliament members and religious leaders such as the head of the Russian Orthodox Church (ROC), Patriarch Kirill I,<sup>8</sup> who recently even called some human rights “heresy.”<sup>9</sup> Altogether, matters concerning human rights and Russia have not turned out the way they were idealistically hoped for by Russian liberals and optimistic CoE politicians back in 1996/1998.

This new normality in Russia has raised a number of questions that are, if not always openly discussed, at least thought about when the PACE meets in Strasbourg where the voting rights of Russian parliamentarians have been suspended since the Crimean events of 2014. Does Russia still have a future in the CoE and the ECtHR? How to deal with cases of noncompliance with judgments of the ECtHR and legislative

<sup>7</sup> K. Malflijet and S. Parmentier (eds.), *Russia and the Council of Europe: 10 Years After*, London: Palgrave Macmillan, 2010, p. 26.

<sup>8</sup> See, e.g., Patriarch Kirill of Moscow, *Freedom and Responsibility. A Search for Harmony – Human Rights and Personal Dignity*, London: Darton, Longman and Todd and the Publishing House of the Moscow Patriarchate, 2011. See further K. Stoeckl, *The Russian Orthodox Church and Human Rights*, London: Routledge, 2014.

<sup>9</sup> See A. Dolgov, “Russia’s Patriarch Kirill: Some Human Rights Are ‘Heresy,’” *Moscow Times*, 21 March 2016, [www.themoscowtimes.com/news/article/russias-patriarch-kirill-some-human-rights-are-heresy/563065.html](http://www.themoscowtimes.com/news/article/russias-patriarch-kirill-some-human-rights-are-heresy/563065.html).

changes that undermine the spirit of the ECHR? Taking into account the human rights backlash, the repetitive nature of some human rights violations in Russia, and the fact that the Russian government has avoided implementing general measures following from judgments of the ECtHR, does the Russian government still overall comply with the ECHR in good faith or has it actually stopped doing so? In the context of the human rights backlash, can Russia's membership in the CoE still be justified or has it become a farce, an alibi of sorts in which the Russian government coexists with the ECtHR according to the principle "we will (usually but not always) pay the fines but will otherwise continue to live in our own way"? Moreover, can Russia's noncompliance with, and resistance to, certain ECtHR judgments become contagious in other CoE member states as well, bearing in mind that Russia is not the only CoE country having problems with compliance? When does the level of noncompliance with judgments reach such a level that it would be more appropriate for a country to leave the institution or for the organization to expel a systematically noncomplying member state?

These are primarily political, not academic questions. They are not easy questions, also because in the present state of European affairs it is not entirely clear who should address them and who is responsible for answering them authoritatively. However, the answers that will eventually be given to these questions will make a big difference for the legal and political order of the Russian Federation – and for Europe as a whole.

Now before such fateful political questions can be meaningfully addressed in the CoE, what is required is a thorough analysis of the situation. Thus, academic researchers should also make their contribution and give their appraisals of the relationship between Russia and the ECtHR. It is necessary to think about the bigger picture and attempt a certain generalization beyond the case law of Russia's almost twenty years under the jurisdiction of the ECtHR.

To contribute to the creation of such a big picture is the main ambition of this book. Thus, we will address the following set of questions: What have been the achievements and failures of almost twenty years of Russia's interaction with the ECtHR? What role has the ECtHR played for Russia ("the Strasbourg effect"), and vice versa, what role has Russia played for the ECtHR since the country has been under its jurisdiction? Can Russia's recent human rights backlash and the rise of antiliberal nativist ideologies among the state leadership be reconciled with the country's membership in the CoE? Have instances occurred of positive legal and societal transformation being facilitated by ECtHR case law and

Russia's participation in the Strasbourg system? Why did the optimistic expectations of 1996/1998 regarding Russia's positive socialization not materialize? What is the transformative potential of regional courts such as the ECtHR in recalcitrant countries like Russia?

Thus, the focus of this book is primarily empirical. That is, it is an extended – and we believe, important – case study of post-Soviet Russia under the jurisdiction of the ECtHR. However, our case study has relevance for a number of larger theoretical, historical, and dogmatic debates in the field of human rights law that will be further explained in this introductory chapter. These questions include what the proper relationship is between national constitutional law and European human rights law, to what extent progress (or lack thereof) in human rights is historically, culturally, and “civilizationally” determined, and what the socialization effects are of regional courts such as the ECtHR beyond case law. These questions will be discussed in more detail in the next section of this chapter.

In this book, we argue that the significance of the ECtHR for Russia and of Russia for the ECtHR goes beyond case law, which by definition concerns individual cases. Post-Soviet Russia has provided the ECtHR with unique and rich life material that was not available in such a form elsewhere in CoE member states. For example, consider the so-called Chechen cases and their impact on the discussion concerning the applicability of international human rights law during armed conflict.<sup>10</sup> Moreover, Russian and other East European judges and also governments have played a key role in certain spectacular outcomes in the ECtHR – consider, for example, the U-turn that the Grand Chamber of the ECtHR made in the *Lautsi v. Italy* case concerning crucifixes in Italian classrooms.<sup>11</sup> Although Russian judges at the ECtHR have occasionally been in a hopeless minority on the bench, Judge Anatoly Kovler's separate opinions have had their own qualities and have been discussed in legal scholarship in their own right.<sup>12</sup> Additionally, Russia being under

<sup>10</sup> See P. Leach, “The Chechen Conflict: Analysing the Oversight of the European Court of Human Rights” 6 *European Human Rights Law Review* 2008, pp. 732–61; V. N. Rusinova, *Prava cheloveka v vooruzhennykh konfliktakh: problemy sootnosheniya norm mezhdunarodnogo gumanitarnogo prava i mezhdunarodnogo prava prav cheloveka*, Moscow: Statut, 2015.

