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## Gambling, Misunderstanding or Compromising? The Council of Europe and the War in Chechnya

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The conflict between Russia and Georgia in the summer of 2008 raised once more a recurring question about Russia: to what extent has the gamble of integrating that country in the Council of Europe paid off? Russia's response to Georgia's 7 August 2008 attack on Tskhinvali, even though it does not exonerate Georgia from its share of responsibility in this conflict,<sup>1</sup> has been said by the Council to be disproportionate and has been the object of releases recalling the general principles of the institution. Yet, this does not at all preclude Russia's participation in the Council of Europe, even though for the first time since the war in Afghanistan Russia is sending troops to a sovereign territory, outside of the country's borders that have been internationally recognised since 1991, when the Soviet Union collapsed. Admittedly, reminders of the fact that the use of force is not deemed acceptable as a means to resolve political conflicts and numerous communiqués from eminent personalities of the Council of Europe (including the general secretary of the Council, Terry Davis, but also Carl Bildt, then president of the Committee of Ministers<sup>2</sup>) have abounded since the Russian troops entered Georgia's territory. But Russia's lack of hurry to pull its troops away from 'proper' Georgian territories, outside South Ossetia and Abkhazia, as well as the way Russia has ignored the principle of territorial integrity and gone all the way to 'recognise' the independence of these two separatist enclaves of Georgia, have shown that as years go by the Council of Europe's impact on Russia has remained feeble, to say the least. In this context, it is all the more interesting to analyse the relations between the Russian state and the Council of

Europe in the so-to-speak 'light' of the Chechen case. Indeed, in the context of the relations between Russia and the Council of Europe, and broadly speaking between Europe and Russia, Chechnya is obviously a crucial and painful point because of the question of massive violations of human rights.<sup>3</sup> One could even say it is a 'black hole'<sup>4</sup>: tens of thousands of civilian deaths, out of a population of less than a million inhabitants, mass torture, and thousands of forced disappearances. On a European territory – in the Caucasus – war, crimes and crimes against humanity have been committed twice, between 1994 and 1996 and from 1999 onwards. From then on, it crystallised the question 'what kind of relations can an institution whose main goal is to protect human rights have with a state which obviously abuses them?'

Since the collapse of the Soviet Union and the emergence of a newly independent Russia two large-scale wars have taken place in Chechnya (1994–96; 1999–2009), and the first one occurred precisely while Russia aspired to become involved in international organisations as a new actor. In fact, Chechnya has been both a cornerstone and a test for the Council of Europe's policy towards Russia. We have to remember that the Russian Federation joined the organisation in 1996 as the first war in Chechnya (1994–96) was still ongoing. It is therefore necessary to note immediately the difference caused by the elaboration of a policy against the Chechen conflict by an organisation of which Russia is a member, compared with the European Union (EU) in its relations with Russia as an external member.<sup>5</sup> Given the centrality of this topic for an organisation with such an aim, it is a real question to assess the true outcome of this policy. It is even possible to ask the question and try to understand what has really motivated Russian authorities to join the Council of Europe – their application dates from 1992 – and how the drift consisting in not taking seriously the Council of Europe's recommendations has taken place.

The main objective of this essay is to shed light on the way different instances of the Council of Europe act with regards to Russia on the issue of Chechnya and to analyse the capacity of the organisation to ensure the implementation of its values in member states. Subsequently, we would like to show which mechanisms were put in place and whether they worked efficiently (or not), in the Russia–Council of Europe relationship. So we shall insist less on the

properly legal and judicial aspects (that are being addressed by our colleagues specialising in law<sup>6</sup>) than on the strategies of the actors, in a sociological way, to emphasise when the logic of cooperation ends up taking precedence over the real objectives. Can one say that the Council of Europe failed in Chechnya? How can this malfunction be explained and analysed?

This kind of question cannot be addressed without bearing in mind that the speed of crimes and military action moves dramatically faster than the speed of politics,<sup>7</sup> the time of assisting the protection of human rights and the time of fighting against impunity. Everybody who has been to Chechnya especially during the first years of the second war has been struck by the distress of people constrained to wait for a hypothetical outcome to the crisis and a hypothetical punishment for those who abused them. After 2005 the situation, which could be called 'a real chechenisation of the conflict, a fake normalisation'<sup>8</sup> if it keeps on carrying its share of abuses, shows a different layout. Indeed, at the political level there is no longer any democratically elected representative of the Chechen people under international supervision as was the case of Aslan Maskhadov, elected in 1997 under the aegis of the OSCE, after an active mediation of this organisation and the Council of Europe's involvement and a ceasefire between the Russian army and Chechen fighters. However, the amount of abuses that are still being perpetrated against the background of Ramzan Kadyrov's terror,<sup>9</sup> keeps on justifying the preoccupations of a body like the Council of Europe, to the extent that the impunity or the lack of judicial treatment of violations demonstrates the deficiency of the Russian state. Chechnya has officially returned to the Russian federal state after the adoption of a new Constitution in 2003.<sup>10</sup> Insofar as impunity reigns or as the Chechen authorities are failing to take care of measures aimed at preventing violations, responsibility falls both on the Chechen authorities, as fully integrated into the federal framework, and the Russian federal authorities in their responsibility to protect laws and freedoms.<sup>11</sup>

This chapter will focus on three main points: first, how did the war in Chechnya influence the agenda of Russia's entrance into the Council of Europe; second, how did the 'cooperation at any cost' lead to the confusion between means and objectives; and third, how can one assess the results of the policy of the Council of Europe towards Chechnya?

### How the war in Chechnya influenced the agenda of Russia's entrance into the Council of Europe

As mentioned earlier, Russia joined the Council of Europe when at war in Chechnya. Actually Russia applied for membership of the Council of Europe in 1992, but the decision was then delayed because the first war started in 1994.<sup>12</sup> The war started at a time when the Committee of Ministers was requesting the Parliamentary Assembly to assess this application and as a result the issue was temporarily frozen. In January 1995 the request was put back on the agenda and Russia ultimately joined the organisation, on the basis of the widely known assumption that it was better to have Russia in the Council of Europe rather than outside. In fact, as Jean-Pierre Massias writes,

it was accepted under the banner of a twofold argument, combining geopolitical pragmatism and democratic hope. In fact, the majority of speakers supported Russia's candidacy, evoking the interests of Europe and the impossibility of marginalizing such an important state, whose European roots should supposedly 'attract' toward Western values.<sup>13</sup>

Furthermore, the fact that in March 1995 Russia authorised the deployment of an OSCE mission in Grozny had contributed to a positive reaction of PACE, despite the opposition of certain parliamentarians. In a report filed by a rapporteur a month before Russia's accession, the author concluded that 'Russia does not yet meet all the Council of Europe standards. But integration is better than isolation; cooperation is better than confrontation.' Russia's application was finally supported by 164 MPs; 35 voted against. The opposition was a minority, but expressed itself from the onset.<sup>14</sup>

But the fact that Russia joined the Council of Europe did not exempt it from the obligation to prosecute those who had violated human rights until that time. On the contrary, PACE Opinion No. 193<sup>15</sup> on the accession of the Russian Federation to the Council of Europe specified that, beside the implementation of a judicial reform and the ratification of the European Convention on Human Rights, Russia had to solve the conflict peacefully and to prosecute the perpetrators of human rights violations. Among the guarantees

made by Russia as a basis for membership there was the agreement to bring to justice human rights violators in Chechnya.

