

Fundamental Rights as the Basis for Democracy in Europe**

Abstract

The protection of fundamental rights and democratic participation are two important pillars of legitimacy of political sovereignty. The preamble of the European Convention on Human Rights itself confirms the existence of a mutual interdependence between democracy on the one hand and human rights on the other. This contribution aims to discuss the two main aspects of this relationship: the importance of fundamental rights for securing democracy and freedom as well as democracy as a basis for fundamental freedoms. It further analyses the role of European and international law as well as constitutional courts in protecting fundamental rights and democracy.

Keywords: democracy, fundamental rights, peace, European Convention on Human Rights, Hungary, constitutional justice, constitutional court

I Mutual Relations between Democracy and Fundamental Rights

There are various kinds of relations between democracy on the one side and fundamental rights on the other side. The German philosopher *Jürgen Habermas* describes the protection of human rights and democratic participation as the two pillars of the legitimacy of political sovereignty.¹

If we look at the preamble of the European Convention on Human Rights, which was – like the universal instruments of human rights – drafted in the aftermath of the Second

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** This text was presented on 5 May 2022 at the Law Faculty of ELTE University Budapest at the eve of the academic ceremony in which the University awarded him the titles of honorary professor and Dr. h.c. The style of an oral presentation remained unchanged; a few footnotes were added. The author would like to thank Katharina Hysek for assistance in the English language as well as in the research for the footnotes to this text.

¹ Jürgen Habermas, *Die Einbeziehung des Anderen* (4th edn, Suhrkamp 2019, Frankfurt am Main) 237 et seq.

World War, we see the most prominent proof of the relationship that is the topic of my speech and its central thesis. Consideration No 4 of the Preamble reads as follows:

The governments signatory hereto, being members of the Council of Europe, [...] Reaffirming their profound belief in these fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights upon which they depend.

With this wording the Preamble confirms the existence of a mutual interdependence between democracy and human rights. Democracy as a basis for human rights, protection of human rights as an indispensable condition for democracy. At the time of the adoption of the Convention, the Preamble was a statement to the internal side of the member states, i.e. a clear sign against what had existed in Nazi Germany and destroyed democracy, rule of law and fundamental rights, including the lives of millions. Moreover, it was a clear sign of initially only Western European States against Stalinism and totalitarian States in communist regimes.

What we can derive more precisely from the preamble is a triangle: democracy, fundamental rights, and peace in the world. Since the beginning of the Russian aggression against Ukraine on 24 February 2022, there is no further need to explain why peace is the third angle besides democracy and fundamental rights.

In my presentation, I am going to discuss the two main aspects of the relation between democracy and fundamental rights: firstly, the importance of democracy as a basis for freedom and fundamental rights, and secondly, fundamental rights securing democracy, more precisely rights framing democratic procedures as well as rights limiting the majoritarian principle.

II Democracy as a Basis for Fundamental Freedoms

The first relation to be discussed can be derived directly from the rights of the European Convention on Human Rights. The limitation clauses of nearly all human rights refer to the requirement of a legal basis for any interference with the respective rights. The prerogative of the legislator demonstrates that it is up to Parliament in the first place to negotiate the manner and the extent of an interference with fundamental rights, in other words to strike the balance between the public interest and the disadvantages of the individual concerned by a certain measure restricting a right.

European Treaties and, above all, all European constitutions reflect the relation between democracy and human rights. In the year 1920, the legal theorist *Hans Kelsen* describes this relationship in his book on 'The Essence and Value of Democracy', as follows: The freedom of the individual is best secured through the individual's participation in the law-making process in a parliamentary democracy: laws that govern the way people live together,

defining their spheres of freedom and ensuring the respect of human and civil rights. These laws have the function of protecting minorities.²

Democracy and the rule of law are fundamental principles of the Austrian, the German and the Hungarian Constitutions.³ In Germany and in Austria, Parliament is not empowered to amend these principles. In Germany they are part of the eternal guarantees protected under Article 79 para 3 of the Basic Law.⁴ In Austria, the basic principles of democracy and the rule of law may not be changed in the normal procedure, not even by a two-thirds majority, as any substantial change of these principles would be equivalent to an overall revision of the Constitution, which must be subjected to a referendum.⁵ In 100 years, such an overall revision occurred only once, when Austria acceded to the European Union in 1995. The referendum was obligatory, because, pursuant to Article 44 para 3 of the Federal Constitution, the people must have a say in any decision to change the fundamental principles of the Constitution.⁶

