
Verzilov and Others v. Russia: The European Court of Human Rights' Continuation of Decisions Against Russia Highlight Shortcomings of International Law

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I. OVERVIEW

During the Sochi Olympics the members of Pussy Riot were attacked by Cossacks during their performance of the song “Putin Will Teach You to Love the Motherland.”¹ The band Pussy Riot is a feminist punk band, that had previously run afoul of the Russian government in 2012 when the band attempted to perform at Christ the Saviour Cathedral in Moscow.² The Cossacks who attacked the band had been brought in by the Sochi police department to maintain public order during the Olympics.³ Cossacks are a subsection of the Russian people whose characteristics are defined in law as a “combination of State service with a specific military and agricultural way of life.”⁴ In 1994 the government resurrected Cossack state service and one of the duties of the Cossack associations is the maintenance of public order.⁵ When Pussy Riot was attacked on February 19 the Cossacks ripped off their balaclavas, pushed them to the ground, sprayed them in the face with gas and one member was attacked with a whip.⁶ The band members went to the hospital the same day and the hospital recorded their injuries including: mild chemical burns, scratches, bruises, abrasions, and a closed brain injury.⁷ The incident was reported to the police and band members informed the police

1. *Verzilov and Others v. Russia*, App. No. 25276/15, ¶¶ 8-9 (Aug. 29, 2023), <https://hudoc.echr.coe.int/eng?i=001-226385>.

2. *Id.* at ¶ 5.

3. *Id.* at ¶ 53.

4. *Id.* at ¶ 39.

5. *Id.* at ¶¶ 39-40.

6. *Id.* at ¶¶ 9-10.

7. *Id.* at ¶ 12.

of the identity of some of the attackers a day later, after they had identified them through open sources.⁸ Sochi police implemented a “pre-investigation inquiry” that involved interviewing the members of Pussy Riot, reviewing medical records, and reaching out to the ataman (leader) of the Cossacks to find out the identity of those involved so that they could be interviewed.⁹ Between February 20 and April 7 the Cossacks that were identified were interviewed about their participation in the attack.¹⁰ The statements by the Cossacks were blatantly contradictory.¹¹ On March 21, following the inquiry, a police investigator refused to commence criminal proceedings.¹² That decision was overturned as unlawful and unfounded.¹³ However, the inquirer issued eight more decisions refusing to prosecute for lack of the elements of a crime.¹⁴ The prosecutor also refused to move forward for similar reasons and because of the failure to confirm the identity of all Cossacks involved.¹⁵ The members of Pussy Riot appealed based on the inaction of the authorities but were unsuccessful because the court determined that the authorities had not been inactive.¹⁶ Ultimately, the band members were told that private prosecution was available by an application to the Justice of the Peace, but they did not pursue that option.¹⁷

Pussy Riot applied to the European Court of Human Rights for violations of Articles 3 and 10 of the European Convention on Human Rights (the Convention).¹⁸ Article 3 protects against “torture or [] inhuman or degrading treatment,” and the freedom of expression is protected in Article 10.¹⁹ Although the Russian Federation ceased to be a party to the Convention on September 16, 2023, the court established jurisdiction over the matter because the events occurred prior to the Russian Federation’s exit.²⁰ Citing precedent, the court stated that “any conduct by law-enforcement officers [towards] an individual which

8. *Id.* at ¶¶ 14, 17.

9. *Id.* at ¶ 19.

10. *Id.* at ¶¶ 24-29.

11. *Id.*

12. *Id.* at ¶ 21.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at ¶¶ 37, 61.

18. *Id.* at ¶¶ 60, 98.

19. *Id.*

20. *Id.* at ¶ 59; *see also* European Convention on Human Rights art. 58, Nov. 4, 1950, C.E.T.S. No. 005; *Fedotova and Others v. Russia*, App. Nos. 40792/10, 30538/14, and 43439/14, ¶¶ 68-73 (Jan. 17, 2023), <https://hudoc.echr.coe.int/fre?i=001-222750>.

diminishes human dignity constitutes a violation of Article 3.”²¹ To hold a state liable for the actions of “civilian volunteers in a quasi-police function,” the court looked at factors such as: manner of appointment, supervision, powers and functions, and if the persons accused made use of their official position while committing the acts in question.²² The court concluded that, due to the intertwined nature of the Russian state and Cossack associations, Russia should be held responsible for the attack.²³ Examining the claim for a violation of Article 10 of the Convention, the court opines that even if the performance offended sincerely held beliefs there was no justification for ending it with force.²⁴ The European Court of Human Rights *held* that there had been a violation of Articles 3 and 10 of the European Convention on Human Rights. *Verzilov and Others v. Russia*, App. No. 25276/15 (Aug. 29, 2023), <https://hudoc.echr.coe.int/eng?i=001-226385>.