<sup>11</sup> ECtHR, Case No. 30814/06, *Lautsi and Others v. Italy*, Grand Chamber Judgment, 18 March 2011; second section judgment, 3 November 2009.

<sup>12</sup> F. Sudre, “Les opinions séparées du juge Anatol Kovler jointes aux arrêts de la Grande Chambre de la Cour européenne des droits de l'homme,” in O. Chernishova and M. Lobov (eds.), *Russia and the European Court of Human Rights: A Decade of Change*.

the jurisdiction of the ECtHR since 1998 has arguably already to some extent transformed, Europeanized, and internationalized the younger generation of Russian lawyers.<sup>13</sup> Moreover, the academic study of the ECHR and the case law of the ECtHR may have given a certain boost to the further internationalization and Europeanization of Russia's legal scholarship and education, at least at some elite universities.<sup>14</sup>

Some of the impact of Russia on Strasbourg has been relatively recent, although probably not reflecting expectations among the pertinent political-legal elites in 1996 and 1998. Consider the 14 July 2015 judgment of the Russian Constitutional Court (Russian CC), in which it held that before judgments of the ECtHR would be implemented in Russia they would be subject to constitutional review. The Russian CC held that judgments of the ECtHR that were not compatible with the Russian Constitution would not be implemented in Russia.<sup>15</sup> Subsequently, the Russian CC has already implemented this doctrine in cases concerning prisoners' voting rights and in the *Yukos* compensation case. However, it is doubtful that this trend is in accordance with what Russia signed up to in 1998. Another question is to what extent Russia's new doctrine of constitutional supremacy reflects a wider trend and might become "contagious" in other CoE member states as well.

That the situation is serious enough can be seen from the fact that on 18 May 2016, the Secretary General of the CoE, Thorbjørn Jagland, said the following when submitting his annual report on the State of Human Rights, Democracy and the Rule of Law across Europe:

[W]e now see the ECHR and the judgments of the ECtHR openly challenged – with some invoking the supremacy of national constitutions,

*Essays in Honour of Anatoly Kovler, Judge of the European Court of Human Rights in 1999–2012*, Oisterwijk: Wolf Legal Publishers, 2013, pp. 9–23.

<sup>13</sup> See M. McAuley, *Human Rights in Russia: Citizens and the State from Perestroika to Putin*, London: I. B. Tauris, 2015, p. 259 et seq.

<sup>14</sup> See, e.g., *Russian Yearbook of the European Convention on Human Rights No 1*, Moscow: Statut, 2015; V. V. Smirnov and A. Yu. Sungurov (eds.), *Prava cheloveka pered vyzovami XXI veka [Human Rights Facing the Challenges of the 21st Century]*, Moscow: ROSSPEN, 2012.

<sup>15</sup> See Judgment of the Constitutional Court of the Russian Federation No. 21-Π/2015, 14 July 2015, <http://doc.ksrf.ru/decision/KSRFDecision201896.pdf>, pp. 33–34. See also L. Mälksoo, "Russia's Constitutional Court Defies the European Court of Human Rights," 12 *European Constitutional Law Review* (2016) pp. 377–95, and M. Hartwig, "Vom Dialog zum Disput? Verfassungsrecht vs. Europäische Menschenrechtskonvention – Der Fall der Russländischen Föderation," 44 *Europäische Grundrechte Zeitschrift (EuGRZ)* (2017), pp. 1–22.

or parliaments, or public opinion instead. But the Convention system hinges on Article 46, which all States have signed up to, and which says that they will ‘undertake to abide by the final judgment of the Court’. Take this away, and the entire system begins to unravel. If this is allowed to happen, the loss to Europe will be immense.<sup>16</sup>

In the report itself, the Secretary General of the CoE lamented the fact that “a growing chorus of voices now openly questions the authority of the European Court of Human Rights and the obligation to execute its judgments.”<sup>17</sup> If a chorus of such voices is growing, then with the judgment of the Russian CC of 14 July 2015, the subsequent legislative changes in Russian laws, and further cases in the Constitutional Court, Russia has become one of the cheerleaders. The project of Europe’s *mission civilisatrice* did not turn out as was envisaged in 1996/1998. Psychologically, the main difference between 1996/1998 and 2016 is that, unlike then, nowadays both Russia and the CoE do not have too many illusions left about each other.

Nevertheless, we proceed from the assumption that over the last twenty years positive changes and European influences have still occurred in terms of human rights law and policy in Russia. Being part of the Strasbourg human rights protection system has changed Russian realities in some ways – at least in the sense that an adequate response to human rights violations has become possible. Both the ECtHR and the Russian Federation have already managed to influence each other in a tense, complex, and uneasy relationship, which has not been a one-way street. Mutual influences (socialization) have taken place but in ways and with outcomes that were not initially expected by political optimists. However, Russia’s historically established tradition of a strong state with illiberal tendencies has proven resistant and has rejected certain major liberal human rights influences from Europe to the extent that the country’s compliance with the ECHR is currently in doubt.

## I.2 Wider issues raised by Russian interaction with the ECtHR

The importance of understanding the Russian experience in the ECtHR goes far beyond the country itself. The following are some contexts in which the experience of Russia has a wider relevance.

<sup>16</sup> T. Jagland, speech at the 126th session of the Committee of Ministers, [www.coe.int/en/web/secretary-general/speeches/-/asset\\_publisher/gFMv10SKOUrv/content/126th-session-of-the-committee-of-ministers?\\_101\\_INSTANCE\\_gFMv10SKOUrv\\_viewMode=view](http://www.coe.int/en/web/secretary-general/speeches/-/asset_publisher/gFMv10SKOUrv/content/126th-session-of-the-committee-of-ministers?_101_INSTANCE_gFMv10SKOUrv_viewMode=view).

<sup>17</sup> Report by the Secretary General of the CoE, *State of Democracy, Human Rights and the Rule of Law. A Security Imperative for Europe*, CoE, 2016, p. 5.

