

Report by the Secretary General  
for the Ministerial Session in Helsinki, 16-17 May 2019

***READY FOR FUTURE CHALLENGES –***  
**REINFORCING THE COUNCIL OF EUROPE**

**Thorbjørn Jagland**  
129th Session of the  
Committee of Ministers

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for the Ministerial Session in Helsinki, 16-17 May 2019

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**French edition**

*Relever les défis à venir –  
Renforcer le Conseil de l'Europe*

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Committee of Ministers Meeting Room



Debating Chamber of the Parliamentary Assembly of the Council of Europe



Thorbjørn Jagland  
Secretary General of the Council of Europe

## A CALL TO MEMBER STATES' GOVERNMENTS

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**T**he Council of Europe is our continent's leading human rights organisation. Each of the 47 member states has ratified the European Convention on Human Rights, setting common standards on human rights, democracy and the rule of law, with implementation overseen by the European Court of Human Rights. All 830 million people across the continent have the ultimate right to petition it.

*The creation of such a common legal space is unprecedented in European history, and throughout the rest of the world.*

*Over the past 70 years our Convention system has replaced conflict with co-operation. It is the bedrock of our democratic security and a success story for modern multilateralism. Its importance endures.*

*However, this report describes worrying trends in Europe. Attempts are being made to bring courts under political control. Media and NGOs are under increasing pressure and journalists are sometimes physically attacked. Meanwhile the supremacy of the European Court of Human Rights is also being challenged by populist and nationalist forces. After 10 years as Secretary General, it is clear to me that in the current environment our Organisation must be more proactive if we hope to uphold our legal standards. European law and institutions must be used to the maximum.*

*I therefore call on member states to strengthen the Convention system and the *acquis* on which it rests, and to finance the Council of Europe properly.*

*I further call on governments to enlarge the *acquis* by establishing legal standards that will safeguard human rights in the use of artificial intelligence and combat "modern slavery". They should also take measures to promote economic and social inclusion.*

*In this report, I am also making specific proposals to strengthen the functioning of our Organisation. This is no time to retreat. We must instead reinforce our democratic security and make ourselves ready for future challenges.*

## COUNCIL OF EUROPE ACQUIS

The action of the Council of Europe is founded on two major legal instruments: the European Convention on Human Rights (the Convention) and the European Social Charter. These remain the living roots from which our Organisation grows.

The Convention guarantees the right to life (Article 2) and outlaws the death penalty. Today, the death penalty has been abolished in all of our 47 member states. The Convention also prohibits torture (Article 3) and forced labour (Article 4), and the practice of punishment without law (Article 7). These are rights from which there can be no derogation. They are seen rightly as an indispensable component of modern Europe.

Other fundamental rights, such as access to justice and a fair trial, freedom of expression, freedom of assembly and freedom of religion are also enshrined in the Convention. An independent judiciary and free media act as vital checks and balances on the distribution and exercise of power in our societies.

The Social Charter, meanwhile, guarantees Europeans the opportunity of a decent and dignified life, with the right to housing, health care, and education, and to work and family life. Such rights are the glue that holds our societies together. The Social Charter lays specific emphasis on the protection of vulnerable people including children, migrants, the elderly and people with disabilities. These rights also characterise modern Europe.

Over the years, the Council of Europe has drawn on these rights, applying them to specific issues and providing additional protection to individuals. We have done this by developing new legal instruments that address a given challenge, which set out agreed common standards for member states to meet, and provided guidance to help them do so. These include, but are not limited to:

- ▶ the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- ▶ the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages;
- ▶ the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;
- ▶ the Convention on Preventing and Combating Violence against Women and Domestic Violence;
- ▶ the Convention on Action against Trafficking in Human Beings;
- ▶ the Convention against Trafficking in Human Organs;
- ▶ the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data;
- ▶ the Convention on Cybercrime;
- ▶ the Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health.

The Council of Europe also supports the role of sports, culture and education. In a world where commercial interests are playing an increasing role, it is of utmost importance to protect the integrity of these common goods, and that they remain open to all. This sentiment lies behind our conventions to combat match-fixing and doping and to protect the safety of sports events and spectators. Our Cultural Convention and a range of other measures make culture more accessible. With regard to education, we have programmes that promote equality, inclusion and democratic citizenship.

The Convention and Social Charter, together with our specialised conventions and instruments, constitute a gold standard of international law and form the basis of public legal order in Europe today. The European Convention on Human Rights and the European Court of Human Rights (the Court) are the foundations of the rule of law at European level. Faced with growing threats to the rule of law and new challenges to human rights across our continent, I am convinced that we need to reinforce the Council of Europe's instruments, not replace or duplicate them. These should also be financed properly from public money.

## **NEW CHALLENGES – VITAL STANDARDS**

The Council of Europe cannot now sit back. In 21st-century Europe, social and technological change are speeding up. Humanity is facing new challenges for which Council of Europe legal standards are required.

Three immediate challenges stand out:

- ▶ how to harness the benefits of the artificial intelligence revolution, while identifying and mitigating its threat to human rights, democracy and the rule of law;
- ▶ how to effectively combat the abhorrent practice of forced labour (often referred to as “modern slavery”);
- ▶ how to manage the effects of increased inequality in 21st-century Europe.

In each of these areas, we should be ready to take action and to strengthen the already existing *acquis*.

## **NEED TO BE MORE PROACTIVE**

Democratic security is deteriorating in Europe as our standards are called into question in multiple member states. Given the severity of the challenges facing Europe, the Council of Europe must become more proactive on member states’ compliance with their obligations and take urgent action if a member state veers clearly off track.

- ▶ To this end our two statutory organs, the Committee of Ministers and the Parliamentary Assembly of the Council of Europe (the Parliamentary Assembly) must co-ordinate their action. Unilateral sanctions do not work. Instead, co-operation is required to address the gravest developments in our member states. This action should be based on clear criteria, specifically on the basis of judgments by the European Court of Human Rights and reports from the Council of Europe’s monitoring bodies. Such action would give the Committee of Ministers and the Parliamentary Assembly the possibility to start an enhanced dialogue with the member state concerned and with the aim of better co-operating in order to rectify any shortcomings or wrongdoing identified.
- ▶ The Committee of Ministers should agree on steps that make it possible for the Organisation to monitor the situation in so-called “grey zones”. The fact that we cannot access them is not acceptable. We should start with an agreement that the Human Rights Commissioner must be granted full, free and unrestricted access to all unresolved conflict zones.
- ▶ The role of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) should be strengthened by creating a special procedure that can be used at short notice, in times of emergency, and in clearly defined circumstances, to monitor conditions in places of deprivation of liberty. While remaining confidential, follow-up reports would be disclosed immediately to the Secretary General and the Committee of Ministers.

## **THE NEED TO SECURE FINANCIAL INTEGRITY AND A CONTINUED FOCUS ON EFFICIENCY**

In order to become more efficient, the day-to-day machinery that enables the Council of Europe to do its work must be put on a sustainable footing. This means that:

- ▶ the financial integrity of the Organisation must be strengthened. A special fund should be set up to that end and member states should move away from the policy of zero nominal growth. A third category of membership, between “grand payeur” and “normal contributor”, should be set up, to make it possible for member states willing to contribute more to the Ordinary Budget to do so;
- ▶ structural and administrative reforms must continue to ensure even greater efficiency and flexibility. The Deputy Secretary General’s role as the Organisation’s Chief Operating Officer should be secured and strengthened.

## THE COUNCIL OF EUROPE'S STRATEGIC ADVANTAGE

The Council of Europe's strategic advantage is underpinned by three factors: our pan-European character; our legally binding Convention system, overseen by an international court, in addition to more than 220 conventions; and our freedom from geostrategic, economic and military interests.

In order to underline the Organisation's pan-European character, I urge all stakeholders to move forward with the process of the EU's accession to the European Convention on Human Rights. This is a pressing matter. If accession does not happen soon, there is a risk that two separate bodies of case law will develop with regard to human rights – one in the European Court of Justice and one in the European Court of Human Rights. This would create a new and detrimental dividing line in Europe.

The impasse over the participation of the Russian delegation in the Parliamentary Assembly, with which the Organisation has lived for over five years, must be resolved. The current situation is harming the entire Convention system. Millions of European citizens stand to suffer as a result.

The Russian Federation is in breach of the Statute; it is not paying into the Council of Europe's budget, yet it continues to participate fully in the Organisation's intergovernmental work. By June of 2019 the Russian Federation will not have paid its dues for two years. This undermines respect for our common rules.

At the same time deprivation of a delegation's voting rights is governed by Articles 7 or 8 of the Statute; this is in the hands of the Committee of Ministers after consultations with the Parliamentary Assembly.

An agreement underlining both the rights and obligations for all member states could be a basis for finding a solution. We should therefore agree on the following principles:

- ▶ each must enjoy the same rights to participate and be fully represented in the two statutory organs, as long as Articles 7 and/or 8 have not been applied;
- ▶ full participation in the two statutory organs is not an option; rather it must be an obligation;
- ▶ all member states have an obligation to co-operate in good faith with all Council of Europe bodies and institutions;
- ▶ all member states must pay their financial contribution in due time.

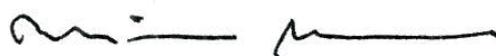
This approach is the right way forward. It would not represent an acceptance of the illegal annexation of Crimea. Rather it would be a recognition of the Council of Europe's pan-European nature and its mission to protect the rights of individuals everywhere on our continent.

In the current political situation in Europe, an agreement based on these principles would consolidate the common legal space, contribute to lowering tensions on our continent and assist the Council of Europe in its aim, set out in Article 1 of the Statute, to work for greater unity in Europe.

The Council of Europe's role is to use the law, to the greatest extent possible, to create societies that are safe and secure for those that live in them and to use legally binding judicial instruments to that end.

Together with partners such as the United Nations, the European Union and the Organization for Security and Co-operation in Europe (OSCE), we are working towards a safe and secure future for all.

Now is the time for persistence and progress.



**Thorbjørn Jagland**

Secretary General of the Council of Europe

# CHAPTER I



*European Court of Human Rights*

# TRENDS AND CHALLENGES TO OUR DEMOCRATIC SECURITY

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**T**he Council of Europe's purpose has always been the pursuit of peace in Europe through greater unity. Over the past 70 years it has been resolute and successful in that mission. However, after decades of geographical expansion and willing uptake of its standards, the Organisation is now experiencing a period of relative backlash. In parts of the continent, its standards are often called into question and its institutions – the European Court of Human Rights in particular – attacked. For some, multilateralism is now the subject of suspicion, and the international rule of law regarded as an obstacle to action rather than the guarantor of individuals' rights.

This backlash threatens Europe's democratic security. That security depends on:

- ▶ efficient, impartial and independent judiciaries;
- ▶ freedom of expression;
- ▶ freedom of assembly;
- ▶ freedom of association;
- ▶ democratic institutions; and
- ▶ inclusive societies.

These are the building blocks of a state whose institutions people can trust: one that is committed to safeguarding human rights, democracy and the rule of law.

This chapter explores the current challenges to the Convention system, its effective implementation, and the application of its commonly agreed standards. It builds on the findings and conclusions of the various Council of Europe monitoring mechanisms and advisory bodies.

## **POLITICAL AND LEGAL CHALLENGES TO OUR CONVENTION SYSTEM**

The Council of Europe's overriding priority is to ensure that all member states comply with the Organisation's standards and with the commitments that they have undertaken. For this, member states' strict adherence to the jurisdiction of the European Court of Human Rights is required. Its judgments must be implemented fully and swiftly.

