

## Analysis

### Poor Record. The Russian Chairmanship of the Council of Europe 2006

Olaf Melzer, Frankfurt am Main

#### Summary

In 2006, for the first time in history, the Russian Federation chaired the Council of Europe's Committee of Ministers, giving the country the opportunity to set the agenda in a European organization. Russia outlined an ambitious program for its six months chairmanship (May–November 2006). Observers are ambivalent about the results because Russia embarked on a hidden strategy: While outwardly claiming to abide by all legal and political obligations and commitments on the basis of common European values such as democracy, rule of law and human rights, Russia simultaneously thwarted these very aims through its obviously undemocratic policies and deteriorating human rights record. The value gap between Russia and Europe has become ever more manifest – despite all political assertions to the contrary during EU-Russia meetings. A mere disposition to discussion no longer suffices to achieve material changes in the understanding of values – a new quality of cooperation between the Council of Europe and the EU should be initiated now.

#### Russia in the Council of Europe

Russia basked in the glory of numerous international organizations during 2006. The Russian Federation not only simultaneously chaired two international institutions – the G8 and the Council of Europe – but also succeeded in reaching a groundbreaking agreement with the US, paving the way for World Trade Organization (WTO) accession. Thus, unsurprisingly Russia seems immune to any kind of European criticism in regard to its human rights policies or energy politics.

Unfortunately, this immunity also applies to critiques coming from within the Council of Europe, the only European organization Russia has been a member of since 1996. The Strasbourg-based Council of Europe, founded in 1949, is the oldest organization in the history of European integration. The Council is most famous for its European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, Council of Europe Treaty Series No.:005), which established the unique European Court of Human Rights in Strasbourg. The ECHR, together with 200 other conventions (international treaties), such as the European Social Charter (revised 1996) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CETS No.:126), constitute the common European legal space for a total of 46 member states and 800 million Europeans.

#### Russia's accession in 1996

Russia's accession to the Council of Europe in February 1996 was controversial. Russia fulfilled neither the political nor the legal preconditions to be-

come a member of the Council, formerly known as the "Club of Democracies." The decision for admittance was strictly political: Although the EU and NATO engaged in a dialogue with Russia, accession to either of those two organizations was not an option. It was the Council of Europe, which became the first European organization to open up for close co-operation with the countries of Central- and Eastern Europe and the former Soviet Union. As early as 1989 special co-operation measures like the "Special Guest Status" were initiated in order to provide formally for the creation of multi-level co-operation mechanisms and programs with the new independent countries of the East. The overriding aim was to facilitate the peaceful transformation of the young and fragile evolving Russian political system toward the consolidation of democracy, rule of law and human rights. The Council employed a country-specific multi-level approach by political, legal, cultural, regional, and local instruments of cooperation.

However, the accession process of the Russian Federation lasted for almost four years and was discontinued due to severe human rights violations by the Russian military in the Chechen war in 1995. It was only after avid affirmations by the Russian government to change its policy in the Caucasus that Russia was accepted as the 39th member of the Council of Europe on February 28, 1996.

Due to Russia's obvious deficits in regard to almost all standards of the Council of Europe, benchmarks were introduced for defining Russia's path toward consolidating its democracy. A long list of individual obligations and commitments were formulated in Opinion 193 (1996) of the Parliamentary Assembly of the Council of Europe (PACE). It was affirmed

that Russia “share(d) fully its understanding and interpretation of commitments (...) as spelt out in the (...) opinion.” In addition, monitoring mechanisms were introduced to supervise and assist the new member states in accomplishing the requested criteria for democracy, rule of law, and human rights. However, Russia’s progress did not exceed its setbacks. Therefore, monitoring procedures for Russia had to be extended on a regular basis since Russia has only very selectively complied with its obligations. None of the 45 other member states shares Russia’s interpretation of the obligations as only “political commitments” rather than legal obligations.

### Russia’s Chairmanship: A Fox in the Henhouse?

After ten years of membership in the Council of Europe (CoE), Russia still falls short of the three key CoE goals: democracy, rule of law and human rights. Thus, when Russia’s Foreign Minister Sergei Lavrov took over the chair of the Committee of Ministers, heated discussion erupted. Human rights organizations, in particular, complained that the Council of Europe’s globally respected human rights standards should not be placed in the hands of the country with the highest number of cases pending before the European Court of Human Rights. Moreover, Russia has been one of the top five countries failing to comply with the judgments of the Court for years and fails to use peaceful means to settle conflicts, as seen in the Northern Caucasus.