### 1.2.1 Comparing Russia with other countries

One can ask what would be the broader value or universal lesson from studying just one country in its interaction with the ECtHR. Concerning the ECtHR, academic lawyers and political scientists have usually asked research questions not focused on a single member state of the CoE. Even when they have primarily focused on postcommunist Eastern Europe, they have focused on this European subregion as a whole, not just on a single country.<sup>18</sup> Legal scholars interested in the ECHR and the ECtHR have examined the case law of the ECtHR and what the Court does and represents, naturally drawing from ECtHR practice concerning various CoE member states.<sup>19</sup> Political scientists have examined issues such as compliance with judgments of the ECtHR across different CoE member states, comparing it with other regional human rights protection systems such as the Inter-American Court of Human Rights.<sup>20</sup>

However, we are convinced that Russia's interaction with the ECtHR justifies academic research with this specific focus. Russia is a special case on a number of accounts, a special client of the ECtHR in a number of ways. With 143 million inhabitants, it is the largest CoE member state. It is the continuator state of the USSR, the former superpower that had ideologically challenged the CoE (and the West more generally) also not the least on account of the meaning and importance of human rights and what a good life means in domestic and international politics. The sheer magnitude of Russia's historic and ideological transformations in the twentieth century has been unprecedented, and this cannot but have influenced the country's interaction with the ECtHR. In a world where resources matter, Russia also contributes about 10 percent of the CoE budget, although this is now in danger since Moscow recently announced that it would stop paying at least parts of this sum until its parliamentary delegation continues to be suspended at the Parliamentary Assembly of the Council of Europe (PACE).<sup>21</sup> Last but not least, Russia currently

<sup>18</sup> See, e.g., I. Motoc and I. Ziemele (eds.), *The Impact of the ECHR on Democratic Change in Central and Eastern Europe*, Cambridge: Cambridge University Press, 2016; J. A. Sweeney, *The European Court of Human Rights in the Post-Cold War Era*, London: Routledge, 2013.

<sup>19</sup> See, e.g., K. Dzehtsiarou, *European Consensus and the Legitimacy of the European Court of Human Rights*, Cambridge: Cambridge University Press, 2015; K. Löhmus, *Caring Autonomy. European Human Rights Law and the Challenge of Individualism*, Cambridge: Cambridge University Press, 2015.

<sup>20</sup> See, e.g., C. Hillebrecht, *Domestic Politics and International Human Rights Tribunals. The Problem of Compliance*, Cambridge: Cambridge University Press, 2014.

<sup>21</sup> See [www.ng.ru/politics/2017-07-05/3\\_7022\\_strasburg.html](http://www.ng.ru/politics/2017-07-05/3_7022_strasburg.html).

deserves special attention because it was Russia's Constitutional Court that with its judgment of 14 July 2015 gave a further boost to the debate on the interrelationship between the ECHR and the constitutional orders of the CoE member states – and to compliance problems in the European human rights protection system as a whole.

At the same time, it is clear that the interaction between Russia and the ECtHR should not be understood in isolation, without comparative analytical perspectives in mind. For example, in terms of a human rights backlash or problematic human rights violations more generally, the Russian Federation of course does not constitute the only possible case of interest in the context of the CoE member states. Over recent years authoritarian tendencies have increased in Turkey, led by President Recep Tayyip Erdoğan.<sup>22</sup> Moreover, elites in other CoE member states in Central and Eastern Europe have expressed conservative reservations to certain liberal ideas and criticized too far-reaching “progressive” interpretations of the ECHR by the ECtHR. In particular the governments in Hungary and Poland are facing criticism as increasingly illiberal. Moreover, in terms of rejecting some of the outcomes in the ECtHR – on the human rights of terror suspects or prisoners' voting rights, for instance – and criticizing judicial activism by the ECtHR, Great Britain presents another major case of comparative interest.

Leo Tolstoy has started his novel *Anna Karenina* with the famous sentence that all happy families are alike, but each unhappy family is unhappy in its own way. If so, then perhaps this also applies to CoE member states, where dissatisfaction with Strasbourg and occasional noncompliance with judgments of the ECtHR can have different origins. For example, both Russia and Turkey have throughout history struggled with the dilemma of whether they are (recognized as) “European” countries or not; their European-ness has been contested both within these countries and in Western Europe.<sup>23</sup> Turkey's

<sup>22</sup> See already Z. F. Kabasakal Arat (ed.), *Human Rights in Turkey*, Philadelphia: University of Pennsylvania Press, 2007.

<sup>23</sup> See V. Morozov and B. Rumelili, “The External Constitution of European Identity: Russia and Turkey as Europe-Makers,” 47 *Cooperation and Conflict* 2012, pp. 28–48. See further also I. B. Neuman, *Russia and the Idea of Europe: A Study in Identity and International Relations*, London: Routledge, 1996; M. Malia, *Russia Under Western Eyes: From the Bronze Horseman to the Lenin Mausoleum*, Cambridge, MA: Belknap Press, 1999; U. Özsu, “Ottoman Empire,” in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law*, Oxford: Oxford University Press, 2012, pp. 429–48.

relationship with the ECtHR is similarly fascinating and has already been studied in its own right.<sup>24</sup>

In another comparison, Russia's and the United Kingdom's dissatisfaction with the ECtHR has led to partly identical outcomes such as occasional noncompliance with judgments of the ECtHR (on prisoners' voting rights, for instance) and plans to put British law above the Strasbourg law<sup>25</sup> or even denounce the ECHR.<sup>26</sup> As Bill Bowring has pointed out, this may have partly similar root causes such as the imperial legacy of both nations.<sup>27</sup> However, there are also important (mental) differences between the United Kingdom and Russia in the context of the ECHR. Many British people think that because of the country's history as a pioneer in terms of democracy and rule of law, the country knows better about human rights than Strasbourg. In contrast, Putin's Russia has developed a negative reaction toward being the disciple who, with no end in sight, gets to be mentored by "Europe." To simplify, one country thinks it knows better, while the other one is exhausted by (being considered as) knowing it worse. Both are understandable sentiments but have led to negative consequences in terms of compliance with judgments of the ECtHR.

