

The European Court of Human Rights on Katyn: a war crime with no legal consequences

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On 16 April, the European Court of Human Rights (ECtHR) in Strasbourg announced its verdict concerning the complaint brought against Russia by the families of the victims of the Katyn massacre. The court found that Russia had violated Article 3 of the European Convention on Human Rights through the “inhumane and humiliating treatment” of some of the victims’ relatives by classifying documents of the investigation as secret, failing to indicate the place where the murdered officers had been buried, and denying the truth about the Katyn massacre. The judges also ruled that Russia had violated Article 38 of the Convention by refusing to present to the court a document on the completion of the Russian investigation into the Katyn massacre (it was closed in 2004 due to the ‘death of the perpetrators’). However, as regards Article 2 of the Convention, which is of key significance for the Polish side, the judges found that the assessment of whether Russia had conducted a thorough investigation was beyond the Court’s jurisdiction since the essential part of the investigation, which had been launched in 1990, was conducted before Russia adopted the Convention (1998).

Commentary

- The Court provided in its verdict an evaluation of the issue which should be seen as being essential for Poland: it classified the Katyn massacre as a ‘war crime’ (killing prisoners of war was a violation of the international law then applicable), to which no statutes of limitation can apply. This evaluation contradicts the conclusions made in the Russian investigation, according to which the NKVD committed a ‘common crime’, and the Katyn massacre is thus subject to prescription.
- Despite this Russia may see the verdict of the ECtHR as beneficial mainly because it does not pose any legal consequences for Russia (it does not impose an obligation on Russia to resume the investigation into the Katyn massacre, to declassify the documents, change the legal qualification of the crime or to rehabilitate the victims). The court chose not to evaluate whether the Russian investigation into the Katyn massacre had been thorough, arguing that this was beyond its jurisdiction. It thus failed to set a precedence which the Russian side had feared – the legal consequences of recognising the Katyn massacre as a Stalin’s atrocity and imposing the liability (including financial) upon Russia as the legal successor of the USSR. For this reason the verdict has been received

favourably in Russia and recognised as balanced and based on compromise. Gleb Pavlovsky, a former advisor to the Kremlin, stated that this issue requires serious moral and political debate but cannot be the subject of a court verdict. This is representative of the mindset of a part of the Russian elite concerning the Katyn issue.

- The stance taken by Russia during the proceedings has laid bare the institutional weakness of the ECtHR. The court was unable to make Russia respect its requests. Furthermore, the lack of co-operation from Moscow has indirectly influenced the court's decision (an inability to evaluate the Russian investigation), and thus has worked to the benefit of Russia. This is yet another example of Moscow's playing with the court, whose verdicts it finds problematic. Russia is the leader in terms of the number of complaints brought to the ECtHR, and loses most of them. Previously, by blocking a reform aimed at streamlining the court's work for four years, Moscow was able through the use of negotiations to ensure the participation of Russian judges in considering complaints brought against it.
- The Court's verdict is unlikely to have marked the end of the court proceedings into the Katyn massacre. The verdict passed by the 'basic' seven-judge chamber is not legally binding, and the Polish side has already announced it will bring a motion for the case to be reheard by the Grand Chamber (consisting of seventeen judges).