Uchwała zarządu Sieci Obywatelskiej Watchdog Polska
nr 1/OB/V/2023
z 5 maja 2023 r.
o podpisaniu Deklaracji Haskiej

1. Na podstawie § 24 pkt 14 Statutu Stowarzyszenia, Zarząd podejmuje decyzję o podpisaniu Deklaracji helsińskiej.
2. Treść Deklaracji stanowi załącznik nr 1 do niniejszej uchwały.
3. Kontakt z inicjatorami akcji w sprawie podpisania deklaracji powierza się Katarzynie Batko-Tołuć.
4. Uchwała wchodzi w życie z dniem podjęcia.

UZASADNIENIE

Deklaracja Haska przedstawia priorytety społeczeństwa obywatelskiego ws reformy Rady Europy przed szczytem przywódców państw Rady Europy w Rejkiawiku 16-17 maja 2023.

Deklaracja powstała w trakcie zjazdu organizacji społecznych z państw Rady Europy na początku marca 2023 roku. Zawiera szereg istotnych idei zmierzających do zwiększenia efektywności i przejrzystości RE. Społeczeństwo obywatelskie, wg. zapisów deklaracji powinno stać w centrum procesów RE, być reprezentowane w kluczowych forach, debatach i procesach decyzyjnych celem zwiększenia przejrzystości tej instytucji. Zwiększeniu powinien ulec również dostęp społeczeństwa obywatelskiego do dokumentacji RE. Tablica wyników państw członkowskich powinna ułatwić społeczeństwu obywatelskiemu rolę informowania obywateli o postępach państw członkowskich w implementacji zobowiązań wobec RE.

Jednym z postulatów Deklaracji jest zwiększenie użytkowania mechanizmów sankcyjnych wobec państw członkowskich RE celem wymuszenia lepszej implementacji zobowiązań wobec tej organizacji. Na poprawę implementacji zobowiązań wobec RE i wyroków ETPC powinno wpłynąć powołanie i działalność Wysokiego Przedstawiciela ds. implementacji wyroków ETPC, a także dwóch komisarzy ds. praworządności i demokracji. Zaproponowano również sposób komunikacji ze społeczeństwami państw niereprezentowanych w RE (grupy łącznikowe). RE powinna odgrywać kluczową rolę w procesie tworzenia trybunału międzynarodowego ds. zbrodni wojennych w Ukrainie. Aby osiągnąć cel zwiększenia efektywności RE, dwukrotnemu zwiększeniu powinien ulec budżet RE.

Sieć Obywatelska Watchdog Polska popiera tę deklarację ze względu na to, że dąży ona do zwiększenia przejrzystości, praworządności i wzmacnia udział społeczeństwa obywatelskiego.

Oddane głosy 2
Za: 2/2
Przeciw: 0/2
Wstrzymujące się: 0/2

Katarzyna Batko-Tołuć

CZŁONKINI ZARZĄDU
SIECI OBYWATELSKIEJ - WATCHDOG POLSKA

Szymon Osowski
prezes zarządu
Sieci Obywatelskiej Watchdog Polska

Campaign to Uphold Rights in Europe | CURE

FOR A STRONG AND EFFECTIVE COUNCIL OF EUROPE

INGO CONFERENCE OF INGOs OF THE COUNCIL OF EUROPE

CONFERENCE DES OING DU CONSEIL DE L'EUROPE

The Hague Civil Society Declaration on Council of Europe Reform

with explanatory notes

The Civil Society Summit on Council of Europe (CoE) took place in The Hague on 28 February and 1 March 2023 ahead of the Council of Europe Summit of Heads of State and Government to be held on 16-17 May 2023 in Reykjavík. The Summit was convened and organised by the Campaign to Uphold Rights in Europe (CURE) and the Conference of International NGOs of the Council of Europe (CINGO).

The Summit gathered 105 participants from 27 CoE member states and 2 non-member states in The Hague, and 57 online participants from 20 CoE member states and 1 non-member state. People active in 38 European networks on human rights, democracy and civic participation were present. The event included two panel discussions, several plenary sessions and 12 thematic working groups, focusing on particular areas of concern. The Summit participants elaborated three outcome documents – The Hague Civil Society Declaration on Council of Europe Reform, a statement on the situation in Turkey and a statement on the role of the Council of Europe in ensuring accountability for international crimes committed by Russia in Ukraine. The outcome documents contain problem analysis and specific recommendations to the CoE and its member states. The outcome documents were presented and handed over to the Council of Europe leadership at the concluding session of the Summit.

Civil society organisations are encouraged to endorse The Hague Declaration until the start of the CoE Summit in Reykjavík by writing to the organisers at css@cure-campaign.org. A list of endorsements will be made available at https://cure-campaign.org/css.

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Preamble

The Civil Society Summit, gathered in The Hague on 28 February and 1 March 2023, calls on the Summit of Heads of State and Government to be held on 16-17 May 2023 in Reykjavík to enact the following measures to strengthen and reinforce the Council of Europe as the foremost value-based European institution to foster democratic development, protect human rights and rule of law and to support civil society and the work of human rights defenders throughout Europe. The Council of Europe should become stronger and more effective to respond to the unprecedented crisis in Europe and major challenges to democracy, rule of law and human rights.

The conscience of Europeans has been shocked by the brutal attack of the Russian Federation on Ukraine. The crime of aggression and other grave and systematic international law violations must lead us all to take steps to ensure accountability, remedy the injustice inflicted, and prevent recurrence of abuses. The attack has been accompanied, indeed made possible, by a strong autocratisation of the Russian Federation. The Council of Europe has a critical role to play both in effectively responding to the major human rights violations that have happened and continue to happen and in strengthening the architecture, which can prevent states from sliding into autocracy.

We specifically recall that safe and open space is necessary and must be guaranteed for civil society to play its critical role in the life of a genuine democracy. Human rights defenders and others in civil society are key partners of the Council of Europe in promoting its values and assisting it in ensuring the implementation of obligations by member states. With their expertise and the richness of their experience, they play an essential role in addressing the current challenges and identifying new threats.

We call on member states to take concrete steps to realise the founding mission and values of the Council of Europe and to strengthen the organisation without further delay, showing their commitment in the context of the current crises.

1. Reaffirm commitment to the Council of Europe and provide sufficient resources to meet the challenges to human rights, rule of law and democracy

States must reaffirm their commitment to the Council of Europe and confirm its importance as the leading organisation in Europe on the development of human rights, democracy and rule of law standards, their adjudication and monitoring of their implementation, and promoting their application. Resilience against backsliding in the protection of European values and non-implementation of CoE obligations requires more effective mechanisms.

Furthermore, the challenges the CoE and the values it defends face must be acknowledged by member states, and appropriate resources must be brought to bear. In the absence of a substantially increased level of resourcing, all pledges to re-vitalise the CoE are meaningless. An increase of the regular budget from half a euro per citizen living in the CoE region to one euro should be a starting point for discussion.

Explanatory note:

The Reykjavik Summit will undoubtedly reaffirm the commitment of member states to the values of the Council of Europe in the face of their continued importance and of new challenges relating to human rights, rule of law and democracy. Such a statement only attains real value if it is accompanied by the willingness to provide funding for the activities needed to implement in a timely and persistent fashion the tasks entrusted to the organisation. The High-Level Reflection Group report says, "[t]he budget is indicative of the political importance attached to any organisation. (...) It is indeed the mandate, the objectives and the activities that should drive the budget, not the other way around. (...) The group cannot help but note that, under the current budget of the Council of Europe, the amount of money member

states are willing to invest in the collective system of protection of our fundamental rights and freedoms represents less than half a euro per person which is unquestionably insufficient"[1].

In the analysis of the High-Level Reflection Group, the European Court of Human Rights has been prioritised in the assignment of budgetary resources. Yet, in January the president of the Court called on the Reykjavik Summit to "translate the discourse of values into material support"[2]. The issue of resources features prominently in discussions on the capacity of the Court and of the system for monitoring and stimulating the implementation of Court judgments (see this Declaration point 2) but is of a more general nature.

A 2022 evaluation of the CoE's monitoring mechanisms (MMs) concluded that "[t]he zero real growth budget policy and the resulting arbitrage measures do not allow MMs to operate at their optimal level or adapt to increasing demands. For a few MMs, financial resources (operational budget) are deemed insufficient. This is especially problematic in a context of an increasing number of states parties in some MMs and in a context of the creation of new MMs." The evaluation recommended to "provide all MMs with the resources needed to deliver quality and relevant products, (...) ensure that MMs have the necessary funds to implement their activities efficiently and effectively"[3]. This recommendation was then rejected in the 'management response', stating that the "Secretary General proposes appropriate resources within the limits of the overall appropriations fixed by the Committee of Ministers", apparently neglecting the evaluation finding that these limits are not sufficient[4].

A similar statement can be found in the evaluation of the work of the Conference of INGOs, stating that the many activities and tasks of the Conference are not reflected in sufficient funding[5].

The historically developed total amount of state contributions should not be taken as the starting point. It has become too unclear why the size of the budget is what it is. A regular budget of one euro per person living in the Council of Europe area would probably by few people be regarded as too high an amount for the supremely important work the organisation is doing. Extra-budgetary resources which the EU and a number of states provide, mostly specifically for support activities in member states, are an imperfect reparation of the shortfall in income.

In addition to the current budget problems, most proposals in this Declaration require more intense and/or expanded activities and will therefore need additional resources. These intensifications and expansions will likely also affect the workload of the Permanent Representations in Strasbourg, which would therefore also possibly need to grow in size.

2. Structurally improve the implementation of the European Convention on Human Rights

Systematic and worsening problems exist in the implementation of judgements of the European Court of Human Rights (ECtHR) by member states. The backlog of cases in the Court also remains a persistent challenge to the delivery of justice. The following actions are needed:

2.1. additional funding allocated for both the ECtHR and the Department for the Execution of Judgements in order to tackle the case backlog and problems in judgement implementation;

2.2. the appointment of a high-level Special Representative on the Implementation of Judgements;

2.3. increased frequency and intensity of Committee of Ministers (CM) meetings concerning judgement implementation as well as its greater involvement in monitoring the implementation of interim measures;

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[1] Report of the High-Level Reflection Group of the Council of Europe (hereafter – HLRG Report), https://rm.coe.int/report-of-the-high-level-reflection-group-of-the-council-of-europe/1680a862eb, page 17-18

[2] ECHR President: Reykjavik summit should 'translate the discourse of values into material support', https://www.coe.int/en/web/portal/-/echr-president-reykjavik-summit-should-translate-the-discourse-of-values-into-material-support-

[3] Evaluation of the Council of Europe's Monitoring Mechanisms, https://rm.coe.int/dio-2022-37-mm-report-en/1680a7fc5f, page 65-66

[4] Ibid, page 3

[5] Evaluation of the Council of Europe's Conference of International Non-Governmental Organisations, April 2021 http://rm.coe.int/0900001680a2c2c8, page 35

2.4. application of infringement proceedings with greater speed and transparency and in a wider range of cases;
2.5. developing and applying new types of sanctions for continued non-implementation;
2.6. increased transparency of the implementation monitoring process and stronger engagement with NGOs and National Human Rights Institutions (NHRIs);
2.7. increased collaboration with other intergovernmental organisations to promote the implementation of ECtHR judgements.

States should also make the following formal declarations at the Summit:

2.8. that they commit to putting in place effective structural mechanisms at the national level for ECtHR judgements implementation;
2.9. that they encourage the ECtHR to be more specific in its judgements about the steps required for implementation.