Even though these commitments are written in ink on paper, Russia's adhesion nonetheless immediately raised concerns. During April's 1996 session, that is two months after Russia's official joining, one can recall the words of Mr Bindig (the rapporteur of the Legal Affairs and Human Rights Committee), deploring that '... barely 2 months after Russia's membership, it continues to violate all the norms and principles we defend...'. An ad hoc commission on Chechnya was then put in place with the fivefold mission of watching over the respect of the ceasefire, the respect for human rights, the effectiveness of legal proceedings, meeting the different actors, and organising a parliamentary hearing of the parties. However, in June and then in September 1996, it is reported that the ad hoc commission had been unable to fulfil any of its missions.<sup>16</sup> What credit should be given to the words of Council of Europe representatives implicated in the Chechen question, like Ernst Mühlemann who, as president of the ad hoc commission, was certain in 1996 that, should there be a new Russian bombing of Grozny, Russia would immediately be excluded from the Council?<sup>17</sup>

It also has to be recalled, and this is not the least important of reactions, that the deputy secretary general of the Council of Europe Peter Leuprecht resigned from his function as a sign of protest. These events show in what an uncertain climate Russia's joining was organised and accepted, and the fact that some parliamentarians, worried by a loss of values, already preferred to express their reticence.

The subsequent sessions in June and September 1996 showed the difficulty for PACE and its ad hoc commission to lead to efficient results. PACE monitored the elections in Chechnya in January 1997 and during the inter-war period the ad hoc commission visited Chechnya to observe the process of the 'so-called' democratisation. Only a few declarations made reference to the persistent problems, but in fact Chechnya was not mentioned at any session of PACE during this period.

Two years later, the Monitoring Committee's 1998 report mentioned that 'few of the many grave human rights violations' committed by the armed forces during the Chechen conflict have been investigated, let alone the guilty brought to justice'. Thus, the first years of Russia's membership in the Council of Europe already

showed the limits of the impact of this institution on the Russian state, and highlight how much of a 'gamble' this joining has been.

### **'Cooperation at any price': from the gamble to the misunderstanding?**

Of course, all this demonstrates that at the very beginning Russia's entrance was a gamble and that to some extent misunderstanding<sup>18</sup> was at the core of the issue. On the one hand, the Council of Europe was keen to remind Russia about its commitments. On the other hand, Russian authorities would insist on the well-founded aspect of their actions, although the Council of Europe never denied the principle of territorial integrity nor the fact that there were problems on the Chechen side and crimes committed by Chechen forces.<sup>19</sup> But the divergence was very visible and the question about the appropriateness of the mechanisms used still stands.

### **The Council of Europe's institutions in the face of war: unadapted mechanisms?**

In this context, it is possible to see how different actors from the Council of Europe try at every stage to 'save their honour'. Among the different actors,<sup>20</sup> a first trend becomes obvious: there is a gap between, on the one hand, parliamentarians and, on the other hand, the Committee of Ministers. In fact it is the same tendency as in other institutions, in particular the EU, where Parliament will be the body to remain the most critical for the longest period of time, while the Council or the Commission follow a logic of cooperation 'at any price' which tends to minimise any criticism emanating from the parliamentary bodies.<sup>21</sup>

Within the Council of Europe the tension between PACE and the Committee of Ministers (requiring unanimous decision-making) is very clear. Every attempt from PACE to make Russia face its responsibilities is actually prevented by this kind of blockage. Whether it is about opening negotiations with the Chechen separatist party, or about giving a decisive impulse to Russian justice in order to speed up and lead legal procedures against war criminals to success, the unanimity required for all decisions largely blocks these processes and disappoints the determination of the most active parliamentarians. Examples of such dissensus abound.

### *PACE's initiatives vs Committee of Ministers' passivity*

As indicated earlier, it is at the level of PACE that strong reservations were expressed in the first half of the 1990s with regard to possible Russian joining the Council of Europe. It was the Committee of Ministers that made the choice to 'move forward', choosing integration and the gamble of a greater influence for the Council of Europe as soon as Russia became a member.

The resumption of war during autumn 1999, with its appalling continuation of human rights violations,<sup>22</sup> first made PACE face its own divisions. The session of January 2000 is indeed marked by internal splits regarding the choice of the most adapted reaction. When a proposition to withdraw the voting right of the Russian delegation was expressed, one could see that the question was divisive and in the end the sanction was not adopted: 83 voted against it, 73 in favour, with 9 abstentions.<sup>23</sup> Recommendation 1444 calls for Russia to introduce a ceasefire and 'stop immediately all indiscriminate and disproportionate military action in Chechnya, and to cease all attacks against the civilian population'. The Recommendation demanded the beginning of negotiations between Russian authorities and the then Chechen President Aslan Maskhadov, with the help of the OSCE, and free access to the territory for journalists. It was in April 2000, however, that the tension reached its climax when, noticing the absence of any amelioration in the situation in Chechnya and the continuing mass violations of fundamental rights guaranteed by the European Convention on Human Rights, PACE voted for the suspension of the Russian delegation's right of vote.<sup>24</sup> It is the first time ever that a delegation saw its voting right suspended. Furthermore, PACE called for the Committee of Ministers to start proceedings for the exclusion of Russia in accordance with Article 8 of the Council's Statute, in the case that Russian authorities were not actively seeking a ceasefire or a political solution. The request was also put forward to initiate an inter-state application against Russia, in accordance with Article 33 of the Statute of the European Court of Human Rights. This April 2000 resolution, which took place after the reports from different commissions of PACE, which all state the absence of any improvement of the situation in Chechnya, and after President Putin's refusal to meet the Human Rights High Representative Mary Robinson, was very conspicuous and caused anger in the Russian representatives. A posteriori, despite

the recurring calls from tireless personalities like R. Bindig (see above), the April 2000 resolution appears to be the most audacious act in the logic of sanctions towards Russia. All the initiatives taken by other institutions (the European Committee for the Prevention of Torture (CPT), the Commissioner for Human Rights, etc.) will never have the impact of this historic April 2000 resolution, which will nonetheless be withdrawn as quickly as it was adopted.

The tension between, on the one hand, PACE and, on the other, the Committee of Ministers is unequivocal and can be summarised by these statistics: whereas PACE regularly appeals to the Committee of Ministers, the latter only answered once. On 3 June 2003, in document 9821, it replied to Recommendation 1600 with one sentence, admittedly full of common sense – ‘if one wants political process to start in the Republic, it is necessary that the attacks on human rights stop and that the people responsible for exactions are handed over to justice’. However, this did not lead to any resolute act. Symmetrically, there are plenty of expressions of regret and bitterness of PACE towards the Committee of Ministers: for example, in Resolution 1546 on 22 January 2002, the Assembly ‘regrets that one year later, the Committee of Ministers still has not given its answer to the said Recommendation’. In its Recommendation 1593 on the assessment of perspectives (on a political solution to the conflict in the Chechen Republic) of 29 January 2003, PACE invites ‘the Committee of Ministers to take urgent measures in order to bring its Resolution 1315 to the attention of the Government of the Federation of Russia, and to insist that it is acted upon diligently’. This remained without effect. In this context, one must mention R. Bindig’s relentless work, including in particular his request for the establishment of an ad hoc international tribunal on Chechnya, expressed in 2003 because of the lack of progress on the situation.<sup>25</sup>

This game of hide and seek between PACE and the Committee of Ministers testifies to a game of inverted mirrors between the two institutions. One can use again Arnaud Breillacq’s formula according to which the organ with the political power seems to be lacking the willingness, whereas the organ possessing the willingness has no power.<sup>26</sup> Indeed, the Committee of Ministers, which can be described as the executive institution of the Council of Europe,<sup>27</sup> is made up of ministers of foreign affairs or their representatives. Given that this institution works confidentially and takes its decisions unanimously,

it is unfortunately impossible to be surprised by the great feebleness shown during the intensive phases of the conflict.