Overall, member states comply with this obligation. During the past decade, the Strasbourg Court's procedures have become more efficient, its caseload has been substantially reduced and its proceedings in straightforward cases have become faster. The Court has benefited from the ratification of Protocol No. 14 to the Convention, which has helped reduce its backlog of 150 000 pending cases in 2011 to less than 60 000 in 2018.<sup>1</sup> When it comes to the execution of judgments, the number of

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1. Over 70% of pending cases concern just six countries.

cases closed by the Committee of Ministers reached an all-time high in 2017 thanks to a new policy of enhanced dialogue with member states.<sup>2</sup> Notwithstanding these impressive achievements, the Convention system still faces a number of challenges to its effective functioning.

Worrying trends have emerged in recent years. The precedence of the Convention and the Court over national constitutions and national courts has been challenged. This trend has taken a number of forms, including constitutional change, judicial reforms and referendums, and has often been sparked by controversy generated by a small number of the Court's judgments.

No member state has yet bluntly refused to execute the Court's judgments on the basis of its national sovereignty. Even in the most difficult cases, dialogue has been maintained. Nonetheless, the political arguments being deployed threaten to undermine international law to the detriment of European unity. Unaddressed, this could lead to a situation where human rights guarantees given by the Convention are severely weakened and at least parts of the Convention can no longer be applied in a systematic way.

Taking on this challenge requires a strong political response on the occasion of the May 2019 ministerial session. This should be in line with the 2018 Copenhagen Declaration, where member states reaffirmed their deep and abiding commitment to the Convention, and to secure for everyone within their jurisdiction the rights and freedoms to which they are entitled.

There are also systemic challenges facing the Court and the Convention system.<sup>3</sup> These are being addressed by means of an ongoing reform process. This began at the Interlaken Conference of member states in 2009. It continued at further conferences in Izmir, Brighton, Brussels and, most recently, Copenhagen. Key moments included the adoption of Protocol No. 15 to the Convention – which it is hoped will enter into force in the very near future (45 out of 47 states parties have ratified it). As a consequence of this reform process, there is a common understanding about the need for subsidiarity and shared responsibility for maintaining the Convention system. Overall, this ongoing process has helped pan-European justice to become more effective and more efficient.

Nevertheless, our work to ensure the longer-term future of the Convention system continues.<sup>4</sup> Its capacity to deal with resistance to implementing judgments must be improved. Delays, particularly those relating to pilot judgments, have repercussions for the work of the Court, which is faced with thousands of repetitive complaints. Responding to this problem is a shared responsibility. More efforts are needed to improve implementation at the national level, especially in relation to complex problems. Reflection on this matter should continue.

The question of whether more efficient measures are needed vis-à-vis an unco-operative state still needs a proper answer. Non-co-operation undermines the credibility of the whole Convention system and poses the risk of a ripple effect. The Council of Europe has dealt with such a situation in recent years (the Mammadov case). Its use of existing mechanisms in the Convention (Article 52 and Article 46.4, deployed for the first time) was instrumental to addressing the resistance encountered. However, this action was clearly required given the failure of the authorities in question to release rapidly the individual concerned – which should have happened on the basis of the Court's judgment.

This situation should never have arisen. **The existence of political prisoners in Europe today cannot be tolerated. A way must therefore be found to prevent the recurrence of such situations: the rapid execution of the Court's judgments must be ensured.**

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2. In 2017, the Committee of Ministers closed 3 691 cases compared to 2 066 in 2016, including many repetitive cases in which individual redress had been provided. In particular, there has been an important increase, over 30%, in the closure of cases revealing structural problems which had been pending before the Committee for more than five years.

3. See, *inter alia*, the January 2019 speech by Guido Raimondi, President of the European Court of Human Rights. [www.echr.coe.int/Documents/Speech\\_20190125\\_Raimondi\\_JY\\_ENG.pdf](http://www.echr.coe.int/Documents/Speech_20190125_Raimondi_JY_ENG.pdf).

4. The Committee of Ministers will take stock of the progress made in this regard by the end of 2019 – and decide how to move ahead. Also, both the Court and the Steering Committee for Human Rights (CDDH) continue to work on how to further improve procedures and consolidate the Court's authority.

## JUDICIAL INDEPENDENCE UNDER STRESS IN A NUMBER OF MEMBER STATES

Judicial independence has been subject to heightened attention in the past four years. While some positive developments were noted in a few countries, efforts to interfere with the work and composition of national judiciaries – including constitutional courts – have increased. Where such political interference occurs, it puts judicial independence under stress and threatens to erode the separation of powers.

On the positive side, efforts have been made in several member states to put in place:

- ▶ merit-based appointment and performance evaluation systems;
- ▶ standards-compliant disciplinary systems;
- ▶ effective judicial councils; and
- ▶ solid professional training.

In one country, comprehensive reform of the judicial structure was carried out. However, the overall trend is concerning.

In several countries, key politicians – including ministers – have publicly targeted the judiciary. They have argued that it is corrupt or politicised, elite or remote. On some occasions, they have claimed that the necessary modernisation of the judiciary could only be achieved by replacing its judges. In several other instances, legislative acts granting very broad powers to the executive were adopted, at the expense of the judiciary (or prosecutors). These have variously included powers over:

- ▶ broad reforms of the High Judicial Councils;
- ▶ the removal and appointment of judges – including supreme court judges – either directly or on the basis of disciplinary proceedings;
- ▶ the removal of court presidents; and
- ▶ the setting up of new courts.

In general, the related legislative processes lacked inclusiveness and transparency. In some cases, combined amendments to judicial laws, the criminal code and the criminal procedure code seemed to directly undermine the independence of judges and prosecutors, as well as the effectiveness of criminal justice. This also undermines the perceived ability of authorities to fight corruption.

Broad powers exercised by the executive have also led to concerns about the independent functioning of the judiciary. Among these concerns are cases where ordinary courts refuse to execute judgments of a constitutional court. In other cases, key competences are now effectively concentrated in the person of the Minister of Justice, including power normally held by the Prosecutor General. Council of Europe bodies active in this field have reacted on the basis of their respective mandates.<sup>5</sup> At the political level, the European Union has been proactive in confronting such developments among its member states. For that it has relied closely on the findings of Council of Europe bodies.

It appears that some political actors no longer see the separation of powers as inviolable. When the integrity and role of the judiciary are questioned, public trust in the justice system is lost and the authority of the rule of law is weakened. **The undermining of the independence of the judiciary by the executive, attempts to replace judges and, finally, efforts to alter constitutions for nefarious purposes are dangerous trends. These are clear threats to democratic societies and democratic security. They must be countered.**

## THREATS AGAINST FREEDOM OF EXPRESSION AND MEDIA FREEDOM

Freedom of expression, enshrined in Article 10 of the Convention, has always been of central importance. It protects the right of individuals to form, hold and express their opinions without undue interference. This is crucial for the realisation of all other human rights. It is a precondition for

5. The Venice Commission, GRECO, the CCJE and CCPE.

democratic security. Consecutive assessments of the state of the freedom of expression in Europe over the past five years have shown that it is under heightened threat across the continent.

Recent assessment reports<sup>6</sup> have made clear that violence against journalists has increased significantly over the last decade. Incidents have included physical attacks, intimidation, harassment, targeted surveillance and cyber bullying. These various tactics serve a common purpose: to silence critical voices and inhibit free speech. Such threats are among the most serious challenges facing media freedom today. In 2018, the number of reported threats – including death threats – doubled, with the majority of violent incidents allegedly committed by unknown or non-state actors. The murders of at least two journalists in Europe for reasons related to their work in 2018 highlight the price that media professionals continue to pay for investigating corruption and organised crime. Impunity for attacks on the life and integrity of media professionals in recent years remains a major concern, despite the fact that the state has a duty to fully investigate such incidents.

Smear campaigns and inflammatory rhetoric by senior politicians are also on the rise. Often followed by social media campaigns against their targets, these undermine the ability of journalists and other media actors to do their job. That job is to inform the public and hold the powerful to account.

At the same time, traditional threats to media freedom and independence persist. In particular, government shutdowns of media outlets remain among the most severe forms of curtailment of media freedom and independence. There are also persistent concerns regarding the criminal prosecutions of journalists, which are often carried out on the grounds of “anti-terrorism operations”. Another worrying trend concerns the growing threat to the protection of journalists’ confidential sources. Financial pressure, favouritism and other forms of indirect manipulation of the media can be equally powerful and are used increasingly.<sup>7</sup> In several member states, public service media fight for their editorial and financial independence in the face of initiatives to slash their budgets, abolish licence fees, or interfere with their internal operations.<sup>8</sup> In other cases, journalists seeking to express an opinion that goes against the majority view are faced with intolerance by the authorities.

The spread of disinformation (especially fake news and hate speech) through the media and online channels also continues to be of significant concern. Lack of editorial control, fast and anonymous distribution, and limited capacity to sift real news from false, heighten the urgency of tackling this problem. There are also concerns that some media have turned into propaganda tools and are being used to incite hatred towards minorities and vulnerable groups, and/or to alter electoral processes. Some legal initiatives have emerged to address the problem of fake news and/or hate speech, but they pose the question of the balance between guaranteeing freedom of expression and ensuring national security and law enforcement.<sup>9</sup>

With regard to freedom of expression on the internet, the misuse of anti-terrorism legislation has become one of the most widespread threats to the freedom of expression and media in Europe.<sup>10</sup> Additional efforts are still required to develop a clear framework with respect to the responsibility and duties of intermediaries vis-à-vis content moderation.

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6. *Journalists under pressure*, 2017. Conducted among almost 1 000 journalists and other news providers in the 47 Council of Europe member states and Belarus. “Democracy at risk: threats and attacks against media freedom in Europe”, which assesses the situation of media freedom in Europe based on the 140 serious media freedom violations reported to the Council of Europe Platform for the Protection of Journalism and Safety of Journalists in 2018.

7. See statement by the Commissioner for Human Rights, 22 February 2018.

8. The Council of Europe intergovernmental work continued to engage actively with the above trends and threats, notably through the drafting and adoption of important guidance instruments for member states, such as on media pluralism and transparency of media ownership, on the roles and responsibilities of internet intermediaries, and on the financial sustainability of quality journalism. The Court’s recent case law on balancing freedom of expression and privacy rights was integrated in the 2018 Guidelines on safeguarding privacy in the media, an instrument of practical advice to journalists. See: [www.coe.int/en/web/freedom-expression/-/guidelines-on-safeguarding-privacy-in-the-med-1](http://www.coe.int/en/web/freedom-expression/-/guidelines-on-safeguarding-privacy-in-the-med-1).

9. See Venice Commission Opinions No. 909/2017, 20 March 2018; No. 920/2018, 23 June 2018; and No. 915/2018, 19 March 2018, issuing recommendations to several countries to amend or repeal vague or overly broad hate speech laws or draft laws that did not sufficiently distinguish between hate speech and merely offensive expression.

10. See the Human Rights Commissioner’s Comment of 4 December 2018: “Misuse of anti-terror legislation threatens freedom of expression”.

Oversight by the European Court of Human Rights remains a critical tool for ensuring that national laws and practices are consistent with the standards set out in the Convention.<sup>11</sup> In early 2019, the Court reiterated its standing jurisprudence that the effective exercise of the freedom of expression is not dependent merely on the state's duty not to interfere, but may call for positive measures of protection.<sup>12</sup>

The deterioration of freedom of expression in Europe over recent years is deeply worrying. It is another dangerous development for our democratic societies. **Strong and concerted political action from the Council of Europe and its member states is needed to reverse the trend.** It is also crucial to provide continued support to the Platform to Promote the Protection of Journalism and Safety of Journalists, which has been operating since 2015. Efforts to increase its visibility should be enhanced, including by member states. States should answer systematically to alerts.

