

Proposals to the Committee of Ministers on the Council of Europe's actions following Russia's aggression against Ukraine and its expulsion from the organisation

26 April 2022

In an immediate response to Russia's military aggression against Ukraine, on 11 March 2022 the CURE Steering Committee published an Open Letter to the Council of Europe's bodies¹, where it put forward a number of suggestions on the CoE's reaction beyond the decision to expel Russia from the organisation.

This new briefing paper, prepared by the CURE campaign's team, aims at further elaborating on the short- and medium-term proposals in the two areas outlined in the Open Letter: (1) ensuring human rights accountability in the context of the conflict and (2) outreach to and expanded engagement with Russian (and Belarusian) civil society and individuals, as well as starts addressing the third point made in the letter, namely (3) the need for a more fundamental reflection on and reconsideration of the CoE's approaches. Many of these proposals, if taken on board, would require the CM to take respective decisions at its upcoming annual ministerial meeting in Turin on 20 May 2022.

1. Ensuring accountability for human rights violations committed by Russia

In its Open Letter, CURE called on the CoE to "use all the instruments at its disposal to monitor and assess human rights compliance in relation to the conflict, document violations of human rights, and support accountability". The European Court of Human Rights would play a distinct and important role in this regard in addition to other available judicial mechanisms (including the ICJ, ICC, Ukraine's domestic court system, as well as the national courts of other states acting under universal jurisdiction), providing another avenue for the recognition of violations having taken place and for possible future reparations.

(a) In their resolutions adopted in March both the Court² and the Committee of Ministers³ established the Court's competency to deal with alleged violations of the Convention by Russia that will occur until 16 September 2022. In practice, this will mean that applications against Russia can continue being lodged to the Court for an indefinite period, given the time needed for the exhaustion of effective national remedies (which may take years) plus a 4-month term provided by the Convention for submitting an application.

Thousands of new applications against Russia can be expected to be lodged to the Court by Russian residents who are facing a growing level of domestic repression, by Ukrainian civilians who suffered human rights violations in the context of Russia's aggression on the territories of both Ukraine and Russia (due to their sometimes involuntary relocation by the Russian authorities from eastern regions of Ukraine), as well as by members of the Ukrainian military apprehended and kept in detention in Russia. Combined with the existing backlog of more than 18 000 cases against Russia already pending consideration as of the end of March 2022⁴, this would create quite a significant burden for the Court. Despite this challenge, it is important that the Court could review all the individual and inter-state complaints lodged against Russia in reasonable time, giving a priority to the ones related to violations committed in the context of the current aggression.

¹ <https://drive.google.com/file/d/1vqwCOOCiCMumrH-sgn7bz0wt5QeQNXeD/view>

² https://echr.coe.int/Documents/Resolution_ECHR_cessation_membership_Russia_CoE_ENG.pdf

³ https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ee2f

⁴ https://www.echr.coe.int/Documents/Stats_pending_month_2022_BIL.PDF

➤ In the situation when Russia as a non-member state will no longer be contributing to the CoE budget, it is of utmost importance for the CM **to ensure that the Court is provided with sufficient financial and human resources to be able to review all these applications in a timely and effective manner.** The CM will have to find **a budgetary solution which would guarantee that the funding available for the Court's work, at the bare minimum, is not decreased or, ideally, increased in real terms.** Given the need to maintain at the same time the funding available for the work of other CoE bodies and institutions, this would most probably require a commitment by member states to increase their budgetary contributions.

(b) The CM itself will continue supervising the execution of all the Court's judgements against Russia. Even if the actual implementation of judgements would be impossible in the current political situation in Russia, they would serve as important reference points for necessary reforms in the country and their execution could be established as one of the preconditions for Russia to potentially rejoin the CoE in the future (and possibly also for the lifting of sanctions imposed by the EU and governments of individual member states).

➤ In the likely event that Russia's authorities will refuse cooperating with the CM's supervision procedure after its expulsion from the CoE, the CM would have **to adapt its working methods so as to ensure that these judgements could be effectively implemented if / when the situation in Russia changes.**

(c) Beyond the European Convention system, Russia still continues being party to a number of CoE conventions that are open to non-member states, and thus stays being bound by their norms and subjected to scrutiny by the respective CoE monitoring and advisory bodies.