Explanatory note:

As the new president of the European Court of Human Rights (ECtHR) said in January 2023, "several of my predecessors have emphasised the need for greater awareness by the authorities of the lack of resources available to the Court. In view of the role we are called upon to play and the situation I have just described, I have no choice but to do the same. Despite the challenges posed in 2022, the Court sought to fulfil its mission faithfully, and ruled on 39,570 applications, of which 4,168 gave rise to a judgment. There are now 74,650 applications pending before the Court, compared to around 70,000 a year ago. Approximately 10,000 applications are related to ongoing conflicts, a situation which is also reflected in the 19 inter-State applications now before the Court." (...) " Political support for the Council of Europe's values and for the Convention system itself will no doubt be at the heart of the 4th Summit in Reykjavik in May. However, this support must imperatively be translated into the provision of appropriate material resources and more sustainable funding to further the implementation of a Convention which, for over 70 years, has contributed to stability, security and peace in Europe."[6]

As regards the non-implementation of judgments, statistics (compiled by the European Implementation Network[7], an NGO network working on improving implementation of ECtHR judgments) indicate that this is a systemic problem and that the situation is becoming more serious every year.

"Leading" judgments of the ECtHR are those which are classified by the Committee of Ministers (CM) of the Council of Europe as revealing a structural and/or systemic problem with human rights in a state. As of 1 January 2022 (the most recent public CoE data), there were 1300 leading judgments pending implementation. Each of these represents a distinct structural and/or systemic human rights problem. This number has risen from 1245 in 2019, and from 1258 in 2020 – indicating that the problem is getting worse. Moreover, the average time that the 1300 leading judgments have been pending implementation is over six years. Furthermore, 47% of the leading ECtHR judgments from the last ten years are still pending implementation[8].

The non-implementation of the Court's judgments is linked to the continued high case load of the Court. Failing to resolve the problems identified in leading judgments means that the same violations keep happening, and more applications come to the Strasbourg Court: over the last five years, 84% of the judgments of the Court have been classified by the CM as repetitive.

The CoE has started a welcome series of reforms to help promote judgment implementation. However, given the scale of the problem, additional steps are needed to address the issue. Proposals for the improvement of ECtHR judgments' implementation are as follows:

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[6] Speech by Síofra O'Leary, president of the European Court of Human Rights, 27 January 2023, https://www.echr.coe.int/Documents/Speech_20230127_OLeary_JY_ENG.pdf

[7] www.einnetwork.org

[8] See point 1 in https://www.einnetwork.org/blog-five/2022/5/16/open-letter-by-ein-calling-for-a-public-strategy-to-address-the-systemic-problem-of-non-implementation-of-ecthr-judgments

• Appointment of a special representative on the implementation of ECtHR judgments: a high-level CoE envoy could promote more systematic implementation by states, by visiting governments and advocating for the creation of effective executive structures to promote implementation, as well as conducting dialogue on difficult/important cases to push implementation forward when it is blocked.

•The CM should double the number of meetings it holds to discuss the implementation of ECtHR judgments. Government ministers who are responsible for the implementation of cases must be called to attend Committee debates on a much more regular basis. The Committee should discuss with the minister not only the implementation of particular cases, but also the country's implementation record as a whole.

• More frequent and speedy initiation of infringement proceedings: in the 13 years since the infringement procedure was established, it has only been used twice, with an average delay of 2 years and 5 months after the judgment became final. States could agree to initiate infringement proceedings far more frequently and speedily.

• A new sanction by the CM for continued non-implementation: there should be a sanctioning measure that lies between Interim resolutions and infringement proceedings. The consequences of this should be less severe than expulsion from the CoE, but substantial enough to create real and credible pressure on states to implement. In 2000, the Parliamentary Assembly of the Council of Europe (PACE) proposed fines for non-implementation, and in 2002 the Venice Commission recommended a feasibility study on this issue. This proposal should be revisited.

• Increased transparency of the implementation monitoring process and engagement with NGOs/NHRIs: NGOs and NHRIs should be allowed to attend the CM's meetings on judgment implementation; such hearings should be made completely public when possible; and NGOs, NHRIs and litigants must be directly provided with information about the implementation process (including notifications when governments make written submissions).

• More guidance from the Court on the implications of a verdict for policy and practice of the convicted state would help clarify and therefore speed up the implementation process; states should therefore encourage the Court to be more specific in its judgements about the steps required for implementation.

Point 2.3 includes a call for increased attention for the follow-up of Interim Measures issued by the Court[9]. Interim Measures are issued in cases where a threat of irreparable harm exists if contested government measures go ahead. Traditionally used mostly in cases of expulsion or extradition, in recent years a certain expansion of the use of interim measures can be observed (such as in inter-state cases relating to the armed aggression against Ukraine and to armed conflict around and in Nagorno-Karabakh, in the measure provisionally prohibiting closure of Russian NGO Memorial, in cases relating to the independence of the judiciary in Poland). In all these situations, arguably upholding the supremacy of the European Convention of Human Rights is at stake. Procedures in situations of Interim Measures being considered may however require to be refined, in line with international best practice as described i.a. in the Nijmegen Principles and Guidelines on Interim Measures for the Protection of Human Rights[10].

3. Strengthen monitoring and preventive systems

The CoE has developed a wide range of human rights standards and monitoring mechanisms. These pertain to various thematic areas or situations of specific vulnerable groups. If implemented consistently, these mechanisms can contribute greatly to the prevention of violations. Unfortunately, the insufficient follow-up to their recommendations leads to backsliding in the field of human rights, the rule of law and democracy. There is a pressing need to question in an authoritative and effective way the states' compliance with these standards and implementation of recommendations of the monitoring mechanisms:

3.1. provide strong political follow-up by the CM to the implementation of recommendations for individual member states issued by the CoE thematic monitoring mechanisms by including this issue in its regular agenda with a view to adopting specific decisions on follow-up;

[9] https://echr.coe.int/documents/fs_interim_measures_eng.pdf

[10] https://www.ru.nl/law/ster/research/nijmegen-principles-and-guidelines-on-interim/read-the-nijmegen-principles-2021/

3.2. improve access for citizens, civil society organisations and human rights defenders to systems of complaints, of providing input to monitoring bodies and of being informed about the outcome of monitoring processes;

3.3. ensure that this approach is also applied in the revision of existing systems such as the ongoing one for the European Social Charter;

3.4. consider introducing individual or collective complaints mechanisms for some of the CoE thematic conventions (e.g., the Framework Convention on National Minorities, the Charter for Regional and Minority Languages);

3.5. upgrade the post of the Venice Commission's President to the CoE Commissioner for the Rule of Law;

3.6. introduce the possibility for the CM, the PACE and the Secretary General (SG) to request the Venice Commission to conduct an assessment of the rule of law trends and patterns of democratic backsliding in a member state following a series of non-implemented Commission's opinions on specific legislative acts;

3.7. introduce a procedure for regular review of compliance by all member states with all CoE human rights, democracy and rule of law standards. This can be done in the form of a comparative "implementation index" or a "scorecard". NGOs and NHRIs should be given an opportunity to give input; the European Commission's Rule of Law annual reporting mechanism could be used as a model. The CM should closely examine the review and make it public;

3.8. stimulate the use of findings, conclusions and recommendations of the CoE bodies in mechanisms of other intergovernmental organisations such as the EU and the UN, as these may have different additional levers of influence.

Explanatory note:

The ECHR complaints system by design is mostly reactive in nature, and by the time the CM has to conclude a serious lack of implementation of ECtHR judgments in a particular state, the anti-human rights and rule-of-law tendencies may have become ingrained and democratic institutions critically deteriorated.

It is therefore important that specialised monitoring bodies and procedures exist that provide advice or recommendations to member states on a range of human rights and rule-of-law subjects. They may perform the role of much needed early warning and preventive mechanisms. Some of them were set up by specific CoE conventions[11], while others were established by CM resolutions[12]. Their mandates are different and capacities vary, but they have a common main strength: they conduct periodic, thorough assessments of all member states, in line with clear legal norms and established criteria, which sets them above political controversies.

Unfortunately, these specialised bodies do not possess formal powers and leverage to push for implementation of their own findings and recommendations and address non-compliance by member states with CoE standards. Thus, the effectiveness of their work is dependent on strong and continued support by CoE political bodies and member states. They should be given more weight, and more emphasis be placed on implementation of their recommendations as an essential element of membership in the CoE.

A recent evaluation of the monitoring mechanisms (MM) recommended that the CoE should "explore further ways and means of facilitating effective follow-up to MM key recommendations addressed to member states, in particular when a specific member state fails to improve a situation of grave concern in the light of the MM recommendations and/or

[11] The Committee for the Prevention of Torture (CPT), European Committee of Social Rights (ESCR), Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), Advisory Committee of the Framework Convention for the Protection of National Minorities (ACFC), Committee of Experts of the European Charter for Regional or Minority Languages, Group of Experts on Action against Trafficking in Human Beings (GRETA), Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Committee), etc.

[12] The European Commission for Democracy through Law (Venice Commission), European Commission on Racism and Intolerance (ECRI), Group of States against Corruption (GRECO), European Commission for the Efficiency of Justice (CEPEJ), Consultative Council of European Judges (CCJE), Consultative Council of European Prosecutors (CCPE), Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), etc.

in the absence of co-operation of one member state with the MM on one or more issues"[13]. We cannot but fully support this recommendation and regret the fact that it was rejected by the Secretariat without proper argumentation[14]. The argument used by the Secretariat for the rejection, namely that "follow-up to MM recommendations is the prerogative of member States", distinctly contradicts the essence of the problem identified in the report – the failure of member states to implement MM recommendations and/or cooperate with them. We strongly call for a revision of this position.

Currently, in most cases the only occasion where the CM can discuss the state of cooperation of member states with the CoE monitoring and advisory bodies and the implementation of their conclusions and recommendations is an annual exchange of views with chairpersons of each of these bodies[15], where they present reports on their work and the CM, as a rule, simply "takes note" of them. This is clearly insufficient for the CM to be properly informed of specific issues regarding the implementation of these bodies' recommendations by member states and to discuss and decide on appropriate follow-up actions to be taken.

The European Social Charter is an exception among these insufficient procedures, having a much more elaborate system for monitoring its implementation, including a collective complaints procedure in which NGOs (and National Human Rights Institutions) play an important role, and a reporting schedule in which they can also intervene[16]. This creates the possibility for civil society to link the provision of information for Strasbourg procedures with the promotion of implementation at the national level. In view of the importance for democratic resilience of placing limits on social insecurity (see also point 9.14 of this Declaration), the Social Charter system must be cherished. Other thematic CoE standards, the violations of which cannot be fully addressed through the ECHR system, such as minority and language rights, would also benefit from the creation of similar system of complaints with opportunities for NGO participation.

In its report, the High-Level Reflection Group "notes the important work undertaken by the European Commission for Democracy through Law (Venice Commission), including its Rule of Law Checklist and recommends that the Council of Europe explore ways of supporting the implementation of the recommendations of the Venice Commission in member states."[17] While some strengthening of the Venice Commission's interaction with the CM is already happening in the form of an additional exchange of views at the CM on the follow-up to the Commission's opinions that was introduced following a recommendation of its evaluation published in 2022[18], further steps should be considered to place more emphasis on the importance of non-evasive follow-up to the Commission's reports. Creating a post of the Commissioner for the Rule of Law that will be able to gain a high level of recognition as such by external stakeholders could be an appropriate measure to this end. Another solution would be giving the Commission the powers to assess not only individual pieces of national legislation, but also overall trends in development of a country's constitutional order with a view to detect and signal about possible democratic backsliding and erosion of the rule of law.