II. BACKGROUND

The Convention was signed by the members of the Council of Europe (the Council) in November of 1950.²⁵ The Council had been created the year before in an effort to prevent a repetition of the horrors seen during the Second World War.²⁶ The goal of the Convention was to give binding effect to the rights stated in the Universal Declaration of Human Rights by establishing a court with jurisdiction over the signing states.²⁷ The Convention became effective in 1953 and judges were elected for the European Court of Human Rights in 1959 with the first case heard the next year.²⁸ The Convention guarantees individuals the right to life, a fair trial and effective remedy, as well as freedom of expression, and freedom from torture or degrading treatment.²⁹ The

21. *Verzilov and Others v. Russia*, App. No. 25276/15, ¶ 71 (Aug. 29, 2023), <https://hudoc.echr.coe.int/eng?i=001-226385> (emphasis added); *see also* *Bouyid v. Belgium*, App. No. 23380/09, ¶ 101 (Sept. 28, 2015), <https://hudoc.echr.coe.int/?i=001-157670>.

22. *Id.* at ¶¶ 84-85.

23. *Id.* at ¶¶ 86, 88-90.

24. *Id.* at ¶ 98.

25. EUR. CT. H.R., *The European Convention on Human Rights: A Living Instrument*, (last visited Nov. 6, 2023), https://www.echr.coe.int/documents/d/echr/Convention_Instrument_ENG.

26. *Id.* at ¶ 9.

27. *Id.* at ¶ 5.

28. *Id.* at ¶¶ 16-17.

29. European Convention on Human Rights art. 2-3, 6, 9, 13, Nov. 4, 1950, C.E.T.S. No. 005.

Russian Federation signed the Convention in 1996 and it came into force in May 1998.³⁰

The European Court of Human Rights has jurisdiction to hear alleged violations of the Convention committed by any of the member states, however, the individual bringing the claim does not need to be a citizen of one of the member states.³¹ If the court finds that there has been a violation they can award damages, but the court itself does not execute its judgements.³² Judgements are executed by the Committee of Ministers of the Council of Europe.³³ Member states that have been found to be in violation of the Convention often have to amend legislation to prevent the same violation from reoccurring.³⁴ The states are bound by the rules of the court, but the court does not have the power to “overrule national decisions or annul national laws.”³⁵ After Russia and other Eastern Bloc countries were admitted to the Council after the fall of communism there was a flood of applications to the court with the backlog topping out at over 100,000 applications.³⁶ A reform was proposed that would allow a single judge to decide the admissibility of applications and also allow member states to be brought before the Committee of Ministers if the state failed or refused to enforce a judgement.³⁷ While the Russian council members approved it, the Duma refused; claiming that the court was targeting Russia.³⁸ Tensions with Russia continued in 2015 when Russia’s Constitutional Court held that any international decisions that conflicted with the Russian Constitution could not be enforced.³⁹ The primacy of the Russian Constitution over international law was codified in an amendment to the constitution in 2020.⁴⁰ The Council denounced the

30. EUR. CT. H.R., *supra* note 25 at 23.

31. EUR. CT. H.R., *European Court of Human Rights: Question & Answers*, 1, 5-7 (last visited Nov. 6, 2023), https://www.echr.coe.int/documents/d/echr/Questions_Answers_ENG.

32. *Id.* at ¶ 11.

33. *Id.*

34. INT’L. JUST. RES. CTR., *European Court of Human Rights*, (last visited Nov. 6, 2023) <https://ijrcenter.org/european-court-of-human-rights/>.

35. *Id.*

36. Jamie Smyth, *Council to Battle Russia on Protocol 14*, IRISH TIMES (May 12, 2009), <https://www.irishtimes.com/news/council-to-battle-russia-on-protocol-14-1.762322>.

37. *Id.*

38. *Id.*

39. Fedotova v. Russia: *European Court of Human Rights Holds that Russia Must Give Legal Recognition to Same-Sex Couples*, 135 HARV. L. REV. 1488, 1488 (2021).