*Secretary general, European Committee for the Prevention of Torture (CPT), and commissioner for human rights: what efforts and what results?*

With the Chechen crisis, some mechanisms foreseen in the texts of the Council of Europe were put into practice for the first time. When the secretary general, in accordance with Article 52, used his discretionary power against Russia in December 1999 he indeed created a first: this article had never hitherto been used against a single state,<sup>28</sup> but in the words of the secretary general himself, ‘extraordinary situations demand extraordinary actions’. While he appealed to the Russian state, the answers given (see below) are considered so insufficient that experts are called to analyse the correspondence between the Russian Minister of Foreign Affairs Igor Ivanov and Walter Schwimmer. In their report they conclude that a number of answers from the minister bear no relation to the questions asked, i.e. on the guarantees of application of the Convention and real practice.

As for the commissioner for human rights, this position was created in May 1999 by a resolution of the Committee of Ministers. Elected by PACE for a non-renewable six-year mandate from a list of three candidates established by the Committee of Ministers, it embodies a machinery between the Council of Europe and the authorities of the member states. Chechnya was the first visit of the first commissioner for human rights, Gil Alvaro-Robles. The creation of the position of special representative of human rights for Chechnya (V. Kalamanov, then A.-Kh. Sultygov) can be attributed to his influence. Among his competences the commissioner can make recommendations or produce reports. The persistence of his publications and interpellations precisely puts into question their very efficiency. In particular, it is possible to mention his requests for clarification addressed in 2002 to Russian general prosecutor Ustinov, or some of his mission reports in Russia and Chechnya (March 2000,<sup>29</sup> March 2001 and March 2003). Each of these actions raised worries about the question of impunity, the overwhelming March 2003 report stating in its point 4: ‘In reality, whatever the reasons for disappearances may be, they highlight in the cruellest possible fashion the glaring absence of the rule of law.’<sup>30</sup>

Finally, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is a non-judicial preventive mechanism.<sup>31</sup> Established by the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,<sup>32</sup> to which Russia adhered in 1998, the CPT is not competent to instruct individual requests or grant reparations, but it can make public statements when deemed necessary. It is composed of independent experts whose mandate is to 'examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment' (Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment), through visits to detention sites. The principle of cooperation that constitutes the basis of the work of the CPT means that reports are confidential. However, public statements occur when the absence of active cooperation from a member state is outstanding. In the case of Chechnya the CPT has precisely three times resorted to public statements, in accordance to Article 10(2) of the Convention:<sup>33</sup> on 10 July 2001, two years later on 10 July 2003, and the latest on 13 March 2007,<sup>34</sup> particularly emphasising the persistence of the use of torture in detention centre ORB-2. This persistence in producing worried statements, published reports and relaunch missions goes together with a Russian reticence to make considerable effort to improve the situation.<sup>35</sup> Here and there alerts from the Council of Europe have been taken into account, for example in relation to the improvements of the conditions of detention at Chernokosovo and the transfer of authority of this detention centre from the Home Office to the Ministry of Justice, after the first public statement of CPT in 2001, or in relation to Directive 80 by General Moltenskoï aimed at 'humanising' the *zachistka* operations. However, the rhetoric developed by the Russian authorities remains deaf to messages from the Council of Europe. In the case of the CPT, the Russian authorities largely call into question its mandate, particularly citing Article 17§3 of the Convention: 'The Committee shall not visit places which representatives or delegates of Protecting Powers or the International Committee of the Red Cross effectively visit on a regular basis by virtue of the Geneva Conventions of 12 August 1949 and the Additional Protocols of 8 June 1977 thereto.'

*A Russian rhetoric battling with the institution . . . but which tries to break through forcefully*

In this context, let us draw the attention to the way in which Russian rhetoric develops. During both the first and the second wars Russian authorities have developed a discourse to justify these two wars, which moreover have never been named as such. The 1994–96 war was called by Russian authorities 'disarmament of illegally formed bands' and 'restoration of constitutional order'. The second war, which started after the incursion into Dagestan of Chechen and Dagestani Islamists led by the Chechen Shamil Basaev and the Saudi Arabian Khattab from Chechnya, and against the backdrop of explosions of buildings in Moscow and Volgograd in September 1999 causing more than 300 casualties, is called a 'counter-terrorist operation'.<sup>36</sup> Thereafter, criticisms formulated by international organisations, including the Council of Europe, are often seen in Russia as unfair and inappropriate and the Russian authorities indeed never ceased to repeat that Russia's territory had been attacked by terrorists, and despite the fact that the attacks were never claimed they were immediately attributed to 'the Chechen track'. Therefore, the Russian arguments are based on recalling these components of the conflict.

Even more explicit is the way that the Russian Minister of Foreign Affairs, Igor Ivanov, develops his arguments in December 1999. The Council of Europe's Secretary General Walter Schwimmer, following Article 52 of the Convention,<sup>37</sup> asked the Russian authorities to state which means they have used to ensure that the European Convention of Human Rights is observed on Chechen territory. Actually, no special regime has been put into place, and Russia has not wished to call upon Article 15 of the Convention.<sup>38</sup> Article 15 indeed 'allows' (by special dispensation and temporarily) a member state of the Council of Europe to decree the suspension of the applicability of the Convention 'in time of war or other public emergency threatening the life of the nation'. However, Russian authorities have not showed interest in using this article. On the one hand, as we have already seen, war has not been officially declared (neither has a state of emergency), despite how massive the military operations and violations of human rights were in 1994–96 or when the conflict restarted in 1999. On the other hand, the Russian authorities have probably wanted for reasons of prestige or decorum to

act as if the Convention remained both applicable and applied,<sup>39</sup> because using Article 15 would have immediately shown a willingness to circumscribe a zone where law is not applied.

The arguments developed by Russia are also visible through the correspondence between Secretary General Walter Schwimmer and the Russian Foreign Secretary Igor Ivanov, in autumn 1999 and in winter 1999–2000.<sup>40</sup> It must be noted that the latter continually refers back to the question of terrorism and that the rhetoric used is as follows: Russia, which places itself on the ‘side of the democracies’,<sup>41</sup> has the legitimacy to fight terrorism and to protect populations against this scourge. In his ‘Reply from the Russian Federation to the Council of Europe’s Request under Article 52 of the European Convention on Human Rights of 17 January 2000’<sup>42</sup> it is possible to read:

The objective of the antiterrorist operation in Chechnya is not aimed against the civilian population; its purpose is to protect the innocent lives from terrorist atrocities. The force applied in the course of the operation is commensurate with the scale of the threat. (. . .) The antiterrorist operation is conducted in full compliance with international obligations of Russia.

Or else:

The power component of the antiterrorist operation by the armed forces in the Chechen Republic is applied lawfully under an efficient state and civil control in accordance with the provisions of the Constitution, laws and regulations of the Russian Federation and in compliance with Russia’s international legal obligations. (. . .)

The actions of the Russian authorities during the antiterrorist operation in Chechnya are based on Russian legislation. The Federal Law on Defence of 1996 envisages that defence means a ‘system of political, economic, military, social, legal and other measures to prepare for armed protection of the Russian Federation as well as the integrity and inviolability of its territory’ and determines powers of state authorities in case of need to use the armed forces. The Federal Law on Combating Terrorism of 1998 establishes a detailed list of measures which authorities can take to suppress terrorist activities.

In March 2000, Igor Ivanov goes as far as to state that given ‘the regime of terror and anarchy prevailing in Chechnya’, under those circumstances there was ‘no question to apply the disposition of the European Convention on Human Rights’, contradicting the answers given in January about the efforts undertaken in order to be able to apply the Convention on Chechen territory.