III Fundamental Rights Securing Democracy

A well-known starting point is the freedoms under the European Convention on Human Rights. The core guarantees of the catalogue of human rights of that convention are enshrined in Articles 8 to 11. They deal with the respect for private life and family life, the freedom of religion, the freedom of expression and the press, and finally the freedom of association and assembly. Each paragraph 2 of these rights sets the conditions for the limitation of the mutual rights as guaranteed under paragraph 1. These conditions are approximately the same for each right. In principle, they empower the legislator to limit the rights if it is 'necessary in a democratic society'.⁷

² Hans Kelsen, *Vom Wesen und Wert der Demokratie* (2nd edn, Reclam Universal-Bibliothek 2018, Dietzingen; original version: J.C.B Mohr 1929) 76 et seq.

³ For an astute inspection of the Hungarian Constitution regarding the resistance to change of its core and the possibilities of the Constitutional Court to react, see László Sólyom, *Das Gewand des Grundgesetzes: Zwei Verfassungsskizzen – Ungarn und Deutschland* (Berliner Wissenschaftsverlag 2017, Berlin) in particular at 36 et seq.

⁴ Among others Matthias Herdegen, 'Das Grundgesetz im Gefüge des westlichen Konstitutionalismus' (§ 1), Christoph Möllers, 'Demokratie' (§ 5), and Peter M. Huber, 'Rechtsstaat' (§ 6) in Matthias Herdegen, Johannes Masing, Ralf Poscher, Klaus F. Gärditz (eds), *Handbuch des Verfassungsrechts. Eine Darstellung in transnationaler Perspektive* (C.H. Beck 2021, München, 15–60, 317–382, 383–436) 46 et seq., 317 et seq., 383 et seq.

⁵ For Austria see Christoph Grabenwarter, 'Constitutional Law' in Christoph Grabenwarter, Martin Schauer (eds), *Introduction to the Law of Austria* (Wolters Kluwer Law 2015, Alphen aan den Rijn, 1–18) 3 et seq.

⁶ Christoph Grabenwarter, 'Änderungen der österreichischen Bundesverfassung aus Anlaß des Beitritts zur Europäischen Union' (1995) 55 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 166–190, 166 et seq.; cf. Art 44 para 2 Bundes-Verfassungsgesetz, initial version, BGBl 1/1920.

⁷ For an overview see Christoph Grabenwarter, *European Convention on Human Rights. Commentary* (C.H. Beck, Hart, Nomos, Helbing Lichtenhahn 2014, Baden-Baden – Basel) 207 et seq., 245 et seq., 266 et seq., 306 et seq., 310 et seq. <https://doi.org/10.5771/9783845258942>

Democracy depends on human rights, as these rights constitute the basis for the exercise of freedoms that are indispensable for a democracy. In this context, we primarily think of political rights such as freedom of expression, freedom of the press, freedom of association and assembly and the right to free elections. Besides these rights one has to see that other freedoms, too, are crucial for democracy. If we go further in our analysis, we can see that the other freedom rights also have significant influence on the way democracy is constituted. It is the freedom of arts, the freedom of research and the freedom of religion. The way in which believers can exercise their religion, artists can show their work and scientists may communicate the results of their research gives a society its characteristics. Institutions of culture, universities, churches and other religious communities and entities of self-government contribute to and carry democracy in a civil society. Or in the words of *John Rawls*: '[...] political liberalism allows [...] that our political institutions contain sufficient space for worthy ways of life, and that in this sense our political society is just and good'.⁸

IV The Role of European and International Law

At the constitutional level, the protection of the freedom of the individual is guaranteed by fundamental rights. After 1945, the catastrophe of Nazism and the Stalin dictatorship made the world understand that the fundamental rights adopted at the national level had to be accompanied by international human rights enshrined in international and European law. Certain human rights were to be beyond the influence of national law including national constitutional law. Today, international courts decide on whether such rights are respected or not. Their existence beyond the reach of national politics is what accounts for the essence of human rights of the individual, as *Friedrich Schiller* puts it in *William Tell*, 'inalienably his, and indestructible as are the stars'.⁹

Being inalienable – this is what makes human rights unique; their core has become binding international law. However, in contrast to *William Tell*, in many states human rights do not continue to abide only in the heaven of international law, but have been incorporated into the constitution and are effectively protected by independent constitutional courts in the majority of European states. Together with Bulgaria and Czechoslovakia, Hungary was among the first three former Communist states which became members of the European Convention on Human Rights thirty years ago in 1992. In the first twenty years after the accession, the Hungarian legal order, the authorities and above all the courts including the constitutional court became well acquainted with the Convention and the practice of the Strasbourg court. Legal scholarship in constitutional as well as in European law discussed in depth a great variety of questions on all rights guaranteed under the Convention.