40. *Id.*

amendment and called for the review or removal of the amendments,⁴¹ then Russia invaded Ukraine.⁴²

The Russian army invaded Ukraine on February 22, 2022.⁴³ Ukraine filed an application against Russia and requested the court issue interim measures.⁴⁴ The court issued those interim measures and called for a stop on attacks against civilians.⁴⁵ Russia was at first suspended from the Council but on March 16 the Committee of Ministers decided to exclude Russia, effective immediately.⁴⁶ Russia remained bound by the Convention for another six months but ceased all communication with the court shortly after their expulsion.⁴⁷ In a press release on September 5 the court took formal notice of the cessation of Russia as a contracting party and that the position of a judge, representing the Russian Federation, would cease to exist.⁴⁸ There were 17,450 pending applications against Russia at the time they ceased to be a contracting party to the Convention on September 16.⁴⁹

Despite the expulsion of the Russian Federation from the Convention, the court issued a resolution that it was lifting the freeze on examining cases against Russia.⁵⁰ The court further asserted that it was able to deal with applications against Russia, provided they occurred

41. Amnesty Int'l, *Europe/Russia: Venice Commission Denounces Putin Constitutional Amendments Which Avoid Execution of ECtHR Rulings* (June 19, 2020) <https://www.amnesty.org/en/latest/news/2020/06/europerussia-venice-commission-denounces-putin-constitutional-amendments-which-avoid-execution-of-ecthr-rulings/>.

42. Julia Crawford, *Ukraine vs Russia: What the European Court of Human Rights Can (And Can't) Do*, JUSTICEINFO (Apr. 7, 2022) <https://www.justiceinfo.net/en/90187-ukraine-russia-european-court-of-human-rights-can-do.html>.

43. *Id.*

44. *Id.*

45. *Id.*

46. Jannika Jahn, *The Council of Europe Excludes Russia: A Setback for Human Rights*, EJIL: TALK! (Mar. 23, 2022), <https://www.ejiltalk.org/the-council-of-europe-excludes-russia-a-setback-for-human-rights/>.

47. Kirill Koroteev, *Moving On in Strasbourg: How to Deal with the Russian Retreat from the European Court of Human Rights*, VERFASSUNGSBLOG (Dec. 12, 2022), <https://verfassungsblog.de/moving-on-in-strasbourg/>.

48. Press Release, Eur. Ct. H.R., Latest rulings by the European Court set out the procedure for future processing of applications against Russia (Mar. 2, 2023).

49. *Id.*

50. Eur. Ct. H.R., Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights, (Mar. 3, 2022), https://www.echr.coe.int/documents/d/echr/Resolution_ECHR_cessation_membership_Russia_CoE_ENG.

before the expulsion date.⁵¹ One of the early cases heard after Russia's expulsion was *Kutayev v. Russia*; the case concerned the torture of a human rights activist.⁵² This case is notable because it demonstrated how the court planned to move forward without a sitting Russian judge.⁵³ Rule 29 §(1)(a) of the court's rules allows the President of the Chamber to appoint an *ad hoc* judge if the judge for the Contracting Party is unable to sit for a case.⁵⁴ Under normal circumstances the Contracting Party would submit a list of candidates but if a list is not supplied the President of the Chamber can appoint another elected judge.⁵⁵ The court considered the lack of a Russian judge and a valid list of *ad hoc* judges, analogous to Rule 29, and appointed an *ad hoc* judge.⁵⁶ The court then informed the Russian government that it planned to apply the same rule to other upcoming applications and offered Russia the chance to comment.⁵⁷ Russia chose not to comment.⁵⁸

Kutayev v. Russia may have dealt with the lack of Russian judges but the court still needed to address its jurisdiction to hear cases.⁵⁹ The court tackled this issue head-on in *Fedotova and Others v. Russia*.⁶⁰ The Convention determines the jurisdiction of the court; Article 32 states that the "jurisdiction of the Court shall extend to *all* matters concerning the interpretation and application of the Convention."⁶¹ The court then turns to Article 58.⁶² The Convention allows for Contracting Parties to leave the Convention after they have been a party for five years.⁶³ Section 2 is

51. *Id.*

52. *Kutaev v. Russia*, App. No. 17912/15, ¶¶ 19-20, 101-02 (Jan. 24, 2023), <https://hudoc.echr.coe.int/eng?i=001-222651>.