The problem is that the observations on the spot show that in reality it is not so much a matter of fighting terrorism (the number one terrorist, Shamil Basaev, miraculously managing to evade the ‘manhunt’ that the Russian state claims to lead against him), than a matter of a war the colonial component of which is at least as important as the official pretence of a fight against terrorism. This is a fortiori the case in a context where the 1999 terrorist attacks were never claimed by Chechens and, it is necessary to recall, that the few people (parliamentarians or journalists) who have assiduously tried to shed some light on these attacks have been murdered: MP Sergey Iushenkov was murdered in 2002; the journalist Anna Politkovskaya was murdered in 2006;<sup>43</sup> and the journalist and MP Iuri Tshekotshikhin died in 2003 from an unexplained illness.

The following rhetoric is consistently found: the Russian army, through its intervention in Chechnya, officially fights terrorism and not the Chechen population. But within the framework of this fight it cannot prevent human losses, a kind of regrettable ‘collateral damage’ that seems one of the necessary conditions for the eradication of terrorism, if one listens to Russian officials.<sup>44</sup> According to this rhetoric one after the other Russian official interventions treat the gravity of the situation by way of euphemism and by emphasising the legitimacy of the objectives. Thus, Mr Rogozin, MP and president of the Russian delegation to PACE, declared on 21 September 2000 in a public hearing regarding the 18,000 missing people that the association Memorial put forward regarding the first Chechen conflict: ‘18,000 missing people, this is not a lot, this is even little, if one thinks at all those people who have found refuge in Russia, and those who left before the first war.’<sup>45</sup> While PACE’s resolutions continue to describe a situation of extreme gravity, another rhetoric register is that of threats and/or anger. The same D. Rogozin, during the adoption by PACE of the 2 April 2003 resolution including the request to envisage the creation of an international tribunal, had

the following reaction: 'This is the frenzied initiative of a relentless enemy of Russia. This goes far beyond decency.'<sup>46</sup>

When the Russian rhetoric does not justify its actions through the arguments of the fight against terrorism, from time to time it again uses the warning that Russia could stop cooperating with the Council of Europe. This U-turn in comparison to the beginning of the 1990s signals a change in the Russian position on the international scene in general and towards the West in particular. For example, and this was seen most blatantly on the day after PACE withdrew the Russian delegation's right to vote in April 2000, six months after the war restarted the Russian party tensed up increasingly. Indeed the Russian delegation left the premises of the Council very noisily during this vote and the Russian foreign secretary expressed his concern regarding a degradation of the relations between this institution and his country. Among others the risk of a suspension of Russian payments was evoked.

In hindsight, it is possible to notice that the rhetoric used by the Russian party in order to protest against the suspension of its voting right prefigures that which would be systematically used during the crises against Europe: in the eyes of Russia this kind of reaction from European institutions, in this instance the Council of Europe but in some other cases the EU, does not contribute to the construction of a reunited Europe after the end of the Cold War.<sup>47</sup> Whether it is a question of realpolitik or fundamental adherence to Russian promises, or a conscious or unconscious propensity to fall for the lies, or a lack of courage in the fight against adversity, it must be noted that the logic of 'cooperation at any price' dominates the Council of Europe, even if it does not bring substantive results. In parallel with the permanent institutions of the Council and with the initiatives undertaken by them, ad hoc mechanisms are put into place. They are presented as an additional step in the cooperation process, but their very existence simultaneously testifies to the uselessness of the institutional policies.

**The ad hoc mechanisms put into place by the Council of Europe when confronted with the failure of institutional policies**

The observation is unequivocal: the renewed resolutions and alerts from PACE are answered by acts from the Committee of Ministers

which, in hindsight, can only leave one puzzled regarding the political attitude towards a war of such magnitude and such a nature. These are the different kinds of cooperation put into practice: on the one hand, three experts from the Council of Europe with the special representative for human rights from the Russian president are sent to Chechnya; on the other hand, the Joint Working Group is put in place; and finally, the attempt to organise a specific political dialogue in the form of a timetable, which eventually only validates the policy of 'true Chechenization' and 'fake normalisation' led by Russia, without managing to impose a true negotiation between the conflicting parties, that is to say between the Russian authorities on the one hand and the separatists on the other.

*Experts: cautioning the office of the Russian representative for human rights in Chechnya?*

One of the first reactions of the Committee of Ministers was to send experts from the Council of Europe to Chechnya in June 2000. These experts were at the disposal of Vladimir Kalamonov, the Russian representative for human rights in the Republic of Chechnya, directly nominated by President Putin. It is therefore only a form of cooperation or assistance, but not a form of surveillance or monitoring. And their effective contribution is questioned by PACE: their mandate is indeed to gather complaints, but they cannot check if these complaints are followed by real consequences and if criminal affairs are going through preliminary investigations and hearings. Every month, a meeting is organised among the delegates under the aegis of the Committee of Ministers,<sup>48</sup> in order to discuss the interim reports by the secretary general relating to the experts' work. The Committee just encourages the Russian authorities and does not use an imperative or a disapproving tone.

The simple fact that they work in the office of Mr Kalamonov creates a situation of suspicion among the civilian population. The Committee on Legal Affairs and Human Rights of PACE will consider that 'their mandate seems to have been inadequate in view of the gravity of the situation, given the scale of abuses and the considerable efforts needed to eliminate the climate of impunity in the Chechen Republic'.<sup>49</sup> The experts were called back in April 2003, after an explosion in Grozny, and a new agreement made to continue a new expert mission that finally closed in 2004. These



missions were replaced by a more consensual solution within the Council of Europe, namely the organisation of training sessions on elections, for example.

*The Joint Working Group: first PACE's renouncement or fertile cooperation?*

It is symptomatic to see that the creation of the Joint Working Group (JWG) followed the restitution of the voting right to the Russian delegation, during Resolution 1240 of 25 January 2001, thus explaining the feeling of ineffectiveness within the permanent institutions of the Council. The JWG is composed of seven representatives from PACE (three representatives from the Political Affairs Committee, three from the Committee on Legal Affairs and Human Rights, and one from the Committee on Migration, Refugees and Population) and eight representatives from the Duma. The JWG's mission is to follow up on the progress accomplished regarding human rights (regarding open legal matters and violations) in Chechnya and it must, in that sense, regularly send reports to the competent commissions within PACE and the Duma as well. However, a major problem is at the heart of the JWG's very function as the document does not follow the normal process in the Council of Europe.<sup>50</sup> In reality the work of the JWG has been very much lacking. The bitter attitudes of the MPs vis-à-vis this group and the fact that fairly rapidly the JWG only dedicated itself to visits to Moscow and meetings with Russian authorities testify to the meagre efficiency of this institution.

The third ad hoc event concerns a political initiative led by MP Andreas Gross. Concerned in his official declarations with favouring a political dialogue he saw his project change into a consensual discussion, through the simple fact that the military resistance and its political counterpart were not invited to the event. This resulted in the March 2005 round table, which seems to exemplify the process of slow and progressive resignation of the Council of Europe towards the Chechen crisis.

*The strange 2005 'round table' project: on the way to political resignation*

While PACE called attention to itself because it took firmer positions than the Committee of Ministers, the project of a round

table driven by the parliamentarian Andreas Gross knew a destiny different from its original design at the very least. During the presentation in a parliamentary session of a very firm report on the situation in Chechnya in October 2004, which would lead to the adoption of Resolution 1402,<sup>51</sup> the idea was expressed of organising a round table that would favour dialogue between the Russians and Chechens. This idea was written in black and white in Article 24 of the October 2004 resolution and it came with a curious condition, which straightaway excluded any possibility of dialogue with separatist representatives, even moderate ones:

The Assembly decides to remain actively involved with this issue and to follow up the progress of human rights, democracy and the rule of law in the Chechen Republic. For this purpose, it instructs its Political Affairs Committee to establish a round table for the organisation of an exchange of views with political parties and local politicians and the Russian federal authorities, while realising that persons who refuse to recognise the territorial integrity of the Russian Federation and who declare terrorism a method to achieve their goals, cannot participate in this exchange of views.