Similarly, it should never be the case that human rights defenders' freedom of expression or any other rights are undermined as a consequence of their legitimate activities.<sup>13</sup> **The Secretary General's Private Office procedure<sup>14</sup> on Human Rights Defenders interacting with the Council of Europe should therefore be maintained.** It has already been decided to strengthen this mechanism by:

- ▶ expanding the procedure to allow external direct reporting rather than rely on information from Council of Europe entities only;
- ▶ refining the criteria for assessing reprisals;
- ▶ ensuring internal co-ordination, including with the Court, the Parliamentary Assembly and the Commissioner for Human Rights (but without interference in their procedures).

This procedure will remain under the direct oversight of the Secretary General of the Council of Europe.

## FREEDOM OF ASSEMBLY AND FREEDOM OF ASSOCIATION

Non-governmental organisations and other civil society actors play a similar, and often complementary, role to that of the media in holding powerful interests to account. As such, there is an inextricable link between freedom of association (Article 11 of the Convention) and healthy democracies. Unfortunately, NGOs and civil society actors in Europe face increased verbal attacks and are subjected to restrictive legislation that undermines their freedom of expression and association. This results in a shrinking civic space.

In recent years, a significant number of countries have increased the regulatory framework concerning the financial resources of non-governmental organisations. According to a study conducted by the European Commission for Democracy through Law (Venice Commission), in many member states specific obligations have been imposed on associations receiving funds from abroad.<sup>15</sup>

These include:

- ▶ reporting/disclosure obligations concerning the source of funding;
- ▶ the requirement of prior authorisation of funding from abroad;
- ▶ restrictions imposed on the uses that may be made of such funds;
- ▶ the imposition of specific taxation rules on foreign funding or restrictions on foreign funding for certain activities.

11. The Court issued more than 70 judgments in Article 10 of the Convention related cases in the course of 2018, finding violations in about two thirds of them. The legal issues before the Court covered a wide range, including the protection of symbolic speech, the state duty to investigate the masterminds of attacks on journalists and the balancing of media freedom with the rehabilitation rights of persons with a prior criminal record. The Court also highlighted the growing threats to the protection of journalists' confidential sources and materials from arbitrary searches and mass state surveillance.

12. *Khadija Ismayilova v. Azerbaijan*, 65286/13 and 57270/15, 10 January 2019.

13. In 2018, the Committee of Ministers adopted the Recommendation to member States on the need to strengthen the protection and promotion of civil society space in Europe, enabling NGOs, human rights defenders and institutions and civil society as a whole to operate safely and freely. CM/Rec (2018)11.

14. [www.coe.int/en/web/secretary-general/-/private-office-procedure-on-human-rights-defenders](http://www.coe.int/en/web/secretary-general/-/private-office-procedure-on-human-rights-defenders).

15. The Venice Commission also adopted four opinions in 2018 concerning the right to freedom of association in several member states.

Reporting and disclosure obligations concerning the funding of NGOs help to ensure its legality and contribute to its public transparency. However, there are concerns that these obligations could be used as a pretext to control and restrict the legitimate work of NGOs.<sup>16</sup> In several instances, it was noted that this type of regulatory framework is selectively enforced, leading to further concerns that the legislative and regulatory power of the state is being misused to hamper, restrict, silence or frighten specific civil society actors. Although this kind of “legal uncertainty” is not limited to NGOs, it can greatly undermine the trust of citizens in the rule of law.

It was also noted that, in a few member states, public authorities continue to engage in smear campaigns targeting civil society, by labelling NGOs as “opposition” or “foreign agents”. When combined with relative impunity for violations ranging from harassment to physical attacks, and in some cases even murder of civil society activists, the result is an unprecedented climate of insecurity and fear. The ability of NGOs to communicate with the public, especially those that aim to hold governments accountable, continues to be impeded by varying degrees. This is due to restricted access to public media and the shrinking number of independent media outlets.<sup>17</sup>

At the same time, some member states have increased their engagement with civil society. They have experimented with innovative participatory governance and policy making, especially at local level, and given increased recognition to the social, economic and educational value of civil society engagement and activism.

Still, the trend of a shrinking civic space is troubling, not only for civil society actors, but for democratic security. It is therefore essential that member states take measures to guarantee the unimpeded exercise of freedom of association. They should do this by means of their regulatory frameworks or other legal and practical methods.

The same is true for freedom of assembly, also enshrined in the Convention under Article 11. Although this right may be subject to limitations, states have a duty to refrain from interfering with it unduly. They should also put in place adequate mechanisms and procedures to ensure that it is enjoyed in practice and by all, without discrimination. Over recent years, a number of member states have amended their related legislation or adjusted their practice with a view to better aligning them with the Convention standards. Changes to notification procedures and the handling of public assembly are prime examples. However, a number of concerns have also emerged – and in certain cases remain – regarding both the legislative framework and practice.

In some countries, the legislative framework on freedom of assembly was affected by the toughening of anti-terrorism legislation. As part of the dialogue with member states, concerns were expressed over the potential lack of adequate legal safeguards when granting administrative authorities powers to limit the manner of assembly. There were also worries regarding legislative amendments that gave priority to certain types of gathering to the possible detriment of others’ right of assembly. It was emphasised by the Court that when granting the power to propose a change of location, time or manner of conduct for public events, the law must also provide for adequate and effective legal safeguards against the arbitrary and discriminatory exercise of the wide discretion left to the executive. Numerous Court judgments have also dealt with complaints about undue bans, notably where adopted with respect to assemblies or parades organised by specific groups such as lesbian, gay, bisexual, transgender and intersex (LGBTI) people. Any kind of ban must be based on substantial and substantiated reasons.

The arrest and conviction of participants in peaceful assemblies that pose no threat to public order also remains a problem in several member states. In others, concerns were expressed regarding the use of undue administrative sanctions and/or disproportionate measures targeting well-known public

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16. At its 118th Plenary Session (Venice, 15-16 mars 2019), the Venice Commission adopted a report on the Funding of Associations (CDL-AD(2019)02).

17. The issues described above have been recurring themes and have been frequently addressed through judgments of the Court, opinions of the Venice Commission, opinions and reports of the Expert Council on NGO Law of the INGO Conference as well as Resolutions of the Parliamentary Assembly and the Congress and a series of Committee of Ministers recommendations. The latest Committee of Ministers recommendations are CM/Rec(2007)14; CM/Rec(2017)2, CM/Rec(2017)83, CM/Rec(2018)11.

figures. Such measures, along with the forced dispersal of peaceful assemblies, have the potential to deter other participants and the public at large from attending demonstrations.

Attention was also paid to the effectiveness of investigations into alleged abuses by security forces during rallies. Issues concerning the handling of mass riots, notably the conditions in which force can be used by the police, remain outstanding in some countries. Concerns have also been voiced recently regarding the use of specific non-lethal weapons by police forces during clashes with protesters, in light of serious injuries incurred. In some instances, the violence observed in rallies has led to legislative changes. This in turn has raised concerns regarding the powers granted to administrative authorities – rather than a judge – to forbid specific individuals from attending a public assembly.

These issues are of greater importance in a period when a number of state authorities are handling repeated mass protests which are increasingly likely to turn violent. **Council of Europe guidance is essential for ensuring that the sometimes necessary limitations to freedom of assembly meet the requirements set out in Article 11 of the Convention.** The right of individuals to gather with other people and make their collective voice heard is fundamental to a properly functioning democracy.

## SOCIAL AND SOCIETAL CHALLENGES

The fallout from the recent economic crisis in Europe continues to affect a number of European countries, including the related austerity measures adopted by some member states. This has had an impact on the fulfilment of social and economic rights in Europe which, in turn, has the potential to affect political stability and social cohesion. This risk is intensified where there is growing inequality and additional perceived threats to economic and social stability, such as increased migration flows.

### Negative impact of austerity measures

In many countries, public services were deeply affected over the last decade by cuts in public funding, with a particular impact on health and social protection. The negative impact of these measures has been heaviest on the most vulnerable persons and groups, such as the poor, the elderly, the sick, children, people with disabilities, migrants and refugees. Those coming from disadvantaged neighbourhoods have suffered most from the resulting poverty and social exclusion. Since 2009, the Council of Europe has emphasised that the economic crisis and the austerity measures should not result in the deterioration of protection for social rights.

A number of reports produced by the Organisation's bodies and mechanisms have highlighted how the economic crisis and austerity measures may impact the enjoyment of rights.<sup>18</sup> Among other issues, it was noted that in times of economic crisis, judicial rights may be impacted negatively as a result of budgetary and human resources cuts to the judiciary. This in turn may lead to procedural delays or the failure to enforce judgments.<sup>19</sup> Reports also indicate that women tend to have been more affected by austerity measures, as budget cuts in the welfare system and/or the stagnation of pension rates further endanger their enjoyment of social and economic rights.<sup>20</sup> Austerity measures also affected young people disproportionately, with difficulty accessing the labour market being the most important challenge, alongside a tendency to lower labour standards and social protections for young employees. Roma people and migrants are more likely to suffer long-term unemployment. Prison overcrowding has also increased in a number of countries as a result of funding cuts. In some

18. See *inter alia* the feasibility study by the Steering Committee for Human Right (CDDH) on the "Impact of the economic crisis and austerity measures on human rights in Europe".

19. The case law of the Strasbourg Court has, however, clarified that it was not open to a state authority to cite lack of funds as an excuse for not honouring a judgment debt, and that a delay may not be such as to impair the essence of the right to have a judgment by a domestic court executed.

20. As women rely more than men on social rights, budget cuts in the welfare system hit them harder. It was also noted that women in poverty or at risk of poverty were more likely to work in low-paid, precarious and informal jobs, and face the risk of exploitation and trafficking in human beings.

instances, the situation raised serious concerns about unacceptable conditions of detention and the risk of inhuman and/or degrading treatment.<sup>21</sup>

The need to protect social rights is further emphasised by reports<sup>22</sup> showing that overall inequality in Europe has increased in recent years. This is true for income both between and within member states and is driven primarily by technological change and policy reforms that have made the labour position of low-skilled/low-income workers perilous. The reports warn that high levels of income inequality can lead to political polarisation and test social cohesion, with low-income individuals being stuck in a cycle of low-income living that seriously limits their enjoyment of basic social rights (education, housing, health) and offers very little perspective for improvement.

## **Need to strengthen anti-discrimination and equality policies**

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In some member states, new social and political movements initiated by citizens who feel let down by the system have multiplied in recent years. Because mainstream political forces have failed to deliver change, millions more people are also now willing to support the nationalist, xenophobic and anti-democratic forces that seek to exploit their frustration. Until their legitimate grievances are met with a proper response, faith in democracy and in the European project as a whole will remain in jeopardy.

As an illustration of this threat to European ideals, there has been a dramatic rise in anti-Semitism, anti-Muslim hatred and online hate speech across the continent.<sup>23</sup> This has now reached levels that are unprecedented in recent decades. It comes despite the fact that important legislative changes were made in a number of countries with a view to strengthening legal protection against racism, discrimination and intolerance and to curtailing hate crime and hate speech. The lack of adequate responses to this fast-growing problem is a serious concern. Data confirms that, when left unaddressed, such verbal transgressions are only the first step to growing levels of racial discrimination in daily life or even to violent racist attacks. The Council of Europe is dedicated to the fight against discrimination: it was established in the wake of the Holocaust, capturing the essence of the “never again” concept – a fact that has been reflected in its education activities and annual commemoration of International Holocaust Day. This should remain a priority. **Member states should maintain and enhance their efforts to combat hate speech within the framework of the Convention.**

Almost all member states have established equality bodies. However, in a number of these, shortcomings were noted with regard to their competences, their independence, and their resources. It was also recognised that many member states have adopted national Roma integration strategies, yet the means for their implementation remains limited. In some countries, members of the Roma community continue to face deeply rooted structural discrimination and exclusion. Although progress has been noted, the insufficient schooling of Roma children remains an acute problem.