➤ Arrangements should be made to **make possible Russia's continued participation in key CoE conventions open to non-member states, specifically those that focus on human rights protection** (such as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment or the Framework Convention for the Protection of National Minorities).

2. Continued engagement with and support for Russian and Belarusian civil societies

The Open Letter called for the CoE to continue and expand its outreach to civil society and individuals in Russia and Russian citizens living in exile on the importance of the CoE's principles and values and actively engage with those who support them. It also noted that a similar approach could be applied to Belarus, where a range of broadly supported political and societal actors, who stay in the country or are living in exile, with a much greater legitimacy than the governing regime stand ready to engage in cooperation with the CoE.

Increased engagement of European institutions with Russian and Belarusian civil societies is key to preventing the emergence of a new "iron curtain", supporting the main agents of change in these countries, and securing a chance for them to return to the family of European nations in the future. The Council of Europe, as the main values-based international organisation in Europe, should play a leading role in this regard.

If in the past such engagement tended to be perceived as secondary to the CoE cooperation with the official authorities, now it has to be recognised that civil society remains the only channel for reaching out to the people of both countries and it should be considered as the main partner for dialogue on the perspectives of European future for these countries.

➤ The CM, while deciding to cease CoE's cooperation with the authorities of Russia and Belarus, expressed its intention to continue engagement with and support for independent civil societies of both countries⁵. It should now **proceed with adopting at the ministerial level a separate political decision clearly**

⁵ Decision CM/Del/Dec(2022)1429/2.5 "Relations between the Council of Europe and Belarus", adopted on 17 March 2022, p. 7, https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680a5dcfb; Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe, adopted on 23 March 2022, https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680a5ee2f; Decision CM/Del/Dec(2022)1431/2.3 "Consequences of the aggression of the Russian Federation against Ukraine", adopted on 6 April 2022, p. 2, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a60b5e

confirming CoE's solidarity with civil societies of the two countries and recognising the importance of cooperating with them on promoting CoE values and principles. This decision should outline the main goals, principles and priorities of this engagement and request the Secretariat to elaborate, as soon as possible, proposals on specific programmes and activities to be implemented to this end.

- In our opinion, the initiatives on the CoE engagement with civil societies of the two countries should:
 - address both Russian and Belarusian civil society representatives that continue staying and working in their countries and those who were forced to relocate to other European states (pro-democracy diaspora groups and initiatives, NGOs, media outlets and universities in exile, etc.);
 - in addition to traditional CoE civil society partners – human rights defenders, NGOs and lawyers, also include other actors, such as journalists, artists, critical academics and educators, etc. as the primary target groups. Pro-democracy opposition politicians, including, in the case of Russia, municipal and regional deputies, as well as regional ombudspersons who opposed the war, may also be engaged;
 - look into ways of reaching out not only to those parts of Russian and Belarusian societies that already share European values and norms, but, jointly with the existing civil society partners, also to those individuals and social groups that can potentially be convinced to start questioning the breach of their authorities with the European values. Cooperation with independent polling / social research agencies could be used to identify such groups and define how to best engage them;
 - explore and utilise the full range of possible formats, using both online channels and live contacts. Due to security concerns and the existing travel restrictions live contacts in the foreseeable future will be limited and will have to take place outside of Russia / Belarus (in some of the CoE member states), but maintaining opportunities for personal encounters is important;
 - both include activities specifically designed for Russian and Belarusian civil societies (addressing the topics related to respective country situations) and ensure the widest possible inclusion of participants from Russia and Belarus and the respective diasporas in CoE-wide activities, events and platforms for cooperation, so as to prevent their isolation;
 - representatives of Russian civil society should also be involved in discussions on dealing with the consequences of the aggression, including on helping refugees from Ukraine (both in other European countries and in Russia), international legal actions to address Russia's violations of international human rights and humanitarian law, as well as the longer term strategy of conflict transformation.
- Specific formats of such engagement ***should be defined in close consultation with the long-term partners of CoE bodies and institutions from the Russian and Belarusian civil societies*** (also to take into account the experiences of implementing previous CoE programs for civil society in Russia and Belarus⁶), as well as representatives of the social / professional groups that these particular formats are aimed at.
- As the CoE activities aimed at Russian and Belarusian civil societies should go beyond engagement only with NGOs and include efforts by various CoE bodies and institutions, ***an over-arching programmatic and institutional framework / interface for coordinating all these activities should be created*** (e.g., in the form of a separate Action Plan or Strategy, as well as a Special Advisor to the Secretary General or a special unit within the CoE Secretariat to oversee its implementation).
- ***Continuing the provision of access to the most important CoE information, materials and publications in the Russian language*** should be considered as one of the important measures to support Russian and Belarusian civil societies in their efforts to promote the European values and standards in their countries. This includes information on the norms and standards developed by CoE bodies, training materials, as well as the most relevant news and official statements. Importantly, all the information on CoE's website related to Russia when it was a member of the organisation, should be preserved and made accessible.

