

RUSSIA AND THE EUROPEAN COURT OF HUMAN RIGHTS

Why has there been a human rights backlash in Russia despite the country being having been part of the European human rights protection system since the late 1990s? To what extent does Russia implement judgments of the Strasbourg Court, and to what extent does it resist the implementation?

This fascinating study investigates Russia's turbulent relationship with the European Court of Human Rights and examines whether the Strasbourg Court has indeed had the effect of increasing the protection of human rights in Russia. Researchers and scholars of law and political science with a particular interest in human rights and Russia will benefit from this in-depth exploration of the background of this subject.

LAURI MÄLKSOO is Professor of International Law at the University of Tartu in Estonia. He is the author of *Illegal Annexation and State Continuity* (2003) and *Russian Approaches to International Law* (2015).

WOLFGANG BENEDEK is a former head of the Institute of International Law and International Relations and Director of European Training and Research Centre for Human Rights and Democracy at University of Graz.

RUSSIA AND THE EUROPEAN COURT OF HUMAN RIGHTS

The Strasbourg Effect

Edited by

LAURI MÄLKSOO

University of Tartu

WOLFGANG BENEDEK

Karl-Franzens-Universität Graz, Austria



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press & Assessment
 978-1-108-41573-6 — Russia and the European Court of Human Rights
 Edited by Lauri Mälksoo, Wolfgang Benedek
 Frontmatter
[More Information](#)



CAMBRIDGE
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,
 a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of
 education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781108415736

DOI: 10.1017/9781108235075

© Cambridge University Press & Assessment 2018

This publication is in copyright. Subject to statutory exception and to the provisions
 of relevant collective licensing agreements, no reproduction of any part may take
 place without the written permission of Cambridge University Press & Assessment.

First published 2018

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging-in-Publication data

Names: Mälksoo, Lauri, editor. | Benedek, Wolfgang, editor.

Title: Russia and the European Court of Human Rights : the Strasbourg Effect / edited by
 Lauri Mälksoo, University of Tartu; Wolfgang Benedek,

Karl-Franzens-Universität Graz, Austria.

Description: Cambridge [UK] ; New York : Cambridge University Press, 2017. |

Includes bibliographical references and index.

Identifiers: LCCN 2017024634 | ISBN 9781108415736 (hardback : alk. paper) |

ISBN 9781108401999 (pbk. : alk. paper)

Subjects: LCSH: Human rights–Russia (Federation) | European Court of Human Rights. |
 Human rights–Europe.

Classification: LCC KLB2460 .R89 2017 | DDC 342.4708/5–dc23 LC record
 available at <https://lcn.loc.gov/2017024634>

ISBN 978-1-108-41573-6 Hardback

Cambridge University Press & Assessment has no responsibility for the persistence
 or accuracy of URLs for external or third-party internet websites referred to in this
 publication and does not guarantee that any content on such websites is, or will
 remain, accurate or appropriate.

CONTENTS

<i>List of contributors</i>	vii
<i>Preface</i>	xiii
<i>Foreword by Dmitry Dedov</i>	xvii
<i>List of abbreviations</i>	xxii
PART I Setting the scene	1
Introduction: Russia, Strasbourg, and the paradox of a human rights backlash	3
LAURI MÄLKSOO	
1 Russia in the Council of Europe: Participation à la carte	26
PETRA RÖTER	
PART II Interaction between the ECtHR and Russian courts	57
2 The use of European human rights law in Russian courts	59
ANTON BURKOV	
3 ECtHR and the Russian Constitutional Court: duet or duel?	93
SERGEY MAROCHKIN	
4 The Russian Constitutional Court and the Strasbourg Court: judicial pragmatism in a dual state	125
ALEXEI TROCHEV	
5 Philosophy behind human rights: Valery Zorkin vs. the West?	150
MIKHAIL ANTONOV	

