

Book Review: Russia and the European Court of Human Rights: The Strasbourg Effect edited by Lauri Mälksoo and Wolfgang Benedek

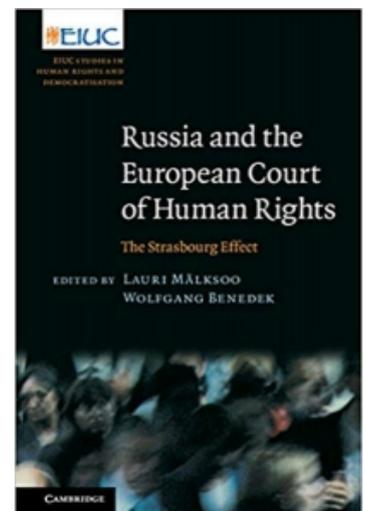
In Russia and the European Court of Human Rights: The Strasbourg Effect, Lauri Mälksoo and Wolfgang Benedek bring together fifteen established European lawyers, judges and human rights scholars to explore interactions between Russia and the European Court of Human Rights in the twenty years since Russia ratified the European Convention on Human Rights. Anyone interested in human rights, legal thinking and issues of sovereignty in Russia will welcome the insights found in this valuable, well-researched volume, writes Camille-Renaud Merlen.

Russia and the European Court of Human Rights: The Strasbourg Effect. Lauri Mälksoo and Wolfgang Benedek (eds). Cambridge University Press. 2017.

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In 1998, Russia ratified the European Convention on Human Rights (ECHR), thereby submitting itself to the jurisdiction of the European Court of Human Rights (ECtHR), widely seen as the most far-reaching international human rights framework. The move reflected the country's aspirations to become a 'normal' European country and was greeted as a hopeful event for the promotion of human rights and the rule of law. What have been the consequences of 'Russia's almost twenty years under the jurisdiction of the European Court of Human Rights' (xiii)? Has there been a 'Strasbourg effect', in the way that the 1975 Helsinki Final Act produced a '[Helsinki effect](#)' on the Soviet Union? And vice versa – has there been a 'St. Petersburg effect on the ECtHR' (xiv)?

These are the main questions this volume, edited by [Lauri Mälksoo](#) (University of Tartu) and [Wolfgang Benedek](#) (University of Graz), tries to answer by bringing together fifteen established European lawyers, judges and human rights scholars, many of them from Russia itself. The contributions are grouped in four thematic sections: in addition to more general introductory and concluding parts, one looks at the interaction between Russia, and particularly its Constitutional Court (RCC), and the ECtHR, and another analyses a number of case studies. The larger academic debates the book engages with include the relationship between the national constitution and international human rights law; the universality of human rights; and the degree to which supranational institutions such as the ECtHR can socialise states.



It is no secret that Moscow's engagement with Strasbourg has grown more contentious over the years. As the chapters on LGBT rights, property rights and human rights violations in Chechnya show, Russia frequently continues to fall short of key ECHR standards, sometimes to the frustration of the Council of Europe (CoE), the Court's overlaying international organisation. But it is the recent efforts to limit the scope of authority of the ECtHR itself in Russia that have sparked the gravest concerns amongst observers. In July 2015, the RCC declared that judgments from international bodies that contravened the Constitution [could not be implemented](#), a direct affront to the binding nature of ECtHR judgments. [A law to the same effect](#) was passed in December 2015, and in April 2016, the RCC declared an ECtHR judgment over prisoner voting rights [impossible to implement](#) on the basis of this new legislation. In January 2017, the RCC similarly ruled that the €1.9 billion sum awarded to former Yukos shareholders by the ECtHR [was to be rejected](#).



Image Credit: Courtroom of the European Court of Human Rights ([Adrian Grycuk CC BY SA 3.0](#))

Pointing to a qualitative change that has taken place in Russia's relationship with the ECtHR, this development and its implications are discussed at length in the volume. As Mälksoo notes, the danger is now that of a 'European human rights protection system "with two speeds"' (25) in which Russia – possibly soon followed by others – can now choose to implement rulings *à la carte*. More generally, the current situation ultimately leaves both parties unsatisfied and can therefore hardly be considered sustainable in the long term. The prospect of Russia leaving the CoE altogether [has already been mooted](#), although this is also due to [fallout from the 2014 Ukraine crisis](#). Accordingly, many of the authors break the twenty-year-old relationship down into different phases, with the current one characterised by a sense of confrontation.

Yet, as this book simultaneously seeks to make clear, there is much more to the relationship between Moscow and Strasbourg than tension and mutual disappointment. As put by the former president of the CoE's Parliamentary Assembly: 'Russia needs us and we need Russia' (46). For the CoE, keeping its largest member state on board is tantamount to securing its own relevance, while for Russia, membership of the human rights body is a way of returning 'to the core of European civilization in the wake of the Communist detour' (135).

In an insightful chapter, Alexei Trochev further observes that the ECtHR and its rulings have been used by the RCC to expand its own jurisdiction in the context of a 'dual state' that demands a fair dose of 'political literacy' from judges in order to navigate between a 'constitutional regime' and an 'administrative regime' entailing arbitrary rule. He also notes that both the RCC and the ECtHR seek to reduce the number of complaints before the Strasbourg court. This kind of overlapping interest indicates that there is some common ground for pragmatic cooperation. Thus, while the ECtHR is recurrently and harshly criticised in Moscow, Russian officials also [emphasise the need](#) to maintain a constructive dialogue with Strasbourg. But it remains to be seen how this could be given form under the current conditions and none of the authors venture to spell out what such a scenario might look like.

Many authors also highlight the ECtHR's positive influence on Russia, although none of them attempts to measure this 'Strasbourg effect'. Although this could leave room for cautious optimism, the fact remains that Russia has spectacularly failed to conform to the ['spiral model'](#), according to which states are socialised through interaction and eventually internalise international norms. Indeed, the phases identified by different contributors do not align with the socialisation theory. On the contrary: as Benedek highlights, 'the number of "wrong" or "impossible" cases is growing' (398-99).

For Bill Bowring, it is the model itself that should be questioned, notably since it fails to appreciate the ‘significantly in-depth and serious engagement between Russia and the CoE, lasting for two decades’ (212). Tracing back the origins of the socialisation thesis, he argues that ‘the problem may well lie in the attempt to explain Russia as a difficult teenager’ (199). Instead, he sees more worth in exploring Russia’s approaches to international law and human rights through its internal debates, a critique picked up by Mikhail Antonov’s analysis of RCC Chairman Valery Zorkin’s legal philosophy, which seeks to reconcile exceptionalism and universalism. These contributions serve as timely injunctions against essentialising Russia and its complexities.

It might be worthwhile to explore several issues raised in the book further from a more comparative angle. Although observers note a general human rights backlash in other ECHR signatory states [and indeed beyond](#), there is little reflection on how the Russian case fits in this broader development. This seems a particularly pertinent issue since Russia is frequently presented as an exponent of this process. It would also be interesting to see how the posited opposition in Russia between sovereignty and international law plays out with regards to other supranational institutions, such as the World Trade Organisation and the International Criminal Court.

To be sure, there is much to say for devoting exclusive attention to this pressing issue, and anyone interested in human rights, legal thinking and issues of sovereignty in Russia will welcome this volume for its many valuable insights and thorough research. Readers will appreciate the fact that no rigid model of analysis was imposed on the authors, leaving room for nuance and a host of different perspectives. Finally, the analysis of a number of key primary sources will be of particular value to non-Russian speakers interested in the topic.

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Note: This review gives the views of the author, and not the position of the LSE Review of Books blog, or of the London School of Economics.