Despite such protests and notwithstanding Russia’s miserable scores in the established democracy indices (Freedom House, Polity IV, Bertelsmann Transformation index), PACE President René van der Linden and Council Secretary General Terry Davis both supported the Russian chairmanship. In spring 2006 they argued that Russia’s progress justified the chair and moreover posed a unique chance for Russia to consolidate its European commitments within the Council of Europe.

### The Record of the Russian Chairmanship

At a first glance, the sheer amount of activity during the Russian chairmanship looks impressive. In the course of six months, Russia organized 30 events: conferences, high-level meetings of European judges and prosecutors, workshops, including a session of the Parliamentary Assembly, a Congress of Local and Regional Authorities gathering, and several committee sessions in Moscow, St. Petersburg and other Russian cities. The conferences dealt with democracy, cooperation among European judges, civil society, human

rights, NGOs and – a favorite Russian topic – the common fight against terrorism. These events were well covered in the Russian media.

However, it is necessary to look more carefully at the conferences, their content, and the Russian way of organizing them. Russia had chosen the following priorities for its chairmanship:

- “ (...) – *reinforcing national human rights protection mechanisms, development of human rights education and protection of rights of national minorities;*
- *creating a common European legal space to protect individuals from modern-day challenges;*
  - *improving access to social rights, protection of vulnerable groups;*
  - *developing efficient forms of democracy and civic participation, promoting good governance;*
  - *strengthening tolerance and mutual understanding through the development of dialogue, cooperation in the field of culture, education, science, youth and sports.”*

The largest number of events took place within the realm of the last priority which does not include controversial issues. However, Russia did not leave out any difficult issue during its chairmanship, even if one can argue about the tangible circumstances of many of the conferences.

- In most of the final reports, the results were formulated in an astonishingly imprecise manner – due to the massive intervention by the Russian hosts, as the author witnessed at the Council’s “Forum for the Future of Democracy” in Moscow in October. Serious bargaining on established Council of Europe standards occurred. The Russian organizers pushed aggressively to change the wording from “independent and free work of the media” to “... a climate ... in which the media can work freely”. At least, the Russians’ favored formulation calling for “responsible work of the media” was not accepted.
- During the same “Forum on the Future of Democracy,” members of the Russian Duma and experts were supplied with extensive Russian-language information material about the Council of Europe. This material (including translations of the key texts of the Conventions of the Council and Russian translations of core judgments of the European Court of Human Rights) should be provided to members of Russian civil society, not experts with easy and unlimited access to all kinds of Strasbourg material! Moreover, Russian authorities actively hinder the dissemination of Council of Europe information material through all Council of Europe information offices in the

Russian Federation. All of these offices are located in extremely inaccessible buildings, such as the Moscow State Institute of International Relations (MGIMO), which is under the guard of the Federal Security Service (FSB).

- Some local Russian NGOs and NGOs with international funding were not allowed to take part in the NGO conference under the Russian chair in Nizhny Novgorod in September. Despite the plea of the Council of Europe, the Russian authorities sent out the invitations to groups of their choosing and refused to make any changes.

### Pushing the Council away from Human Rights

The Russian approach subtly, but clearly aims to dilute the core competencies of the Council of Europe. Ostensibly, numerous Russian oral and written statements only seem to lack the necessary accuracy in regard to legal formulations and obligations. The common European legal space becomes a “common European space”, democratic principles of the Council of Europe are referred to as principals of “traditional democracy”. What appears to only be neglectful at first, in fact calls into question the basic principles of the Council of Europe.

The first priority of the Russian chair was reinforcing national human rights protection systems. This, no doubt, clearly is a European goal. However, the oft heard Russian complaints about the politicization of the European Court of Human Rights and the accusation of employing “double standards” against Russia pricks up one’s ears. The simultaneous Russian blockade of the budget increase for the Court – despite the agreement of May 2005 – clarifies the new dimension of Russian policies towards Europe.

Moreover, Russia remains the last of the 46 members of the Council which has not ratified the 14th additional Protocol of the European Convention of Human Rights. This does not come as an surprise since Russia has failed to comply with a judgment of the Court (*Ilascu vs Russia*) for more than two years, as the Secretary General of the Council of Europe noted on 9 December 2006. According to the general acceptance of the European Convention of Human Rights, the convention in combination with the judgments of the Court establish a constitutional order (“objective Grundordnung”) within the 46 member states of the Council of Europe which far transcends the normal scope of an international treaty. Even the Russian Federation is bound by that constitutional order, but opposes this order by state practice.