Similar measures to ensure an intensified interaction with the CM should also be implemented with regard to other CoE monitoring mechanisms, for example for the CPT, GREVIO, GRECO and ECRI.

In addition, a holistic procedure for regular, non-selective monitoring of compliance by all the member states with all the CoE standards should be introduced, which would assess the level of implementation of and follow-up to conclusions and recommendations by all the CoE monitoring bodies and procedures. It should be based on an agreed transparent methodology and could take a form of a comparative "implementation index" (ranking) or a "scorecard" to be prepared by the Secretariat (or one of the CM subsidiary bodies) at least once a year on the basis of the information provided by the ECtHR, Department for the Execution of Judgments, monitoring bodies, member states themselves, as well as NHRIs and NGOs. It should be closely examined by the CM and made public (either as a separate document or

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[13] Evaluation of the Council of Europe's Monitoring Mechanisms, May 2022, DIO-2022(37), https://rm.coe.int/dio-2022-37-mm-report-en/1680a7fc5f, p. 65, see: Recommendation 1.

[14] Evaluation of the Council of Europe's Monitoring Mechanisms: Management Response and Action Plan, September 2022, DIO-2022(37), https://rm.coe.int/dio-2022-37-mm-mrap-final-en/1680a7fdf6, p. 2, see: Recommendation 1.

[15] Apart from the European Committee on Social Rights, the decisions of which on collective complaints are followed up by the CM individually under a separate procedure, and the Commissioner for Human Rights, who has exchanges on her/his activity reports with both the CM and the PACE on a quarterly basis.

[16] See: https://www.coe.int/en/web/european-social-charter/ingos-engagement-with-ecsr

[17] HLRG Report https://rm.coe.int/report-of-the-high-level-reflection-group-of-the-council-of-europe-/1680a85cf1, p. 16, para 6 (f).

[18] Evaluation of the European Commission for Democracy through Law (Venice Commission): Management Response & Action Plan, https://rm.coe.int/dio-2022-35-venicecommission-mrap-en-final/1680a65562, see Recommendation 10.

as part of the SG annual report on the state of democracy, human rights and the rule of law in Europe). Such a tool would complement the existing political monitoring procedure of the PACE, fill the gap created by the abolition of the CM's own monitoring procedure in 2021[19] and provide a higher level of transparency and visibility to member states' implementation efforts. A similar recommendation was made in the report by the High-Level Reflection Group: "the Council of Europe should consider issuing its own report on the rule of law, based on the judgments of the Court and the conclusions of the monitoring bodies."[20]

The CoE should seek to enhance its cooperation with other intergovernmental organisations, the mandate of which is not fully focused on democracy, human rights and the rule of law (such as the EU and UN), and which may have additional political and/or economic leverage to assist in promoting meaningful follow-up to CoE's expert advice. For instance, the assessments by CoE bodies should be used by the European Union more systemically as benchmarks in its bilateral relations with other countries (in particular, within its neighbourhood cooperation and enlargement process, bilateral human rights dialogues / consultations), as well as in addressing specific rule-of-law issues in its own member states (as is currently the case with country monitoring reports by GRETA). The High-Level Reflection Group in its report made a number of specific proposals in this regard, which merit further consideration[21].

4. Vigorously oppose the backlash against gender equality, LGBTIQ+ and women's rights, and freedom from gender-based violence and discrimination

The CoE has led pioneering work in developing strong legal standards on women's rights, gender equality and protection from gender-based violence. Since 2010, substantial progress has also been made in building the CoE's work on the protection of the rights of LGBTIQ+ people. However, a reactionary backlash targeting gender equality, sexual and reproductive rights, comprehensive sexuality education and the right to bodily autonomy of trans people is on the rise in many member states. It is facilitated by transnational right-wing conservative movements and supported by populistic politicians. This backlash is manifested in the adoption of restrictive laws and policies and the spreading of sexist, patriarchal, homophobic/ transphobic views, gender- and SOGIESC[22]-based discrimination, hate speech and violence. The CoE should vigorously oppose this dangerous backlash by taking concrete steps, including:

4.1. prioritise full ratification of the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), its effective implementation, and move to make ratification of the Istanbul Convention a political requirement for CoE membership;

4.2. develop a bold and effective Gender Equality Strategy (2024-2029) to address persistent problems and respond to new challenges, in particular the reactionary anti-gender backlash and its impact on the right to abortion, the right to bodily autonomy and self-determination of gender identity in member states;

4.3. consolidate CoE legal standards on gender equality, including the rights of LGBTIQ+ people, based on ECtHR case law and CM recommendations, produce guiding documents on their implementation into laws and practices, and ensure more systematic and regular monitoring of their implementation;

4.4. make the protection of LGBTIQ+ people from stigmatisation, exclusion, intolerance, hate speech, violence and discrimination a priority in line with the developing ECtHR case law, CM recommendations, Venice Commission opinions, PACE resolutions, and ECRI recommendations;

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[19] See: CM(2021)50-final "Report on Council of Europe monitoring – strengthening cohesion and synergies", 28 April 2021, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a24bb7, para. 53; CM/Del/Dec(2021)1407/1.6 "131st Session of the Committee of Ministers (Hamburg (videoconference), 21 May 2021) – Follow-up", adopted on 16 June 2021, https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a2da57, p. 3.

[20] HLRG Report https://rm.coe.int/report-of-the-high-level-reflection-group-of-the-council-of-europe-/1680a85cf1, p. 16, para. 6 (f).

[21] HLRG Report https://rm.coe.int/report-of-the-high-level-reflection-group-of-the-council-of-europe-/1680a85cf1, pp. 28-29, para. 43-45.

[22] SOGIESC is an umbrella term for all people whose sexual orientations, gender identities, gender expressions and/ or sex characteristics place them outside culturally mainstream categories.

4.5. task the Venice Commission, with the support of the Group of Experts on Action against Violence against Women and Domestic Violence, the Gender Equality Commission, the Sexual Orientation and Gender Identity Unit and other relevant CoE bodies, to produce an overview of best practices and negative developments in policy and practice of CoE member states, including those leading to and justifying withdrawal from the Istanbul Convention or a refusal to ratify it, and the adoption of restrictive constitutional amendments and laws incompatible with CoE legal standards on gender equality and undermining the protection from gender- and SOGIESC-based discrimination and violence;

4.6. acknowledge that gender- and SOGIESC-based violence, hate speech and discrimination often lead to severe health and psychological consequences and represent a public health problem, including mental health. Public health systems, including public mental health systems, should be better equipped to recognise this problem and provide adequate help;

4.7. develop narratives promoting the importance of gender equality and the respect of rights of all people without discrimination, including the rights to bodily integrity and autonomy, to serve as a basis for public awareness raising campaigns to counter regressive narratives pushed by anti-gender movements.

Explanatory note:

The Council of Europe has been a leading force in advancing women's rights and gender equality and in combating gender discrimination and gender-based violence. As the CoE High-Level Reflection Group noted in its report[23], the Istanbul Convention is considered a "golden standard" of legal norms in this field. CoE bodies have adopted important documents in this field, including ECtHR judgments, CM recommendations, PACE resolutions, Venice Commission opinions, Commissioner for Human Rights reports, and ECRI recommendations. The CoE has developed an array of instruments and programmes, including two consecutive Gender Equality Strategies[24]. Specialised expert bodies, including the Group of Experts on Preventing and Combating Violence against Women (GREVIO)[25] and the Gender Equality Commission (GEC)[26], were set up and have successfully mainstreamed gender dimension in CoE activities, monitored implementation of conventions and recommendations, engaged in dialogue with member states, provided assistance to them, and produced educational materials.

Despite of these efforts and progress in some member states, the problem of gender-based discrimination and violence against women persists. The latter remains one of the most widespread human rights violations in Europe, affecting millions of people and a wide range of rights. Gender-based discrimination is propped up by patriarchal attitudes and harmful gender stereotypes, deeply ingrained in many societies.

Moreover, a growing reactionary backlash targeting gender equality, sexual and reproductive rights, comprehensive sexuality education and the right to bodily autonomy of trans people is on the rise in many member states. It is facilitated by transnational right-wing conservative movements and supported by populistic politicians who exploit patriarchal attitudes and harmful stereotypes for their own gain under the false pretext of defending "traditional values". This backlash is manifested in the adoption of restrictive laws and policies and the spreading of sexist, patriarchal, homophobic/transphobic views, gender- and SOGIESC-based discrimination, hate speech and violence. It undermines the implementation of CoE standards, threatens security and well-being of millions of women, girls, and LGBTIQ+ people, and ultimately erodes trust in democracy, rule of law and human rights for all.

In particular, this backlash has had a negative impact on the ratification of the Istanbul Convention, with one member state denouncing the Convention in 2021, another not having even signed it, and seven more stopping short of ratification after having signed it, some for more than ten years. Ensuring full ratification of the Convention should become a matter of priority for the CoE. The organisation should make the ratification of the Istanbul Convention politically if not legally mandatory for all member states. Being a CoE member state is incompatible with depriving half of the population of equal enjoyment of fundamental rights and protection from violence. Proactive work for the effective implementation of the Istanbul Convention should be undertaken by pushing for concrete actions in all of its four pillars – prevention, protection, prosecution and co-ordinated policies. Tackling root causes of gender inequality

[23] HLRG Report https://rm.coe.int/report-of-the-high-level-reflection-group-of-the-council-of-europe-/1680a85cf1, p. 33.

[24] https://www.coe.int/en/web/genderequality/gender-equality-strategy

[25] https://www.coe.int/en/web/istanbul-convention/grevio

[26] https://www.coe.int/en/web/genderequality/gender-equality-commission

requires much more active and consistent work by member states through public education and changes in laws, policies and institutions. For the CoE, this entails elaboration of a new bold and effective Gender Equality Strategy for 2024-2029 to address persistent problems and respond to new challenges, in particular the reactionary anti-rights backlash, based on lessons learned from the implementation of the current Strategy.

Since 2010, the CoE has made substantial progress in building its work on the protection of rights of LGBTIQ+ people, starting with the adoption of important CM Recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity[27]. Steering Committee on Anti-discrimination, Diversity and Inclusion[28] (CDADI) was set up by the CM in 2019 "to promote equality for all and build more inclusive societies, offering effective protection from discrimination and hate and where diversity is respected". Within its broad mandate, it monitors the implementation of the aforementioned CM Recommendations as well as the implementation of CM Recommendations on combating hate speech[29], adopted in May 2022 which address the problem of sexist and LGBTIQ+-phobic threats and insults, along with other hate speech manifestations. CM Recommendations on combating hate crime are also being currently drafted[30] and will be very relevant for the protection of LGBTI people from violence. CoE Sexual Orientation and Gender Identity (SOGI) Unit[31], set up by the CM in 2014, provides technical support and expertise to member states in implementation of relevant standards. Development of standards has been substantially advanced by the evolving ECtHR case law in this field[32]. The Venice Commission has issued important opinions on compatibility of laws and constitutional provisions in some member states with international human rights standards[33]. Important work has been done by the PACE, including by the adoption of a number of key resolutions and recommendations[34], establishing a mandate of the General Rapporteur on the rights of LGBTI people and, most recently, creating the Parliamentary Platform for the rights of LGBTI people in Europe[35]. European Commission against Racism and Intolerance (ECRI) has addressed the situation of LGBTI people in its country reports since 2013 and has issued recommendations to member states in this regard[36]. ECRI produced a Factsheet on LGBTI issues[37] and is currently drawing up its General Policy Recommendations to combat discrimination and intolerance against LGBTI persons.