Finally, in terms of international and regional human rights law, we should also keep in mind the comparison between post-Soviet Russia and the United States. Compared to the United States, the other superpower of the Cold War era, Russia's ratification of the ECHR in 1998 particularly stands out as an historically significant event, as a transformative step in Russian history. Neither during nor after the Cold War has the United States subjected itself to the jurisdiction of any similar regional human rights court, most notably the Inter-American Court of Human Rights. The attitude behind these decisions seems to be similar to the dissatisfaction of conservative circles of the United Kingdom with the ECtHR: Wouldn't a cradle of modern democracy know it better than "unaccountable" judges

<sup>24</sup> See, e.g., Z. F. Kabasakal Arat (ed.) *Human Rights in Turkey. With Foreword of R. Falk*, Philadelphia: University of Pennsylvania Press, 2007.

<sup>25</sup> N. Watt and R. Mason, "Cameron 'Committed to Breaking Link with European Court of Human Rights,'" *The Guardian*, 1 June 2015, [www.theguardian.com/law/2015/jun/01/david-ferguson-european-court-of-human-rights](http://www.theguardian.com/law/2015/jun/01/david-ferguson-european-court-of-human-rights).

<sup>26</sup> A. Asthana and R. Mason, "UK Must Leave European Convention on Human Rights, Says Theresa May," *The Guardian*, 25 April 2016, [www.theguardian.com/politics/2016/apr/25/uk-must-leave-european-convention-on-human-rights-theresa-may-eu-referendum](http://www.theguardian.com/politics/2016/apr/25/uk-must-leave-european-convention-on-human-rights-theresa-may-eu-referendum).

<sup>27</sup> B. Bowring, "Did the States that Founded the UN Have Liberal or Illiberal Governments?," *15 Baltic Yearbook of International Law*, Leiden: Brill, 2016, pp. 131–44 at 31.

in Strasbourg (or San José, Costa Rica)? However, scholars who have compared attitudes toward human rights in historically predominant political philosophies in the United States and Russia have nevertheless come to conclusions favorable to the United States.<sup>28</sup>

*I.2.2 The Russian Constitutional Court, the ECtHR and the interrelationship between constitutional law and international/European human rights law*

The story of Russia in the ECtHR mirrors a number of important debates that are more broadly relevant for the fields of international law and human rights. Thus, an analysis of the post-Soviet Russian story in the ECtHR may help us gain new insights regarding these contested issues.

To start with, there is the problem of the interrelationship between public international law and international (regional) human rights law. Probably there is no other subfield of public international law than human rights law that would be as much subject to pressures of fragmentation,<sup>29</sup> i.e., moral claims to autonomy from and even moral superiority to general public international law. There are activists who talk about human rights law and specifically about the ECHR as interpreted by the ECtHR, as if it were detached from and “higher” than the rest of public international law. However, CoE member states that value state sovereignty at least as much as (or even more than) they value human rights, such as the Russian Federation, see in the ECHR first of all an international treaty. They emphasize that when ratifying the international treaty, they did not sign up to extensive judicial activism and even less to a “European constitutional court” type of human rights court.

The role of Constitutional Courts is paramount in the judicial dialogue between the ECtHR and the CoE member states. The law and politics of the Russian CC has already caught the attention of legal scholars.<sup>30</sup> As was pointed out previously, with the 14 July 2015 judgment of the

<sup>28</sup> See, e.g., A. Kadarkay, *Human Rights in American and Russian Political Thought*, Lanham: University Press of America, 1982.

<sup>29</sup> See M. Koskeniemi (Report of the Study Group of the ILC), *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, A/CN.4/L.682, 13 April 2006, [http://legal.un.org/ilc/documentation/english/a\\_cn4\\_l682.pdf](http://legal.un.org/ilc/documentation/english/a_cn4_l682.pdf).

<sup>30</sup> See, e.g., A. Trochev, *Judging Russia. The Role of the Constitutional Court in Russian Politics*, Cambridge: Cambridge University Press, 2008; A. Nußberger, C. Schmidt, and T. Moršćakova (eds.), *Verfassungsrechtsprechung in der Russischen Föderation*.

Russian CC and its subsequent implementation in Russia, the country has recently taken a “leader” role in systematically questioning the nature and authority of the ECtHR and its judgments. So far no other CoE member state has developed the idea of constitutional primacy over the ECHR into a full-scale constitutional doctrine and mechanism the way the Russian authorities did in 2015. In our context this means that the issue of the interrelationship between international (regional) human rights law and constitutional law remains a highly contested matter, at least for some major CoE member states.

The historical experience (and experiment) of having Russia under the jurisdiction of the ECtHR for almost twenty years now may also be relevant for the debate on whether or not creating a World Court of Human Rights would be a realistic idea.<sup>31</sup> If having Russia with its two centuries of active participation in *jus publicum europaeum* (ca. 1700–1917)<sup>32</sup> meaningfully in the ECtHR has still led to considerable backlashes and noncompliance, then how difficult would it be to have a *globally* legally binding arrangement comparable to the ECtHR?

### I.2.3 *The problem of compliance: to what extent do international human rights treaties and institutions matter?*

Furthermore, the question arises, what is the overall effect of human rights treaties to which states have become party? Do such treaties and institutions make a real difference or not so much? While conservative and realist scholars argue that the practical value of international (regional) human rights treaties and institutions has been overrated,<sup>33</sup>

*Dokumentation und Analyse der Entscheidungen des Russischen Verfassungsgerichts 1992–2007*, Kehl: N. P. Engel Verlag, 2009.