With regard to attitudes towards LGBTI persons, considerable improvements were achieved in many countries, in particular through legislative acts on same-sex partnerships and marriage, and recognition of the rights of transgender people. That being said, serious concerns remain with regard to discrimination, attacks and crackdowns on LGBTI people in a few member states.

Challenges persist also with regard to gender equality. These include:

- ▶ the persistence of unequal power structures;
- ▶ gender-based violence;
- ▶ threats to women’s rights defenders;
- ▶ access to equality in employment and financial resources;

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21. The CPT has underlined that guaranteeing the basic rights of inmates flows directly from the responsibilities of the state towards persons whom it has deprived of their liberty and from the fundamental principle that a lack of available resources cannot justify detention conditions which infringe the rights of inmates.

22. Council of Europe Development Bank, “An introduction to inequality in Europe”, December 2017.

23. See the 2017 Annual Report by the European Commission against Racism and Intolerance (ECRI). (CRI(2018)26).

- ▶ gender bias and stereotypes;
- ▶ sexism and discrimination including sexist hate speech online and offline and in political discourse; and
- ▶ budgetary cuts applied to gender equality authorities and bodies.

Concerns have been expressed about the persistent failure to tackle these problems properly and, in some member states, retrogressive measures have been introduced. Recent citizen-led initiatives like the #MeToo movement have broken a powerful taboo and shed light on how sexual harassment and sexual violence affect the lives of millions of women in Europe and around the world. It also sends a clear signal to authorities that society expects them to act in a definite manner to ensure women's rights and gender equality. This should happen without exception. The Council of Europe Gender Equality Strategy (2018-2023) should play a key role in equipping member states for that challenge.

### **Protecting national minorities' rights: maintaining peace in Europe**

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The rights of national minorities continue to be a topic of intense debate in several member states. There have been examples of hard-won rights being diminished. In particular, in certain member states, the tendency to emphasise the importance of the state language as a unifying factor went hand-in-hand with measures aimed at diminishing the protection of minority languages. Overall, the level of protection afforded to people from national minorities is often affected by the relative backlash against human rights. This is true for freedom of peaceful assembly, association and expression. However, history has shown that the strong protection of minority rights is instrumental to a high level of political stability.

### **Addressing migration on the basis of our standards**

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The flow of migrants and asylum seekers, although now significantly reduced, remains a serious and sensitive challenge for European countries. This is often exploited by populist forces to instigate or increase fear and resentment in a difficult economic context. In some instances, efforts to secure borders and stop the flow of migrants have raised questions as to whether the right to seek asylum is effective in practice and whether the prohibition on collective expulsion is being upheld – although some states have made progress on this issue. Concerns were also expressed regarding existing safeguards against the breach of Article 3 of the Convention (prohibition of torture) for people intercepted or rescued at sea by vessels from member states, but outside European waters, and who are then returned to Libyan shores.

**There is also a need to show more solidarity in dealing with newly arrived refugees – including those rescued by NGO-operated vessels.** Migrants on board these vessels should receive adequate medical care, food, water and basic supplies. The poor conditions of stay in facilities in a number of countries of reception are also deeply concerning. Examples include overcrowding, lack of basic health-care provision, inadequate assistance to vulnerable groups, and the risk of trafficking in human beings and sexual violence. Concerns about sub-standard living conditions persist also with regard to establishments in transit countries. In a number of countries, it was also found that measures taken to deprive migrants and refugees of their liberty lacked legal basis. However, some member states have made progress with legislative measures ensuring an effective and speedy procedure to challenge the lawfulness of detention.<sup>24</sup> The Council of Europe has been active on the ground – notably the Special Representative on Migration and Refugees – conducting visits to member states at the forefront of these challenges and helping them to ensure that their actions are in accordance with human rights standards.

24. The Steering Committee for Human Rights (CDDH) concluded and published its analysis "Legal and practical aspects of effective alternatives to detention in the context of migration". The analysis has been widely disseminated and referenced for its practical value, giving a precise overview of the applicable international human rights standards in the field and identifying essential elements that render alternatives to immigration detention effective.

In addition, access to international protection continues to be difficult in several member states.

There is a positive trend regarding the enrolment of migrant and refugee children in schools. However, despite efforts undertaken by some countries, unaccompanied children are still faced with inadequate support, and serious concerns were raised with regard to their detention and confinement or their accommodation in inappropriate conditions.<sup>25</sup> There has also been inadequate support for victims of trafficking and of sexual and gender-based violence, and persons with disabilities.

That said, reports reveal greater awareness among a number of member states on the need for effective migrant integration policies as a means to foster social cohesion and respect for human rights. Considerable efforts have been made by some, particularly regarding housing, learning local languages, education, employment and health.

**As part of a much-needed move towards greater European solidarity, member states should recognise that child detention in the context of migration is in no-one's interests. They should work to bring this practice to an end.**

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25. In the framework of the Council of Europe Action Plan on Protecting Refugee and Migrant Children the Organisation provides support to its member states in a number of areas including age-assessment, guardianship, transition to adulthood, alternatives to detention and access to education.

# CHAPTER II



*Palais de l'Europe, Council of Europe*

# COUNCIL OF EUROPE ACQUIS

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## ENSURING AND PROTECTING RIGHTS

The **European Convention on Human Rights** and the **Social Charter** establish clear and specific rights. Over the years the Council of Europe has built on this with additional legal instruments, but most of these treaties do not create new rights as such. Instead they help member states to apply existing rights to specific challenges that have emerged. They explain those challenges and provide practical ways for member states to address them. These agreed common standards often aim to facilitate three clear principles – the “three Ps” – prevention, protection and prosecution. Most recent conventions have introduced new criminal offences in their specific subject area. Member states must then incorporate these offences into their own domestic law.

Several of these treaties are open to accession by non-member states – and some are in high demand. This underlines the Organisation’s leadership role in raising human rights standards around the world.

Together, these conventions constitute the *acquis* of the Council of Europe<sup>26</sup>. They are the sole set of pan-European legal instruments protecting human rights, democracy and the rule of law from Lisbon to Vladivostok. They are extensive, effective and essential.

### Key areas

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Among the additional legal instruments adopted by the Council of Europe is the **Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**. This provides for the setting up of an international committee empowered to visit all places where persons are deprived of their liberty by a public authority. The committee, composed of independent experts, may make recommendations and suggest improvements in order to strengthen, if necessary, the protection of persons visited from torture and from inhuman or degrading treatment or punishment.

The Council of Europe also protects minorities and minority and regional languages. In part, it does this through the **Framework Convention for the Protection of National Minorities** and the **European Charter for Regional or Minority Languages**. Among other things, these treaties have confirmed circumstances in which individuals have the right to education in their national language, rather than the language of the state in which they live. In light of the range of recent challenges that Europe has faced with the rise of extreme nationalism and xenophobia, the protection of European minorities’ rights must remain a priority.

A further important treaty is the **Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention)**. It is the first international instrument to establish various forms of sexual abuse of children as criminal offences. The convention also ensures that child victims receive protection and support. The scourge of child sex abuse and exploitation must end. For the Council of Europe, contributing to this global challenge also requires closing legal loopholes and addressing the risks in the digital environment.

Another key instrument is the **Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention)**. This is the world’s most comprehensive international treaty on these issues. It recognises violence against women as an explicit human rights violation, and contains measures aimed at preventing violence, protecting victims, and prosecuting the perpetrators. Despite a strong impetus for action and the progress already accomplished since

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26. The Conventions cited within this chapter are non-exhaustive: these do not constitute the *acquis* in its entirety.

the adoption of this convention, gender-based violence and discrimination persist. There have also been delays in the ratification of the treaty and/or its full implementation. Special attention therefore still needs to be given to this issue.

The trade in human beings and human organs has also been a focus of the work of the Council of Europe. The **Convention on Action against Trafficking in Human Beings** aims to prevent and combat people trafficking, to protect the human rights of the victims, and to ensure the effective investigation and prosecution of perpetrators. The convention applies to all forms of trafficking, whoever the victim and whatever the form of exploitation. Reports from the related monitoring body indicate that trafficking for the purpose of sexual exploitation remains the most common form. However, trafficking for the purpose of labour exploitation is on the rise across Europe – hence the need for renewed action based on common European standards.

The Council of Europe has also adopted the **Convention against Trafficking in Human Organs**. This calls on governments to criminalise the illegal removal of human organs from living or deceased donors, and provides protection measures and compensation for victims, as well as prevention measures.

Mention should also be made of the Council of Europe's protective role with regard to cybercrime and personal data. The **Convention on Cybercrime** (Budapest Convention) was the first international treaty on crimes committed via the internet and other computer networks. Its main objective is to pursue a common criminal policy aimed at the protection of society against cybercrime. A new additional protocol is being drafted and will bring added value on electronic evidence; it is important to work closely with the European Union on this matter, but also to make sure our protocol benefits all Parties (currently numbering 63) to the Cybercrime Convention.

The emerging privacy challenges resulting from new information and communication technologies are addressed by the **Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data** and its most recent protocol. The convention expressly refers to the right to personal autonomy and the right to control one's personal data. It is also the only existing legally binding international treaty in this field. Its 2018 protocol provides a modern, robust and flexible multilateral legal framework to facilitate the flow of data across borders while providing effective safeguards when personal data are being used.

The Council of Europe has also taken action to protect individuals from the threat posed by counterfeiting medical products and similar crimes involving threats to public health. The **MEDICRIME Convention** makes clear that to intentionally manufacture and supply falsified medicines, or to traffic them, is a criminal act. The Council of Europe is also active in ensuring quality standards for safe medicines and their safe use. It does this by granting certificates of suitability and carrying out inspections on the manufacturers of these substances. This convention-based work is undertaken by the European Directorate for the Quality of Medicines & HealthCare (the European Pharmacopoeia).

## ENABLING PARTICIPATION

The Council of Europe supports individuals' participation in sports, culture and education. It also promotes a human rights-based approach to internet governance.

### Sports

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Over the last four decades, the Organisation has worked tirelessly to promote sport's positive values, to open up participation and to fight the threats faced at the local, national and international levels. The **Anti-Doping Convention** lays down binding rules that harmonise anti-doping regulations. In recent years, two new conventions to protect the integrity of sport were also adopted: the **Convention on the Manipulation of Sports Competitions**, and the **Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events**. The Council of Europe has also launched the "Start to talk" initiative, which aims to tackle child sexual abuse in sport. Promoting diversity and combating discrimination has also been a priority.

## Culture

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The Organisation has taken positive steps to open up cultural experiences for people across Europe. The **European Cultural Convention** promotes understanding of Europe's cultural diversity, and supports Europe's common cultural heritage. The **Convention on Offences relating to Cultural Property** protects against criminal activities. In addition, the **Convention on the Value of Cultural Heritage for Society (Faro Convention)**, promotes the idea that knowledge and the use of heritage form part of a citizen's right to participate in cultural life. Over the years, there has been a range of specific cultural initiatives. These include:

- ▶ European Heritage Days;
- ▶ the Enlarged Partial Agreement on Cultural Routes; and
- ▶ the Enlarged Partial Agreement for the European Support Fund for the Co-Production and Distribution of Creative Cinematographic and Audiovisual Works (Eurimages).

## Education and youth

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The Council of Europe has also focused on the importance of education to healthy democracies. Its priorities in this field are clearly reflected in the **Charter on Education for Democratic Citizenship and Human Rights Education**.<sup>27</sup> At the heart of the education agenda is the flagship Framework of Competences for Democratic Culture (RFCDC). This sets out the specific competences young people need to fully understand and participate in their democratic societies.<sup>28</sup> Stemming from this framework, is the "Free to Speak - Safe to Learn" campaign, which encourages school pupils to discuss even the most controversial of topics, while promoting freedom of expression, tolerance and inclusion. Related to these efforts is the Education for Democracy and Human Rights (EDC/HRE) Initiative. It helps all groups in society to learn about, identify with and respect human rights, democracy and the rule of law. Other projects in the field of education are also being implemented, for example by the North-South Centre. All of these are worthy of support.