53. *Id.* at ¶¶ 8-9.

54. Eur. Ct. H.R., Rules of Court, Rule 29 § (1)(a) (Oct. 30, 2023), https://www.echr.coe.int/documents/d/chr/Rules_Court_ENG.

55. *Id.* at Rule 29 §§ (1)(a), (2)(a).

56. *Kutaev*, App. No. 17912/15, ¶¶ 7-8 (Jan. 24, 2023), <https://hudoc.echr.coe.int/eng?i=001-222651>.

57. *Id.* at ¶ 8.

58. *Id.*

59. *Id.*

60. *Fedotova and Others v. Russia*, App. Nos. 40792/10, 30538/14, and 43439/14, ¶¶ 68-73 (Jan. 17, 2023), <https://hudoc.echr.coe.int/fre?i=001-222750>.

61. *Id.* at ¶ 69; EUROPEAN CONVENTION ON HUMAN RIGHTS art. 32, Nov. 4, 1950, C.E.T.S. No. 005 (emphasis added).

62. *Fedotova*, App. Nos. 40792/10, 30538/14, and 43439/14, ¶ 70 (Jan. 17, 2023), <https://hudoc.echr.coe.int/fre?i=001-222750>.

63. *Id.*

the key to the courts jurisdiction over applications against Russia.⁶⁴ Article 58 § 2 states:

Such a denunciation [of the Convention] shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.⁶⁵

Article 58 § 3 stipulates that if a Contracting party is no longer a member of the Council it will also no longer be party to the Convention on the same terms as § 2.⁶⁶ The court concluded that from reading § 2 and § 3 together a party was not released from responsibility from violations perpetrated prior to leaving the Convention.⁶⁷ The court also referenced the resolution issued on March 22, 2022 that the court remained competent to deal with pending applications for offences committed prior to Russia's expulsion.⁶⁸ *Verzilov and Others v. Russia*, cites the precedent set in *Fedotova* for jurisdiction and applies the same judge selecting mechanism as *Kutayev*.⁶⁹

III. COURT'S DECISION

In the noted case, the European Court of Human Rights, relying on jurisdiction provided by Article 58 of the Convention and court precedent, applied well-established case law to find that the Cossacks had acted as state agents and Russia was responsible for their actions.⁷⁰ The court

64. EUROPEAN CONVENTION ON HUMAN RIGHTS art. 58 §2, Nov. 4, 1950, C.E.T.S. No. 005.

65. *Id.*

66. *Id.* at 58, § 3.

67. *Fedotova*, App. Nos. 40792/10, 30538/14, and 43439/14, ¶ 71 (Jan. 17, 2023), <https://hudoc.echr.coe.int/fre?i=001-222750>.

68. Eur. Ct. H.R., Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights, (Mar. 3, 2022), https://www.echr.coe.int/documents/d/echr/Resolution_ECHR_cessation_membership_Russia_CoE_ENG.

69. *Verzilov and Others v. Russia*, App. No. 25276/15, p. 1, ¶ 59 (Aug. 29, 2023), <https://hudoc.echr.coe.int/eng?i=001-226385>; *Fedotova and Others v. Russia*, App. Nos. 40792/10, 30538/14, and 43439/14, ¶¶ 68-72 (Jan. 17, 2023), <https://hudoc.echr.coe.int/fre?i=001-222750>; *Kutayev v. Russia*, App. No. 17912/15, ¶¶ 7-8 (Jan. 24, 2023), <https://hudoc.echr.coe.int/eng?i=001-222651>.

70. *Verzilov*, App. No. 25276/15, p.1, ¶¶ 59, 56, 83-97 (Aug. 29, 2023), <https://hudoc.echr.coe.int/eng?i=001-226385>.

found that the Cossacks' treatment of the members of Pussy Riot amounted to degrading treatment and was a violation of Article 3 of the Convention.⁷¹ Russia was responsible for the actions of the Cossacks because they had acted as agents of the Russian government.⁷² Concerning the alleged violation of Article 10, which protects the freedom of expression, the court found that Russia had failed its duty to take reasonable measures to protect the freedom of expression.⁷³ The court awarded 15,000 euros to each applicant for damages and 7,200 euros plus any tax for legal costs.