While at the time of adopting the resolution Maskhadov was still alive and called for negotiations on numerous occasions, from the onset the project of a round table excluded him and people from his movement, since the territorial integrity of the Russian state was part of the required recognition for all actors. Yet, every conflict resolution process that involves actors with incompatible positions necessarily starts by looking for dialogue between the parties to the conflict. This is then the way that the Ria-Novosti agency advertised the project: it is

a roundtable in which will take part representatives of public opinion of Chechnya, Russia and members of the Parliamentary Assembly of the Council of Europe. (...) Russia had supported this initiative, while putting two prerequisites: the participants can, in any case, neither be linked to terrorists nor contest the territorial integrity of Russia.<sup>52</sup>

In reality, this led to organising a round table where discussions were undertaken between Russian authorities and Chechen representatives precisely nominated or backed by Russia. Negotiations on the fundamental political conflict and its colonial dimension appeared blatantly absent and in this context, PACE itself somehow admitted to supporting the Russian positions about 'refusing to negotiate with terrorists'. As noted by Anna Politkovskaya,

Mashkadov will be 'represented' by President Alkhanov (pro-Russian), MP Akhmar Zavgaev and – why not? – Khalid Yamadaev (member of the presidential party United Russia) etc. One cannot forget Aslambek Aslakhanov, President Putin's advisor on the Caucasus. These men come nowhere near representing the Chechen war lords.<sup>53</sup>

Indeed, at the political level it is important to note that, during the whole period before the murder of Maskhadov in March 2005, there was a potential interlocutor with whom the Russian state could open negotiations if it wanted to or was forced to. In other words, against the background of mass murders committed on the territory of a member state of the Council of Europe the political game was not completely over. In this sense the Council of Europe could have contributed to the implementation of a political dialogue between the Russian power and a Chechen president democratically elected in 1997 under the aegis of the OSCE, as the Council had done so alongside the OSCE during the first conflict. Admittedly, it is impossible to guess what the negotiations with Maskhadov would have produced and it is impossible to forget that in 1997 Maskhadov was elected to the presidency until 2002. We also know the immense difficulties that Maskhadov had encountered in his attempt to establish a Chechen state, which he considered to be independent, while trying to anchor it in an appeased relation with Russia.<sup>54</sup>

### Concluding remarks

While the situation in Chechnya has changed over recent years and open war has been replaced by a terror under the domination of Chechen President R. Kadyrov,<sup>55</sup> it is possible to draw a certain number of conclusions on the role played by the Council of Europe.

A first series of remarks relates to the question of the applicability of the European Convention on Human Rights on Chechen territory and to the issue what the Council of Europe had, might have, can (or cannot) do in principle, faced with this type of crisis and such mass crimes/murders. First, one cannot avoid seeing the political failure of the Council of Europe. Indeed, on a global political level it is impossible not to come back to the expression by Arnaud Breillacq that highlights the blatant gap between PACE, characterised by its political will and its lack of power, and the Committee of Ministers, characterised by its power but its lack of political will. In that sense, PACE's incessant calls to the Committee of Ministers and the latter's deafness, largely the consequence of the decision-making process requiring unanimity from the executive body, show the limits of the Council of Europe in this kind of crisis and its inability to resolve such a conflict in a political manner. On the other hand, we know straightaway that the absence of any incentive on the behalf of the executives, including the executive of the Council of Europe, could only bolster the Russian position in its refusal to negotiate. Like in the case of the EU, we can see a substantial gap between the parliamentary assembly, which is attached to its freedom of expression and its principles, and the executive, constrained (and sometime self-constrained) and overall looking to preserve dialogue with Russia.

These questions raise others: are the mechanisms of pressure of the Council of Europe adapted to mass crimes like those committed in Chechnya? Is dialogue at all cost a sure and reliable means? In this kind of context, does an institution whose *raison d'être* is to defend values, not risk losing its credibility? Faced with this political failure, it is at the judicial level that Russia's entry to the Council of Europe seems to find, somehow, most of its 'justification'. The ECHR even appears like a last hope in terms of the fight against impunity. 'The European Court of Human Rights: the last hope?': it is under this title that Human Rights Watch described in June 2008 the role of the ECHR towards the violations committed in Chechnya.<sup>56</sup> Indeed, it is several years after the crimes have been committed that justice is done. Better known in Russia as 'the Strasbourg Court', the ECHR indeed passes rulings on Chechnya with the regularity of a metronome. The series started with the 24 February 2005 ruling,<sup>57</sup> and by the end of September 2008 there were 34 rulings made,

by the European Court against the Russian state, establishing the responsibility of the state in being unable to protect civilian populations and to ensure a guarantee of legal protection and the fight against impunity.

As stated in the introduction to this chapter, the time gap between the moment that the crimes were committed and that justice is done clearly appears here. If Russia pays the victims indemnity 'cash on the nail', the Russian authorities fail to demonstrate a determination to follow the recommendations that come with every Court judgment and to correct these practices. And the theoretical powers of the Committee of Ministers to ensure the follow-up are actually quite limited. In reality, one might wonder if the fight against impunity could have been conducted, even if there was no ECHR. No hope can lie with the International Criminal Court,<sup>58</sup> which is not operative in the Chechen case because Russia has not ratified the Rome Statute, and even if Russia were to ratify the treaty it would only cover the crimes committed after ratification. Concerning other forms of justice, R. Bindig's call to create an ad hoc international tribunal for Chechnya has remained fruitless. However, one would not be able to consider the Court of Strasbourg as the 'panacea', since this court is not able to judge all of the war criminals in this conflict and since its purpose is not to judge war criminals but rather to point to problems in the functioning of the internal justice system and to urge the condemned Russian state to remedy the failures. In this respect, it is possible to hear some critical voices in Russia who, while tirelessly pursuing the work of justice, worry slightly about the risk of concentrating all their energy on submitting cases to the ECHR while neglecting to work on improving the internal Russian justice system, the lacunae of which precisely led the petitioners to turn to the ECHR. One of them, the Russian lawyer Stanislav Markelov, alerted us in this direction before he was killed in January 2009. According to him, the absolute priority for Russian federal justice to be exercised on Chechen territory would consist in relentlessly trying the offenders of the crimes committed in Chechnya in the Russian tribunals, both civil and military, in order to develop a legal culture in the country and to avoid 'delegating' the immense contingent of unpunished crimes to Strasbourg.<sup>59</sup>

However, in the context of the gamble described above, and with regard to the political failure of the Council of Europe in the

Chechen crisis, we can only hang on to the fact that Russia's membership of this institution allows victims and families to obtain moral and financial compensation.<sup>60</sup> In the absence of any state complaints to the ECHR (Article 34 of the Convention, which had been requested against Russia by Denmark and the Netherlands, but unsuccessfully), the Court is flooded with individual submissions (Article 33). The series of judgments, which continue to be rendered by the ECHR until today<sup>61</sup> and which condemn Russia within the framework of the Chechen war, do confirm the persisting obstacles to a really democratic judicial transition within Russia. Lemaître's chapter to this book offers a luminous analysis in this respect.