While progress in protecting rights of LGBTIQ+ people varies widely from state to state, overall in CoE region hate crime and anti-discrimination laws have been strengthened, legal gender recognition procedures have been simplified, the bodily integrity of intersex people has started to be better protected, and the rights of LGBTIQ+ families have increasingly been recognised.

However, this tangible progress is heavily threatened by the recent negative developments. A marked increase in hate speech, violence and hate crime against LGBTIQ+ people is observed in many CoE member states. It is the result of sustained attacks on the human rights of LGBTIQ+ people which occur in a broader context of the reactionary backlash by conservative movements seeking to stifle the identities and realities of women and LGBTI people, perpetuating gender inequalities and gender-based violence.

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[27] Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. https://www.coe.int/en/web/sogi/rec-2010-5

[28] See information about the Steering Committee on Anti-discrimination, Diversity and Inclusion at https://www.coe.int/en/web/committee-antidiscrimination-diversity-inclusion/about-us

[29] Recommendation CM/Rec(2022)161 of the Committee of Ministers to member States on combating hate speech. https://rm.coe.int/prems-083822-gbr-2018-recommendation-on-combating-hate-speech-memorand/1680a710c9

[30] Draft Recommendation CM/Rec(20XX)XX of the Committee of Ministers to member States on Combating Hate Crime https://rm.coe.int/pc-adi-ch-2022-09rev-eng-draft-recommendation-2771-8082-1510-1/1680a8ff72

[31] See information on the SOGI Unit at https://www.coe.int/en/web/sogi/home.

[32] See https://rm.coe.int/thematic-factsheet-lgbti-eng/1680a3b2d7.

[33] https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)050-e, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)029-e and https://www.venice.coe.int/WebForms/documents/default.aspx?pdffile=CDL-AD(2013)022-e.

[34] Including the adoption most recently of Resolution 2417 (2022) https://pace.coe.int/en/files/29712/html and Recommendation 2220 (2022) https://pace.coe.int/pdf/9e2ae22af2220751fbe79a81e692dda034de2d882b9b8f1aadb068482e74e681/recommendation%202220.pdf "Combating rising hate against LGBTI people in Europe".

[35] https://pace.coe.int/en/news/8752/pace-launches-its-new-parliamentary-platform-for-the-rights-of-lgbti-people-in-europe

[36] A compilation of ECRI recommendations https://rm.coe.int/5th-cycle-ecri-recommendations-on-lgbt-issues/16809e7b66.

[37] https://rm.coe.int/ecri-factsheet-lgbti-issues/1680a1960a

It is crucial to react quickly to prevent further backsliding by prioritising protection of LGBTIQ+ people from stigmatisation, exclusion, intolerance, hate speech, violence and discrimination. Likewise, it is essential to develop narratives promoting the importance of gender equality and the respect of rights of all people without discrimination, including the rights to bodily integrity and autonomy, to serve as a basis for public awareness raising campaigns to counter regressive narratives pushed by anti-gender movements. These goals correspond to an appeal made by the PACE in its Recommendations in January 2023 to the CoE Summit in Reykjavik to support expansion of the CoE's activities aimed at enhancing citizens' trust in democratic processes and public institutions, including by "tackling discrimination, intolerance and exclusion"[38].

5. Maximise human rights protection for people in conflict-affected territories

Inhabitants or former inhabitants of conflict-affected territories of member states that are not under the effective control of their *de jure* authorities, including occupied territories, suffer from persistent and wide-ranging human rights abuses and lack access to CoE mechanisms, including the ECtHR. The CoE should:

5.1. develop and apply a tailored approach to each of these territories to maximise human rights protection for their inhabitants; each of them merits its own approach to achieve this maximisation, while some approaches may be common to all territories. A proposal should be considered to create a specific office or a focal point, such as a Special Representative for Human Rights in Conflict-Affected Territories;

5.2. consistently emphasise the importance of ensuring access to these territories by the Commissioner for Human Rights, monitoring bodies on specific human rights issues and other relevant CoE bodies. Place particular emphasis on ensuring access by CoE bodies' representatives to places of detention in conflict-affected territories, including occupied territories. CoE bodies should have the possibility to issue recommendations to states involved, including *de jure* and *de facto* authorities, and ensure a follow-up to CM recommendations. Such access should be brought forward early on in any negotiations on conflict resolution and the status and future of these territories;

5.3. continue to insist on the importance of access to the ECtHR for persons who have suffered violations of human rights in these territories, and facilitate this access as much as possible; develop measures to allow access to remedy and reparations for violations of the ECHR in respect of persons who have suffered violations of human rights in these territories, including by developing the option of impounding assets of states that have been found in violation of the ECHR and are not fulfilling the just satisfaction element of Court judgements, including the states that ceased to be CoE members;

5.4. develop CoE information-gathering capacity in respect of conflict-affected territories, including by closely cooperating with monitoring mechanisms of other intergovernmental organisations such as the OSCE and with civil society organisations working with conflict-affected territories, and strengthening civil society's capacity to carry out independent monitoring in these territories;

5.5. recognise that massive human rights violations in the context of conflict and occupation have a major impact on the well-being and health of the affected people, including mental health. To remedy this, an infrastructure of the public health systems, including mental health, should be developed.

Explanatory note:

Millions of Europeans live in conflict-affected territories, including in Azerbaijan, Cyprus, Georgia, and Ukraine. In some of the territories, military conflict is ongoing while others are characterised as "frozen conflicts".

[38] The Reykjavik Summit of the Council of Europe: United around values in the face of extraordinary challenges. Recommendation 2245 (2023), Parliamentary Assembly of the Council of Europe, 24.01.2023, par. 18.7 https://pace.coe.int/pdf/c630f49740df86f5347ea4395494752f4a377d5e75162d4c8401e58619bae269/recommendation%202245.pdf

There has been extensive debate about how the CoE, as well as the involved states[39], and the *de facto* authorities in these territories, can strengthen the human rights protection of the people living there. Residents in Abkhazia, Crimea, other occupied territories of Ukraine, Nagorno-Karabakh, Northern Cyprus, South Ossetia, and Transnistria suffer from conflicts, from lack of access to international legal protection of their rights, and from varied degrees of human rights violations by *de facto* authorities. While Russia is no longer a member of the CoE, all the conflict-affected territories *de jure* are part of a CoE member state.

When conflict-affected territories are on the international agenda it is usually about the unresolved nature of the conflicts, the role of external patronage, or the risks of ceasefire violations. These issues, and the thorny questions of status, make international involvement to improve human rights difficult. However, we are convinced that more can be done to improve the human rights situation on the ground and that the CoE can play an important role in this regard.

From ECtHR case law it can be concluded that by applying the *effective control test*, the Court places the main responsibility on the state that determines the policy choices of the *de facto* authorities (the 'Patron State') and at the same time did not relieve the *de jure* authorities (the 'Parent State') from their positive obligation to take appropriate diplomatic or other measures in support of rights protected by the European Convention on Human Rights.

One can also argue that, since human rights norms contained in the Universal Declaration of Human Rights are customary international law, they must be respected and protected by *de facto* authorities having effective control of the territory, regardless of their political status internationally. The responsibility to protect human rights norms which form part of customary international law does not require specific accession to, or ratification of, treaties by *de facto* authorities.

Furthermore, one could argue that since non-state actors have responsibility for human rights violations in international human rights law and international humanitarian law, they as a corollary have a responsibility in conflict-affected territories where they have effective control.

On the basis of these principled legal arguments, the CoE's human rights protection mechanisms are in a strong position to play a larger role than they do today, insisting that human rights are about law, not about politics.

ECtHR judgments on events in Russian-occupied territories before 16 September 2023, the date by which Russia is no longer bound by the European Convention of Human Rights, continue to be of great importance to many persons whose human rights were violated by Russian or Russian-backed forces. Failure by Russia to fully implement these judgments already dates back from long before the start of the major invasion of Ukraine – for example, the judgment in Georgia v Russia (I), relating to events in 2006 (expulsions on Georgians by Russia) still must be implemented, in particular the payment of a (collective) 'just satisfaction' amount. This is likely to repeat itself with respect to judgments on the series of interstate complaints (accompanied by many individual complaints) by Ukraine against Russia on events that happened before 16 September 2023. New legal ways should be discussed to maximise implementation, including by using the judgments as a basis to impound Russian state assets.

Besides processes linked to the ECHR system, a number of Council of Europe monitoring bodies and the Commissioner for Human Rights may play a special role with respect to the situation in conflict-affected territories; they should be encouraged to maximise this role as part of the 'tailored approach' devised for each of these territories, and stimulated by a specific office or a focal point, such as a Special Representative for Human Rights in Conflict-Affected Territories. The latter proposal comes from the report of the High-Level Reflection Group[40] and is also included in the action points in the report of the September 2022 conference at the University of Galway on the effectiveness of CoE Human Rights Standards in Areas of Conflict and Contestation[41].

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[39] The involved states are both the "Parent State", which according to international law has a recognised jurisdiction over the territories, and the "Patron State", which are states that support *de facto* authorities in the territories politically, economically, and militarily, such as Russia, Armenia, and Turkey.

[40] HLRG Report https://rm.coe.int/report-of-the-high-level-reflection-group-of-the-council-of-europe-/1680a85cf1, p. 24, para. 32.

[41] See Report of "Lighting the Shade" conference, chapter IV, Possible Action Areas, https://www.universityofgalway.ie/media/irishcentreforhumanrights/files/ICHR-ECHR-Conference-Conclusions-2022.pdf

6. Address the triple planetary crisis of climate change, biodiversity loss and pollution as a supreme human rights crisis

Environmental damage, including from the triple planetary crisis of climate change, biodiversity loss and pollution, presents the greatest risk for humanity, for our democratic societies and for the enjoyment of the rights of present and future generations. There is a clear danger of marginalised and vulnerable sectors of the population being disproportionally affected and inequalities being enhanced. The impact of climate change on livelihood and health can be considerable and affect marginalised and vulnerable sectors disproportionally. Public health systems should be prepared for this.

The future relevance of the CoE will be greatly enhanced by demonstrating its capacity to address this triple crisis. There is an urgent need for the European human rights system, in alignment with other regional systems and the UN, to recognise and protect a legally binding, autonomous right to a clean, healthy and sustainable environment through an additional protocol to the European Convention on Human Rights.

Explanatory Note:

Harmful environmental impacts are increasingly affecting the enjoyment of human rights by individuals and society at large and damaging the shared values that the CoE is called upon to defend. Recently, the UN Human Rights Council and then the General Assembly passed resolutions recognising the right to a clean, healthy and sustainable environment as a human right[42]. It is worth noting that all CoE member states voted in favour of the UN GA resolution. Additionally, this human right is protected under the Inter-American Convention on Human Rights, the Arab Charter on Human Rights, and the African Charter on Human and Peoples Rights. The Council of Europe's CM has adopted, as recently as in September 2022, a Recommendation on human rights and the protection of the environment[43] - a non-binding set of recommendations, principles and guidance, but the European human rights framework remains the only regional human rights framework failing to recognise explicitly this right through a legally binding instrument.

This constitutes a compelling case for consolidating and updating the CoE's legal arsenal, and linking action in Europe with the commitments made under the relevant international treaties, such as the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, the Convention on Biological Diversity and instruments protecting human health from hazardous chemicals and wastes.

The right to a clean, healthy, and sustainable environment is already enshrined in the constitution of several member states of the CoE. Over 90 percent of member states already recognise the right to a clean, healthy, and sustainable environment in law through either constitutional protection, legislation, or as parties to the Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters. Despite the fact that the right is already recognised in many national systems, an explicit and comprehensive provision protecting this right is currently lacking in the CoE system and therefore a legally binding instrument will bring more consistency across CoE member states.