The application by Pussy Riot was originally submitted to the court in 2015 and the Russian government had previously submitted observations to the court that the Cossacks had acted in a private capacity and were, therefore, not agents of the state.⁷⁴ To determine if the Cossacks were agents of the Russian state, the court looked at three areas of law: Russian legislation regarding Cossacks, the Draft Articles on Responsibility of States for Internationally Wrongful Acts issued by the International Law Commission, and court precedent.⁷⁵ First, the decree that reinstated the Cossacks specifically mentions that there is a long history of a link between Cossacks and state service.⁷⁶ For a Cossack association to exist it must be entered into a state register.⁷⁷ Any movement to take up state duties must be presented before the general Cossack assembly and their decision was still subject to approval by a higher Cossack ataman (leader) or federal/territorial authorities.⁷⁸ The ataman of a Cossack host had to be approved by the Russian President.⁷⁹ Allowances were to be paid to the Cossacks or their families from the budget of the regional government in case of death or injury.⁸⁰ There was also extensive contact between the Cossack group and the Main Police Department of the region and local authorities.⁸¹ Second, looking to international law, the court cites articles adopted by the International Law Commission that says that the actions of an entity that has been empowered by the state to exercise elements of government authority is

71. *Id.* at ¶¶ 95-96.

72. *Id.* at ¶¶ 84, 90, 96.

73. *Id.* at ¶¶ 98, 101-02.

74. *Id.* at pg. 1, ¶ 61.

75. *Id.* at ¶¶ 38-54, 56, 84.

76. *Id.* at ¶ 39.

77. *Id.* at ¶ 40.

78. *Id.* at ¶ 44.

79. *Id.* at ¶ 45.

80. *Id.* at ¶ 52.

81. *Id.* at ¶¶ 52-54.

considered a state action.⁸² Third, and finally, court precedent sets the criteria that determines state responsibility for acts of a person as: “manner of appointment, supervision and accountability, objectives, powers and functions of the person in question.”⁸³ When the case revolves around civilians in a “quasi-police function” additional factors are added to the test.⁸⁴ These factors are: if the person made use of their official position while committing the acts and acquiescence by the authorities in regard to the acts.⁸⁵

Applying these factors, the court ultimately found that the Cossacks were agents of the state, and Russia was responsible for their actions.⁸⁶ The Cossacks performed their service under approval and appointment by the state.⁸⁷ There was a close working relationship between the Sochi police and the Cossacks, the police approved the list of Cossacks, trained them, and were responsible for their management.⁸⁸ The Cossacks’ appointment was to maintain public order and protect citizens.⁸⁹ During the attack several perpetrators were wearing their Cossack uniform, indicating that they were officially carrying out their duties.⁹⁰ Finally, there was the lack of action by the police at the time of the attack, the refusal to commence criminal proceedings, and the dismissal of the applicants’ complaint to the court for inaction.⁹¹ In combination, these facts showed an acquiescence by the government toward the Cossacks’ actions.⁹² The actions of the Cossacks and the authorities in Russia met the threshold needed to hold Russia responsible for the attack.⁹³

The observations submitted by the Russian government, prior to its expulsion from the court, relied on the argument that the Cossacks had acted as private citizens as a defense against the allegations that there had been a violation of Articles 3 and 10 of the Convention, which prohibit

82. *Id.* at ¶ 56.

83. *Id.* at ¶ 84 (citing *V.K. v. Russia*, App. No. 68059/13, ¶ 175 (June 7, 2017), <https://hudoc.echr.coe.int/?i=001-171778>).

84. *Id.* at ¶ 85 (citing *Avşar v. Turkey*, App. No. 25657/94, ¶¶409-416 (July 10, 2001), <https://hudoc.echr.coe.int/?i=001-59562>; *Acar and Others v. Turkey*, App. Nos. 36088/97, 38417/97, ¶¶ 83-86 (Oct. 12, 2005), <https://hudoc.echr.coe.int/?i=001-69116>; *Seyfettin Acar and Others v. Turkey*, App. No. 30742/03, ¶35 (Jan. 6, 2010), <https://hudoc.echr.coe.int/?i=001-69116>).

85. *Id.*

86. *Id.* at ¶ 90.

87. *Id.* at ¶ 86.

88. *Id.* at ¶ 87.

89. *Id.* at ¶ 88.

90. *Id.* at ¶ 89.

91. *Id.* at ¶¶ 21, 91.

92. *Id.* at ¶ 91.