Youth participation in our societies goes hand-in-hand with education. Council of Europe recommendations have been adopted on issues including access to work and social rights, participation, mobility and non-formal education. The principles, priorities and approaches of work with the youth sector are set out in our Agenda 2020, which was endorsed by youth ministers. The Council of Europe's European Youth Foundation and European Youth Centres make a key contribution to the implementation of the Organisation's youth activities.

## Internet governance

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The internet is a space for democratic participation. However, it is also a space in which people's fundamental rights can be challenged. The Council of Europe has therefore worked to develop and promote relevant new standards. The 2011 Declaration on internet governance principles identified the internet's public service value. The 2014 "Guide to Human Rights for Internet Users" elaborates on human rights online, how they may be limited, and the remedies available for this. The Council of Europe also participates in regional and global dialogue on internet governance. It provides policy guidance and instruments to ensure that internet governance bodies take proper account of human rights and rule of law issues.

In sum, the Council of Europe has a powerful *acquis* that enhances the lives of 830 million Europeans, day in, day out. **It is in our interest to safeguard it, and to further strengthen it so that it addresses the challenges of the modern world.**

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27. In the framework of Recommendation CM/Rec(2010)7.

28. In April 2018, the Council of Europe Education Policy Advisors Network (EPAN) was launched with the aim to contribute to effective reforms in the 50 States Parties to the European Cultural Convention in respect of education for democracy and human rights in accordance with the objectives of the Charter on Education for Democratic Citizenship and Human Rights Education, in particular by encouraging integration of the Reference Framework of Competences for Democratic Culture.

# STRENGTHENING THE ACQUIS BY ADDRESSING MAJOR CHALLENGES

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## FORCED LABOUR (“MODERN SLAVERY”)

In Europe today, people trafficking for the purpose of labour exploitation – or forced labour – is a real and pressing problem. The Group of Experts on Action against Trafficking in Human Beings (GRETA) has raised concerns that existing convention obligations are not being met when it comes to this issue.<sup>29</sup> GRETA has established that trafficking for the purpose of labour has been on the rise for the last decade and is the predominant form of exploitation in some countries. All countries indicate an upward trend in this crime, albeit with a significant variation in the extent of the problem. **Part of the difficulty lies in the fact that there is no consensus on the definition of forced labour, which makes it more difficult to tackle.** Bringing to an end the abhorrent practice of forced labour within Europe should therefore be among the Organisation’s top priorities in the years to come.

### Scope and victim profiles

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GRETA’s reports show that labour trafficking takes different forms and occurs across various sectors, both in the formal and the informal economy. It concerns both women and men, but the number of identified male victims tends to be higher. Men are exploited primarily in the agriculture, construction and hospitality industries, and in manufacturing, fisheries and cleaning services. Trafficking for the purpose of exploitation in domestic and care work more frequently concerns women and is more difficult to detect. It takes place in private households where victims can be subjected to a combination of labour and sexual exploitation, sometimes in the context of forced or sham marriages. Cases of exploitation in diplomatic households, which could amount to human trafficking, have also been reported in some countries. Instances of child trafficking for the purpose of forced labour have also been identified: in the majority of cases in relation to forced begging or exploitation of criminal activities. Victims of trafficking for the purpose of labour exploitation are trafficked both cross-border and within their countries of origin or residence. There is a growing trend to choose victims via the internet, including on social media.

### Source of vulnerability

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Vulnerability to exploitation and trafficking is determined by a combination of factors. Many of these are structural and are linked to economic, labour and immigration policies. Limited resources for labour inspectorates, restrictions on collective bargaining and restricted access to channels for legal migration all contribute to labour trafficking. Migrant workers, especially seasonal and irregular migrant workers, as well as asylum seekers who have no access to the labour market, are particularly vulnerable. They lack power and status in society and migrant workers in an irregular situation have little access to remedy. They also lack protection against deportation. The fisheries industry is recognised as posing particular challenges to the resourcing and functioning of inspectorates and other oversight bodies. Domestic and care workers are also particularly vulnerable because the development of this market has been largely uncontrolled in many countries. People from Roma communities are also often affected by poverty, unemployment and inadequate access to services, putting them at risk. This is especially true of Roma children. Raising awareness of trafficking for labour exploitation, how to avoid it and where to look for assistance is important as many people still lack information about this phenomenon.

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29. GRETA, 7th General Report on GRETA Activities. March 2018. <https://rm.coe.int/greta-2018-1-7gr-en/16807af20e>.

## Identification challenges

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Labour trafficking is harder to detect than trafficking for the purpose of sexual exploitation. This leads to fewer reported cases. The statistics available on identified victims therefore do not reflect the true scale of the problem. The people concerned may not see themselves as victims or may mistrust the authorities because they are in an irregular situation. They might also prefer not to lodge complaints or be witnesses because they are often dependent on their traffickers for work and housing. There is also a knowledge gap when it comes to identifying this form of trafficking among relevant professionals. As a result, although there has been a gradual improvement in data collection, its relative scarcity in many countries means that it is difficult to have a fully clear picture.

## Difficulties in acknowledging the problem

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Both Article 4 of the Convention and Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings do refer to “forced labour” but neither defines the term. The case law of the European Court of Human Rights has given a broad meaning to “forced labour”, encompassing “forced services”, and there is therefore no distinction to be made between the two concepts. “Labour exploitation” in the context of trafficking in human beings is not defined as such in international legal instruments, but is taken to cover, at a minimum, forced labour or services, slavery or servitude.

However, different countries continue to have different understandings of what constitutes exploitative labour conditions and what falls under the scope of trafficking in human beings. Consequently, some states have struggled to acknowledge the existence or scale of human trafficking for the purpose of labour exploitation and have not addressed it sufficiently in their policy and practice. Courts’ restrictive interpretations of this type of exploitation may result in acquittals, or in cases being considered as simple labour law violations. For some time, there have been few successful prosecutions and convictions for trafficking for the purpose of labour exploitation. Many states parties have referred to difficulties in this regard.

The 2017 landmark judgment by the Strasbourg Court in the case of *Chowdury and Others v. Greece* did, however, bring a degree of clarity in this area. The Court found for the first time a violation of Article 4 of the Convention (prohibition of slavery and forced labour) in respect of trafficking for the purpose of labour exploitation.<sup>30</sup> It considered that trafficking could exist in spite of the victim’s freedom of movement. It concluded that authorities had failed to fulfil their positive obligations under Article 4 to prevent human trafficking, to protect victims, to effectively investigate the offences committed, and to punish those responsible for human trafficking offences. The judgment also highlights that Article 4 of the Convention must be construed in light of the Council of Europe Convention on Action against Trafficking in Human Beings, and of its interpretation by GRETA.

## Difficulties in addressing the problem

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Over the last decade, GRETA has issued recommendations to a number of member states on amending their national definition of trafficking in human beings. These recommendations are designed to ensure that all forms of exploitation provided for by the convention are covered. In response, a number of member states have revised their criminal law provisions. In its subsequent reviews of these amendments, GRETA stressed the need to explicitly include “servitude” and “practices similar to slavery” among the forms of exploitation which constitute trafficking in human beings; to state explicitly in legislation that consent is irrelevant to determining whether the crime of human trafficking has occurred; and to bring the interpretation of the “abuse of a position of vulnerability” into line with the convention, i.e. any state of hardship in which a human being is impelled to accept being exploited. GRETA noted that the majority of the Parties monitored had adopted provisions

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30. See *Chowdury and Others v. Greece* (application No. 21884/15), judgment of 30 March 2017. The Court took the view that restriction of freedom of movement is not a prerequisite for a situation to be characterised as forced labour or even human trafficking. The relevant form of restriction relates to certain aspects of the life of the victim in breach of article 4 of the Convention.

criminalising the use of the services of victims of trafficking, recognising the person as a victim. However, there have been very few related convictions.

Based on GRETA recommendations, many member states have adopted additional measures. These include comprehensive national strategies and action plans, the enlargement of existing co-ordination bodies and the setting-up of other structures or agreements. GRETA noted with concern, however, that in some countries trade unions are not recognised as a partner in anti-trafficking work. It is clear that the complex issues related to trafficking for the purpose of labour exploitation require a multidisciplinary approach at national and international level.

Extending the scope of labour protection over all sectors of the economy and over undocumented workers is vital. Access to compensation remains out of reach for most trafficked people. This is a failure by states parties to fulfil their duties. It also makes victims' rehabilitation more difficult. GRETA noted cases where victims of exploitation did not benefit from the non-punishment provision. The non-punishment provision holds that victims of trafficking should not be held responsible for crimes that they were compelled to commit. This includes administrative and immigration-related offences. GRETA has also urged the national authorities of most states parties to carry out a review on the application of the corporate liability provision. This should examine why no legal entities have been punished for trafficking-related acts and to take necessary measures to ensure that criminal liability is applied effectively.

These facts highlight the urgent need for action. The problem of human trafficking for the purpose of labour exploitation – often referred to as modern slavery – must be recognised properly. Victims must not be criminalised. Instead, they must be given effective protection and have effective access to compensation and legal redress. Perpetrators must be prosecuted. Again, this is about prevention, protection and prosecution. The Committee of Ministers should invite GRETA and the European Committee on Crime Problems (CDPC) to issue proposals to ensure that these principles are enforced in practice. **The possibility of a protocol to the Convention on Action against Trafficking in Human Beings should be considered.**

Among other issues, and building on best practices, a protocol could include provisions aimed at:

- ▶ providing a common legal definition of forced labour;
- ▶ encouraging states parties to consolidate offences prescribed by the convention into a single framework legislation that provides greater legal clarity;
- ▶ ensuring that State Parties introduce measures to restrict the activity of criminals who have been convicted of offences prescribed by the convention (e.g. prohibition of foreign travel) when there is a risk of new trafficking and/or exploitation offences being committed;
- ▶ encouraging harmonisation of related criminal legislation among State Parties;
- ▶ addressing the problem of human trafficking or forced labour on board vessels at sea;
- ▶ providing guidance on better identification and victim support;
- ▶ introducing a legal duty on public bodies to notify the relevant national authority about potential victims of trafficking and/or exploitation;
- ▶ establishing mandatory training for labour inspectorates and law-enforcement forces whose regular functions require that they are able to spot the signs of exploitation and take effective action;
- ▶ encouraging State Parties to extend the scope of labour protection over all sectors of the economy, and to reinforce labour inspections in sectors known to be prone to undeclared work and/or human trafficking;
- ▶ providing guidance on how to work collaboratively with the private sector to tackle forced labour in supply chains;
- ▶ providing a platform for the regular sharing of best practices aimed at tackling forced labour.



## ARTIFICIAL INTELLIGENCE

The Council of Europe should also further address the potential misuse and negative impact of artificial intelligence (AI) on human rights. AI facilitates progress in a wide range of fields, including industrial productivity, health care, transportation and logistics. At the same time, there is growing concern about the broader implications of the use, and possible abuse, of automated data processing and mathematical modelling. Individuals, communities and society at large are all affected by this. The Council of Europe member states are under an obligation to ensure that human rights, democracy and the rule of law are maintained by appropriate legislative frameworks.

### Potential risks of AI

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Modern technologies, most of which based on algorithms and machine learning, already influence the information we consume, the opinions we form and the everyday choices we make. They have also become indispensable in numerous areas of consumption, in commercial transactions, financial services, entertainment, education, transportation, etc. They have the potential to do much more. For example, to determine who should – and who should not – be entitled to health care, and what treatment is prescribed. They could assist in the identification of likely criminals, monitor their activities, and play a key role in determining their guilt. They might play a central role in recruiting employees and determining the conditions in which they work. These technologies will also fill roles as yet unimagined.