Only a legally binding instrument would provide sufficient certainty with regards to the obligation of states to address the human rights impacts of climate change, loss of biodiversity and environmental degradation. Anything short of a legal instrument would also fail to send the strong political message needed from the CoE as the rights of people across Europe are threatened by the triple planetary crisis. This is also in line with a PACE resolution of September 2021[44]. It is time to take a step further and ensure that the people protected by the European Convention on Human Rights (ECHR) are afforded a legally binding, autonomous right to a clean, healthy, and sustainable environment, thus bringing the European human rights system in line with the African, Arab and Inter-American systems.

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[42] The right to a healthy environment, https://www.un.org/en/climatechange/right-healthy-environment

[43] Recommendation CM/Rec(2022)20 of the Committee of Ministers to member States on human rights and the protection of the environment, 27.09.2022, https://rm.coe.int/0900001680a83df1

[44] Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe, Resolution 2396 (2021) of the Parliamentary Assembly of the Council of Europe, https://pace.coe.int/en/files/29499/html

It is therefore important that the CM draws up an additional Protocol to the ECHR on the right to a clean, healthy and sustainable environment (R2HE), based on the terminology used by the United Nations. The inclusion of this right in the Convention would establish the clear responsibility of member states to maintain a good state of the environment that is compatible with life in dignity and in good health and the full enjoyment of other fundamental rights; this would also support much more effective protection of a clean, healthy and sustainable environment at national level, including for generations to come.

The adoption of a Protocol would give a stronger and clearer mandate to the ECtHR to scrutinise the implementation and the enforcement of the R2HE in CoE member states. This would enable the ECtHR to go beyond the piecemeal approach that the Court has taken to environmental matters until now. As the former President of the ECtHR has recognised, the Court's strongest protections for environmental human rights are its complementary doctrines of a "living instrument" and "harmonious interpretation", promoting harmony with evolving developments in international law[45]. The Court's tasks would be greatly assisted by the adoption of a Protocol, which would also send a very powerful and timely political message.

An additional Protocol to the ECHR would not only be consistent with the state of the law, but would provide important and tangible benefits, including raising awareness of and reinforcing the understanding that member states are obliged under human rights law to protect the environment; closing the gaps in current protection; catalysing greater environmental protection; and ensuring consistent protection across member states, including for those most vulnerable.

7. Recognise civil society as a cornerstone of the Council of Europe

The CoE needs civil society as civil society needs the CoE – for standard setting, for awareness-raising on the standards and for monitoring of and advocating for their implementation. Civil society provides CoE bodies with vital information from the ground and reflects people's voices in all their diversity, thus enhancing the CoE's democratic legitimacy. It is a crucial enabler of CoE norms and values in societies of member states. Civil society is prepared to play its role in addressing the current crisis in human rights, democracy and rule of law and helping the CoE to become stronger, but for that, it needs support from both the CoE and its member states. Civil society across Europe should be enabled to become more active in stimulating the authorities to adhere to CoE values and principles and in monitoring of and campaigning for the implementation of standards. Its voice should be taken into account in decision-making on all the major aspects of the CoE's work. The CoE should build on the Declaration of the Warsaw Summit of 2005 and the 2019 Helsinki ministerial decisions to strengthen the dialogue with and involvement of civil society, including by taking the following steps:

7.1. create a truly enabling environment for civil society within the CoE. The level of civil society participation in the work of CoE bodies should go beyond the provision of information and consultation. Integrating civil society fully in the decision-making processes by CoE political bodies should be considered mandatory by making the consideration of civil society views a formal step in decision-making;

7.2. make the work of CoE main bodies, in particular the CM, more transparent and open to civil society and the European public at large. Confidentiality of decision-making should become an exception rather than the rule;

7.3. ensure and facilitate formal channels for representatives of national NGOs to engage with the CoE both in Strasbourg and at the country level (e.g. through CoE field offices where they exist);

7.4. encourage the creation of broad civil society coalitions in support of CoE's work in member states;

7.5. strengthen the Conference of INGOs and give it sufficient support to carry out its mission; it should be integrated into CoE decision-making processes on a mandatory basis;

[45] Should the European Court of Human Rights become Europe's environmental and climate change court?, speech by Robert Spano, President of the European Court of Human Rights, 2020, https://www.echr.coe.int/Documents/Speech_20201005_Spano_Conference_Planet_ENG.pdf

7.6. ensure that the Commissioner for Human Rights has enough resources and political support for its work to support human rights defenders, their protection and the development of an enabling environment for their activities. Member states should engage openly and in good faith with the Commissioner and other mechanisms for the protection of human rights defenders, including the UN Special Rapporteur on Human Rights Defenders and the OSCE/ ODIHR;

7.7. organise an annual meeting of the main CoE bodies and delegations of member states with civil society to discuss a broad range of issues of CoE work to better protect and promote human rights, democracy and rule of law and to ensure effective implementation of CoE standards and decisions of CoE bodies. For the effective organisation of such meetings, study the experience of regular meetings with civil society in other intergovernmental organisations such as the annual OSCE Human Dimension Implementation Meeting and the EU Fundamental Rights Forum;

7.8. regular domestic consultations between civil society and authorities on CoE-related matters should become the norm, organised by independent actors such as a CoE field office or an NHRI;

7.9. respond to the backlash against freedom of association in a number of member states, including by the adoption of "foreign agents" laws and other restrictive legislation. Ensure close monitoring by the CoE of the issue of space for civil society in member states and the ability of NGOs and human rights defenders supporting CoE values and norms, as well as civil society in general, to operate freely. This could be done by developing a special monitoring tool for freedom of association and the situation of human rights defenders, modelled on the CoE Platform for the Safety of Journalists. Member states should be required to report on their policies in respect of civil society. The existing procedure of reacting to instances of reprisals against human rights defenders for their engagement with the CoE should be strengthened and made more transparent, including public reporting on its work;

7.10. CoE is a frontrunner in integrating youth in its activities, but the youth perspective should be better mainstreamed in the entire work of the CoE, especially on themes related to emerging challenges, which younger generations will have to deal with. The Advisory Council on Youth and the co-management system in the Youth Sector could serve as a model for other arrangements for civil society engagement in the CoE.

Explanatory note:

The CoE has developed a significant framework for cooperation with civil society, including granting participatory status to international NGOs and recognising the Conference of INGOs as one of its official bodies. However, opportunities for civil society to give a meaningful input in the CoE's work still remain limited, as the existing working procedures of its bodies and institutions do not always provide sufficient channels for effective engagement by NGOs. In contrast with the CoE itself being at the forefront among other intergovernmental organisations with regard to developing and promoting new progressive human rights and democracy standards, the organisation's framework for cooperation with civil society looks quite conservative and restrictive. Already at the 3rd CoE Summit of the Heads of States and Government held in Warsaw in 2005 member states agreed on the necessity to "enhance the participation of NGOs in Council of Europe activities as an essential element of civil society's contribution to the transparency and accountability of democratic government"[46]. Unfortunately, a lot remains to be done to achieve this goal.

Many of the most vibrant parts of the societies of CoE member states are supportive of its values and can play an indispensable role in upholding and promoting them in their countries. Unfortunately, they do not currently have a real say in developing and implementing CoE strategies and policies. The majority of civil society groups interact with the CoE system only through a specific lens of one of its mechanisms (e.g., submission of complaints to the ECtHR, Rule 9.2 submissions to the CM of information on the implementation of judgments, etc.) or are consulted by monitoring and advisory bodies in their respective thematic fields on an ad hoc basis. However, engagement of national NGOs or other civil society stakeholders in building up support and advocating for the CoE as a whole, its values and instruments, is not stimulated. Participation in the official CoE body supposed to represent the voice of civil society, the Conference of

[46] Action plan adopted by the 3rd Council of Europe Summit of the Heads of States and Government, Warsaw, May 2005, https://www.coe.int/t/dcr/summit/20050517_plan_action_en.asp, part I, p. 3.

International NGOs, is only possible for organisations having membership in five or more member states, which disqualifies a vast majority of NGOs.

To stimulate the bottom-up support for the CoE in member states, a fundamental review of the way the organisation engages with those parts of society that support (or could potentially support) its values is needed.

NGOs in member states interested in promoting CoE standards and values and ensuring compliance with them by their governments should seek to join their efforts and consider creating national coalitions / platforms in support of the CoE work (similar to the UN Associations that are active in many countries)[47]. Most importantly, arrangements for national NGOs to interact with the CoE should be created. This could be achieved by reactivating and reviewing the existing CoE partnership status for national NGOs[48], which has barely ever been used, in order to grant national NGOs holding this status at least some of the rights that international NGOs with participatory status currently enjoy (such as a regular access to the CoE premises), or by introducing a set of new procedures and rules for national NGOs. The process of developing and implementing CoE action plans for individual member states and planning of the activities of the CoE field offices should include consulting national civil society groups as a required step[49].

The so-called "Helsinki process" on enhancing civil society participation in the CoE, launched at the 2019 ministerial meeting in Helsinki with a CM decision to "examine further options for strengthening the role and meaningful participation of civil society organisations <...>, including access to information, activities and events"[50], unfortunately, has not led to significant changes. The CM delegated the follow-up to these decisions to the Secretariat, which in June 2020 came up with a set of specific proposals[51]. These proposals were mostly technical in nature (such as the publication of a handbook for NGOs on co-operation with the CoE and the development of a civil society portal), and, even if implemented fully, they could hardly solve the key problems preventing effective civil society participation in the CoE, namely facilitating the input of civil society organisations into preparation of decisions and documents of the CoE bodies. A real solution is impossible without political decisions introducing changes to the existing rules and procedures[52].

A critical issue with respect to enhancing the participation of civil society in the CoE's work is the lack of transparency of deliberations and decision-making in its main political body, the CM. Interested NGOs and other civil society actors should have timely access, at the minimum, to the meeting agendas of the CM's rapporteur groups and other subordinate bodies, and, ideally, also to drafts of documents that are being discussed to be able to provide relevant input before the meetings. Decisions by the CM adjusting its rules of access to documents and meetings procedures are needed to solve this issue.

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[47] Irish president Michael Higgins in his October 2022 address to PACE said: "The Council of Europe has achieved much in its history, but cannot afford to be complacent about the challenges that remain ahead. It is appropriate, I suggest, to ask if the architecture which is available in current diplomacy can deliver on the original aims of the Council of Europe". (...) "Achieving a vibrant democracy requires that we engage citizens meaningfully, inclusively, comprehensively in an understanding and commitment to human rights – a literacy of human rights. That is why I would like to see associations of the Council of Europe in every stage, associations supporting the United Nations delivering the debate and the options and the discussion to the street." (see: https://pace.coe.int/en/verbatim/2022-10-11/am/en).

[48] Resolution Res(2003)9 "Status of Partnership between the Council of Europe and National Non-governmental Organisations": https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805de633.

[49] The existing *Guidelines on Civil Society Organisations' participation in Council of Europe's co-operation activities* (https://rm.coe.int/0900001680656cef) should be implemented fully and in good faith, and a review thereof should be considered to introduce safeguards from this area being taken over by GoNGOs or other NGOs that are not critical of the official state policies.

[50] Decision CM/Del/Dec(2019)129/2_2 adopted at the 129th Session of the Committee of Ministers (Helsinki, 17 May 2019) - 2 "A Shared Responsibility for Democratic Security in Europe - The Need to Strengthen the Protection and Promotion of Civil Society Space in Europe": https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168094787f.