93. *Id.* at ¶ 95.

torture and protect freedom of expression.⁹⁴ For an Article 3 violation, the ill-treatment that the applicant suffers must meet a minimum level of severity, which includes bodily injury or intense mental suffering.⁹⁵ The applicants were able to meet these criteria through videos of the attack, witness statements, and their medical records.⁹⁶ The Cossacks' actions amounted to degrading treatment and were thus a violation of Article 3.⁹⁷ The applicants claimed that the attack had occurred because of their performance and political speech.⁹⁸ Parties to the Convention have a duty to protect the freedom of expression and Russia failed to do so when it did not take sufficient measures to protect the peaceful freedom of expression.⁹⁹ After holding that there had been violations of the Convention, the court awarded damages to the applicants in accordance with Article 41 of the Convention.¹⁰⁰

IV. ANALYSIS

While the violations of the Convention are well documented and straightforward, it is the surrounding circumstances that make this case notable.¹⁰¹ There is truly very little precedent for how the court is dealing with Russia.¹⁰² Greece is the only other country who has left the Council of Europe, and during that time they also had no sitting judge; however, there were no applications pending against them, unlike Russia.¹⁰³ After a period of unrest, Greece asked and was allowed to rejoin the Council after democracy was reinstated in the country.¹⁰⁴ Currently, it is unknown if Russia will ever ask to be allowed back on the Council or if they would be allowed to rejoin. After Russia's expulsion they have refused to comply with the Court's judgements or pay awarded compensation; they

94. *Id.* at ¶¶ 76, 99.

95. *Id.* at ¶ 71.

96. *Id.* at ¶ 73.

97. *Id.* at ¶¶ 95, 97; EUROPEAN CONVENTION ON HUMAN RIGHTS art. 3, 10, Nov. 4, 1950, C.E.T.S. No. 005.

98. *Id.* at ¶ 98.

99. *Id.* at ¶¶ 101-02.

100. *Id.* at ¶¶ 103-09.

101. *Id.* at ¶ 73.

102. Kirill Koroteev, *Moving On in Strasbourg: How to Deal with the Russian Retreat from the European Court of Human Rights*, VERFASSUNGSBLOG (Dec. 12, 2022), <https://verfassungsblog.de/moving-on-in-strasbourg/>.

103. *Id.*; Molly Quell, *One Year After Russian Expulsion from Top European Human Rights Body, Ukraine War Rages On*, COURTHOUSE NEWS SERV. (Sept. 15, 2023), <https://www.courthousenews.com/one-year-after-russian-expulsion-from-top-european-human-rights-body-ukraine-war-rages-on/>.

104. Quell, *supra* note 103.

ratified a law cementing this in June 2022.¹⁰⁵ The court was very likely aware of this law before they resumed hearing applications against Russia.¹⁰⁶ Thus, despite the lack of collaboration from Russia and the outright hostility towards the Council, the court has continued issuing judgements against Russia.¹⁰⁷

Between Russia's expulsion and the ruling in *Fedtova*, commentators across the world were concerned as to how the court would move forward and what options it might implement.¹⁰⁸ Several articles addressed the idea that the court would put a freeze on hearing cases, but cautioned that this solution was not sufficient as it might undermine the legitimacy of the court and was based on the assumption Russian would return.¹⁰⁹ Kirill Koroteev suggested a trust be set up to pay the applicants who were awarded compensation.¹¹⁰ Interestingly, he suggests that the trust be funded by donations from countries and individuals.¹¹¹ Essentially, this would be crowd sourcing the money to pay the applicants, which would completely defeat the purpose of the court, which is to hold states responsible for violations of the Convention.¹¹² Another potential solution is to use frozen Russian assets to pay the compensation, but that generalized solution may not be sufficient to adequately compensate the wide group of applicants from several countries.¹¹³ However, this is a significantly more reasonable option and one that is better able to hold Russia responsible for its actions without undermining the legitimacy of the court. Another solution offered was to sever the link between Council and court membership, so that states that

105. Koroteev, *supra* note 102.

106. *Id.*

107. Julia Emtseva, *The Withdrawal Mystery Solved: How the European Court of Human Rights Decided to Move Forward with the Cases Against Russia*, EJIL: TALK! (Feb. 8, 2023), <https://www.ejiltalk.org/the-withdrawal-mystery-solved-how-the-european-court-of-human-rights-decided-to-move-forward-with-the-cases-against-russia/>.