<sup>31</sup> See M. Nowak, “The Need for a World Court of Human Rights,” 7 *Human Rights Law Review* 2007, pp. 251–59; M. Scheinin, “Towards a World Court of Human Rights,” Research Report, 2009, [www.eui.eu/Documents/DepartmentsCentres/AcademyofEuropeanLaw/CourseMaterialsHR/HR2009/Scheinin/ScheininClassReading1.pdf](http://www.eui.eu/Documents/DepartmentsCentres/AcademyofEuropeanLaw/CourseMaterialsHR/HR2009/Scheinin/ScheininClassReading1.pdf); P. Alston, “Against a World Court for Human Rights,” 28 *Ethics & International Affairs* 2014, pp. 197–212.

<sup>32</sup> For a wider historical interpretation of Russia’s relationship with and discourse of international law, see L. Mälksoo, *Russian Approaches to International Law*, Oxford: Oxford University Press, 2015.

<sup>33</sup> See E. Posner, *The Twilight of Human Rights Law*, Oxford: Oxford University Press, 2014; J. L. Goldsmith and E. Posner, *The Limits of International Law*, Oxford: Oxford University Press, 2007.

the liberal scholarly mainstream in the field of human rights sees in such treaties big potential for and evidence of human rights-friendly transformations in state parties.<sup>34</sup>

The ECHR is overall considered to be almost an outlier in the context of regional human rights courts because it has more political and financial support compared to other regional human rights treaty frameworks. The governments of the CoE member states are collectively watching out for implementation of and compliance with judgments of the ECtHR via the CoE's Committee of Ministers (CoM). This is a body made up of the Ministers of Foreign Affairs of the CoE member states that, however, are represented in day-to-day business in Strasbourg by their Permanent Representatives to the CoE. Compliance or noncompliance with judgments of the ECtHR has remained a permanent preoccupation for the CoM, especially since some countries have not executed judgments and, furthermore, have been reluctant to implement general measures (for example, change laws) besides implementing individual measures (paying compensation).<sup>35</sup>

Russia offers valuable insights into the problem of compliance in the context of the ECtHR because certain violations and challenges to compliance have occurred on a special scale in the country. For example, in the case of *Aslakhanova and Others v. Russia* the ECtHR found that the problem of non-investigation of disappearances that had occurred in Chechnya and Ingushetia between 1999 and 2006 was of a systemic nature.<sup>36</sup> At the same time, compliance with the judgments of the ECtHR remains a problem for other countries as well. This can be seen from regular reports by the Council of Europe, which currently ranks Russia third after Italy and Turkey with regard to the number of

<sup>34</sup> See B. Simmons, *Mobilizing for Human Rights. International Law in Domestic Politics*, Cambridge: Cambridge University Press, 2009.

<sup>35</sup> See C. Hillebrecht, *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance*, Cambridge: Cambridge University Press, 2014 and F. de Londras and K. Dzhetisariou, "Mission Impossible? Addressing Non-Execution through Infringement Proceedings in the European Court of Human Rights," 66 *International & Comparative Law Quarterly (ICLQ)* 2017, pp. 467–90.

<sup>36</sup> ECtHR, Case No. 2944/06 et al., *Aslakhanova and Others v. Russia*, Judgment of 18 December 2012. See further J. Laffranque, "Can't Get Just Satisfaction," in: A. Seibert-Fohr and M. Villiger (eds.), *Judgments of the European Court of Human Rights – Effects and Implementation*, Baden-Baden: Nomos, 2014, p. 101; L.-A. Sicilianos, "The Role of the European Court of Human Rights in the Execution of its Own Judgments: Reflections on Article 46 ECHR," in: Seibert-Fohr and Villiger, *Judgments of the European Court of Human Rights*, p. 289.

non-implemented cases, but also emphasizes that most of these cases concern particularly serious human rights violations while many show a clear lack of political will.<sup>37</sup>

Courtney Hillebrecht, a political scientist from the United States, characterizes Russia's attitude to compliance with judgments of the ECtHR as an *à la carte* approach.<sup>38</sup> For Russia, her study finds partial compliance together with "persistent non-compliance" in the form of non-implemented judgments and even "overarching hostility."<sup>39</sup> Many repeat ("clone") cases reveal that while the Russian government has paid compensation to the victims of human rights violations, just as ordered by the ECtHR, it has failed to respond to general measures suggested by the ECtHR or make systemic changes to prevent similar cases ending up in the ECtHR in the future.

Hillebrecht asks:

Given the institutional configuration in Russia, the underlying question should not be "why doesn't Russia comply with the ECtHR rulings," but rather "why does the Russian Federation bother complying at all?"<sup>40</sup>

However, in principle the same question can be asked about each CoE member state. Perhaps the Russian government still bothers to comply – to the extent that it still does, that is – because for reasons of history, identity, but also international prestige and foreign investment, it still cares about its image as a rule of law-based "civilized state," which exiting from the CoE might put in doubt. However, after sanctions were established between the West and Russia in 2014, this consideration can no longer be taken for granted.

Compliance remains a contested issue in the context of judgments of the ECtHR. In the *Markin* case, the ECtHR came to the conclusion that the concrete human rights violation originated directly from a stipulation in Russian legislation and accordingly, to fix the problem, it was not sufficient to just pay compensation to the victim but Russia also needed to amend its legislation on child support by military personnel.<sup>41</sup> The

<sup>37</sup> Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, Implementation of the Judgments of the European Court of Human Rights: 8th report of 23 June 2015, paras. 11 and 17.

<sup>38</sup> C. Hillebrecht, *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance*, Cambridge: Cambridge University Press, 2014, p. 115.

<sup>39</sup> *Ibid.*, p. 121. <sup>40</sup> *Ibid.*, p. 119.