⁸ John Rawls, *Political Liberalism* (Columbia University Press 1993, New York) 210.

⁹ Friedrich Schiller, *William Tell* (1804, Tübingen).

It is not the task of a foreign constitutional lawyer to give marks on the quality of research into human rights in Hungary. But allow me to say that there has been and still is a generation of constitutional and European lawyers at Hungarian universities who were stimulated by the developments after the fall of the Iron Curtain and who continue to work successfully on the significance of international human rights for the Hungarian legal order. A prominent example for all initiatives in the field is the conference on ‘The European constitutional area and national constitutionalism’, which was organised by Eötvös Loránd University in cooperation with the Heidelberg Max Planck Institute for Comparative Public Law and International Law in January 2012.¹⁰

From a legal point of view the so-called ‘new’ Hungarian constitution of 2011 did not change or reduce the legal obligations under the Convention. A number of new provisions and organic laws were added, in particular Article R. on the interpretation of the Constitution.

Admittedly, a number of new questions arose. However, it should be recalled that the Venice Commission in its opinion of June 2011 on the new Constitution of Hungary once more stressed the particular significance of the interpretation of constitutional provisions on fundamental rights and freedoms in the light of human rights treaties binding on Hungary and the related case law, as it results from Article I para 3¹¹ and Article Q para 2¹² of the new constitution. In particular, the Venice Commission held that insofar as the rights guaranteed under the Constitution are also guaranteed in international and European conventions on human rights ratified by Hungary, limitation clauses specified in these international instruments should also be fully respected.¹³ Besides paragraphs 2 of Articles 8 to 11 – necessary in a democratic society – reference must be made and was made to Article 52 para 1 of the EU Charter on Fundamental Rights, in particular to the requirements of a sufficiently clear legal basis for every interference with a fundamental right.¹⁴

¹⁰ Christoph Grabenwarter, ‘The European Convention on Human Rights: Inherent Constitutional Tendencies and the Role of the European Court of Human Rights’ (2014) (2) ELTE Law Journal 101–115, 101 et seq.; László Szegedi, ‘The Eastern Way of Europeanisation in the Light of Environmental Policymaking? – Implementation Concerns of the Aarhus Convention-related EU Law in Central and Eastern Europe’ (2014) (2) ELTE Law Journal 117–134, 117 et seq.; István Varga, ‘Identification of Civil Procedure Regulatory Needs with a Comparative View’ (2014) (2) ELTE Law Journal 135–163, 135 et seq.; Pál Sonnevend, András Jakab, Loránt Csink, ‘The Constitution as an Instrument of Everyday Party Politics: The Basic Law of Hungary’ in Armin von Bogdandy, Pál Sonnevend (eds), *Constitutional Crisis in the European Constitutional Area* (C.H. Beck, Hart, Nomos 2015, London 33–110) 33 et seq.

¹¹ Venice Commission, opinion n 798/2015, 8 et seq.; opinion n 891/2017, 4.

¹² Venice Commission, opinion n 891/2017, 13; opinion n 941/2018, 8.

¹³ Venice Commission, opinion n 621/2011, 13.

¹⁴ Venice Commission, opinion n 614/2011, 6.

V The Role of Constitutional Justice

Against this constitutional and legal background and with a view to majorities in Parliament since 2011, the role of the Hungarian Constitutional Court has become more critical. Let me start with some general observations on the functions of constitutional courts in democracies governed by the rule of law.

Fundamental freedoms, such as the freedom of movement, serve the protection of minorities. Proceedings before the constitutional court, in which fundamental rights can be invoked, also serve the protection of minorities. The parliamentary majority has the power to enforce its political objectives through the adoption of laws and thus ensure that fundamental rights are observed. Members of minorities can put their case before the constitutional court, as they have a constitutional right and a human right of access to an independent court.