vi	CONTENTS
6	Russia’s cases in the ECtHR and the question of implementation 188
	BILL BOWRING
7	Russia’s impact on the Strasbourg system, as seen by two former judges of the European Court of Human Rights 222
	ELISABET FURA AND RAIT MARUSTE
	PART III Specific rights and violations: case studies 253
8	Egregious human rights violations in Chechnya: appraising the pursuit of justice 255
	PHILIP LEACH
9	Property rights in Russia: reconsidering the socialist legal tradition 295
	VLADISLAV STARZHENETSKIY
10	LGBT rights in Russia and European human rights standards 326
	DMITRI BARTENEV
	PART IV Interpretations of the Strasbourg Effect and Russia’s responses to the ECtHR 353
11	Nativist ideological responses to European/liberal human rights discourses in contemporary Russia 355
	BENEDIKT HARZL
12	Russia and the European Court of Human Rights: some general conclusions 385
	WOLFGANG BENEDEK
	<i>Index</i> 400

CONTRIBUTORS

MIKHAIL ANTONOV is Professor of Law associated with the Law Faculty at the National Research University Higher School of Economics. He teaches legal theory and comparative law. His research interests focus on the Russian philosophy of law and contemporary legal theory. His main publications in recent years include, among others, *Law and Society in the Conception of Georges Gurvitch* (2013, in Russian) and *History of the Russian Legal Thought* (2017, in Russian).

DMITRI BARTENEV is an associate professor of international law at St Petersburg State University. He teaches international law and human rights and has also taught comparative constitutional law and medical law. He is a member of the European Commission on Sexual Orientation Law. As a practicing attorney he has represented clients in a number of topical cases at the European Court of Human Rights and the UN human rights bodies in anti-discrimination, mental disability, LGBT, and freedom of speech cases. His publications include *Fundamentals of Constitutional Law of Finland* (2004), *Implementation of Shtukaturv v. Russia: Challenges and Strategies* (2011), and *Justice or Complicity* (2016).

WOLFGANG BENEDEK is a former head of the Institute of International Law and International Relations and Director of European Training and Research Centre for Human Rights and Democracy at University of Graz.

BILL BOWRING is a practicing barrister and teaches international law and human rights at Birkbeck College. He has represented many applicants at the European Court of Human Rights since 1992, against Armenia, Azerbaijan, Estonia, Georgia, Latvia, Russia, and Turkey. He is founder and Chair of European Human Rights Advocacy Centre and is President of European Lawyers for Democracy and Human Rights, active in eighteen European countries. He has more than 100 publications to his name,

including two monographs, the most recent of which is *Law, Rights and Ideology in Russia: Landmarks in the Destiny of a Great Power* (2013).

ANTON BURKOV is a chair of the European and Comparative Law Department at the University of Humanities. Since 1998 he has been practicing and teaching human rights law. During his twenty years of practice as a human rights lawyer with the NGO Sutyajnik (<http://sutyajnik.org/>), Anton litigated cases in district and regional courts, the Supreme Court and the Constitutional Court of the Russian Federation, and the European Court of Human Rights. He is involved in some of Sutyajnik's most recent cases: *Burkov v. Google* (IT and privacy), *Mikhaylova v. Russia* (free legal aid), *Sablina and Others v. Russia* (secret organ harvesting), and *Korolevs v. Russia* (rights of prisoners and their families to conjugal meetings and artificial insemination). He has authored, coauthored, and edited nine books and more than twenty papers in major Russian law journals and in English-language law journals. In 2000 Anton was awarded a citywide legal prize, the "Profi-Yekaterinburg" in the area of "Jurisprudence." In 2001 he was awarded the highest legal prize in Russia, the "Femida" award, "for contributions toward the creation of a democratic society and the development of state legal institutions." In 2002 he set up a human rights news agency, *Sutyajnik-Press*.

DMITRY DEDOV currently serves as judge elected from the Russian Federation at the European Court of Human Rights. He worked as a professor of law at Lomonosov State University in Moscow from 1994 to 2013, writing various books on methodology including the theory of corporate governance, conflict of interests, general good, principle of proportionality, democracy, and sustainable development. He has broad experience and knowledge in the application of the rule-of-law concept and its fundamental principles to civil and criminal matters on national and international levels as a judge and a scholar.