<sup>41</sup> ECtHR, Case No. 30078/06, *Konstantin Markin v. Russia*, First Section Judgment, 7 October 2010, para. 67.

Chairman of the Constitutional Court in Russia, Valery Zorkin, did not like so direct a suggestion by the ECtHR, considering the proposal of concrete methods of implementation rather the business of the Committee of Ministers of the CoE.<sup>42</sup> The rest is already history, with a certain culmination being reached with the judgment of the Russian CC of 14 July 2015.

#### *I.2.4 The importance of history and culture in the perception and realization of human rights*

Another overarching issue concerning Russia in the ECtHR inevitably concerns the old debate on the universality versus cultural specificity of human rights (law). The ECHR is by definition not “universal” or global in the sense that it only binds European states that are parties to it. However, it is supposed to be “regionally universal” vis-à-vis CoE member states, perhaps with the only significant exception of the use of the margin of appreciation doctrine by the ECtHR.<sup>43</sup> From the moment a country is inside the European human rights protection system, it should in principle not raise objections of exceptionalism. At the same time, it is clear that, even within the CoE, quite a wide variety exists in terms of national traditions and historical trajectories related to human rights.

It is also remarkable that both in scholarship and in the practice of the CoE the jurisdiction of the ECtHR is often presented in a sort of ahistorical way. If a country ratifies the ECHR, it is supposed to respect the ECtHR and the ECHR, no more, no less. The fact that Russia’s history has been an almost constant “backlash” from the perspective of acceptance of human rights<sup>44</sup> has not been considered a mitigating circumstance or legitimizing factor in the context of today’s CoE and the ECtHR. But in reality, states and societies are not ahistorical. In this context it seems problematic that the history of attempts to establish human rights in Russia, the idiosyncrasies of and backlashes to such

<sup>42</sup> V. Zorkin, “Predel ustupchivosti,” *Rossiiskaya gazeta*, 29 October 2010, [www.rg.ru/2010/10/29/zorkin.html](http://www.rg.ru/2010/10/29/zorkin.html).

<sup>43</sup> See L. Mälksoo, “Concluding Observations. Russia and European Human-Rights Law: Margins of the Margin of Appreciation,” 37 *Review of Central and East European Law*, 2012, pp. 359–69.

<sup>44</sup> See, e.g., N. N. Belyakovich, *Prava cheloveka i politika. Filosofsko-pravovye osnovy [Human Rights and Politics: Philosophical-Legal Foundations]*, Minsk: Amalfeya, 2009, p. 181 et seq. (examining the history of human rights in the Russian Empire and the USSR from a critical Belarusian perspective).

attempts, have so far been studied insufficiently, at least in English language scholarship.<sup>45</sup> It is as if Russia were almost a huge and silent black hole in the global history of human rights (law).<sup>46</sup>

At the same time, this dismissive view does not fully take into account brilliant flashes of human rights thought in Russian intellectual history, for example, when in 1882 the leading Russian international law scholar and diplomat Fedor Fedorovich Martens (1845–1909) built his concept of international law on the notion of “civilized states” while defining “civilization” not directly based on race or religion but as the government’s respect for human rights of its citizens.<sup>47</sup> Ideas expressed by Martens and others<sup>48</sup> in Russia did not achieve ascendancy, or at least not immediately, but this does not mean they do not matter. It was possible to think such thoughts in Russia, while to go down this road always existed as an alternative.

The perspective on Russia’s – or any country’s – interaction with the ECtHR will change if we attempt to take into account its history of human rights. This history may to a large extent be a history of failure and governmental resistance to the idea of human rights, but in Russia’s case it is a history that nevertheless goes back far beyond the “Strasbourg” years of 1996/1998. Moreover, one thing that history can teach is patience: if certain patterns have existed for centuries, they will probably not be fully changed in twenty years.

### 1.2.5 Socialization effects of Russia’s experience with the ECtHR

Related to the historical situatedness of human rights and the general question of what human rights treaties and courts can achieve is the question of socialization in the context of international human rights treaties and institutions. Socialization of states and societies in the

<sup>45</sup> See, however, A. Walicki, *Legal Philosophies of Russian Liberalism*, Oxford: Clarendon Press, 1987; O. Crisp and L. Edmondson (eds.) *Civil Rights in Imperial Russia*, Oxford: Clarendon Press, 1989.

<sup>46</sup> For recent histories of human rights, see, e.g., S. Moyn, *The Last Utopia: Human Rights in History*, Cambridge, MA: Belknap Press, 2012; S. Moyn, *Human Rights and the Uses of History*, Brooklyn, NY: Verso, 2014; L. Hunt, *Inventing Human Rights: A History*, New York: W. W. Norton, 2007.

<sup>47</sup> See F. F. Martens, *Sovremennoe mezhdunarodnoe pravo tsivilizovannykh narodov* [*Contemporary International Law of Civilized Nations*] Moscow: MGU Iuridicheskii kolledzh, Vol. 1, 1995, foreword (original published in 1882).

<sup>48</sup> See, e.g., S. Heuman, *Kistiakovskiy. The Struggle for National and Constitutional Rights in the Last Years of Tsarism*, Cambridge, MA: Harvard University Press, 1998.

context of human rights has been studied from a number of theoretical and empirical perspectives,<sup>49</sup> and yet regrettably the Russian case has not played a significant role in these studies.<sup>50</sup> Again, a qualitative assessment of the Russian experience in the ECtHR might contribute to these debates on and theories about human rights socialization as well. The recent human rights backlash in Russia makes one cautious about accepting overoptimistic theories on socialization via human rights instruments. However, in such cases the historical, social, and political context of human rights backlashes instead of human rights advancement should be further examined.