108. *Fedtova and Others v. Russia*, App. Nos. 40792/10, 30538/14, and 43439/14, (Jan. 17, 2023), <https://hudoc.echr.coe.int/fre?i=001-222750>; Koroteev, *supra* note 102; Julia Crawford, *Ukraine vs Russia: What the European Court of Human Rights Can (And Can't) Do*, JUSTICEINFO (Apr. 7, 2022), <https://www.justiceinfo.net/en/90187-ukraine-russia-european-court-of-human-rights-can-do.html>; Kanstantsin Dzehtsiarou, *The Range of Solutions to the Russian Cases Pending before the European Court of Human Rights: Between 'Business as Usual' and 'Denial of Justice'*, ECHR BLOG (Aug. 16, 2022), <https://www.echrblog.com/2022/08/the-range-of-solutions-to-russian-cases.html>.

109. Koroteev, *supra* note 102; Dzehtsiarou, *supra* note 108.

110. Koroteev, *supra* note 102.

111. *Id.*

112. *Id.*

113. *Id.*

leave the Council are still bound by their obligations to the Convention.¹¹⁴ While this works in theory, if a country is blatantly refusing to implement judgements against it, like Russia is, the court is left in the same position in which it currently finds itself. Despite the extensive discussion on how the court should move forward, all options fell short.

Essentially what the court has decided is to move forward with business as usual, or as close as it can get considering the unprecedented nature of the situation. Currently, Russia is a state with low social vulnerability; it is not economically dependent on other states and is not concerned about its reputation.¹¹⁵ The logic of sanctions and exclusions is built on the assumption that international pressure will force the state to comply with international law.¹¹⁶ However, when there is low social vulnerability the pressure and influence wielded by international organizations falls short of the goal of compliance. Continued rulings against Russia are unlikely to bring about the desired result but the alternative is unpalatable.

If the Court had decided to freeze the applications against Russia it would basically be denying human rights the legal protections guaranteed in the Convention.¹¹⁷ The war in Ukraine, the annexation of Crimea, and the persecution of vulnerable peoples by the Russian state amounts to one of the largest human rights violations of the twenty-first century. Inaction directly contradicts the purpose of the Council and the Convention, which was set up to serve as the “conscience of Europe.”¹¹⁸ This forces the court into an impossible position: either let Russia continue with no repercussions or continue in the hopes that victims of Russian human rights violations will eventually see justice.

V. CONCLUSION

The situation in which the European Court of Human Rights finds itself highlights the lofty goals of post-World War II international law and

114. Jannika Jahn, *The Council of Europe Excludes Russia: A Setback for Human Rights*, EJIL: TALK! (Mar. 23, 2022), <https://www.ejiltalk.org/the-council-of-europe-excludes-russia-a-setback-for-human-rights/>.

115. Ausra Padsokocimaite, *Execution of the ECtHR's Judgments Against Russia: Some Legal and Political Aspects*, STRASBOURG OBSERVERS (May 15, 2023), <https://strasbourgobservers.com/2023/05/15/execution-of-the-ecthrs-judgments-against-russia-some-legal-and-political-aspects/>.

116. Jahn, *supra* note 114.

117. *Id.*

118. Courtney Hillebrecht, *Rights at Risk: Russia's Withdrawal from the ECtHR*, OPEN GLOBAL RTS. (May 26, 2022), <https://www.openglobalrights.org/rights-at-risk-russias-withdrawal-from-the-ecthr/>.

its pitfalls. The Convention was the first instrument enacted to give effect to the Universal Declaration of Human Rights.¹¹⁹ The court had many successes, such as the abolishment of corporal punishment in U.K. schools, the decriminalization of homosexuality in Cyprus, and the abolition of the death penalty.¹²⁰ However, in the face of a Russian state that cares nothing for the opinion of others, the court can only issue judgements into the wind. The legitimacy of the court is severely undermined by its inability to hold Russia accountable. If the Council of Europe does not take steps to find a workable solution to this issue, there is a distinct possibility that the effectiveness of international law in protecting human rights will be diminished.

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119. EUR. CT. H.R., *The European Convention on Human Rights: A Living Instrument*, 1, 5 (last visited Nov. 6, 2023), https://www.echr.coe.int/documents/d/echr/Convention_Instrument_ENG.

120. *Id.* at 5,7.

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