ELISABET FURA recently retired from the position as chief parliamentary ombudsman in Sweden. Before that she served for nine years as judge in the European Court of Human Rights, and before that she was a partner of Vinge law firm, Stockholm, Sweden and Paris, France. She is Juris Doctor Honoris Causa of the law faculty of Stockholm University, former president of the Swedish Bar Association, and head of the Swedish delegation to the CCBE (the Bar Council of the EU). She was awarded a medal for achievements in the legal field by His Majesty the King of Sweden.

CONTRIBUTORS

ix

BENEDIKT HARZL is an Austrian Marshall Plan Foundation Fellow at Johns Hopkins University/SAIS and Assistant Professor at the Russian East European Eurasian Studies Centre (REEES) of the Law Faculty of the University of Graz. He worked in various research institutions across Europe, among them at the European Academy of Bolzano/Bozen (Italy) in 2007–12. While the University of Graz is Harzl's alma mater, he completed his PhD in law at the University of Frankfurt. His research foci include human rights and post-Soviet state building as well as the law and politics of ethnic conflicts in the post-Soviet space.

PHILIP LEACH is Professor of Human Rights Law at Middlesex University, a solicitor, and Director of the European Human Rights Advocacy Centre (EHRAC: www.ehrac.org.uk), also based at Middlesex University. He researches and publishes widely in the field of international human rights law. He was a member of the Independent Advisory Panel on Deaths in Custody from 2009 to 2015 and a member of the *Harris Review* from 2014 to 2015. He is a former trustee of the Media Legal Defence Initiative and the Human Dignity Trust and is a member of the Advisory Board of the Open Society Justice Initiative. He has extensive experience of representing applicants before the European Court of Human Rights, in particular against Russia and other former Soviet states, as well as the United Kingdom and Turkey.

LAURI MÄLKSOO is Professor of International Law at the University of Tartu in Estonia. He is the author of *Illegal Annexation and State Continuity* (2003) and *Russian Approaches to International Law* (2015).

SERGEY MAROCHKIN is Director of the Institute of State Law at the University of Tyumen. He is an Honored Jurist of the Russian Federation (2007, conferred by the President of Russia) and Member of the Executive Committee of the Russian Association of International Law (since 1993). Sergei is a coauthor of monographs, textbooks, chapters in international edited books, and articles published in Europe, Canada, China, and the United States. He was a visiting professor and lecturer (2007–12) at the University of Lorraine (France) and at the University of Tartu (Estonia) (2012) and Coordinator of the Russian team of reporters for the Amsterdam-Oxford multinational project International Law in Domestic Courts (ILDC) since 2007. His awards include the Russian Academy of Sciences' F. F. Martens Prize Laureate (2013), G. Tunkin Medal, and Russian Association of International Law.

RAIT MARUSTE was a law professor at Tartu University until 1998 and President of the Supreme Court of Estonia after restoration of Estonian independence. In 1998 he received the state decoration White Star II class (II klassi Valge Tähe orden). From 1998 to 2010, he was a judge at the European Court of Human Rights, and from 2011 to 2015 he was a member of the Estonian Parliament (Riigikogu) chairing the Constitutional Committee. From 2015 he was an ad hoc legal advisor for government and a visiting professor at Tartu University. He has written more than 100 articles and books on judiciary, human rights, and constitutional law, including *Constitutionalism and Protection of Fundamental Rights* (2004).

PETRA ROTER is Associate Professor of International Relations at the University of Ljubljana, Faculty of Social Sciences, and a senior researcher at the Centre of International Relations at the same faculty. She is Slovenia's national director for the European Master in Human Rights and Democratisation (Venice; EMA) and a coordinator of the MA program in International Relations at her faculty. She has published on international minority protection, conflict management, post-conflict reconstruction and human rights (including in *Parliamentary Affairs*, *Journal of International Relations and Development*, *Mediterranean Politics*, *Mediterranean Quarterly*) and coauthored *Mapping the New World Order* (2009). She is President of the Advisory Committee of the Framework Convention for the Protection of National Minorities (2016–18).