All of this brings potential benefits. However, progress in this area must not be made at the expense of European core values. The risks that accompany these innovations should not be ignored. People are right to ask whether a society driven by statistical models and machine learning might remain human but stop being humane. They are right to question whether innovation might undermine the human rights, democracy and rule of law which have been so hard won in Europe, and which the Council of Europe was established to protect.

The Committee of Ministers<sup>31</sup> has already expressed concern about increasing reliance on mainly privately-developed technologies that are applied in the absence of a commonly agreed regulatory framework – one that should safeguard rights. There is limited public knowledge about the unprecedented amount of personal information that is translated into behavioural data for machine-learning technologies. When online, users are frequently prompted to disclose their data, with or without their explicit awareness. This includes information on our health, politics and family life. The

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31. Decl(13/02/2019)1, Declaration by the Committee of Ministers on the manipulative capabilities of algorithmic processes (adopted by the Committee of Ministers on 13 February 2019 at the 1337th meeting of the Ministers' Deputies).

data allows developers to predict an individual's behaviour and preferences better than humans can. Predictive products are then traded at substantial prices in a new kind of marketplace. These practices are sometimes referred to as "surveillance capitalism". People using online technologies are often unaware of such data exploitation, trading and surveillance. It poses a clear challenge to the right to control one's own personal data and raises the prospect of a data monopoly controlled by a few large multinational companies.

Behavioural data and predictive products can also be used to shape personal preferences – sometimes subliminally – and to control the information we receive. Individuals can be subjected to behavioural experimentation. In fact, micro-targeted and sub-conscious algorithmic persuasion can affect our capacity to form opinions and take independent decisions. This has the potential to make individual manipulation easier, more efficient and less visible. This calls to mind the *Cambridge Analytica* scandal, which revealed how democratic electoral processes can be impacted in ways that raise serious ethical questions. The ill-intentioned use of AI can in fact affect virtually all aspects of society and daily life. The developers' power raises the question of democratic oversight.

There are also risks related to the methodologies used to process personal data. In particular, there are concerns that unless clear rights-oriented standards are followed, the processing and sorting of individuals into categories may facilitate and reinforce different forms of discrimination and segregation. Certain profiles may be prioritised over others. This could have a profound impact on individuals' lives and bias the social environment in which people make decisions. There are already clear indications that women, ethnic minorities, people with disabilities and LGBTI persons are particularly impacted by discrimination originating from biased algorithms. The Commissioner for Human Rights has pointed out<sup>32</sup> that flawed and subjective algorithms can have serious repercussions with respect to employment opportunities, decisions about health care and disability benefits, and the functioning of the justice system. Those at the receiving end are often unaware or lack access to remedy.

AI also risks being used to restrict legitimate free speech and self-expression. Lack of transparency by internet intermediaries regarding their algorithms' filtering methodology is a concern. So too is the possibility that facial recognition algorithms could be used to restrict unduly the rights to privacy, freedom of assembly and freedom of movement. Further work is needed to distinguish clearly what real advantages AI offers, what human rights risks accompany them, and how the Council of Europe can best act to prevent and mitigate these dangers.

## **Basis for action by the Council of Europe**

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The Council of Europe has long taken a leading role in helping its member states to harvest the opportunities that come with technological innovation while safeguarding the standards that stem from the Convention and other legal benchmarks. It was the first international organisation to ensure data-protection laws in Europe that respect individuals' rights. The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and its most recent protocol were central to this. The Council of Europe also drafted the first binding legal instrument on biomedicine and banned human cloning by means of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Oviedo Convention) and its protocols. The fight against cybercrime in Europe today is co-ordinated by means of our Budapest Convention.

In 2012, the Council of Europe initiated its ambitious Internet Governance Strategies (2012-2015; 2016-2019) to provide timely responses in an evolving digital environment. Fundamental guidance has been provided to member states in that regard.<sup>33</sup>

32. The Commissioner's Human Rights Comments, Safeguarding human rights in the era of artificial intelligence. 3 July 2018. [www.coe.int/en/web/commissioner/-/safeguarding-human-rights-in-the-era-of-artificial-intelligence](http://www.coe.int/en/web/commissioner/-/safeguarding-human-rights-in-the-era-of-artificial-intelligence).

33. For instance: the Recommendations CM/Rec(2016)5 on Internet freedom, or on the roles and responsibilities of internet intermediaries. In its work, the Council of Europe is co-operating not only with member states but with all relevant actors, including major internet companies and associations. It also takes an active part in major internet governance events.

Proactive steps to address some of the issues associated with AI have already been taken too. The Committee of Experts on Internet Intermediaries (MSI-NET) has published a study on the human rights dimension of automated data-processing techniques and possible regulatory implications.<sup>34</sup> The European Commission for the Efficiency of Justice (CEPEJ) adopted last December a European Ethical Charter on the use of AI in judicial systems<sup>35</sup> – the first international charter of its kind. Also, in February 2019, the Committee of Ministers adopted a Declaration on the manipulative capabilities of algorithmic processes. Currently, the Steering Committee on Media and the Information Society is finalising a draft recommendation on the human rights impacts of algorithmic systems, with specific guidance to member states on action that should be taken. This includes public communication and opinion forming. The Council of Europe is also looking at ways to help equality bodies prevent discrimination. Important as these measures are, it is clear that more must be done, for there is still no commonly agreed regulatory framework safeguarding rights.

## Ways forward

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The Council of Europe must move forward with new thinking: a strategic, transversal approach with the binding and non-binding frameworks that will protect the 830 million Europeans it represents. AI should be designed, developed and applied in line with European standards on human rights, democracy and the rule of law. The lack of transparency, accountability or safeguards when it comes to the development and use of AI should be addressed. The era of deep learning machines should bring more benefits and fewer concerns.

Clear, binding and enforceable rules should be legitimated through democratic processes. The Council of Europe should continue to engage with all relevant stakeholders, including those outside our continent. This should facilitate the broadest possible agreement on common principles and enforcement mechanisms across jurisdictions.

**In order to do this, the Committee of Ministers should explore the feasibility of a new legal instrument setting a framework for the development, design and application of AI in conformity with the Council of Europe standards on human rights, democracy and the rule of law.**

## INCREASED INEQUALITY

### A widening gap

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In many member states, the gap between rich and poor is growing ever wider. In some countries, unemployment remains stubbornly high. In others, the “working poor” are increasing in number: people who are employed but cannot afford a decent standard of living for themselves or their families, and who often rely on state benefits to supplement their earnings.

For millions of individuals, replicating their parents’ standard of living is impossible. In some countries, home ownership is an impossible dream for many, and rents are unmanageably high.

This reality jars with the post-war European vision of peace and prosperity. There is little doubt that it is eroding hope among our citizens and faith in our institutions. We see this in the cynicism – and sometimes violent protest – that are manifest in parts of Europe today. This strains our democracies. It is in no-one’s interest to ignore it. Inaction will only continue to feed the political extremes.

More than ever, the enforcement of social rights is required to tackle extremes of poverty and inequality and to rebuild social ties and trust in national governments and international organisations.<sup>36</sup>

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34. DGI(2017)12, Algorithms and Human Rights, study on the human rights dimension of automated data-processing techniques and possible regulatory implications. March 2018. <https://rm.coe.int/algorithms-and-human-rights-en-rev/16807956b5>.

35. CEPEJ, European Ethical Charter on the use of artificial intelligence (AI) in judicial systems and their environment, adopted at the 31st plenary meeting of the CEPEJ (Strasbourg, 3-4 December 2018). [www.coe.int/en/web/cepej/cepej-european-ethical-charter-on-the-use-of-artificial-intelligence-ai-in-judicial-systems-and-their-environment](http://www.coe.int/en/web/cepej/cepej-european-ethical-charter-on-the-use-of-artificial-intelligence-ai-in-judicial-systems-and-their-environment).

36. See the [message](#) (app. VII) from the Governmental Committee of the European Social Charter and the European Code of Social Security to the Committee of Ministers of the Council of Europe: Social rights still need protection and investment – A contribution to the reflection on priorities for the Council of Europe on the occasion of the 70th anniversary of the Council of Europe.

## Social rights in Europe

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Together with the European Convention on Human Rights, the European Social Charter embodies the best of the European democratic and social model. It outlines the fundamental rights required to ensure human dignity: the right to education, to health care, to housing, to fair remuneration, social security, and social assistance. This is a means to ensure social justice, consolidate inclusive societies and strengthen democratic security in our member states.

The Turin Process was launched in 2014. It promotes the implementation of social and economic rights at the continental level, in parallel to the civil and political rights guaranteed by the European Convention on Human Rights. Its key objectives include the ratification of the Revised European Social Charter and acceptance of the additional protocol that provides for a system of collective complaints by all Council of Europe member states.

## Renewed momentum

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Currently, the European Social Charter is in force in 43 out of 47 member states. Thirty-four member states are bound by the 1996 Revised Charter, and nine by the original 1961 Charter. Four member states have not ratified either of them.

Only 15 states are bound by the 1995 Additional Protocol providing for a system of collective complaints.

The reasons for the lack of further ratifications will be addressed by the Steering Committee for Human Rights (CDDH) in a forthcoming report on improving the implementation of social rights in Europe.<sup>37</sup> However, it is already known that some member states are deterred by the complexity of the monitoring procedures, and the scope of interpretation of the Social Charter/Revised Social Charter. A thorough analysis from the CDDH could serve as a basis for addressing these concerns through bilateral dialogue and assistance activities, with a view to obtaining additional ratifications.

**Clearly, the Turin Process therefore needs renewed momentum. Special attention should be devoted to responding to the concerns of the four member states that have neither ratified the 1961 Charter nor the revised one.**

**Assistance activities should also be designed and pursued to help every member state to accept additional provisions (preferably all) in the revised Charter.** Many states have accepted only a small number of articles. Whereas this “à la carte” system facilitates ratifications, it is time for the Committee of Ministers to make mandatory the acceptance of all nine core provisions.

Bolstering the European Social Charter also implies strengthening the authority of the European Committee of Social Rights (ECSR). Debates on enhancing its role and function should continue. **Focus should also be put on further strengthening knowledge about its decisions. The nomination process to the committee should also be refined.** This should include considering an increase in the number of members and an examination of the criteria for their selection. By increasing confidence in the institution, additional ratifications of the 1995 protocol will become more likely.

The Committee of Ministers can also further assist in the implementation of the decisions on collective complaints. For example, it should make more frequent use of its powers to make recommendations. This would increase the impact and visibility of the procedure.

It has been argued that the complexity of the reporting procedure has affected the ratifications. Serious thought should be given to simplifying it. A number of proposals to that effect have been put forward by the President of the ECSR.<sup>38</sup>

**Finally, the process of mutual harmonisation with the European Union’s standards should be brought forward.** It is important to ensure synergy between the European Social Charter mechanism and EU standards and to avoid conflicts between different instruments. The European Social

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37. See [CDDH terms of reference for the biennium 2018-2019](#), doc. CDDH (2018)1.

38. See the [message](#) of ECSR President Palmisano before the GR-SOC (January 2019).

Charter should be central to the implementation of the European Pillar of Social Rights and new ways to promote this should be explored.<sup>39</sup>

There should be further reflection on these issues in light of the conclusions within the CDDH's forthcoming report.

However, as a first step, **the Committee of Ministers should use the May 2019 ministerial meeting to reaffirm the paramount role of the Social Charter in guaranteeing and promoting social rights across the continent.** It should resolve to secure the long-term effectiveness of the Social Charter, in line with the Declaration issued on its 50th Anniversary in 2011.<sup>40</sup>

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39. [Speech](#) of the Secretary General (Social summit for fair jobs and growth, Gothenburg, 17 November 2017). See also "[The European Pillar Of Social Rights and the role of the European Social Charter in the EU Legal Order](#)", Olivier De Schutter, November 2018 (study prepared at the request of the Secretariat of the European Social Charter and of the Council of Europe–EU Agency for Fundamental Rights–European Network of National Human Rights Institutions–Equinet Platform on Economic and Social Rights).

40. Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter, adopted by the Committee of Ministers on 12 October 2011 at the 1123rd meeting of the Ministers' Deputies. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cc1d4](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cc1d4).



# CHAPTER III



*The 128th Session of the Committee of Ministers on 18 May 2018  
was held in Elsinore Castle, Helsingør, Denmark*

# TAKING STOCK OF THE REFORM PROCESS

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## A STRENGTHENED CONVENTION SYSTEM

Over the last decade a major reform process has been implemented within the Organisation. The first priority was to improve the Court's efficiency in light of its increased workload. In 2011 there were 150 000 applications pending. The capacity of the Court to play its pre-eminent role in protecting human rights in Europe was under threat. Consequently, so too was the credibility of the Convention system.

The swift ratification of Protocol No. 14 to the Convention was of primary importance to ensure that it entered into force. This was one of the Secretary General's key priorities after his election in 2009. This was achieved at Interlaken in 2010 with the Russian Federation's ratification.

Protocol No. 14 brought in a number of changes:

- ▶ single judges could declare applications inadmissible;
- ▶ three-judge committees could deal with well-founded cases supported by well-established case law;
- ▶ a pilot judgment procedure aimed at eliminating systemic or structural problems in member states was introduced.

These measures have better enabled the Court to focus on high priority or urgent cases. After Interlaken, additional reforms were agreed at high-level meetings in Izmir, Brighton, Brussels and Copenhagen. These too have improved its efficiency and productivity.

A key initiative was the 2015 Brussels Declaration on shared responsibility. This made it clear that everyone must take their share of the strain in defending and upholding the Convention system, first and foremost at the national level. In line with this basic principle, additional resources were devoted to helping member states bring their legislation into line with the Convention, and to help them train judges and lawyers on the case law of the Court.

As a result of these joint efforts, by the beginning of 2019, the Court's backlog was reduced to fewer than 57 250 pending cases. More than half of the applications come from four member states.

Additional resources were also allocated to the Department for Execution of Judgments. Its working methods were reviewed and improved in order to ensure the timely and appropriate execution of judgments by the Court. The total number of cases pending before the Committee of Ministers has fallen from nearly 10 000 in 2016 to 6 150 in 2018.

The combined reforms put in place so far have averted what was set to become an institutional crisis and succeeded in upholding the credibility of the whole system. Work to ensure the longer-term future of the Convention system continues.<sup>41</sup>

## **BETTER CO-ORDINATION WITHIN THE ORGANISATION**

Better co-ordination of the Organisation's activities and a gradual shift of focus and resources to the field have also been achieved. This included the creation of a new co-ordinating entity within the Secretariat with fund-raising capacity: the Office of the Directorate General of Programmes (ODGP). As a result, annual extra-budgetary funds have doubled since 2009, reaching a level of around 60 million euros today.

Structures were rationalised, including the merger of four Directorates General into two and the creation of the Directorate of Internal Oversight which ensures the audit of the Organisation and evaluates activities. For a number of member states, results-based action plans have been introduced.

These action plans are implemented primarily in the field. The Organisation now has a decentralised network of 17 field offices with a total of 300 staff members – twice as many as in 2009. This helps achieve better dialogue with member states and improved assistance for compliance with Council of Europe standards. Prior to 2009, there was a lack of co-ordination and focus: for example, in Kyiv, there were three different offices for three different projects. Those offices have now been consolidated into one.

Thematic action plans were also introduced, including on issues such as independence of the judiciary; building inclusive societies; the fight against violent extremism and radicalisation leading to terrorism; Roma and travellers; and migrant and refugee children. These action plans are co-ordinated and transversal. Importantly, they are funded by pooling the Ordinary Budget and extra-budgetary resources in order to achieve common objectives. The programme of activities and the budget were brought together into a single, streamlined document with fewer programme lines.

The Secretary General's annual report on the challenges facing Europe was introduced, which helps bring focus to the Committee of Ministers political priorities.

It is vital for the Organisation to respond rapidly and pragmatically to emerging issues in member states. To this end new mechanisms were introduced. These include the Platform to promote the protection of journalism and safety of journalists, the Special Representative of the Secretary General on Migration and Refugees, and the Private Office procedure on Human Rights Defenders.

Better co-ordination of monitoring bodies was also ensured. There is now an annual meeting that brings these bodies together, helps them to focus on priority areas and encourages them to adopt new working methods.

## **A SUSTAINABLE HUMAN RESOURCES POLICY**

It has also been important to address the challenge posed by the growing costs of human resources and ensure sustainability. Staff numbers increased significantly as a result of the enlargement of the Council of Europe during the 1990s and 2000s. Human resources policies had not adjusted to take full account of this. In order to contain staff-related costs, a number of changes were introduced:

- ▶ the number of years between salary steps was doubled;
- ▶ most of the existing staff allowances were reviewed;

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41. See Chapter 1, Political and legal challenges to our Convention system.

- ▶ a third pension scheme with lower benefits was introduced;
- ▶ 230 posts (12%) have been suppressed since 2010;
- ▶ a moratorium on the granting of permanent contracts was introduced in 2012, followed by a new contractual policy in 2014; the proportion of the workforce on flexible contracts has increased from 35.4% in 2013 to 45.7% in 2019.



*The 129th Session of the Committee of Ministers will be held in Finlandia Hall, Helsinki, Finland, on 17 May 2019*

# STRATEGIC PROPOSALS FOR MOVING FORWARD

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## STRENGTHENING INTERGOVERNMENTAL CO-OPERATION

There is a need to reaffirm the importance of intergovernmental co-operation within the Organisation. The role of our intergovernmental committees is crucial to the effectiveness of our Organisation.

The Council of Europe cannot respond to new challenges without common reflection and common answers agreed by our 47 member states – whether in the form of guidelines, advice, good practices or new standards.

Over the past 10 years intergovernmental work has been streamlined: the number of committees has been reduced; their mandates refined and time-limited; and their “production” of new standards pared back to what is essential.

Intergovernmental committees must use their resources to tackle subjects that are important for member states and where the Council of Europe has a real competence and added value compared to other organisations. At the same time, there should be sufficient flexibility in their terms of reference to maintain or adapt to urgent needs.

**Co-ordination and intergovernmental co-operation should be furthered enhanced.** This requires:

- ▶ strengthening multi-stakeholder participation, bringing in expertise from civil society, academia and business;
- ▶ strengthening interaction between intergovernmental committees, for example by:
  - more regular exchanges between the committees’ secretaries;
  - more dynamic use of multi-annual thematic strategies (internet, terrorism, etc.);
  - more use of thematic rapporteurs for transversal themes (gender equality, Roma issues, disability, etc.);
  - setting up an IT platform – a common database for intergovernmental committees, to facilitate access to information and co-ordination; collecting all relevant information on intergovernmental committees;
  - pursuing the practice of regular (annual) meetings for chairs of intergovernmental committees and supporting digital exchanges.

## STRENGTHENING THE MONITORING BY THE COUNCIL OF EUROPE

Further reforms should be implemented with a view to increasing the efficiency of the Council of Europe monitoring system. This includes both the monitoring by statutory bodies and the monitoring by convention-based and institutional mechanisms. Better co-ordination is needed between them, starting with the Parliamentary Assembly and the Committee of Ministers.

## Monitoring by statutory bodies

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### Parliamentary Assembly

As part of the Council of Europe's enlargement process, the Parliamentary Assembly identified specific commitments that applicant member states would make in order to uphold the Organisation's basic principles. On accession, the new member states freely undertook to meet these, in addition to their statutory obligations. Between 1993 and 1995, the Parliamentary Assembly adopted texts instructing its Political Affairs Committee and Committee on Legal Affairs and Human Rights to monitor closely the honouring of obligations and commitments and to report to it when problems arose. In 1994 it also emphasised that failure to honour commitments freely entered into would result in follow-up action. In 1997, a new monitoring mechanism was established, implemented under what is now commonly known as the Monitoring Committee.

The Parliamentary Assembly Monitoring Committee can conduct:

- ▶ a full monitoring procedure, with regular visits by two rapporteurs, (currently, this applies to 10 member states);
- ▶ a post-monitoring dialogue, which is a less intensive procedure applied to member states that have made progress, (currently this applies to three member states);
- ▶ periodic reviews of all other member states every five to six years, (currently this applies to 34 of the 47 member states);
- ▶ a report on the functioning of democratic institutions in any member state when particular developments warrant this.

### Committee of Ministers

Building on the 1994 Committee of Ministers Declaration on compliance with commitments by member states, the Committee of Ministers has also developed monitoring procedures. It conducts the monitoring of commitments undertaken upon accession and on the basis of the Parliamentary Assembly opinions. Today, this applies effectively to three member states.

Monitoring by the Committee of Ministers has also contributed to ensuring that the states concerned fulfil their obligations and commitments. A number of monitoring procedures have since been discontinued, in light of the progress achieved.

However, it has been suggested on a number of occasions that monitoring by the Parliamentary Assembly and the Committee of Ministers lacks efficiency and could be further improved. For example, there have been concerns that the monitoring procedure and post-monitoring dialogue by the Parliamentary Assembly are applied only to a few countries and for a prolonged period, creating "monitoring fatigue" by the states concerned. Some have also questioned the political neutrality of the process and the lack of clear criteria for starting and ending the procedures.

Monitoring by the Committee of Ministers has often lacked a foreseeable and defined end point, disquieting some of the states concerned. Moreover, the Committee of Ministers' monitoring procedures concern only a few countries and are sometimes perceived not to have been applied to other member states where similar, pressing issues have emerged. Whether or not these concerns are valid, they continue to affect co-operation and, ultimately, the efficiency of monitoring.

## Monitoring by convention-based and institutional mechanisms

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In addition to the statutory bodies, monitoring functions are performed by specialised institutions and monitoring bodies. These were set up by specific treaties or Committee of Ministers resolutions and include:

**The Commissioner for Human Rights:** the Commissioner's Office is an independent and impartial non-judicial institution whose mandate is to foster the effective observation of human rights, and

assist member states in the implementation of such standards. The Commissioner also promotes education in and awareness of human rights; identifies possible shortcomings in the law and practice; facilitates the activities of national ombudsperson institutions; and provides advice and information regarding the protection of human rights across the region. The activities of this institution focus on country visits, thematic reporting and awareness raising.

**The European Commission for Democracy through Law:** better known as the Venice Commission, this advisory body provides legal advice – by way of opinions – to its member states. It aims to help them bring their legal and institutional structures into line with European standards in the fields of democracy, human rights and the rule of law. It can provide “emergency constitutional aid” to states in transition. It adopts a non-directive approach based on dialogue. It also produces studies and reports on topical issues.

**The European Committee for the Prevention of Torture (CPT):** the CPT oversees places of deprivation of liberty. It does so by organising visits to detention sites and assessing the treatment of people deprived of their liberty. After each visit, the CPT sends a detailed report to the state concerned, containing findings, recommendations, comments and requests for information. Since its creation in 1990, the CPT has carried out more than 400 visits across the Council of Europe’s 47 member states. While the CPT can already conduct ad hoc visits, it is proposed to strengthen this provision in cases of emergency situations (see proposal in subsequent pages).

**The European Committee of Social Rights (ECSR):** the committee monitors compliance with the Social Charter under two complementary mechanisms: through collective complaints lodged by the social partners and other non-governmental organisations, and through national reports drawn up by contracting parties. Decisions and conclusions of the committee must be respected by the states concerned; even if they are not directly enforceable in the domestic legal systems, they set out the law and can provide the basis for positive developments in social rights through legislation and case law at national level.