What does the constitutional court do when reviewing a law from the perspective of fundamental rights? It examines the law's conformity with the constitutional barriers to the right to restrict an individual's freedom; it re-thinks the decision taken by the legislature in a dual sense – following it in time and reviewing it in substance.¹⁵

The Austrian Constitutional Court performs its task, on the one hand, by considering the legislature's scope of action in legal policy and, on the other hand, by verifying through detailed scrutiny, in consultation within the collegiate body of judges, whether the grounds of justification it demands can be derived from the provisions of the Constitution.

A constitutional court weighs the arguments both for and against. Interference with a fundamental right by means of a law is proportionate and constitutional only if the reasons for a restriction weigh more heavily than the disadvantages deriving from such restriction. What does this involve in practice? Determining the weight of the arguments placed on Justitia's scales is much more difficult in the case of a law applying, in principle, to the entire population, such as the authorisation to prohibit access to public space in the interest of protection from a pandemic, than assessing the proportionality of the use of force against an individual by the police. In this case, the vital public interest in protecting people's health has to be weighed against the far-reaching restrictions of several fundamental rights.

Whether the decisions rendered by a constitutional court as a result of this balancing process are more or less contested depends on the extent of societal consensus on the issue at stake. How privacy is weighed against the freedom of opinion, or the protection of minors against the freedom of art, is ultimately the outcome of often intensive discussions during the proceedings, first with the parties and then among the judges.

Decisions by a constitutional court on specific laws follow a juridical pattern of argumentation but also depend on personal views and ideology. *Jürgen Habermas* speaks

¹⁵ For this and the following paragraphs cf. Christoph Grabenwarter, 'The Modern Constitutional State as a Guarantor of Freedom' in *Verfassung der Kultur – Kultur der Verfassung* (Verlag Österreich 2021, Wien, 79–98) 90 et seq.

of an ‘ethically impregnated state under the rule of law’ shaped by personal ideas and views – views which, quoting *John Rawls*, one may call the ‘substantive content of comprehensive conceptions of good life’.¹⁶

This is the theoretical background for specific constitutional law. In general, it would be the task of a constitution to ensure that decisions are not dominated by a certain ideology, a particular party. From a comparative perspective, two instruments can be found and it is worth mentioning that we find both also in the Hungarian Fundamental Law. First, the provisions of constitutional law governing the composition of the constitutional court provide for a large collegiate body of 14 judges in Austria, 15 in Hungary and in Italy and 16 in Germany. On the other hand, the election of judges requires a qualified majority. In many states we can find a two-thirds majority.¹⁷

These rules are no guarantee for plurality in the court; the political background and the practice are likewise important. This may work in two directions – on the one hand, if government or even a single party has a two-thirds majority in Parliament, the effect of a qualified majority on plurality is reduced if not removed. On the other hand, persons proposed by a certain government or party usually turn out to behave somewhat differently in their work as a constitutional judge than expected.

The experience of the Austrian Constitutional Court in the 1990s can be of some interest for the situation in Hungary today. At that time, the Court was confronted with legislation initiated by a Government that had a two-thirds majority in Parliament. It was not only once that a decision of the Constitutional Court was ‘corrected’ by a constitutional act. This practice was made easier by the Constitution itself, which allows the legislature to insert a single constitutional provision in an ordinary law.¹⁸ This practice came to an end shortly after the year 2000. First, the government lost its two-thirds majority in Parliament, second, the Constitutional Court took a landmark decision where it declared a constitutional provision in the federal law on public procurement unconstitutional. It found a violation of the basic principles of rule of law and of democracy, which may not be amended by a constitutional act.

In some European states, including Hungary, constitutional courts are in a difficult situation. The situation cannot be changed in the short-term. However, constitutional courts may and should aim at preserving as much independence as possible even under difficult circumstances. In dialogue with European courts, other constitutional courts

¹⁶ Habermas (n 1) 252 et seq.

¹⁷ See the contributions in Armin von Bogdandy, Peter M. Huber, Christoph Grabenwarter (eds), *Max Planck Handbooks in European Public Law*, Vol III, Constitutional Adjudication: Institutions (Oxford University Press 2020, Oxford); for a comparative view cf. Christoph Grabenwarter, ‘Die Bestellung der Richter in vergleichender Perspektive (§112)’ in Armin von Bogdandy, Christoph Grabenwarter, Peter M. Huber (eds), *Handbuch Ius Publicum Europaeum*, Vol VII: Verfassungsgerichtsbarkeit in Europa: Vergleich und Perspektiven (C.F. Müller 2021, Heidelberg, 129–166) 138.