VLADISLAV STARZHENETSKIY is Associate Professor at the Chair of International Public and Private International Law, Faculty of Law, Higher School of Economics. He also serves as First Deputy Dean of the Law Faculty. His research interests include international law, private international law, human rights, property law, and intellectual property law. He graduated from the Moscow Institute of International Relations (MGIMO) with a degree in International Law. In 2003, he received his PhD for his dissertation dedicated to comparative analysis of property rights concepts under the ECHR and Russian law. From 1998 to 2014, he has been working at the Russian Federation's Supreme Commercial Court and was heading the Department of International Law and Cooperation from 2011 to 2014; this has afforded him a fine opportunity to trace the evolution of the Russian legal and judicial systems.

Cambridge University Press & Assessment
978-1-108-41573-6 — Russia and the European Court of Human Rights
Edited by Lauri Mälksoo, Wolfgang Benedek
Frontmatter
[More Information](#)

CONTRIBUTORS

xi

ALEXEI TROCHEV is the author of *Judging Russia: The Role of the Constitutional Court in Russian Politics, 1990–2006*. He edits the journal *Statutes and Decisions: The Laws of the USSR and Its Successor States*, which has recently covered issues of judicial politics in Ukraine, police reform in Russia, criminal justice reforms in Kazakhstan, and the administrative court proceedings in Russia. His latest article, “Between Convictions and Reconciliations: Processing Criminal Cases in Kazakhstani Courts,” has appeared in *Cornell International Law Journal*. His current research projects explore the judicial profession in Kazakhstan and comparative judicial behavior outside the courthouses.

PREFACE

This edited book deals with the question of what has been the impact of Russia's almost twenty years under the jurisdiction of the European Court of Human Rights (ECtHR). If once there was a certain Helsinki effect for the USSR and its dissident movement, related to the Helsinki Final Act of the Conference of Security and Cooperation in Europe in 1975, to what extent can we now speak of a Strasbourg effect regarding post-Soviet Russia? What is the explanatory value of the socialization theory in this respect? And what has been the impact of Russia on the Strasbourg system?

The idea of the book was born at the European Inter-University Center (EIUC), a network of universities in European Union (EU) countries that operates a common European Master Program in Human Rights and Democratization (E.MA) in Lido (Venice). Our book project represents the spirit of the EIUC in at least two ways. First, it is interdisciplinary and combines legal dogmatic- and more political science-oriented approaches in the context of examining the interrelationship between Russia and the ECtHR. Disciplinary openness is required to answer the research questions that we are interested in exploring in this project. The question of the Strasbourg effect in Russia cannot be answered only with the help of classic legal research methods although legal expertise in itself is a *sine qua non* for analyzing the socialization effects of Strasbourg in Russia.

Second, in the same way as the EIUC network reached out in 2004 to universities in new EU member states in Central and Eastern Europe, with this project we wanted to reach out and examine questions related to the Russian Federation and the ECtHR. No one is more informed (or morally entitled to opinions) about the evolution of the human rights situation in Russia than Russian experts themselves. All Russian contributors to this volume have earlier already made academic efforts to take stock of the influence of the ECtHR on Russian law, and they continue to do so in this book.

As coeditors, we also invited to the project representatives of other EIUC universities such as the political scientists Petra Roter from the University of Ljubljana and Benedikt Harzl from the University of Graz. Moreover, we invited on board Western legal scholars who are not part of the EIUC as such but who have already prominently published on Russia and human rights law and politics: Bill Bowring and Philip Leach from the United Kingdom. In order to obtain a perspective from within the ECtHR, we invited two former judges at the Court, Elisabet Fura from Sweden and Rait Maruste from Estonia, to contribute.