[51] Information document "Follow-up to the Helsinki decisions on civil society", SG/Inf(2020)8, 2 June 2020, http://rm.coe.int/native/09000016809e8f6f.

[52] In this regard, *Guidelines for civil participation in political decision making* (CM(2017)83-final), adopted by the Committee of Ministers on 27 September 2017 at the 1295th meeting of the Ministers' Deputies, https://rm.coe.int/090000168097e936, should not be seen only as applying to member states, but also provide guidance to the CoE itself.

The official CoE participatory status for international NGOs[53] should also be strengthened by providing the NGOs holding it a better access to documents of the CoE bodies, CoE premises and meetings – similarly to the modalities of NGO consultative status with the UN Economic and Social Council (ECOSOC)[54].

The Conference of INGOs should be recognised as an equal partner in the so-called 'quadrilogue' of CoE bodies (involving also the CM, the PACE and the Congress of Local and Regional Authorities), and its status should be elevated to the same level as that of the Congress, with respective amount of resources allocated for its functioning.

Participation of NGOs in developing new CoE standards and legal tools, unfortunately, remains very limited. The opportunity for NGOs to participate in the work of the CM's intergovernmental steering committees as 'observers'[55] is not widely known, the procedure of obtaining this status remains unclear, and its modalities are not very appealing to NGOs. The unique 'co-management' system, which provides for joint decision-making by representatives of authorities and youth NGOs in the CoE Youth sector[56], could serve as an alternative model of real partnership with civil society and potentially be adopted in other thematic areas of the CoE's work, which are currently managed by intergovernmental steering committees. The introduction of 'observer' status for NGOs within the CoE monitoring and advisory bodies should also be considered.

In the situation of continuous crackdown on the freedom of association and shrinking civic space in many European countries, increased efforts are needed to protect the activities of NGOs cooperating with the CoE and promoting its standards and values in member states and beyond. Member states should ensure a full implementation of the 2018 CM Recommendation on the need to strengthen the protection and promotion of civil society space in Europe[57]. The CoE should set up a monitoring and early-warning mechanism for reacting to negative developments in the field of freedom of association. The existing Platform to promote the protection of journalism and safety of journalists[58] could serve as a potential model of such a mechanism. A similar proposal has been repeatedly put forward by the Conference of INGOs and its Expert Council on NGO Law and supported by the PACE[59]. Finally, the procedure for investigating alleged reprisals against human rights defenders as a consequence of their interaction with the CoE launched by the SG's Private Office in 2017[60], should be made more visible, inter alia, by publishing annual reports on its implementation containing information on the number and type of cases received and raised.

8. Maintain relations with civic and democratic actors of European non-member states

Maintaining relations with civic and democratic actors of Belarus and Russia, while respecting differences in the situations in these two countries, as well as making efforts to increase support for CoE values among their respective populations are crucially important for bringing these countries closer to joining the organisation in the future. Independent pro-democracy civil and political actors in these countries should be considered by the CoE as the foremost source of information and key partners for dialogue on the perspectives of the European future for their countries:

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[53] Resolution CM/Res(2016)3 "Participatory Status for International Non-governmental Organisations with the Council of Europe': https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168068824c.

[54] For details see: http://csonet.org/index.php?menu=134.

[55] See: Evaluation of the contribution of NGOs to standard setting and monitoring in the Council of Europe. Final Report, DIO 2016(17), https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806bdb52.

[56] See: https://www.coe.int/en/web/youth/co-management.

[57] Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe (Adopted by the Committee of Ministers on 28 November 2018 at the 1330th meeting of the Ministers' Deputies), https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016808fd8b9.

[58] See: https://fom.coe.int/en/accueil

[59] See: Recommendation 2134 (2018) New restrictions on NGO activities in Council of Europe member States, adopted by the Assembly on 27 June 2018, https://pace.coe.int/en/files/24944/html, para. 1.6.; Recommendation 2194 (2021) Restrictions on NGO activities in Council of Europe member States, adopted by the Assembly on 27 January 2021, https://pace.coe.int/en/files/29021/html, para. 1.7.

[60] See: https://www.coe.int/en/web/secretary-general/procedure-human-rights-defenders, https://www.coe.int/en/web/secretary-general/-/private-office-procedure-on-human-rights-defenders

8.1. institutional framework created for cooperation between the CoE and civil society and democratic actors of Belarus (the Contact Group on Belarus) should be encouraged to effectively implement planned activities and to propose and implement new formats of engagement, going beyond the ones that have been traditionally used by the CoE in respect of this country;

8.2. similarly to Belarus, an institutional and programmatic framework should be created as soon as possible for coordinating the CoE's permanent engagement with independent Russian civil society, involving both the actors remaining in the country and those operating in exile;

8.3. member states should support CoE engagement with Belarusian and Russian NGOs and democratic actors, including by assisting them with the necessary funding, visa support, protection programmes, prevention from deportation, support for cooperation with peers in other countries, etc.;

8.4. CoE should support the continuous efforts by Russian NGOs and human rights defenders in submitting complaints to the ECtHR and providing information to the CM procedure on the implementation of the Court judgements;

8.5. CoE should develop and launch, in partnership with Belarusian and Russian civil society stakeholders, special outreach and awareness-raising programmes to promote CoE values among wider parts of their respective populations along with educational activities for lawyers, human rights defenders and other stakeholders, taking security risks into account.

Explanatory note:

The realisation of the Council of Europe's mission of upholding and promoting human rights, democracy and the rule of law should not be limited only to the territory of its member states. It should extend to the entire European continent. All the European countries, including Belarus and Russia, are potential member states of the CoE, and the organisation should be making every effort possible for bringing them closer to joining it, by actively cooperating with all the potential allies in these countries.

While in the past engagement with independent non-state actors of Russia and Belarus was mostly perceived as secondary to CoE's cooperation with the official authorities of these countries, now it has become clear that democracy actors in their respective societies remain the only channel for reaching out to the people of both countries.

The CM has recognised in its decisions that maintaining channels of communication with independent civil societies of Belarus and Russia – both on the ground and in exile – remains important for the CoE after the Russian Federation's expulsion from the organisation and the suspension of official dialogue with Belarusian authorities in March 2022[61].

The High-Level Reflection Group, which was specifically invited to come up with proposals on possible ways to pursue and enhance CoE's co-operation with the Russian and Belarusian civil societies, in its report recommended that "under the responsibility of the Secretary General, a new framework for the Council of Europe co-operation with, respectively, Russian and Belarusian civil society be developed"[62]. At the same time, the HLRG suggested "to proceed with caution" and said, in particular, that "the avenues of cooperation should focus at present on those organisations and individuals who are located in Council of Europe member states."[63] Despite the fact that engagement with those civil society actors that remain inside Belarus and Russia, indeed, may carry serious risks, they should not be abandoned in isolation. Struggling to continue important human rights work on the ground in a very hostile climate, these actors need international support now more than ever. They are fully capable of assessing their own risks related to potential engagement with international partners, including the CoE, and take informed decisions in this regard.

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[61] Decision CM/Del/Dec(2022)1429/2.5 "Relations between the Council of Europe and Belarus", adopted on 17 March 2022, p. 7, https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5dcfb; Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe, adopted on 23 March 2022, https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ee2f; Decision CM/Del/Dec(2022)1431/2.3 "Consequences of the aggression of the Russian Federation against Ukraine", adopted on 6 April 2022, p. 2, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a60b5e

[62] HLRG Report https://rm.coe.int/report-of-the-high-level-reflection-group-of-the-council-of-europe-/1680a85cf1, **p. 31, para. 48.**

[63] Ibid, p. 31, para. 49.

Notably, the PACE in its report on the Summit recommended in this regard that the CoE "should maintain a policy of openness towards Belarusian and Russian civil society, especially towards those individuals, groups and organisations that are at risk of persecution from the authorities for upholding Council of Europe values and principles."[64]

The framework for CoE co-operation with representatives of Belarusian democratic forces and civil society, the "Contact Group on Belarus", was officially launched in September 2022[65]. While the creation of this new framework is to be fully welcomed, the first outcome of the Contact Group's work – the list of its activities planned for 2023[66] – does not seem to be very ambitious, as it largely replicates the traditional formats of engagement that have been already employed by the CoE in Belarus for several decades. As a pioneering initiative in this area, the Group should be encouraged to put forward bolder, more innovative proposals that would go beyond "business as usual" at the CoE and help shaping a new model of the organisation's engagement with civic and democratic actors of non-member states.

Unfortunately, when it comes to setting up a framework for CoE cooperation with Russian civil society, the process is currently in a much less advanced stage. The CM has received proposals from the Secretariat in this regard and has had several exchanges of views on the matter. Now the political will of all member states is needed to adopt relevant decisions, which, given the deteriorating situation, should be made as soon as possible. Ideally, this framework should be similar to the one already created for Belarus, to allow for continuous discussion and exchange with independent Russian civil society representatives and joint designing and planning of activities.

While the Russian Federation ceased to be a party to the ECHR as from 16 September 2022, thousands of complaints related to violations committed before this date are still pending review by the Court, and hundreds of cases are still under the CM procedure on the implementation of judgments. Moreover, submission of new complaints on the past ECHR violations by Russia continues. At the same time, the Russian authorities stopped any engagement with the CoE on issues related to dealing with these complaints. Against this background, the CoE Secretariat and the CM officially recognised that "in the absence of communication from the authorities, information provided by the NGOs remains a vital resource to enable the Committee to keep up to date with the situation in the Russian Federation"[67]. The continuous efforts by Russian NGOs and human rights defenders in submitting complaints to the ECtHR and providing information to the CM procedure on the implementation of the Court judgements need to be encouraged and supported by the CoE. This can be done by making available necessary funding and facilitating the participation of Russian human rights defenders and lawyers in relevant information briefings, seminars and conferences, online courses conducted by the CoE structures, as well as organising internships for them at the CoE and Strasbourg-based NGOs.

The role of member states should not be limited to only adopting a decision on formats and modalities of cooperation. Without other forms of support by states such as assistance with the necessary funding, visa support, protection programmes, prevention from deportation, support for cooperation with peers in other countries, effective CoE engagement with Belarusian and Russian NGOs and democratic actors will not be possible. A number of specific recommendations to member states in this regard were made by the Commissioner for Human Rights in August 2022[68].

Finally, for maximising the potential impact of CoE's efforts with regard to promoting positive change in Belarus and Russia it is crucial that, besides the awareness-raising and educational activities addressing CoE's traditional target groups (NGOs, lawyers, journalists, students, etc.), special programs and campaigns are developed for reaching out to those in the populations of these two countries who are or could become interested in supporting and holding up CoE values. This can be done by building systemic cooperation with Belarusian and Russian civil society stakeholders that have access to key target groups and capacity to study and influence public opinion in their respective countries (e.g., independent polling agencies, independent Russian- and Belarusian-language media outlets, pro-democracy bloggers,

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[64] The Reykjavik Summit of the Council of Europe: United around values in the face of extraordinary challenges (Doc. 15681), https://pace.coe.int/en/files/31483/html, para. 65

[65] https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a7f5a4

[66] https://rm.coe.int/list-of-council-of-europe-activities-planned-for-2023-annex-2761-4703-/1680aa0737

[67] See: Information document "Strategy paper regarding the supervision of the execution of cases pending against the Russian Federation", CM/Inf/DH(2022)25, 8 December 2022, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a91beb, para. 10-11.