## Notes

1. See PACE's resolution, 'The Consequences of the War between Georgia and Russia', Resolution 1633 (2008). <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1633.htm>. See also Silvia Serrano, 'Géorgie: le rêve brisé', *Politique internationale*, No. 121, Autumn 2008, pp. 153–76. See also 'Russia and the Conflict in Georgia', *Russian Analytical Digest*, www.res.ethz.ch, No. 45, 4 September 2008.
2. Carl Bildt is currently chairing the EU as Swedish minister of foreign affairs. Terry Davis, 'Council of Europe Secretary General Terry Davis: Russia Cannot Have it Both Ways', 26 August 2008: [https://wcd.coe.int/ViewDoc.jsp?Ref=PR596\(2008\)&Language=lanEnglish&Ver=original&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE](https://wcd.coe.int/ViewDoc.jsp?Ref=PR596(2008)&Language=lanEnglish&Ver=original&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE). On 12 September 2008, 24 members of PACE asked for the powers of the Russian delegation to be re-examined: <http://assembly.coe.int/Documents/WorkingDocs/Doc08/FDOC11703.pdf>; from 22 to 25 September 2008, a delegation of PACE headed by Luc Van den Brande paid a visit to Russia and Georgia to gather information on the consequences of the conflict, and the war between Georgia and Russia was put as a key point at the autumn session of the Parliamentary Assembly of the Council of Europe (PACE), held in Strasbourg from 29 September to 3 October 2008.
3. One only needs to refer to the numerous reports by NGOs working on the protection of human rights: Human Rights Watch ([www.hrw.org](http://www.hrw.org)), the Fédération Internationale des Droits de l'Homme ([www.fidh.org](http://www.fidh.org)), or Amnesty International ([www.amnesty.org](http://www.amnesty.org)). These organisations, as well as Memorial in Russia and Chechnya, have regularly documented in detail the violation of human rights committed on Chechnya's territory during the first and second conflicts. Indiscriminate bombing, use of torture, 'cleansing' operations with rounding up of civilians and ransom extortion on a large scale: these practices have been qualified not only as war crimes but also as crimes against humanity. See for example, Human

- Rights Watch reports 'Civilian Killings in Staropromyslovskiy District of Grozny' (February 2000), 'Welcome to Hell: Arbitrary Detention, Torture and Extortion in Chechnya' (October 2000), 'The "Dirty War" in Chechnya: Forced Disappearances, Torture and Summary Executions' (March 2001) and a briefing paper 'Worse than a War: "Disappearances" in Chechnya – a Crime against Humanity' (March 2005); Memorial reports 'Zachistka: Poselok Novye Aldy 05.02.2000', 'Kontrterroristicheskaya operatsiya: Poselok Starye Atagi' (2002), 'Deceptive Justice' (2003), 'Zdes' zhivut lyudi: Khronika nasiliya' (2003, 2006), 'A Conveyor of Violence: Human Rights Violations in Ingushetia' (2005); 'What Your Children do will Touch upon You', Punitive House-Burning in Chechnya, 2 July 2009; joint reports of Memorial and the International Federation for Human Rights (FIDH): 'Tchéchénie: crimes contre l'humanité. Quand leurs auteurs seront-ils jugés?' February 2000; 'Tchéchénie: un an de crimes impunis', October 2000; 'Terreur et impunité: un système organisé', March 2002; 'La normalisation: un discours de dupe', March 2003; 'La torture en Tchétchénie: la « normalisation » du cauchemar' (2007); Amnesty International report, 'The Russian Federation: Denial of Justice' (29 October 2002). As for torture, see 'Widespread Torture in the Chechen Republic', Human Rights Watch Briefing Paper for the 37th Session of the UN Committee against Torture, 13 November 2006, <http://hrw.org/backgrounder/eca/chechnya1106/>. See also Arnaud Breillacq, *La Tchétchénie, zone de non droit*, L'Harmattan, Paris, 2004.
4. Arnaud Breillacq is talking about a 'real zone of non-law in a member state of the Council of Europe' (Breillacq, *La Tchétchénie*, p. 18). Interestingly, the author later develops the expression 'zone of non-law' as 'zone where law is not applied'. He does not exclude the possibility that the violations committed are punished, since Chechnya, officially a part of the Russian territory, is – in theory – not exempt from the application of law.
  5. In this respect, it is very interesting to compare those two institutions, the Council of Europe on the one hand, the EU on the other, in the light of the difference of status of Russia, member of the former and not the latter. See Céline Francis, 'Selective Affinities: the Reactions of the Council of Europe and the European Union to the Second Armed Conflict in Chechnya (1999–2006)', *Europe-Asia Studies*, 60, 2, March 2008, pp. 317–38.
  6. See for example Héléne Tigroudja, 'La Cour européenne des Droits de l'Homme face au conflit en Tchétchénie (arrêts Khachiev et Akaïeva, Issaïeva, Youssoupova et Bazaïeva, et Issaïeva contre la Russie du 24 février 2005)', *Revue trimestrielle des Droits de l'Homme* (65/2006), pp. 111–40 and Roemer Lemaître's chapter in this book.
  7. And in this case, this dramatic distance can be found on a number of occasions, be it Cambodia, Rwanda or many other cases of mass murder. See Jacques Sémelin, *Purify and Destroy: the Political Uses of Massacre and Genocide*, Hurst and Co., London, 2007. And regarding the political responsibilities in extreme crises, is it necessary to recall that France had to wait until 1995 to see its then president, Jacques Chirac, recognise France's responsibility in the deportation of Jews during the Second World War? Papon and Barbie's trials, which took place in the 1980s and 1990s in France, testify to the extreme distance between the moment acts were committed and the moment justice acted upon them. Regarding the European Convention of Human Rights, France for a number of years did not adhere to it. It only adhered to it in 1974, at a time when Alain Poher, president of the Senate, had become interim president of the French Republic following the death of Georges Pompidou.
  8. See for example Aude Merlin (ed.), 'La Tchétchénie: derrière les façades, dans quel état?', *La Revue nouvelle*, December 2007, Brussels ([www.revenouvelle.be](http://www.revenouvelle.be)). One can also mention recent books on Chechnya addressing today's situation. James Hughes, *Chechnya: from Nationalism to Jihad*, Philadelphia, University of Pennsylvania Press, 2007; John Russell, *Chechnya: Russia's War on Terror*, London: Routledge, 2007, and Richard Sakwa (ed.), *Chechnya: From the Past to the Future*, Anthem Press, 2005. Concerning the attempts of negotiations and obstacles to a regulation of the conflict, see Céline Francis: 'La politique russe en Tchétchénie de 1994 à 2006. Analyse des raisons d'un échec', in Aude Merlin (ed.), *Où va la Russie?* Editions universitaires de Bruxelles, 2007; James Hughes, 'The Peace Process in Chechnya', in Richard Sakwa (ed.), *Chechnya: From the Past to the Future*, Anthem Press, 2005; John Russell, 'The Paths not Taken: the Russian Failure to Reach a Political Solution in Chechnya', in John Russell, *Chechnya: Russia's War on Terror*, London: Routledge, 2007.
  9. See for example 'La torture en Tchétchénie: la normalisation du cauchemar', rapport FIDH, 2006, [www.fidh.org](http://www.fidh.org)
  10. A Chechen Constitution was adopted in 1992, proclaiming Chechnya as a lay, independent and democratic state. The 1997 election took place in the framework of this Constitution, even if Russia never officially recognised the independence of Chechnya. See the whole text of the Constitution at <http://www.trybunal.gov.pl/constit/constitu/constit/chechnya/chechn-e.htm>. Even though, as a number of reports and independent documents have shown (Aleksander Mnatsakanyan, 'The March 2003 referendum in Chechnya – a glimpse of hope or a political manipulation', in Tanya Lokshina (ed.), *Chechnya 2003: Political Process through the Looking Glass*, Moscow, Moscow Helsinki Group, pp. 14–20), the referendum on 23 March 2003 as well as the following elections, organised within the policy of 'normalisation' (presidential elections on 5 October 2003, 28 August 2004, legislative elections on 27 November 2005), have been questionable and indeed questioned. See also Tanya Lokshina, Mary Mayer and Ray Thomas, *The Imposition of a Fake Political Settlement in the Northern Caucasus – the 2003 Chechen Presidential Election*, Ibidem-Verlag, Stuttgart, 2006. As to the Chechen Constitution of 2003, it was submitted to the Venice Commission, who published some comments. For more information, [http://www.venice.coe.int/site/dynamics/N\\_Opinion\\_ef.asp?L=E&OID=231](http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&OID=231)