For the purposes of discussing each other's ideas, in early July 2015 we held a book conference in hot and humid Lido (Venice), just a week before the historic 14th July judgment of the Russian Constitutional Court (Russian CC) came out. The judgment of the Russian CC reinforced our initial intuition that something noteworthy and complex was going on between Russia and the ECtHR and that this deserved serious academic study. We also realized in Venice that the appropriate way to approach the question of Russia and the ECtHR academically is to facilitate different perspectives within the project. While naturally we have aimed at the coherence of this book as a whole, it has not been our aim that different contributors would all share each other's policy perspectives and substantive conclusions. We believe that it is a strength rather than a weakness of this book that it offers a variety of perspectives and thus invites the reader to think along and make up his or her own mind on the subject matter.

We have divided the chapters in this book into thematic sections. The aim of the Part I is to set the scene. We are honored that the current Russian judge at the ECtHR, Dmitry Dedov, agreed to write a foreword to our volume. Then Lauri Mälksoo opens up the questions raised in this volume with an introductory chapter, and Petra Roter gives an overview of Russia's twenty years in the CoE with the obvious logic that the subject matter of the ECtHR cannot be meaningfully detached from its political context, i.e., the dynamics of Russia's membership in the CoE.

Part II deals with the interaction between the ECtHR and the Russian courts, especially the Russian CC and examines their mutual influence. When we ask about the Strasbourg effect for Russia or, in contrast, the St. Petersburg effect for the ECtHR (the Russian CC is located in St. Petersburg), we are first of all dealing with high courts and the wider consequences of their judgments. Thus, the study of the interrelationship and dialogue between the ECtHR and the Russian courts, especially the Russian CC, is a central part of our research project.

First, Anton Burkov gives a critical overview of the uses and non-uses of the ECHR in the Russian courts, including the lower courts. After this Sergei Marochkin attempts to reconcile the views of the ECtHR and the Russian CC with regard to their mutual relationship and hierarchy, after the 14 July 2015 judgment of the Russian CC. Next, Alexei Trochev takes a political science viewpoint on what the Russian CC has been doing and characterizes the Court's approach as pragmatic rather than deeply ideological. Then, Mikhail Antonov examines the political philosophy behind the ideas of Valery Zorkin, the chairman of the Russian CC. He finds that Judge Zorkin is increasingly distancing himself from liberal political philosophy. Thus, different interpretations of human rights can be found in the thinking of the Russian CC. Bill Bowring puts the Russian CC's interaction with the ECtHR in a historical perspective and postulates that in a number of ways this is a continuation of earlier debates in Russian-European normative encounters and arguments. One of the points made by Bowring is that it is not necessary to overdramatize the 14 July 2015 judgment of the Russian CC because in some aspects the Court was still interested in a certain cohabitation with the ECtHR.

Part II continues with a chapter coauthored by Elisabet Fura and Rait Maruste, two former judges at the ECtHR. They reverse the main question of the "Strasbourg effect" and attempt to establish how Russia's participation in Strasbourg has changed certain practices in the ECtHR (the "Russian effect on Strasbourg"). Some of the information that they present is not immediately visible to outsiders; therefore, their look at how the Court has changed, over the years that Russia has been part of it, is particularly valuable.

Part III of our book is entitled "Specific Rights and Violations: Case Studies." The need for this angle is quite obvious: at the end of the day, human rights cannot be discussed only on a general level; in their effects, they are in fact concrete. Therefore, it is necessary to look at some of the concrete areas within human rights (law) and examine what has been (or has not been) the "Strasbourg effect" there.

In his case study, Philip Leach looks more closely at Russia's so-called Chechen cases at the ECtHR: how they have been received and implemented (or not) in the country. Next, Vladislav Starzhenetskiy takes up another case study, on property rights, and examines some historical-legal and theoretical obstacles in Russia that have prevented the full reception of property rights in the spirit of the ECHR, although significant improvements are also identified. After that, Dmitri Bartenev,

an attorney in the well-known *Alekseyev v. Russia* case,¹ examines the precarious situation with LGBT rights in Russia from the perspective of European human rights standards.

