



Latest rulings by the European Court set out the procedure for future processing of applications against Russia

The Russian Federation is no longer a party to the European Convention on Human Rights (see [press release of 16 September 2022](#)). The European Court of Human Rights has decided over the past months several cases which set out some guiding procedural principles for dealing with cases against Russia which fall within its jurisdiction. On 1 February 2023, 16,730 applications lodged against Russia are pending before a decision body.

It has, notably, delivered judgments and decisions in two Grand Chamber and two Chamber cases:

[Fedotova and Others v. Russia \[GC\]](#), 17 January 2023

[Ukraine and the Netherlands v. Russia \[GC\]](#), 25 January 2023

[Kutayev v. Russia and Svetova and Others v. Russia](#), 24 January 2023

Essentially these rulings explain that: the Court is competent to deal with cases concerning acts or omissions which took place before 16 September 2022, the date on which Russia ceased to be a party to the European Convention; the office of judge in respect of Russia having ended, the Court will appoint an *ad hoc* judge from among the sitting judges to examine those cases lodged against Russia within its jurisdiction; and the Court may proceed with examination of the applications where the Russian authorities do not cooperate with it.

The failure of a respondent State to participate effectively in the proceedings does not automatically lead to acceptance of an applicant's claims. However, the Court must be satisfied by the available evidence that a claim is well-founded in fact and law.

There are eight inter-State cases pending concerning Russia, which remain a top priority for the Court: *Georgia v. Russia (II)* (Article 41 – just satisfaction); *Georgia v. Russia (IV)*; *Ukraine v. Russia (re Crimea)*; *Ukraine and the Netherlands v. Russia*; *Ukraine v. Russia (VIII)*; *Ukraine v. Russia (IX)*; *Russia v. Ukraine*; *Ukraine v. Russia (X)*. There are also currently approximately 16,700 individual applications pending before the Court against Russia.

The cases decided over the last months highlight three main procedural issues: the Court's jurisdiction; the question of how to proceed given that the office of the elected judge in respect of Russia has ceased to exist and the list of *ad hoc* judges is no longer valid; and the consequences of the Russian authorities' failure to cooperate in the proceedings concerning pending cases.

Specifically, on 17 January 2023 the Court ruled for the first time – in its Grand Chamber judgment *Fedotova and Others v. Russia* (application no. 40792/10 and two others) – on the question of whether it was still competent to deal with cases lodged in respect of Russia. In that case the Court confirmed that it had jurisdiction to deal with the case, as the facts giving rise to the alleged violations of the Convention had taken place before 16 September 2022, the date on which Russia had ceased to be a party to the European Convention on Human Rights.

The legal basis for that finding is found in [Article 58 § 2](#) of the European Convention, read in conjunction with §§ 1 and 3 of that provision, as reflected in the Court's [Resolution of 22 March 2022](#). Article 58 applies to situations where a Council of Europe member State ceases to be a Contracting Party to the Convention by withdrawal or expulsion from the Council of Europe and/or denunciation of the European Convention. In its Resolution of 22 March 2022 the Plenary declared that the European Court remained competent to deal with applications directed against Russia in

relation to acts and omissions capable of constituting a violation of the Convention provided that they occurred up until 16 September 2022.

The Court went on to confirm this approach to jurisdiction on 24 January 2023 in two Chamber judgments, *Kutayev v. Russia* (no. 17912/15) and *Svetova and Others v. Russia* (no. 54714/17).

In both those judgments it also addressed the issue of the appointment of an *ad hoc* judge in Russian cases after 16 September 2022, given that the office of Russian judge had ceased to exist and the list of *ad hoc* Russian judges was no longer valid. In particular, the parties were informed that the Court intended to appoint one of its sitting judges to act as an *ad hoc* judge for the examination of their applications and to apply the same approach in respect of other applications against Russia for which the Court remained competent. The respondent Government were invited to comment, but they did not submit any comments. Accordingly, the President of the Chamber decided to appoint an *ad hoc* judge from among the sitting judges, applying by analogy [Rule 29 § 2 \(b\)](#).

This approach to the appointment of an *ad hoc* judge in Russian cases was confirmed in the Grand Chamber decision of 25 January 2023 in the inter-State case [Ukraine and the Netherlands v. Russia](#) (nos. 8019/16, 43800/14 and 28525/20, see paras 39 and 40 of the decision).

The Court further outlined its approach to any failure by the respondent State to cooperate in ongoing proceedings in cases after March 2022, basing itself on the States' general obligation to cooperate with the Court and to provide all necessary facilities for the effective examination of applications (Articles 34 and 38 of the Convention and [Rule 44A of the Rules of Court](#)). In particular, in *Svetova and Others* of 24 January 2023, it confirmed that the Government's failure to cooperate in the proceedings – by not submitting written observations – did not prevent the Court from examining the case. The Court pointed out that even though Russia had ceased to be a party to the Convention, it still has a duty to cooperate in the case as the events had occurred before the 16 September 2022 cut-off point.

Following the Council of Europe's Resolution on the cessation of membership of the Russian Federation and the Court's Resolution on the consequences of such cessation of March 2022 (see below), the Court has continued with the processing of Russian cases (save for a very short period between 16 and 22 March). Indeed, some important judgments have been delivered after March 2022, such as *Taganrog LRO and Others v. Russia* on the authorities' crackdown of Jehovah's Witnesses, *Ecodefence and Others v. Russia* on the application of the Foreign Agents Act to NGOs and *Pavlov and Others v. Russia* and *Kotov and Others v. Russia* on industrial pollution. Chambers of seven judges will continue to deal with priority and impact cases of this nature.

The Court has also continued to process applications against Russia in Committee formations, if the complaints fell under the well-established case-law of the Court. Approximately 12,000 of the pending applications against Russia (i.e. 72% of all the pending applications) raise legal questions in relation to which the Court's case-law is already well-established. These cases will be notified to the parties and processed in a simpler manner using case-processing tools which the Court has developed to deal with repetitive cases of this nature.

Relevant background decisions

Following Russia's armed attack on Ukraine in March 2022, the Council of Europe, including the European Court of Human Rights, took a series of decisions:

[Decision](#) of the Council of Europe to suspend the Russian Federation from its rights of representation in the Council of Europe in accordance with Article 8 of the Statute of the Council of Europe (25 February 2022)

[Opinion No. 300 \(2022\)](#) of the Parliamentary Assembly of the Council of Europe which considered that the Russian Federation could no longer be a member State of the Council of Europe (15 March 2022)

[Resolution of the Council of Europe](#) on the cessation of the membership of the Russian Federation to the Council of Europe (16 March 2022)

[Resolution of the European Court of Human Rights](#) on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention (22 March 2022)

[Resolution of the European Court of Human Rights](#) taking note that the office of the judge in the Court with respect to the Russian Federation would cease to exist on 16 September (5 September 2022)

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.