It is also worthwhile examining the case of Russia in the ECtHR, and their mutual impact, against the backdrop of theoretical literature on how human rights law does or does not socialize states. For example, in 1999, political scientists Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink presented their “spiral model” of human rights change in which governments and civil society interacted in five distinct phases: repression, denial, tactical concessions, prescriptive status, and, finally, rule-consistent behavior.<sup>51</sup> Later, they dedicated a further study on conditions and mechanisms by which actors such as states, transnational corporations, and other private actors make the move from commitment to compliance.<sup>52</sup>

In the account of Risse, Ropp, and Sikkink, there is actually no determinacy that a government would necessarily move from one end of the spiral to another; backlashes are possible. Considering their theory, it would be interesting to evaluate whether Russia’s accession to the CoE and ratification of the ECHR in the 1990s was a recognition of the prescriptive status of European human rights law or whether this was at that time a mere tactical concession. In terms of this theoretical model, what can be made of Russian government policy to accept human rights in general (although with increasing exceptions), but to contest their application fiercely in concrete cases and policies such as rights of nongovernmental organizations (NGOs), homosexuals – and opposition

<sup>49</sup> R. Goodman and D. Jinks, *Socializing States: Promoting Human Rights through International Law*, Oxford: Oxford University Press, 2013.

<sup>50</sup> For an exception, see S. Saari, *Promoting Democracy and Human Rights in Russia*, London: Routledge, 2010.

<sup>51</sup> T. Risse, S.C. Ropp, and K. Sikkink (eds.) *The Power of Human Rights: International Norms and Domestic Change*, Cambridge: Cambridge University Press, 1999.

<sup>52</sup> T. Risse, S.C. Ropp, and K. Sikkink (eds.) *The Persistent Power of Human Rights: From Commitment to Compliance*, Cambridge: Cambridge University Press, 2013.

groups? Perhaps nowadays there is an urgency to develop a reverse spiral model of how governments challenge the European human rights paradigm.

Another theoretical account of socialization has recently been provided by Ryan Goodman and Derek Jinks, two U.S. human rights law scholars.<sup>53</sup> They argue that in the context of international human rights law and institutions there are three main modes of socialization affecting states: material inducement, persuasion, and what they call acculturation. Material inducement means that complying with human rights either brings material incentives to the respective state (e.g., more foreign aid) or, vice versa, violating human rights may entail costs that human rights protection systems envisage. In turn, persuasion means that the recipient country becomes convinced about the advantage of human rights norms, standards, and ideas and sincerely prefers to implement them at home.

Goodman and Jinks particularly emphasize acculturation as a third mode of socializing states in the context of human rights – even if the recipient state is not substantively convinced of the supremacy and value of a human rights norm or idea, it may follow it for status reasons and simply engage in mimicry. Both authors explain: “Whereas persuasion emphasizes the *content* of a norm, acculturation emphasizes the *relationship* of the actor to a reference group or wider cultural environment.”<sup>54</sup> However, Goodman and Jinks maintain that both persuasion and acculturation can bring about positive change in terms of human rights protection.

In the case of Russia under the jurisdiction of the ECtHR – as in fact in the case of all CoE member states – all three modes of socialization may be said to be at play. However, can it also happen that human rights socialization takes a “wrong” turn? It seems to me that socialization theories such as Goodman’s and Jinks’ are not entirely convincing at explaining cases when this happens and why.

Consider, for example, the aspect of material inducement. Essentially what the ECtHR does is to put a price tag on each human rights violation. Ideally, paying compensation for human rights violations would cause governments to improve their policies *inter alia* in order not to lose further resources. However, these considerations may not work very effectively if the price tag is relatively insignificant, as it usually

<sup>53</sup> R. Goodman and D. Jinks, *Socializing States: Promoting Human Rights through International Law*, Oxford: Oxford University Press, 2013.

<sup>54</sup> *Ibid.*, p. 26.

is in the case of individual human rights violations in the ECtHR. Ultimately, however, the price tag for human rights violations may also become shockingly high – as in the recent *Yukos* case,<sup>55</sup> when it may be tempting not to pay up, at the same time testing whether the system has any meaningful response to nonpayment.

Moreover, as far as material inducement is concerned, it is plausible to imagine that when the Russian government joined the CoE in 1996 and ratified the ECHR in 1998, it first of all counted on further economic integration with a technologically more advanced Western Europe and in this sense expected further material incentives from rapprochement with the West. CoE membership seemed to offer a kind of guarantee that, in terms of the political-social environment, post-Soviet Russia was from now on a safe and “civilized” place for European and other foreign investors and businesses. In this context, Russia’s CoE membership also offered an “indulgence” for Western political and political interests – even if human rights violations occurred in Russia, in contrast to the USSR they would be dealt with in a European setting and manner and real compensation would be available.

Concerning persuasion, it is worth contemplating in what sense the Russian government has actually been persuaded by the CoE’s and the ECtHR’s liberal human rights discourse. Judgments of the ECtHR are well reasoned, of course – but it is another matter whether the rationales of judgments are *politically and philosophically* convincing for the recipient country. Reactions by the Russian government to cases related to World War II,<sup>56</sup> the conflict in Transnistria,<sup>57</sup> and the expropriation of *Yukos* reveal that the Russian government has not always been persuaded by the ECtHR. Persuasion also becomes a particularly difficult matter when the ECtHR has actually changed its mind during the proceedings – as, for instance, in the *Kononov* case, when a slight majority in the Chamber found that Latvia had violated a Soviet war veteran’s human rights by convicting him of war crimes, whereas later on the Grand Chamber found that Latvia had not violated Mr. Kononov’s human rights.<sup>58</sup> Such changes of heart on the part of the European

<sup>55</sup> ECtHR, Case No. 14902/04, *Neftyanaya Kompaniya Yukos v. Russia*, 31 July 2014.

<sup>56</sup> ECtHR, *Kononov v. Latvia*, Case No. 36376/04, Judgment, Grand Chamber Judgment, 17 May 2010; Third section, Judgment, 24 July 2008.