⁶ Including the 3-year Framework Cooperation Programme (2008-2011) "Strengthening Civil Society and Civic Participation in the Russian Federation" and civil society-related components of the CoE Action Plans for Belarus.

- ***The CoE should confirm the legitimacy and provide additional recognition for civil society organisations and groups from Russia and Belarus*** (including those of them that lost their registration as a legal entity) ***by granting them the partnership status for national NGOs. The CM resolution introducing this status⁷ should be reviewed*** in order to update the criteria/conditions to be met by groups that may be granted such status, as well as the rights and opportunities that this status provides to its holders.
- ***Opportunities should also be considered for bodies that can make a legitimate claim to represent the democratic forces of Belarus to be given some form of representation*** (e.g., an analogue of the observer or “partner for democracy” status) ***in CoE bodies*** (including the PACE and the CM’s intergovernmental steering committees).

3. Reflection on the “lessons learned” and the renewed CoE role and mission in a changed Europe

A gradual growth of internal repression and severe democratic backsliding in Russia, which were not timely and effectively addressed at the international level, have led to its current political regime becoming a threat to international peace by committing aggression against other states. This situation has demonstrated that the ways in which the CoE is addressing grave and systemic violations of its norms and standards by member states have serious deficiencies. Following the expulsion of Russia, it cannot be assumed that the organisation has become more effective in dealing with violations by the remaining member states. Many states continue to have a problematic record on at least some aspects of ECHR standards, and a number of them exhibit such a record on a range of subjects. Creeping autocratisation and disdain for and disrespect of human rights have grown substantially in Europe and become manifest at governmental level or in key political parties.

All of this calls for a more fundamental reflection on the possible “lessons learned” from the CoE dealing with grave and systemic violations in the past years and the extent to which its mechanisms are suitable and effective in this regard. Besides, after losing its largest member state and not anymore encompassing the entire European continent, the CoE might need to revisit and reframe its vision and mission as the main guardian of human rights, democracy and the rule of law in all of Europe, including in non-member states.

- Such a reflection process ***should involve not only discussions among the representatives of governments and parliamentarians of the member states, but also consultations with other important stakeholders:*** local and regional authorities, NHRIs, legal community, relevant professional associations, NGOs, academia, active youth, etc. (experience of the Conference for the Future of Europe⁸ could be studied and taken into account in this regard).
- This process could lead to and serve as a preparation for ***the 4th Summit of the Heads of State and Government of the CoE member states***, which the PACE has officially called for again⁹ (after such an idea was first voiced in 2017¹⁰).
- ***A political decision on launching such a process could be taken at the ministerial meeting in Turin, with the 75th CoE anniversary in 2024 as a potential endpoint for it.***

CURE stands ready to contribute to the launch of and participation in such a process, with a first step being the civil society “reflection event” to be held by the campaign in Turin on the eve of the official ministerial session. However, this preparatory process needs to be a larger multi-stakeholder exercise consisting of a number of steps and potentially leading to taking important political decisions on the future of the CoE.

⁷ Please, see: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805de633

⁸ Please, see: <https://futureu.europa.eu>

⁹ PACE Opinion 300 (2022) “Consequences of the Russian Federation’s aggression against Ukraine”, adopted on 15 March 2022, <https://pace.coe.int/en/files/29885/html>

¹⁰ Please, see: <https://pace.coe.int/en/files/24210>