In Part IV, Benedikt Harzl offers a broad political-philosophical perspective on our subject matter and examines the rise of nativist ideology in Russia that juxtaposes the country to a (Western) Europe that is, from the Russian perspective, too much under the influence of the United States. Harzl sees this as a response to failures and irritations in Russia's encounters with the Council of Europe and the West more generally, and in this sense Russian cases at the ECtHR of course become part and parcel of a much larger historical-ideological dialogue.

Finally, Wolfgang Benedek, one of the two coeditors, has written conclusions to this book by responding to questions raised and discussed throughout the book and by summing up the substantive outcomes of the book regarding what the "Strasbourg effect" has been for Russia, and also, to a lesser extent, Russia's effect on Strasbourg.

We are grateful to Christopher Goddard from Riga Graduate School of Law for working on the accuracy of English language in the submissions. We would also like to acknowledge the financial support of the Estonian Research Council (grant No. IUT 20–50), the EIUC, and the University of Graz, which was crucial for completing this project.

Lauri Mälksoo
Wolfgang Benedek

¹ ECtHR, Case Nos. 4916/07, 25924/08, and 14599/09, *Alekseyev v. Russia*, 21 October 2010.

FOREWORD

DMITRY DEDOV

Russian poet Fyodor Tiutchev once noted about Russia:

The mind cannot understand Russia,
It cannot be measured by a common yardstick,
This country is very special –
You can only believe in Russia.¹

During the last 150 years this idea was always confirmed and never challenged. Using a modern political science term, many experts and philosophers agree that Russia is a separate civilization. They include Samuel Huntington and Andrey Konchalovsky. This idea initially seemed to me to be very fair and reasonable. But finally it turned out that they are both equally right and wrong at the same time, while listing the elements of this civilization.

Konchalovsky believes that culture stands at the heart of this civilization. But this thesis is controversial: Russian culture features both high spirituality (great writers, poets, composers, philosophers, and artists) and the unpretentious archaism of people deprived of, among other things, rationality and “a bourgeois accumulation instinct.” I ought to say that all the great representatives of Russian art were nobles; they came from the privileged class, with access to knowledge, education, and self-realization. But their profound ideas were inspired by the old-fashioned traditional style of life pursued by ordinary people. They were like the gods who can see what no mere mortal can understand.

According to Huntington, Russian civilization is characterized by authoritarian rule and lack of democracy and of political and civil

¹ Умом Россию не понять,
Аршином общим не измерить,
У ней особенная стать –
В Россию можно только верить.

liberties. But these criteria do not relate to the features of civilization. Moreover, it could be noted that both assessments are made from opposite sides of the spectrum of civilization – from antiquity to modern political institutions and liberal values.

In my opinion, the term “civilization” is universal. Russia has been recognized as a member of the community of civilized nations. It has made its contribution to the development of modern values of human civilization. Some irrationality and inconsistency of behavior (as a feature of the Russian mentality) exist only to the extent to which it is assessed from the perspective of social progress and development.

An assessment of progress should be objective: it includes quality of life, complex analysis during rational debate, and the complexity of social organization. Therefore, fundamental human rights and freedoms, democracy, and the rule of law are integral features of social progress and civilization. They are followed by scientific or technological progress, sustainable development, social equality, and the improvement of quality of life for all.

Needless to say, the world order is far from ideal. It is still based on ideas of force and power, and fundamental rights are used as a tool for the purpose of political pressure, destabilization, and chaos. This book should not be considered in that way.

There is no high spirituality in antiquity. Before Soviet times, Russian peasants worked very hard, but they expressed their love of nature and of all living species, and they were deeply humane, although their life was isolated from professional education and technology. It seems that antiquity can be found only in opposition to savagery and high humanistic and ethical values. But there is no opposition within plain life, and the two can coexist.