<sup>57</sup> ECtHR, *Ilaşcu and Others v. Moldova and Russia*, Case No. 48787/99, 8 July 2004; *Catan and Others v. Moldova and Russia*, Case Nos. 43370/04, 8252/05, and 18454/06, Judgment, Grand Chamber, 19 October 2012.

<sup>58</sup> See *supra*.

Court presumably confirm Moscow's historical instinct that the essence of international human rights adjudication is political, and as sometimes occurs in the Eurovision song contest, Russia lacks good friends in Europe.

Finally, there is the point of the less conscious and more relationship-oriented acculturation. My hypothesis here is that the success of socialization in Russia has turned out fairly modest so far because "liberal Europe" is less and less seen as a cultural ideal in contemporary Russia. "Liberal Europe" is seen as "decadent," "too much under U.S. influence," "hypocritical," "hostile," "applying double standards," and so on. The discourse of human rights is increasingly politicized in Russia, while a number of ECtHR judgments are seen as primarily political as well. Perhaps no other cases epitomize this tendency as Georgia's and Ukraine's interstate cases against Russia, both linked to the respective wars of 2008 and 2014 or the events that preceded them.<sup>59</sup> Perhaps no other events more than these wars put a question mark on the socialization effects of Strasbourg – since, in theory at least, democracies and CoE member states were not supposed to have wars with each other in the first place.

In the meantime, the West and Russia have rhetorically slipped from partners to almost enemies. Thus, rather than mimicking, for example, Western attitudes toward LGBT rights and the fundamental idea that representatives of sexual minorities have exactly the same rights as the heterosexual majority, the Russian government has made it clear that it rejects such an idea but rather emphasizes "traditional," in particular "family" values.<sup>60</sup>

Even in cases when Moscow mimics Western use of the language of human rights – for example, when the Ministry of Foreign Affairs (MFA) publishes annual reports on human rights violations in the United States and EU countries – it of course reaches opposite conclusions to the United States and countries critical of Russia in Europe. In this way, the actual rhetorical distance between Russia and the West, unlike what was hoped for in the 1990s, has not become smaller but

<sup>59</sup> ECtHR, Case No. 13255/07, *Georgia v. Russia (I)*, Grand Chamber Judgment, 3 July 2014. The other Georgia-Russia case is still pending, as well as Ukraine-Russia cases.

<sup>60</sup> See Human Rights Council, Resolution on the protection of the family, No. 26/11 of 26 June 2014 and Summary of the Human Rights Council panel discussion on the protection of the family, Report of the Office of the UN High Commissioner for Human Rights, Un Doc. A/HRC/28/40 of 22 December 2014.

bigger. In this project, we are also looking for further explanations for this ongoing “anti-acculturation” in terms of understanding of human rights in Russia.

Russian political elites have suspected a wider Western geopolitical agenda of weakening Russia, along with its geopolitical claims and interests – with repercussions for human rights. In this sense, the European human rights discourse is no longer seen as innocent and without political bias. In 1998, there were still traces of hope in Moscow that Russia would become part of a common post-Cold War security architecture in Europe. By 2017, the security tensions between Russia and North Atlantic Treaty Organization (NATO) countries have become considerable, while Cold War-like rhetoric and divisions have returned to Eastern Europe. Although human rights idealists might ask what do countries’ security concerns have to do with their legal obligation to respect human rights, in the world of *Realpolitik* these issues can be more linked than is sometimes recognized.

### I.3 By way of conclusion

When we raise in this book the question of the Strasbourg effect on Russia, the phrase “Strasbourg effect,” unlike in “Helsinki effect,” is presented with a certain question mark, not as a triumphant exclamation. We are certain that there has been a Strasbourg effect but, in this book project, we want to establish its contours. Thus, the question mark is about the exact nature of the Strasbourg effect on Russia. Writing in 2010, Malfliet and Parmentier remained somewhat puzzled when they wrote that “the exact impact of the Convention and the ECtHR on Russia is ambiguous and difficult to assess.”<sup>61</sup> Since then, many further events have happened and today we can occasionally be more specific.

In some areas, Strasbourg has been a source of inspiration for legal reforms in Russia, whereas in other areas it has triggered systematic rejection and resistance by Russia’s current legal-political elites along with the learning outcome that “we do not want to become what ‘they’ want us to become.” Thus, the Strasbourg effect can also amount to rejection and resistance; it can consolidate opposition to ideas that are seen as civilization-wise alien.

<sup>61</sup> K. Malfliet and S. Parmentier (eds.) *Russia and the Council of Europe. 10 Years After*, London: Palgrave Macmillan, 2010, p. 26.

It emerges as the main argument of this book that realism is required when projecting the socialization effects of international human rights treaties and courts on countries in which an anti-liberal history and ideology draw the government to question the foundations of the ECHR even when under the jurisdiction of the Court. It has been a certain weakness of theories of human rights socialization that they tend to suggest universal models without duly taking into account these historical and ideological idiosyncrasies of specific country contexts where the devil is always hidden in the detail. On such occasions, encounters with liberal human rights courts and institutions such as the ECtHR can both trigger positive changes and consolidate human rights backlashes, or at least not necessarily prevent them.

In the reality of implementation of ECtHR judgments, we now have a European human rights protection system “with two speeds.” Since the judgment of the Russian Constitutional Court of 14 July 2015, Russia will *de facto* be able to pick and choose which judgments of the ECtHR to oppose and which judgments not to implement. However, since the post-World War II Council of Europe has been built on the idea of grace and reconciliation, it can be assumed that even today the reservoirs of Western grace toward Russia have still not been exhausted. The predominant thinking seems to be that as long as at least one Russian individual can still benefit from the ECtHR, it is worth having the Russian Federation on board – unless it wants to cut the Gordian knot at some point. However, it goes without saying that the situation is not easy for the Strasbourg Court and several negative side effects and consequences will ensue, not only concerning one country.