- &MenuL=E. See also Michèle Henry, *Tchéchénie: la réaction du Conseil de l'Europe face à la Russie*, L'Harmattan, 2004, p. 78.
11. See the text of the Russian Constitution adopted in 1993, <http://www.constitution.ru/en/10003000-01.htm>, especially Chapter 2 on 'Rights and Freedoms of Man and Citizen' and Chapter 7 on 'Judicial Power'.
  12. Francis, 'Selective Affinities'.
  13. Jean-Pierre Massias, 'Russia and the Council of Europe: Ten Years Wasted?', *Russie.nei.Visions* No. 15, IFRI, January 2007, p. 6: [http://www.ifri.org/frontDispatcher/ifri/publications/russie\\_cei\\_visions\\_1111752534925/publi\\_P\\_publi\\_rus\\_massias\\_1168954361649](http://www.ifri.org/frontDispatcher/ifri/publications/russie_cei_visions_1111752534925/publi_P_publi_rus_massias_1168954361649).
  14. Céline Francis, 'Russie-Tchéchénie: un défi pour le Conseil de l'Europe', in T. De Wilde and L. Spetschinsky (eds), *La politique étrangère de la Russie et l'Europe. Enjeux d'une proximité*, PIE Peter Lang, Brussels, 2004, p. 229.
  15. PACE, Opinion No. 193 'On Russia's Request for Membership of the Council of Europe', 25 January 1996; <http://assembly.coe.int>. See also Francis, 'Russie-Tchéchénie', p. 229.
  16. Francis, 'Russie-Tchéchénie', p. 231.
  17. Rick Fawn, 'Correcting the Incurable? Russia's Relations with the West over Chechnya', in Rick Fawn and Stephen White (eds), *Russia after Communism*, Frank Cass, London, 2002, p. 13.
  18. See Massias, 'Russia and the Council of Europe', p. 6.
  19. On this topic, see for example the February 2000 report *Tchéchénie. Crimes contre l'humanité. Quand leurs auteurs seront-ils punis ?* [www.fidh.org](http://www.fidh.org), which devotes a part to the violations committed by Chechen warriors.
  20. The different actors in a position to act in the case of Chechnya have been mapped in a very clear synthetic diagram in annex II of Henry, *Tchéchénie*.
  21. See in particular Francis, 'Selective Affinities':
  22. One can notably think about the bombing of Grozny's market on 21 October, the bombing of a column of refugees on 29 October, and the series of *zachistki* – mopping-up operations – which went together with the storming of Grozny at the beginning of February 2000, and which ended in hundreds of civilians going through filtration camps.
  23. PACE, 'Debate of 27 January 2000', available at <http://assembly.coe.int>
  24. PACE, 'Session from the 3rd till the 7th April 2000', Strasbourg, 6 April 2000.
  25. It is indeed possible to read in Resolution 1323 from 2 April 2003 and Recommendation 1600 of the same date PACE's request to the Committee of Ministers to envisage proposing to the international community the creation of an ad hoc international tribunal in order to judge war crimes committed in Chechnya, assimilated by PACE to 'war crimes and crimes against humanity', if substantial results are not obtained in Chechnya in 2004. See Henry, *Tchéchénie*, pp. 137–8. This tribunal would be able to judge crimes committed by the federal army as well as by the Chechen fighters.
  26. Breillacq, *La Tchéchénie*, pp. 44–5.
  27. Céline Francis, 'La guerre en Tchétchénie: quelle efficacité du Conseil de l'Europe face à des violations massives des Droits de l'Homme?', *Revue trimestrielle des Droits de l'Homme*, No. 57, 2004, p. 92.
  28. Press communiqué, 15 December 1999.
  29. 'Report by Mr Alvaro Gil-Robles, commissioner for human rights, on his visit to the Russian Federation (in particular Ingushetia and Chechnya, Grozny)', 1 March 2000, <https://wcd.coe.int/ViewDoc.jsp?id=980387&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864> and others.
  30. 'Report by the Commissioner for Human Rights, Mr Alvaro Gil-Robles, on his visit to the Russian Federation (Chechnya and Ingushetia) from 10 to 16 February 2003', <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=318562&SecMode=1&DocId=31878&Usage=2>
  31. CPT website is <http://cpt.coe.int/en/about.htm>
  32. See <http://cpt.coe.int/en/documents/ecpt.htm>
  33. Art. 10 § 2: 'If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter.'
  34. 'Public statement concerning the Chechen Republic of the Russian Federation (13 March 2007)'; <http://cpt.coe.int/documents/rus/2007-17-inf-eng.htm>; 13/03/2007 – 'Chechnia: publicnoe zaiavlenie Komiteta Soveta Evropy po preduprezhdeniiu pytok' (Chechnya: public statement CPT) [http://www.coe.int/T/R/Press/\[Press\\_releases\]/20070313\\_CPT\\_Chechnya.asp](http://www.coe.int/T/R/Press/[Press_releases]/20070313_CPT_Chechnya.asp)
  35. See, for detail, Henry, *Tchéchénie*, pp. 38–47.
  36. The question of terrorism and the fight against terror has, in political and temporal terms, contributed to integrate or reintegrate Russia within 'the democratic side', in particular after 11 September 2001, and the windfall effect could be seen in the reality of the Russian discourse. See, among others, Anne Le Huérou and Amandine Regamey, 'Russia's War in Chechnya: the Discourse of Counterterrorism and the Legitimation of Violence', in Samy Cohen (ed.), *Democracies at War against Terrorism*, Palgrave Macmillan, 2008, pp. 212–32, and the fourth chapter of Anne Le Huérou, Aude Merlin, Silvia Serrano and Amandine Regamey, *Tchéchénie, une affaire intérieure? Russes et Tchétchènes dans l'étau de la guerre*, Autrement, Paris, 2005. See also John Russell, 'Wars by any Other Name. Yeltsin's Restoration of "Constitutional Order" and Putin's Counter-Terrorist Operation', in John Russell, *Chechnya. Russia's 'War on Terror'*, Routledge, 2007, pp. 69–89.
  37. Article 52 of the Convention, entitled 'Inquiries by the Secretary General', stipulates that 'On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the

