Between a Rock and a Hard Place: The Dilemma of Continuing or Ceasing Russian Membership in the Council of Europe

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Last week the Washington Post reported that top Russian officials are contemplating withdrawal from the Council of Europe. This would be the first withdrawal since 1967 when Greece pulled out of the Council of Europe after the military coup during the most turbulent times in Greece's modern history. In the 60s, the Council of Europe had started a procedure of expelling of Greece for gross human rights violations but the 'black colonels' government withdrew before the procedure was complete. The same scenario is also possible in the context of the confrontation between Russia and the Council of Europe. The political regime in Greece changed and four years later Greece returned to the family of European states. It is yet to be seen how long it will take Russia to return if it withdraws.

In 2017, Russia failed to pay two thirds of its contribution to the ordinary budget of the Council of Europe. The financial pressure continued in 2018, when Russia refused to pay its contributions They justified it by references to lack of participation of the Russian Delegation in the Parliamentary Assembly of the Council of Europe (PACE) which was effectively self-inflicted. To avoid humiliation of not being allowed to participate in the PACE, the Russian authorities decided not to send their Parliamentarians to Strasbourg. The root causes of this situation can be traced to the reaction of PACE to illegal actions of Russia in Crimea and Eastern Ukraine. Now Russia demands that the rules of procedure of the PACE are changed in a way that PACE would not be able to reject any of the delegations to participate. PACE has recently attempted to change its rule of procedure but these attempts failed. Such financial 'blackmail' falls short of the standard of 'sincere collaboration' established under Article 3 of the Statute of the Council of Europe.

Legal Regulations

Technically, both withdrawal and expulsion are not particularly difficult. Withdrawal from the Council of Europe would not lead to such complications as we witness now with the UK withdrawal from the EU. Suspension and termination of membership are regulated by Article 8 of the Statute of the Council of Europe. It provides that any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. Article 3 establishes that all members of the Council of Europe should accept the principles of rule of law and human rights and they should *collaborate sincerely and effectively* in the realisation of the aims of the Council. In times of crisis, the Council of Europe can consider the possibility of triggering Article 7 in relation to states which fall below the standards that are declared in Article 3. Pursuant to Article 8 of the Statute, if a member state that was requested to withdraw does not comply, the Committee may decide that it has ceased to be a member of the Council.

Article 9 also provides that the Committee of Ministers may suspend the right of representation on the Committee and on PACE of a member which has failed to fulfil its financial obligation. If Article 9 is read in light of Article 8, such suspension might lead to a request to withdraw.

If a state would like to leave, it can do so by formally notifying the Secretary General of its inten-

tion to do so pursuant to Article 7 of the Statute; within a year, a member state can cut almost all ties with the Council of Europe. The European Court of Human Rights will have to deal with the backlog of cases and some treaties will continue operating even after the withdrawal. Technically, neither expulsion nor withdrawal are particularly lengthy or difficult. That said, there is an infinite number of considerations that are not reflected in the very laconic Articles 7, 8 and 9 of the Statute of the Council of Europe.

Beyond Law

There are a number of complex considerations that both Russia, the Council of Europe as a whole and the most influential governments in Europe should take into account. I will just briefly point to the most important ones that the stakeholders have to take into account.

Expulsion from an international organisation raises many fundamental choices for this organisation. One of these choices is whether expulsion and the consequent loss of any influence on the expelled country is more preferable than trying to keep the "problematic" country within the organisation. When the latter choice is made, the Council will continue suffering from the loss of legitimacy if the "problematic" country continues disregarding the fundamental values of the organisation. This brings us to the question of where the Council of Europe should draw the red line. The Russian foreign minister, Lavrov, recently said that the Russian authorities will not wait until the procedure of expulsion is completed, they will withdraw before that. Among other things, he opined that Russia needs the Council of Europe not more than the Council of Europe needs Russia. So, the government does not seem to think that it will lose much if Russia withdraws from the Council. This is unfortunate because Russia will clearly demonstrate that it does not consider itself a part of Europe if not geographically but definitely spiritually.

The Council of Europe might consider that it will lose a part of its influence if any of its members withdraw. However, the extent of this influence is questionable. Member states like Russia, Turkey and Azerbaijan might show that the Council of Europe is failing in bringing states closer to the ideals of human rights, rule of law and democracy. While it is not the fault of the Council of Europe that this is happening, the Council of Europe can only be effective if there is a genuine will and ability of its members to collaborate. The Council of Europe has predominantly soft powers at its disposal which are not sufficient to force compliance.

Another unfortunate outcome of expulsion is related to the European Court of Human Rights, (ECtHR). Expulsion from the Council of Europe means that any person under the jurisdiction of the former member state whose rights are allegedly violated will lose an opportunity to apply to the ECtHR. The Secretary General of the Council of Europe has identified this as one of the key challenges of expulsions or withdrawals. Often the ECtHR is the last hope for the most vulnerable people such as prisoners or national and ethnic minorities. The ECtHR has a significant impact in some areas of Russian law but unfortunately it cannot influence the bigger picture especially when the Russian government is not particularly willing to change.

Finally, an international organisation cannot exist, let alone effectively fulfil its aims, without funding. Financial considerations are not ends themselves; they remain means to an end, but they are nonetheless important. The Council of Europe needs to consider if expulsion would undermine its ability to fulfil its statutory aims from the financial point of view. Having said that, financial considerations, while significant, remain ultimately of prudential importance – they cannot be given more weight than the integrity of the system as such. Taking into account that Russia does not pay its dues anyway – this might not be such an important consideration here.

To sum up, the law is not capable of giving a clear answer to a number of crucial dilemmas for the Council of Europe in these circumstances. What will it chose – influence over principles, money over values, or *vice versa*?

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