¹⁸ Richard Novak, Bernd Wieser, *Zur Neukodifikation des österreichischen Bundesverfassungsrechts* (Österreichische Staatsdruckerei 1994, Wien) 12, 93.

and the academic world and, subsequently, among the judges themselves, arguments and reasonings can be reconsidered in the light of the constitution. The struggles of the Hungarian Constitutional Court since 2011 have been described on various occasions by *László Sólyom*,¹⁹ *Pál Sonnevend*,²⁰ *András Jakab*,²¹ *Lóránt Csink*²² and others. A series of critical opinions of the Venice Commission goes along with this development.²³

It is not the practice of Constitutional Courts in Europe to give advice to the colleagues in other states on how they should interpret their own constitution. The situation of the Constitutional Court of Hungary is difficult enough in particular with a view to the unhidden intention of the constitutional legislator to influence the interpretation of the Constitutional Court as of other courts by specific rules of interpretation.

However, there is a practice of mutual reports, a practice of putting questions, a practice of mutual affirmation in particular when it comes to the relationship between European Union law and European human rights. It is in this context that I refer to the decision of the Constitutional Court of Hungary of 7 December 2021 where it deals with the relationship between European Union law and Hungarian constitutional law in particular in the light of Article E of the Fundamental Law.²⁴ This decision is not easy to read, at least for a foreigner. The style of the reasoning includes lengthy references to national identity and the history of Hungary. If we leave this aside and look at the substance, we can see an attempt to stay in line with other constitutional courts that defined their position in recent years and to accept in principle the effects of European Union law on national law.²⁵

¹⁹ László Sólyom, 'The Rise and Decline of Constitutional Culture in Hungary' in Armin von Bogdandy, Pál Sonnevend (eds), *Constitutional Crisis in the European Constitutional Area* (C.H. Beck, Hart, Nomos 2015, London, 5–32) 5 et seq.

²⁰ Sonnevend, Jakab, Csink (n 10) 102 et seq.

²¹ Ibid; András Jakab, 'On the Legitimacy of a New Constitution: Remarks on the Occasion of the New Hungarian Basic Law of 2011' in Miodrag Jovanović, Đorđe Pavićević, Biljana Đorđević (eds), *Crisis and Quality of Democracy in Eastern Europe* (Eleven International 2012, 61–76) 61 et seq.

²² Sonnevend, Jakab, Csink (n 10) 33 et seq.; Lóránt Csink, Johanna Fröhlich, 'Topics of Hungarian Constitutionalism' (2012) 4 *Tijdschrift voor Constitutioneel Recht* 424–439, 424 et seq.

²³ Venice Commission, opinion n 663/2012; opinion n 665/2012; opinion n 683/2012; opinion n 1035/2021; opinion n 1050/2021.

²⁴ Decision 32/2021. (XII. 20.) AB of the Constitutional Court of the Republic of Hungary, ABH 2021, 103–111, see for the English translation of the decision <https://hunconcourt.hu/uploads/sites/3/2021/12/32_2021_ab_eng.pdf> accessed 2 November 2022.

²⁵ Cf. Attila Vincze, 'Unsere Gedanken sind Sprengstoff – Zum Vorrang des Europarechts in der Rechtsprechung des ungarischen Verfassungsgerichts' (2022) 49 *Europäische Grundrechte-Zeitschrift* 13–21, 13 et seq. Previously already critically with respect to the control of constitutional identity in relation to European Union Law in general, Pál Sonnevend, 'Das Verfassungsgericht als Hüter nationaler Verfassungsidentität?' in Christoph Grabenwarter, Michael Holoubek, Verena Madner, Josef Pauser (eds), *Verfassungsgerichtsbarkeit in der Zukunft – Zukunft der Verfassungsgerichtsbarkeit* (Verlag Österreich 2021, Wien, 123–137) 123 et seq. <https://doi.org/10.33196/9783704688422>

VI Democracy, Fundamental Rights and Peace

This presentation started with the relationship between democracy and fundamental rights and peace as it is established in the preamble of the European Convention on Human Rights. For decades, reference to peace has been a compulsory exercise because it seemed so self-evident to us. This has changed during the last months.