- effective implementation of any of the provisions of the Convention'. <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf>
38. Article 15 of the Convention on 'Derogation in time of emergency' stipulates that:
1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided such measures are not inconsistent with its other obligations under international law.
  2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1), and 7 shall be made under this provision.
  3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.
39. See the arguments developed by Breillacq, *La Tchétchénie*, pp. 24–5.
40. See Henry, *Tchéchénie*, pp. 126–7 and 'Rapport consolidé relatif à l'analyse de la correspondance entre le Secrétaire Général du Conseil de l'Europe et la Fédération de Russie au titre de l'article 52 de la CEDH, 26 juin 2000, doc.SG/Inf (2000)24', *Revue universelle des Droits de l'Homme*, 2000, pp. 356–68.
41. See Le Huérou and Regamey, 'Russia's War in Chechnya', and John Russell, *Chechnya: Russia's War on Terror*, London: Routledge, 2007.
42. Doc. 8613 <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc00/EDOC8613.htm>
43. Anna Politkovskaya was murdered on 7 October 2006 in Moscow. This murder provoked international indignation. See for example Masha Novikova's film, *Seven Years on the Frontline*.
44. This is exactly the kind of discourse that for example Mr Kalamonov, special representative to human rights in Chechnya named by President Putin, has developed: interview with Mr Kalamonov, 1 September 2000, Moscow. In parallel, it must be noted that in some ways Chechnya's civil population came close to taking the Russian authorities at their word and called for a return to order after three years of chaotic independence or chaos in the context of a pseudo-independence. 'Were it not for the violence of the Russian Army in its behaviour towards civilians, this might have been welcomed with open arms by the great majority of the Chechen population, which could not bear the maskhadovian disorder any longer': interview with Svetlana Gannushkina, president of the association Civic Assistance and the programme Migration and Right of Memorial, Moscow, 2 September 2000.
45. FIDH, *Tchéchénie: un an de crimes impunis*, 25 October 2000, <http://www.fidh.org/spip.php?article1122..>
46. 'Un tribunal pénal international pour la Tchétchénie', *Courrier International*, No. 647, 27 March 2003.
47. One can mention a lot of occurrences of such threats: 'During a meeting with Secretary-General Schwimmer in Strasbourg in January 2000, Ivanov threatened that the decisions by the Council that harmed Russia's interests would be reciprocated by Moscow and would have a negative impact on the relations between the Council and Russia. He specifically warned that measures taken against Russian members of PACE, such as turning them into 'deputies of second class without any rights' would adversely affect the Council's relations with Russia and that this was 'unlikely to be in the interest' of the Council: Fawn, 'Correcting the Incorrigible?', p. 12. See Russian Foreign Ministry, 'Russia's Reaction to the PACE Resolution in Connection with the Situation in the Chechen Republic', Press Release, 7 April 2000. We would once again hear this kind of rhetoric from Russian President D. Medvedev in August 2008.
48. See Breillacq, *La Tchétchénie*, p. 45.
49. PACE Committee on Legal Affairs and Human Rights, 'Human Rights Violations in the Chechen Republic: the Committee of Ministers' Responsibility vis-à-vis the Assembly's Concerns', doc. 10774, 21 December 2005.
50. Breillacq, *La Tchétchénie*, pp. 47ff.
51. Resolution 1402 (2004) 'The Political Situation in the Chechen Republic: Measures to Increase Democratic Stability in Accordance with Council of Europe Standards', <http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/ta04/ERES1402.htm>
52. Ria-Novosti, No. 125, 11 January 2005, quoted by Hélène Blanc, *T comme Tchétchénie*, Ginkgo Editeur, Montreuil, 2005, p. 144.
53. *Novaya Gazeta*, 2005, 1. Interviews with Yves Cohen, University Professor at EHESS in Paris, present during the round table, are congruent with this analysis. Interview, 30 March 2005, Paris.
54. Regarding the inter-war period (1997–99), see in particular: Anatol Lieven, *Chechnya, Tombstone of Russian Power*, Yale University Press, New Haven and London, 1999, 436 pp.; Carlotta Gaal and Thomas de Waal, *Chechnya, Calamity in the Caucasus*, NY University Press, New York and London, 1998, 416 pp., and Emil Souleimanov, 'Interwar Chechnya and Invasion of Dagestan', in *An Endless War: the Russian–Chechen Conflict in Perspective*, Peter Lang, Frankfurt am Main, 2007. See also Moshe Gammmer, *The Lone Wolf and the Bear: Three Centuries of Chechen Defiance of Russian Rule*, Hurst, London, 2006, 252 pp.
55. The assassination of Memorial's member Natasha Estemirova in Grozny on 15 July 2009 shows that terror and dictatorship are going on, silencing any dissident voices, with total impunity.

56. See the Human Rights Watch communiqué, June 2008: 'Chechnya: European Court Last Hope for Victims', <http://www.hrw.org/english/docs/2008/06/09/russia19059.htm>
57. See e.g. *Khashiyev and Akayeva v. Russia* (Nos. 57942/00 and 57945/00, 24.02.2005), *Isayeva, Yusupova and Bazayeva v. Russia* (Nos. 57947/00, 57948/00 and 57949/00, 24.02.2005), *Isayeva v. Russia* (No. 57950/00, 24.02.2005), *Bazorkina v. Russia* (No. 69481/01, 27.07.2006), *Estamirov and others v. Russia* (No. 60272/00, 12.10.2006), *Imakayeva v. Russia* (No. 7615/02, 09.11.2006), *Baysayeva v. Russia* (No. 74237/01, 05.04.2007), *Akhmadova and Sadullayeva v. Russia* (No. 40464/02, 10.05.2007), *Alikhadzhiyeva v. Russia* (No. 68007/01, 05.07.2007), *Magomadov and Magomadov v. Russia* (No. 68004/01, 12.07.2007), *Musayev and Others v. Russia* (Nos. 57941/00, 58699/00 and 60403/00, 26.07.2007), *Goncharuk v. Russia* (No. 58643/00, 04.10.2007), *Makhauri v. Russia* (No. 58701/00, 04.10.2007), *Goygova v. Russia* (No. 74240/01, 04.10.2007), *Kukayev v. Russia* (No. 29361/02, 15.11.2007) and others, <http://www.echr.coe.int>
58. See the website <http://www.icc-cpi.int>
59. 'The power of law versus the law of power': interview of Stanislav Markelov, lawyer, conducted by Aude Merlin, Moscow, 3 June 2008, *Power Institutions of Post Soviet Societies*, <http://www.pipss.org/index2398.html>
60. Natasha Estemirova, who was assassinated on 15 July 2009, constantly underlined the fact the ECHR was the only hope for abused civil families in Chechnya.
61. The list of rulings condemning Russia for the violation of different articles is increasing every month; more than 100 rulings has been published; the most commonly cited of these are: violation of Article 2 (right to life), violation of Article 3 (treatment in respect of the applicants), violation of Article 13 (right to an effective remedy). See: <http://www.echr.coe.int>

## 8

## Can the European Court of Human Rights Provide Justice for Victims of Russian Human Rights Abuses in Chechnya?

*Roemer Lemaître\**

The attached materials do not corroborate the involvement of any military servicemen in the disappearance of [Yandiyev]. (...) [His] corpse was never found, it does not follow from the videotape that he was killed, as the videotape did not show [his killing]. It was therefore decided not to open an investigation (...) because of the absence of a crime.

(from letters of the military prosecutor after viewing a videotape of a Russian general ordering the execution of a young man who was never seen again)<sup>1</sup>

### Introduction

One of the main issues in the first decennium of Russian membership of the Council of Europe has been Russia's appalling human rights record in Chechnya. Boris Yeltsin's bloody attempt to restore order in Russia's breakaway republic of Chechnya delayed Russia's membership in the Council of Europe until 28 February 1996. It took the country another two years – until 5 May 1998 – to ratify the European Convention on Human Rights (the Convention).<sup>2</sup> Under Article 34 of the Convention, individuals can take the Russian government to the European Court of Human Rights (ECHR or Court) if the authorities violated their rights and freedoms included in the Convention. In September 1999 Vladimir Putin ordered Russian troops back into Chechnya, again leading to widespread human rights abuses. Amid calls to suspend or exclude Russia from the Council of Europe, the Parliamentary Assembly of the Council of