[68] **Human Rights Comment "Support Russian and Belarusian civil societies and human rights defenders", 31.08.2022,** https://www.coe.int/en/web/commissioner/-/support-russian-and-belarusian-civil-societies-and-human-rights-defenders

etc.). Likewise, educational activities for lawyers, human rights defenders and other stakeholders from these countries should be developed and implemented, taking security risks into account.

9. Develop more explicit democracy standards and create accountability on their implementation

Backsliding of democracy cannot be countered and democratic resilience cannot be achieved only by measures in the rule of law and human rights spheres. Compared to CoE human rights and rule of law pillars, democracy seems weak on explicit standards that member states need to comply with and on monitoring tools to systematically review compliance. Proper democratic governance should not only be stimulated, but procedures developed to hold member states accountable against well-defined standards:

9.1. speed up the process of adoption of the currently drafted CM Recommendations on the principles of good democratic governance and develop robust monitoring tools to ensure their effective implementation at all levels of government in all member states;

9.2. based on the future experiences of the implementation of the above Recommendations, start a discussion on developing standards contained therein into a Convention for Democracy;

9.3. amend Article 3 of Protocol 1 to the ECHR to extend the right to free elections to all types and levels of elections, to cover not only legislatures at the national and provincial levels but also elections of executive authorities on all levels (local, provincial and national) and of local councils;

9.4. compile ECtHR judgements on cases related to democracy as a benchmark for combatting backsliding in democracy, similar to the existing ECtHR guide on Article 3 of Protocol No. 1 and the Department of Execution of Judgements factsheet on the right to free elections;

9.5. develop an early warning mechanism to detect signs of democratic backsliding;

9.6. actively cooperate with civil society organisations monitoring the state of democracy and working to develop democracy, in order to receive first-hand information, raise the CoE profile with civil society and provide NGOs with advocacy tools to stimulate governments to implement reforms;

9.7. make translation and publication of CoE recommendations and guidelines on democracy into national languages mandatory for member states so that civil society has access to and knowledge of these instruments, can hold governments accountable and organise public education on democracy;

9.8. introduce a requirement for member states to follow up in a meaningful way on recommendations of International Election Observation Missions (IEOMs) led by the OSCE/ ODIHR and present implementation reports to the CM. In its turn, the CM should follow up on states' reports;

9.9. adopt sanctions against member states for repeatedly holding fraudulent elections that fail to meet international standards, as concluded by IEOMs. In particular, the PACE should challenge the credentials and suspend the voting rights of a member state's national parliamentary delegation in connection with the parliamentary elections that fail to meet international standards;

9.10. adopt an agreement between the CoE and the OSCE on cooperation on ensuring the right to free and fair elections, including through election monitoring, and explore the possibility of incorporating OSCE/ ODIHR standards on holding free and fair elections into CoE legal standards;

9.11. strengthen democratic infrastructure in member states by supporting the implementation of CoE standards on citizens' engagement in political deliberations and decision-making at all levels;

9.12. strengthen CoE work on democratic citizenship, including by actively promoting implementation by member states of the Charter on Education for Democratic Citizenship and Human Rights Education, and make the work of the CoE better known to the European public;

9.13. create a mandate of the Commissioner on Democracy to oversee the aforementioned measures;

9.14. the increasing inequality in our societies is one of the greatest dangers which undermines public confidence in democracy and the rule of law. This challenge must be moved to the forefront of policies and become a matter of serious attention to the CoE.

Explanatory note:

While the three concepts of democracy, rule of law and democracy are strongly related, each of them needs specific attention. Backsliding of democracy cannot be countered and democratic resilience cannot be achieved only by measures in the rule of law and human rights spheres. Compared to the human rights and rule of law pillars, democracy seems weak on explicit standards that states need to comply with and on which they are subject to systematic review of the level of compliance. The PACE Rapporteur's report on the 4th Summit says that "the pillar of democracy is clearly the one in which more innovation is necessary to spur a meaningful change of direction."[69]

Legally binding Conventions specifically on this pillar only exist on a number of niche subjects[70]. The 'right to free elections' is laid down in Article 3 of protocol 1 to the ECHR[71], but little use is made of this provision. It seems that mostly situations of explicit exclusion from the voting process or from standing as a candidate are covered by the Court's jurisprudence[72]. Practices such as fraud in vote counting, gerrymandering of district borders, the use of state resources by incumbents to influence public opinion and the unequal distribution of media time among candidates have not been dealt with by the Court. The wording of Article 3 possibly does not lend itself to complaints on such cases. Extension of the article to voting processes that are not (only) for legislative bodies, such as to presidential, gubernatorial and mayoral elections, or referenda would be an improvement but would not solve the more fundamental question of how unfair elections can be addressed.

Currently, the main CoE documents covering the core of democratic governance have a 'soft law' nature, with a number of Recommendations and Guidelines having been adopted by the CM.

The '12 Principles of Good Democratic Governance at the local level' were endorsed by the CoM already in 2008; municipalities can voluntarily apply to have their implementation of these standards being examined[73] (and receive the European Label of Governance Excellence), but apparently there is no expectation that all municipalities in CoE member states will do this. It is an attractive approach to 'award' an administration for holding up values rather than having to reproach it for not living up to them, but just evading evaluation of performance by not signing up for it is too non-committal. Creating a CoE-wide approach covering all local authorities should be examined; good performers can still get a Label but others should be more explicitly stimulated to aspire to reach this standard.

The intergovernmental committee covering the 'democracy' pillar, the European Committee on Democracy and Governance (CDDG), works on developing several additional Recommendations[74], including transforming the '12 Principles' into a Recommendation on Principles of Good Democratic Governance that would be applicable at all levels of government[75]; this text is (almost) ready to be submitted to the CM. This document comes close to a 'democracy checklist', a suggestion of the PACE Rapporteur on the Summit preparation[76] and the call of the High-Level Reflection Group for the "development of new benchmarks and indices for the principles of good democratic governance"[77].

A number of the principles are very suitable for a more explicit definition in a form of binding standards, for example in a Convention, and for monitoring and other follow-up procedures. For example, Principle 1 says that "elections are conducted freely and fairly, according to international standards and national legislation, and without any fraud". Extensive monitoring against a broad range of factors determining the level of freedom and fairness of elections is already done in Europe by ODIHR, the human rights and democracy office of the OSCE[78]. But since it is in essence up to the respective states that participate in the OSCE whether and how they want to follow-up on recommendations arising

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[69] The Reykjavik Summit of the Council of Europe: United around values in the face of extraordinary challenges, report by PACE rapporteur (hereafter – PACE report), 9 January 2023, https://pace.coe.int/en/files/31483, p. 11

[70] CoE Standards on democratic governance, https://www.coe.int/en/web/good-governance/standards

[71] ECHR, page 34 https://www.echr.coe.int/Documents/Convention_ENG.pdf

[72] See the Court's Guide on the Article, https://www.echr.coe.int/Documents/Guide_Art_3_Protocol_1_ENG.pdf, and the Factsheet of the Department on the Execution of Judgments, https://rm.coe.int/tfs-electoral-rights-final-eng/1680aa6951

[73] https://www.coe.int/en/web/good-governance/eloge

[74] https://www.coe.int/en/web/good-governance/cddg

[75] See (near-)final text at https://rm.coe.int/cddg-2022-10e-draft-rec-on-principles-of-good-demo-gov-2754-8907-5206-/1680a8efbf

[76] PACE report, https://pace.coe.int/en/files/31483, point 36

[77] HLRG Report, https://rm.coe.int/report-of-the-high-level-reflection-group-of-the-council-of-europe/1680a862eb, p. 16, point e

[78] https://www.osce.org/odihr

from ODIHR election monitoring, on the whole states that need it the most, do the least with implementing ODIHR reports. The OSCE organisational set-up limits the extent to which states can be held accountable on their implementation of recommendations, and it would be very desirable if the CoE could take up this role. Incorporating OSCE/ ODIHR standards on holding free and fair elections into CoE legal standards would have to be investigated in the coming years, as would the formalisation of a close institutional cooperation between the CoE and ODIHR.

Not all factors that are important for a resilient democracy can be captured by election monitoring. Building and maintaining a culture of democracy is key, as the High-Level Reflection Group points out[79]. Monitoring should be strengthened of the implementation of the Charter on Education for Democratic Citizenship and Human Rights Education[80] and the development of more and stronger standards explored.

Ways for citizens to be involved in democratic decision-making continue to evolve. Citizens' assemblies are increasingly seen as an important way to "complement and reinforce citizen's trust in democratic institutions', as the HLRG writes[81]. They contribute to democratic culture and the CoE should encourage their use and identify and promote best practices.

As stated above, this pillar of CoE work needs a strong impulse. The PACE Rapporteur mentions the suggestion of the creation of a post of Commissioner for Democracy; it may be too early to establish a permanent mandate, but a temporary high-novel position could be created in charge of pushing ahead with expanding and deepening the CoE's work.

10. Work to promote a sustainable, independent public information space

For a functioning democracy, a public information space is needed that provides sound independent information not influenced by political or commercial interests and that offers a safe environment for presenting ideas and for discussion. Creating such space should be a priority. The Council of Europe should:

10.1. expand its recording, in cooperation with specialised NGOs, of the persecution of journalists, bloggers, human rights defenders and others providing information of social interest, and of those pursuing academic research and discussion. SLAPPs[82] and similar forms of intimidation and silencing should also be covered under the concept of "persecution". CoE reaction to and follow-up on the information recorded must be actively pursued;

10.2. pay particular attention to the situation of journalists and media workers imprisoned for political reasons, including in occupied and conflict-affected territories. CoE bodies and member states should develop a mechanism of sending urgent inquiries to de-facto authorities about their condition in order to prevent arbitrariness, torture, inhuman conditions and the lack of access to lawyers or medical personnel, and to end politically motivated detention;

10.3. step up efforts to stimulate the development of standards on production of and access to information that is free from one-sided political interference from the state or state-aligned interests and free from commercial considerations that favour sensationalism over quality and polarisation over the balanced presentation of facts and arguments;

10.4. pay due attention to limits that should be put on the use of artificial intelligence and algorithmic amplification. All artificial intelligence instrument settings need to be firmly embedded in CoE standards on the rule of law, human rights and democratic governance, including in the Charter on Artificial Intelligence and its subsidiary instruments that are currently being elaborated;

10.5. make academic freedom and institutional autonomy of universities a part of CoE work to further human rights and democracy by adopting standards, policies and effective monitoring tools;

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[79] HLRG Report https://rm.coe.int/report-of-the-high-level-reflection-group-of-the-council-of-europe/1680a862eb, page 15

[80] https://www.coe.int/en/web/edc/charter-on-education-for-democratic-citizenship-and-human-rights-education

[81] HLRG Report https://rm.coe.int/report-of-the-high-level-reflection-group-of-the-council-of-europe-/1680a85cf1, page 15

[82] Strategic Lawsuits against Public Participation (SLAPPs) are lawsuits alleging defamation that are in reality brought for the purpose of censoring, intimidating, harassing, and silencing critics for speaking out against the plaintiff on matters of public interest by burdening them with the cost of a legal defence until they abandon their criticism or opposition.

10.6. favour giving a dominant role to professional associations in the development and application of quality and ethical standards that can limit the production and distribution of information;

10.7. tackle the problem of abuse of freedom of expression by propaganda and hate speech, especially during war and in ethnic conflicts, in a human rights-compliant way. This requires applying different measures to two distinct groups of abuse: states have an obligation to combat and prosecute expressions prohibited under international law, while other types of expression, which stand against ethical standards but do not violate international law, should be tackled by the journalistic community and civil society.