Modern archaism comprises dedication, endurance, tolerance to harsh living conditions (climatic and domestic), and an extremely negative and emotional attitude to injustice (“Russian revolt, senseless and merciless”²), the severity of punishment (“the good should come with the fists”³), including the death penalty (a return to the death penalty was recently discussed in the Russian parliament), the absence of a rational strategy, and limited social ties and social solidarity (trust exists only among close relatives and friends). This means that the potential value of each person (especially if their talents are not so visible) does not matter.

² “Русский бунт, бессмысленный и беспощадный.”

³ “Добро должно быть с кулаками.”

This implies a lack of respect for the ordinary person or disbelief in the possibility of correction (rehabilitation) of the offender. In contrast, a state official demands respect just because of occupying a senior position or because of having power. This gives rise to arbitrariness, jealousy, and vindictiveness. These feelings are deeply archaic.”

Old-fashioned traditionalism could have existed by itself, and might even bear the proud name of civilization, if there were no progress as a recognized phenomenon. In comparison with progress, all the disadvantages of old-fashioned Russian traditionalism become evident (extremely high levels of adult mortality, domestic crime and violence, a large proportion of prisoners, abandoned children, and elderly persons who live, respectively, in an orphanage or a special home).

In order to develop along the path of progress, the Russian authorities decided to join the Council of Europe. Russia has established the necessary organs and institutions of democratic governance. Perhaps they do not possess all the qualities attributable to truly democratic institutions. But this cannot be achieved in one day. It is only an illusion that Russia was liberal in the 1990s and is authoritarian today.

There is another problem. The values of social progress cannot immediately and completely overcome old-fashioned traditionalism. It is necessary to understand that and to be patient. Moreover, it is always more difficult to climb than to sink. Democracy and fundamental rights and freedoms did not appear after the Second World War: they have more than 2,000 years of history. It took several bloody centuries for the West to change the public consciousness and the nature of power after the institutional and constitutional consolidation of those values in basic legal documents. Indeed, old-fashioned traditionalism still exists everywhere. But its scope is not homogeneous. And, indeed, in the West the whole social atmosphere has become anti-traditional.

In Russia this process is much shorter (about twenty-five years of modern history) and less painful. Starting from Peter the Great, all Russian tsars constantly implemented various reforms, formally copying Western patterns without, however, changing the essence of power, without transforming it from subordination and control over society to coordination (cooperation) and provision of services to society. We could face the same problem with implementation of the concept of fundamental rights and freedoms.

How to learn from Western experience? Neither of the parties is always ready for that. Russia is hampered by archaism, and for the West

it is often that high humanistic and ethical values are considered like fossils or like words immobilized on a piece of paper, without remembering their meaning. Human history is a history of fighting for those values. So, the values still require passion and charisma, and they are closer to ordinary people than to the Western bureaucracy, which has failed to understand the most pressing current needs of society. It appears that people are not well protected from economic crises, terrorism, and human trafficking.

These values are degraded to discipline, political correctness, hatred, hate speech, propaganda, and even to a police state. I ought to note that there is a deep crisis of Western democracy and values. Perhaps this phenomenon is of a temporary nature because it has happened many times in history. Konchalovsky pointed out that the West has “a flabby spineless imitation of democracy.” Irresponsible bureaucracy has failed to combat social inequality, a rigid class structure, an information monopoly, conflict of interests, and the power of money.

It is impossible to overcome archaism by saying: “Create democratic institutions and you will prosper and flourish as we do.” There are some reasonable doubts. Look at history, and you can find wars of conquest, plunder of colonies, export of cultural property, sanctioned piracy, and financial pyramids. In this mud it is hard to find gold nuggets such as the culture of accumulation of benefits or the art of decision-making.

Self-criticism is always the best medicine. Human values are still more important than politics. And there is no Western civilization; there is only human civilization. I have heard that Russia was invited to become a member of the Council of Europe too early, or that judges from Eastern Europe are not qualified to consider cases against the United Kingdom. It is easy to criticize any archaic belief or action, especially if it concerns the arbitrary implementation of power by the authorities, but criticism should not be colored by arrogance.