The Russian motion to refrain from sending CoE

and OSCE election observation missions, while assigning these tasks to the Venice Commission, shows in practice how Russia wanted to shift the core competencies and main tasks of the Council of Europe. The staff of the Council of Europe has long dealt with this problem. As early as May 2005, after the third CoE summit, Council staff experienced a conspicuous deviation by Russians in regard to the otherwise consensual interpretation of the final declaration of the summit by all other 45 member states. These differences gained momentum during the Russian chairmanship when the drafting of the “memorandum of understanding” between the EU and Council of Europe was delayed time and again. It does not come as a surprise that the Russian agenda caused cynical comments behind the scenes: The alleged aims were to

- block progress
- decelerate inevitability
- shift CoE core competencies away from human rights towards economic, social, and cultural issues.

One can find explicit indications for this agenda in the speech of Foreign Secretary Lavrov in his contentious performance in the Parliamentary Assembly on October 4, 2006. After responding elusively to some critical questions on Russian NGO legislation, on human rights in general, and on the dispatch of Russian parliamentarians to the “referendum” in Transnistria (a ballot recognized by no other countries), Lavrov found some inauspicious words to comment on the ongoing tensions between Russia and Georgia. The day before, the President of the Parliamentary Assembly had already called to order the Heads of the Georgian and the Russian delegations to the Council of Europe in regard to the use of “inflammatory speech”.

### Intensified Co-operation between the Council of Europe and EU as a Step Forward?

Thus, the record of the Russian Chair in the Council of Europe remains poor. While the discrepancy between Russian views and Council of Europe views on values and existing obligations is manifest and sad enough, Russia’s strategy to undermine Council of Europe positions could have alarming consequences.

The attitude of the European states is incomprehensible: In light of the differences between Russian assertions and de facto policies, it no longer suffices to swear allegiance to common values at EU-Russia meetings. Until now, the EU policy towards Russia neglected the Council of Europe – and did not achieve a common understanding of values in EU-Russia rela-

tions. In contrast, the “Russian way towards democracy” is not convincing, either.

There is an alternative: the Council of Europe, rather than the EU, presents an adequate forum for discussing common values on the basis of common Russian-European progress *and* common treaties. Better co-operation between the EU and CoE,

two old rivals, and a considerable reinvigoration of Strasbourg’s Council is urgently needed in order to foster sustainable developments in Russia. Only with the combined powers of the two European organizations is it possible to incorporate Russia into a serious dialogue on human rights and democracy.

*About the author:*

Olaf Melzer is Research Associate at the Peace Research Institute Frankfurt (PRIF). He is currently completing his PhD dissertation, which focuses on Council of Europe democracy promotion efforts in Russia.

*Further Reading:*

[www.coe.int](http://www.coe.int)

[www.echr.coe.int/echr](http://www.echr.coe.int/echr)

- Florence Benoit-Rohmer, Heinrich Klebes: Council of Europe law – Towards a pan-European legal area, Strasbourg 2005.
- Bruno Haller, Hans Christian Krüger, Herbert Petzold: Law in Greater Europe: Towards a Common Legal Area, Studies in Honour of Heinrich Klebes, Kluwer 2000.
- Uwe Holtz (Hg.): 50 Jahre Europarat, Schriften des Zentrum für Europäische Integrationsforschung. ZEI, Band 17, Baden-Baden 1999
- Denis Huber: A decade which made history: The Council of Europe 1989 – 1999, Strasbourg 2000.
- Olaf Melzer: Russland im Europarat: Demokratiexport durch den Europarat nach Rußland seit 1989, in: Integration und Ausgrenzung im Osten Europas, Forschungsstelle Osteuropa Bremen, Arbeitspapiere und Materialien, Nr. 70 – September 2005 , S. 25–30

## Documentation

### The Parliamentary Assembly of the Council of Europe on Russia’s Request for Membership

OPINION No. 193 (1996)1 of 25 January 1996

(excerpt)

10. The Parliamentary Assembly notes that the Russian Federation shares fully its understanding and interpretation of commitments entered into as spelt out in paragraph 7, and intends:
- to sign the European Convention on Human Rights at the moment of accession; to ratify the Convention and Protocols Nos. 1, 2, 4, 7 and 11 within a year; to recognise, pending the entry into force of Protocol No. 11, the right of individual application to the European Commission and the compulsory jurisdiction of the European Court (Articles 25 and 46 of the Convention);
  - to sign within one year and ratify within three years from the time of accession Protocol No. 6 to the European Convention on Human Rights on the abolition of the death penalty in time of peace, and to put into place a moratorium on executions with effect from the day of accession;
  - to sign and ratify within a year from the time of accession the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
  - to sign and ratify within a year from the time of accession the European Framework Convention for the Protection of National Minorities; to conduct its policy towards minorities on the principles set forth in Assembly Recommendation 1201 (1993), and to incorporate these principles into the legal and administrative system and practice of the country;