Explanatory note:

The CoE has an impressive history of activities related to defending and promoting freedom of expression[83]. The Safety of Journalists Platform[84] is a unique example of CoE's cooperation with civil society organisations working on media freedom and safety of journalists. Since 2015, the Platform compiles alerts on serious concerns about media freedom and safety of journalists in CoE member states, who are expected to act and address the issues and inform the Platform on the actions taken in response to the alerts.

The Platform issues annual reports that do not just provide thematic analysis but point the finger at concrete problems in CoE member states[85]. The report is acknowledged by the Secretary General[86] but does not receive further follow-up in the CoE system; such follow-up would in particular be merited with respect to member states not replying to the alerts (in 2021 "member states only replied to one third of the alerts published on the platform").

The Safety of Journalists Platform also covers SLAPPs (Strategic lawsuits against public participation), the increasingly worrying use by powerful or wealthy individuals, companies and other bodies of lengthy and costly legal procedures alleging journalists, media outlets, whistle-blowers or NGOs of producing information that damages their reputation. The CoE now has started the development of a Recommendation of the matter, a step that has been applauded by civil society. As with so many subjects, follow-up of this Recommendation (e.g. by making states report about steps they have taken, and by continued attention for the issue in the Platform) will be key in making it a working instrument.

The approach chosen for this Platform could possibly be copied for other crucial categories of persons, such as people who raise human rights problems or other social issues, or who in artistic ways address the situation in society, and are persecuted for that reason. It is recommended to investigate this option. It could be a part of an enhanced reaction to problems of shrinking civic space (see also under point 7).

In a similar fashion, issues of academic freedom could possibly be taken up in cooperation with NGOs and academic institutions' umbrella organisations. Individual freedom of expression and the upholding of professional ethical and quality standards both play a role – as they do in the journalism sector.

An issue that requires special attention is those types of expressions that are prohibited under international law. States have a legal obligation to combat and prosecute propaganda for war and hatred in accordance with Article 20 of the ICCPR and its interpretations by the UN Human Rights Council, as well as Article 10.2 of the ECHR and relevant ECtHR case law. Analysis and recommendations by the OSCE Office of the Representative on Freedom of the Media are quite helpful in navigating the challenging balance between protecting freedom of expression and combating propaganda[87]. Likewise, certain types of hate speech also require prosecution by states, based on international standards such as those stipulated in the 2022 CM Recommendation to member states on combating hate speech[88]. Prohibited speech includes public incitement to commit genocide, crimes against humanity or war crimes and their public denial, trivialisation and condoning; public incitement to hatred, violence or discrimination; racist, xenophobic, sexist and LGBTI-phobic threats

[83] https://www.coe.int/en/web/freedom-expression

[84] https://fom.coe.int/en/accueil

[85] https://fom.coe.int/en/rapports

[86] https://www.coe.int/en/web/portal/-/secretary-general-media-should-be-able-to-report-free-from-attacks-and-intimidation-including-in-times-of-war

[87] See https://www.osce.org/representative-on-freedom-of-media/319286

[88] The Council of Europe adopted the Recommendation on combating hate speech (May 2022), https://www.coe.int/en/web/committee-on-combatting-hate-speech/-/the-council-of-europe-adopted-the-recommendation-on-combating-hate-speech

and insults; and intentional dissemination of material that contains these expressions, including ideas based on racial superiority or hatred.

Other types of propaganda and hate speech may be against professional standards of journalism but do not necessarily violate international law and should be tackled primarily from inside the journalistic profession and by civil society through alternative responses such as counter-speech, actions fostering intercultural dialogue and understanding, including via the media and social media, and relevant educational, information-sharing and awareness-raising activities[89].

Beyond more or less 'traditional' threats to individual journalists or media outlets and discussions on the limits to freedom of expression described above, enormous changes in the overall information production and distribution system are indirectly impacting media workers as well as consumers. Authoritarian-minded governments as well as commercial or political interests of media or internet platform owners greatly affect the content and messaging of news and opinions that people are offered. Manipulation is achieved and polarisation increased without even resorting to fake or twisted news stories. To begin with, in view of the centrality of passing and exchanging information and views for democracy, the population should not be seen primarily as 'consumers' but rather as citizens and as democratic actors rather than passive objects.

The CoE has issued many studies related to the revolution in the information environment and has been developing standards on a range of subjects. Compilations of standards have been issued, new standards produced, and more are on the work programme of the Steering Committee on Media and Information Society (CDMSI)[90]. A fundamental question before us is whether these standards do not aim mostly to limit harm to human rights and democracy rather than more fundamentally addressing the problematic architecture of the media system. A Ministerial Conference in June 2021[91] pledged "to support a media ecosystem based on a plurality of independent media actors and other relevant organisations that represent the whole diversity of the society and (i) share commitment to truth seeking and reporting in line with journalistic ethical guidelines, (ii) adopt transparent journalistic practices that enable individuals to assess information and develop trust in both the media and the content provided, and (iii) empower individuals, through widely available content of public interest across all platforms, including public service, to make autonomous decisions about their life, work and public participation[92]. How can this lofty aim of the Ministers be achieved? Increasingly, voices are heard that ask for far-reaching interventions to reconstruct a cooperative internet[93]. These discussions take place on a global level[94], and probably the CoE is not the most important forum; however, any organisation that has the preservation and promotion of human rights and democracy as its goal, should take part in this debate and find ways to contribute.

The present role of artificial intelligence in influencing the information environment cannot be underestimated, and much less its potential future role. Due attention must be paid to limits that should be put on the use of artificial intelligence and algorithmic amplification. At the very least, all artificial intelligence instrument settings need to be firmly embedded in CoE standards on the rule of law, human rights and democratic governance, including in the Charter on Artificial Intelligence and its subsidiary instruments that are currently being elaborated. This is a field in which definitely a prominent role should be claimed by the CoE and in which NGOs that are working in the spirit of the CoE (and many of which have participatory status) should be given a full participatory role in the development of standards[95].

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[89] See, for example, the measures proposed in section 4 of the 2022 CM Recommendation, and by Article 19 in part II of its Toolkit on 'Hate Speech', https://www.article19.org/resources/hate-speech-explained-a-toolkit/

[90] https://www.coe.int/en/web/freedom-expression/cdmsi

[91] https://www.coe.int/en/web/freedom-expression/media2021nicosia

[92] Point D in https://rm.coe.int/coeminaimedia-resolution-on-media-environment-en/1680a2dc92

[93] For example, here https://jacklimpert.com/2022/05/the-internet-is-broken-how-do-we-fix-it/ or https://demos.co.uk/wp-content/uploads/2022/05/Good-web-1.pdf

[94] For example, at UNESCO, https://www.accessnow.org/cms/assets/uploads/2023/01/Access-Now-Submission-and-Comment-on-UNESCO-Guidance-for-regulating-digital-platforms_-a-multistakeholder-approach-01.20.2023.pdf, in a US-led coalition that issued a Declaration on the Future of the Internet, https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/28/fact-sheet-united-states-and-60-global-partners-launch-declaration-for-the-future-of-the-internet/, and as part of UN discussions on a Global Digital Compact, https://comment.eurodig.org/global-digital-compact/

[95] This includes the work on the elaboration of a new Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law, https://www.coe.int/en/web/artificial-intelligence/cai#{%22126720129%22:[0],%22126720142%22:[1]}

Endorsements[96]

Organisations

1. AFEM – Association of Women of Southern Europe
2. APDHE – Spanish Association for Human Rights (Spain)
3. Austausch – For a European Civil Society (Germany)
4. CAJ – Committee on the Administration of Justice (Northern Ireland, UK)
5. Center for Civil Liberties (Ukraine)
6. CIEL – Centre for International Environmental Law (Switzerland)
7. CNED – National Council of Law Students (Portugal)
8. Community Law and Mediation (Ireland)
9. COSTA – Community Organisations of South Tyrone & Areas (Northern Ireland, UK)
10. CRD – Civil Rights Defenders
11. Danish Helsinki Committee for Human Rights (Denmark)
12. Ecojustice Ireland (Ireland)
13. EDYN – European Democracy Youth Network Belarus (Belarus)
14. EHRAC – European Human Rights Advocacy Centre (UK)
15. EIN – European Implementation Network
16. EMDS – Election Monitoring and Democracy Studies Center (Azerbaijan)
17. EPA – European Psychiatric Association
18. EPD – European Partnership for Democracy
19. EPLN – European Prison Litigation Network
20. EQUAL PostOst (Germany)
21. EuroClio – European Association of History Educators
22. European Movement Ireland (Ireland)
23. European Movement Netherlands (Netherlands)
24. European Training and Research Centre for Human Rights and Democracy, University of Graz (Austria)
25. EU-Russia Civil Society Forum – endorsed by the Board
26. FIDH – International Federation for Human Rights
27. FIDU – Italian Federation for Human Rights (Italy)
28. Finland – Russia Society (Finland)
29. FLAC – Free Legal Advice Centres (Ireland)
30. Focus: The Identity Trust (Northern Ireland, UK)
31. Gay Community News (Ireland)
32. Gay Health Network (Ireland)
33. Greenpeace
34. Helsinki Foundation for Human Rights (Poland)
35. Humanists UK (UK)
36. Human Rights Defense Center "Memorial" (Russia)
37. Human Rights House Foundation
38. Human Rights SENTINEL (Ireland)
39. Hungarian Helsinki Committee (Hungary)
40. IAW – International Alliance of Women
41. ICCL – Irish Council for Civil Liberties (Ireland)
42. INAR – Irish Network Against Racism (Ireland)
43. Irish Traveller Movement (Ireland)
44. Just Fair (UK)
45. Justice for Shane (Ireland)

[96] As of 30 March 2023

46. Mental Health Reform (Ireland)
47. Migrant Centre NI (Northern Ireland, UK)
48. MLSA – Media and Law Studies Association (Turkey)
49. Norwegian Helsinki Committee (Norway)
50. Norwegian Humanist Association (Norway)
51. NXF – National LGBT Federation (Ireland)
52. OMCT – World Organisation Against Torture
53. Outhouse – LGBTQ+ Centre (Ireland)
54. Pat Funicane Centre for Human Rights (Northern Ireland, UK)
55. Pavee Point Traveller and Roma Centre (Ireland)
56. People's Advocate Office of the Republic of Moldova (Moldova)
57. PILA – Public Interest Law Alliance (Ireland)
58. PILS Project – Public Interest Litigation Support (Northern Ireland, UK)
59. Protection International
60. Public Verdict Foundation (Russia)
61. Quarker Council of European Affairs
62. Quarteera (Germany)
63. SAIH – Norwegian Students' and Academics' International Assistance Fund (Norway)
64. SIM – Netherlands Institute of Human Rights, Utrecht University (Netherlands)
65. Ukrainian Helsinki Human Rights Union (Ukraine)
66. Waterford Integration Services (Ireland)
67. Women's Platform (Northern Ireland, UK)

Individuals

1. Mihaela Anca Ailincai, Legal Research Centre, Grenoble-Alpes University (France)
2. Wolfgang Benedek, Professor Emeritus of public international law
3. Alice Donald, School of Law, Middlesex University (UK)
4. Tobias Lock, Maynooth University (Ireland)
5. Dr Aidan McQuade, writer and independent human rights consultant (UK)
6. Sean T. O'Reilly, Sean T. O'Reilly & Co. Solicitors (Ireland)
7. Sean Rooney, Barrister-at-Law (Ireland)
8. Alibhe Smyth, Campaigner (Ireland)
9. Anne-Katrin Speck, Human Rights Centre, Ghent University (Belgium)
10. Colin Wrafter, retired diplomat (Ireland)