The European Convention on Human Rights was drafted in 1949, ten years after the beginning of World War II in 1939. In this very year, the great Austrian writer *Stefan Zweig* wrote his autobiography 'The World of Yesterday'.²⁶ Instead of a conclusion let me end with two quotations of this book. The first one deals with a report on a journey *Stefan Zweig* undertook at the beginning of the first World War in a mission for the Austrian army to Russia where heavy military fighting was taking place. He travels back to Budapest with a hospital train full of wounded soldiers, together with a Hungarian doctor and a Catholic priest in his sixties who admits that he never had believed such a crime on the part of humanity possible. When the author arrives in Budapest in 1915, he wakes up on a sunny morning:

It was one of those bright, sunny days that are still spring-like in the morning but are summer by midday, and Budapest was as beautiful and carefree as I had ever seen it. Women in white dresses promenaded arm-in-arm with officers, who suddenly looked to me as if they belonged to some army entirely different from the one I had seen only yesterday and the day before yesterday. With the smell of iodoform from the transport of wounded soldiers still clinging to my clothes, still in my mouth and my nostrils, I saw them buying little bunches of violets and presenting them gallantly to the ladies, I saw immaculate cars being driven down the streets by immaculately shaved, well-dressed gentlemen. And all this eight or nine hours by express train away from the front line! [...] The lies of wartime leapt out at me naked, gigantic and shameless. The ladies and gentleman casually parading in that carefree way were not the guilty ones, the guilty were those using words to stir up bellicose feeling. But we too were guilty if we did not do our best to counter them.²⁷

The final consideration is taken out of the foreword of the book, which seems as it had just been written:

...That September day in 1939 drew the closing line under the epoch that had formed and reared those of us who are of the generation now reaching the age of sixty. But if we can salvage only a splinter of truth from the structure of its ruin, and pass it on to the next generation by bearing witness to it, we will not have lived entirely in vain.²⁸

²⁶ First published in German 1942: Stefan Zweig, *The World of Yesterday* (Anthea Bell tr, Pushkin Press 2011, London). The following quotations have been taken from the translation by Anthea Bell, published in 2011.

²⁷ Zweig (n 26) 273 et seq.

²⁸ Zweig (n 26) 21 et seq.

Democracy and human rights were established on an international and on a European level some eighty years ago. In a book on democracy and human rights, published twenty years ago, the former President of the European Court of Human Rights *Luzius Wildhaber* compared the Convention on Human rights to an ‘insurance policy’ for democratic stability in Europe.²⁹ This policy has been terminated unilaterally by Russia, first on 24 February 2022 and resulted in Russia’s expulsion from the Council of Europe with immediate effect on 16 March 2022.³⁰ What is more, the plenum of the European Court of Human Rights and the Committee of Ministers decided that Russia shall cease to be a High Contracting Party to the ECHR on 16 September 2022.³¹

Our generation of academics, legal scholars and justices sitting in constitutional courts enjoyed the privilege of having spent most of our professional life under the umbrella of the insurance policy of the Convention, in a world aiming at democracy and freedom. Now that this umbrella has been damaged, we are called upon to continue to work and stand up even more for these values – in Paris, in Brussels, in Rome, in Berlin, in Vienna and not least in Budapest.

²⁹ Luzius Wildhaber, ‘The European Court of Human Rights: The Past, The Present, The Future’ (2007) 22 *American University International Law Review* 521–538, 523.

³⁰ Committee of Ministers, CM/Res(2022)2, 16 March 2022; With the expulsion, the Committee of Ministers refused to accept Russia’s declaration of withdrawal submitted on 15 March. The declaration of withdrawal would have resulted in the termination of Russia’s membership with effect from 31 December 2022 in accordance with Art 7 S 2 of the Statute of the Council of Europe.

³¹ 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 on Human Rights, <https://echr.coe.int/Documents/Resolution_ECHR_cessation_membership_Russia_CoE_ENG.pdf> accessed 30 March 2022; Committee of Ministers, CM/Res(2022)3, 23 March 2022; cf. Norbert K. Engel, ‘Russland aus dem Europarat ausgeschlossen, Die Chronologie’ (2022) 49 *Europäische Grundrechte-Zeitschrift* 165–168, 165 et seq.