Separation of people into friends and foes, allies and aliens, is also a sign of archaism. Unfortunately, there are cases (like *Vo v. France*, *Hassan v. the UK*) where I had a feeling that the applicants were treated as if they were representatives of a lower civilization. Therefore, it is necessary to abstain from hypocrisy or double standards or from the dangerous temptation to protect a reputation (of a “higher” civilization) or exclusiveness, and to maintain impartiality and independence in the decision-making process. It is a burden of civilized treatment to remain modest and constantly ask oneself: What have I personally contributed to the development of social progress?

FOREWORD

xxi

The European Court of Human Rights has not an easy task to identify a balance between the forces of archaism and the forces of progress to promote the values of social evolution in the most effective way. Sometimes it is enough to point out that this had not complied with standards, such as the rule of law where the safeguards and values are visible. But there are enough complex and sensitive issues where the Court has to conduct a comprehensive analysis in order to distinguish archaism and progressive values. This is difficult to do because of lack of development of the theory of civilizations, because these issues are at the forefront of cognition, and because we are humans and we ourselves are part of evolution.

This book contains interesting and informative studies on how European standards of fundamental rights and freedoms have been applied in Russia, describing all the difficulties. These studies have been written by honored experts and passionate individuals. I would recommend reading them with hopes for social progress.

Dmitry Dedov

ABBREVIATIONS

APCE	French version of PACE
ART	Assisted reproductive technology
CDDH	Steering Committee for Human Rights
CEE	Central and Eastern Europe
CFE	Conventional Forces in Europe (Treaty)
CIS	Commonwealth of Independent States
CoAO	Russian Code of Administrative Offences
CoE	Council of Europe
CoM	Committee of Ministers
CPSU	Communist Party of the Soviet Union
CRC	Convention on the Rights of the Child
ECHR	European Convention of Human Rights/the Convention
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EHRAC	European Human Rights Advocacy Centre
EIUC	European Inter-University Center
EU	European Union
FARA	Foreign Agents Registration Act
FIDH	International Federation for Human Rights
FSIN	Federal System of Execution of Sentences
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GMO	genetically modified organism
HAC	Higher Arbitration Court
HIV	human immunodeficiency virus
ICJ	International Court of Justice
LGBT(I)	lesbian gay bisexual transgender (and intersex)
MP	Member of Parliament
NATO	North Atlantic Treaty Organization
NGO	nongovernmental organization
OSCE	Organization for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe

ABBREVIATIONS		xxiii
RF	Russian Federation	
RF Constitution	Constitution of the Russian Federation (1993) [also “1993 Constitution”/“the Constitution”]	
RF Supreme Court	Supreme Court of the Russian Federation [also “Supreme Court”]	
ROC	Russian Orthodox Church	
RSFSR	Russian Soviet Federative Socialist Republic	
RUDN	Russian Peoples Friendship University	
Russian CC	Constitutional Court of the Russian Federation	
The 1992 law	The Federal Act “On Transplantation of Human Organs and/or Tissues,” dated 22 December 1992	
The 1995 law	The 1995 RF Law “On International Treaties”	
The 1998 law	1998 Federal Law ratifying the Convention	
The 2003 Regulation	Regulation No. 5 of 10 October 2003 “On the Application by Courts of General Jurisdiction of the Generally-Recognized Principles and Norms of International Law and the International Treaties of the Russian Federation”	
The 2013 Regulation	Regulation No. 21 of 27 June 2013 “On Application of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and Protocols thereto by the Courts of General Jurisdiction”	
UDHR	Universal Declaration of Human Rights	
UK	United Kingdom (of Great Britain and Northern Ireland)	
UN	United Nations	
US	United States	
WTO	World Trade Organization	
YaNAO	Yamalo-Nenets Autonomous Okrug	