**The Advisory Committee of the Convention for the Protection of National Minorities:** this is the independent expert committee responsible for evaluating the implementation of the Framework Convention in state parties and advising the Committee of Ministers. The results of this evaluation consist of detailed country-specific opinions adopted following a monitoring procedure. This procedure involves the examination of state reports and other sources of information as well as on-the-spot meetings with governmental interlocutors, national minority representatives and other relevant actors. Monitoring by the Advisory Committee has in many cases played a crucial part in prompting improvements in the implementation of the Framework Convention.

**The Committee of Experts of the European Charter for Regional or Minority Languages:** the committee’s role is to evaluate a state party’s compliance with its undertakings, to recommend improvements in legislation, policy and practice, and to report to the Committee of Ministers. In addition, once every two years, the Secretary General of the Council of Europe presents to the Parliamentary Assembly a detailed report on the application of the Charter.

**The European Commission against Racism and Intolerance (ECRI):** this body is entrusted with combating racism, racial discrimination, xenophobia, anti-Semitism and intolerance. It is composed of independent members. ECRI carries out country monitoring activities, dealing with all member states on an equal footing. Each report contains an analysis of the situation in the state concerned and makes recommendations to the relevant government on how to tackle the problems identified.

**The Group of Experts against Trafficking in Human Beings (GRETA):** the monitoring mechanism of the Convention on Action against Trafficking in Human Beings consists of two pillars: (i) the Group of Experts on Action against Trafficking in Human Beings (GRETA), a technical body composed of independent and highly qualified experts, and (ii) the Committee of the Parties, a more political body, consisting of representatives of the parties to the convention. GRETA issues reports evaluating the measures taken by the parties to implement the convention. The Committee of the Parties may then make recommendations to ensure the implementation of GRETA’s conclusions. GRETA’s

reports have a substantial impact on tackling human trafficking. It is now proposed to strengthen GRETA's capacity to address the scourge of forced labour (see Chapter II).

The **Group of States against Corruption (GRECO)**: GRECO's objective is to improve its members' capacity to fight corruption. It does this by monitoring their compliance with Council of Europe anti-corruption standards – in particular the Criminal Law Convention on Corruption<sup>42</sup> and the Civil Law Convention on Corruption<sup>43</sup> – and employing a dynamic process of mutual evaluation and peer pressure. This helps to identify deficiencies in national anti-corruption policies. Its monitoring consists of a "horizontal" evaluation procedure. Recommendations follow and are aimed at ensuring any necessary legislative, institutional and practical reforms. A compliance procedure is designed to assess the measures taken by its members to implement the recommendations. GRECO also provides a platform for the sharing of best practices.

The **Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL)**: the committee assesses compliance with the principal international standards to counter money laundering and the financing of terrorism. MONEYVAL also makes recommendations to national authorities on how to do these things more effectively. All MONEYVAL reports automatically become public documents.

The **Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)**: this is composed of independent and impartial experts. GREVIO publishes reports evaluating member states' measures to implement the Convention on Preventing and Combating Violence against Women and Domestic Violence. In cases of serious or persistent violence covered by the convention, GREVIO may initiate a special inquiry procedure. Some eight country reports have already been published as part of the first (baseline) evaluation.

The **Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Committee)**: the Lanzarote Committee evaluates the protection of children against sexual violence in state parties. When a situation requires immediate attention, the Lanzarote Committee may also request the urgent submission of a special report.

The **Congress of Local and Regional Authorities**: the Congress is responsible for evaluating the application of the European Charter of Local Self-Government in each member state. It carries out regular general monitoring visits. It may also focus on a particular aspect of the Charter or organise urgent fact-finding missions to situations of concern. It pursues a regular "post-monitoring" and "post-electoral" political dialogue with member states to ensure the implementation of its recommendations.

Many of these specialised institutions and monitoring mechanisms' added value resides in the cyclical nature of their work. The periodic, thorough assessment of all member states, in line with established criteria, sets them above the political controversies of the day. Their strength also derives from the fact that their activities largely build on the case law of the European Court of Human Rights. Monitoring is a complex exercise. Its ongoing effectiveness requires continued political and financial support. It also requires confidence, respect, consistency and non-politicisation. The monitoring mechanisms must also be able to evolve and adapt to new challenges.

The 2014 Annual Report by the Secretary General identified the need for consistency and the prevention of duplication. It pointed out that some standards are monitored by two or more separate monitoring bodies and that this may create overlap. It also noted that periodic country-by-country evaluation cycles are sometimes too long. This is a particular challenge where the Organisation needs to react rapidly to ongoing events.

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42. The Criminal Law Convention on Corruption is an ambitious instrument aiming at the co-ordinated criminalisation of a large number of corrupt practices. It also provides for complementary criminal law measures and for improved international co-operation in the prosecution of corruption offences.

43. The Civil Law Convention on Corruption is the first attempt to define common international rules in the field of civil law and corruption. It *inter alia* deals with compensation for damage; liability (including state liability for acts of corruption committed by public officials); contributory negligence; validity of contracts; protection of employees who report corruption; clarity and accuracy of accounts and audits; acquisition of evidence.

Since then, much has been done to remedy these shortcomings. Most monitoring bodies have increased their capacity for rapid reaction and become more flexible. They have also developed, or are developing, mechanisms for ad hoc action, either to be included in their statute or at the level of the rules of procedure. They have in some cases conducted common visits to member states. This approach should be pursued.

However, there are concerns about the recurrence of cases where the opinions and recommendations of monitoring bodies are ignored. Equally, these bodies have sometimes faced harsh criticism simply for doing their work. **In such cases, there should be increased political support including from the Committee of Ministers and the Parliamentary Assembly.**

### **New monitoring approach to critical developments**

Recent developments have proved that the Council of Europe must be able to react quickly and effectively.

Currently, where there are urgent concerns about a member state's compliance with statutory obligations and specific commitments, several actions are possible. The Secretary General can trigger Article 52 of the Convention and begin an inquiry procedure.<sup>44</sup> The Ministers can start the formal monitoring of a specific country on the basis of the 1994 Committee of Ministers Declaration on compliance with commitments by member states of the Council of Europe.<sup>45</sup> It can also trigger Article 46.4 of the Convention,<sup>46</sup> as was done in the Ilgar Mammadov case. Similarly, the Parliamentary Assembly can initiate its monitoring procedures. The Human Rights Commissioner also has a broad mandate and the capacity to act.

However, experience has revealed the limits of this compartmentalised approach. Lack of co-ordination has seriously hampered the ability of the Council of Europe to react efficiently.

The Organisation can respond by becoming more efficient – if the political will to do so exists. For this, the two statutory organs – the Committee of Ministers and the Parliamentary Assembly – must work in a co-ordinated manner.

The Joint Committee fulfils a co-ordinating role between the two. Its main functions are:

- ▶ to examine the problems that are common to the Committee of Ministers and the Parliamentary Assembly;
- ▶ to draw the attention of those two organs to questions which appear to be of particular interest to the Council of Europe;
- ▶ to make proposals for the draft agendas of the Committee of Ministers and the Assembly sessions; and
- ▶ to examine and promote means of giving practical effect to the recommendations adopted by one or other of these two organs.

**In practice, the Joint Committee has dealt primarily with interinstitutional issues. Its activities should include examining problems that are common to the Committee of Ministers and the Parliamentary Assembly, as foreseen in its mandate.**

44. As per Article 52 of the Convention, on receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

45. The main objective of the 1994 Declaration was to set up a special mechanism enabling the Committee of Ministers to examine any situation or theme related to the implementation of the statutory obligations by the member States or of specific commitments in the fields of democracy, human rights and the rule of law.

46. As per Article 46.4, If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that party has failed to fulfil its obligation to execute the related judgment.

This would empower the Parliamentary Assembly and the Committee of Ministers to better ensure the statutory compliance of member states, especially concerning Article 3 of the Statute.<sup>47</sup>

On the initiative of the Parliamentary Assembly and/or the Committee of Ministers, the Joint Committee would establish an “enhanced dialogue procedure” with the state concerned.

The Joint Committee would invite the Secretary General with to create an ad hoc transversal task force within the Secretariat. This would conduct the “enhanced dialogue” with the state concerned. Activities might include:

- ▶ country visits and meetings with the authorities and civil society;
- ▶ visits to places of detention;
- ▶ requests for additional information; and
- ▶ the participation of high-level representatives.

Reports, conclusions and recommendations issued as part of the enhanced dialogue would be made public rapidly.

Triggering this enhanced dialogue process would not confirm a serious breach of obligations, but signal that serious concerns to that effect exist. The process is aimed at lifting these concerns through jointly identified measures that fall within the expertise of the Council of Europe. This is in line with the Organisation’s ethos of co-operation. As such, the state concerned would be expected to co-operate with the task force in good faith. It would also be expected to continue fulfilling its other obligations.

The Secretary General would report back on whether the state concerned has co-operated and whether the serious concerns persist. In the case of effective co-operation, follow-up measures could be applied. In the case of a marked lack of willingness to co-operate, the reporting by the Secretary General could include recommendations to the Committee of Ministers that it should make use of the powers conferred on it by Articles 7 and 8 of the Statute.<sup>48</sup> According to the Statute, the Committee of Ministers has the power to apply articles 7 and 8 after consulting with the Parliamentary Assembly. The Parliamentary Assembly also has a right to recommend to the Committee of Ministers that it apply these articles.

Overall, this approach will increase the cohesion and effectiveness of the Organisation when faced with critical developments. Endorsing this proposal would allow the Council of Europe to emerge from the current institutional crisis with strengthened authority. This approach does not require any change to the Statute.

## **ADDRESSING THE CHALLENGE OF “GREY ZONES”**

As a result of revolutionary change in Europe at the end of the 1980s and beginning of the 1990s, the continent as a whole embraced democratic development and human rights as a means to achieve greater unity. However, there are still areas in Europe known as “grey zones”. Here, European standards are not applied and individuals are deprived of basic rights. This phenomenon should be addressed definitively by the Council of Europe.

The Organisation has made progressive and comprehensive efforts to engage with these territories and to provide support to conflict-affected populations. These efforts have proven largely ineffective. Access and engagement with the *de facto* authorities is the principal problem. The governments of member states’ suffering from territorial conflicts are understandably sensitive to any situation that may be seen as a voluntary or involuntary step in a recognition process of a breakaway territory.

47. As per Article 3 of the Statute, every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council.

48. As per Article 8 of the Statute, any member of the Council of Europe which has seriously violated Article 3 (which refers to the respect for the rule of law, human rights and fundamental freedoms) may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under the procedure foreseen in Article 7.

This concern is very well understood in the Council of Europe. That is why all of its actions relating to conflict areas are conducted in agreement with the member states of which such a territory is part. This fully respects member states' sovereignty and territorial integrity.

The fundamental rights of every European should be protected equally. Those in the midst of so-called "frozen" or "protracted" conflicts are no exception. The protection of these rights should be considered as a step in resolving the conflicts in which civil populations suffer the most. Full protection, as provided by the Convention, cannot be achieved instantaneously. However, access by the Commissioner for Human Rights should be seen as a first step, and an absolute priority.

**Resolution (99) 50 of the Committee of Ministers, establishing the institution of the Commissioner for Human Rights, should therefore be completed to clarify that the Commissioner must have full, free and unrestricted access to all unresolved conflict zones, at any time, and by use of any possible and secure means of access.<sup>49</sup>**

**It should also be stressed in Resolution (99) 50 that none of the Commissioner's visits to an unresolved conflict zone and no meetings with any representative of the *de facto* authorities shall be considered as addressing a territorial status issue or as part of a recognition procedure.**

## **ENHANCING THE ABILITY OF THE CPT TO REACT TO EMERGENCY SITUATIONS**

Over the course of the past 10 years, there have been several emergency situations relating to the deprivation of liberty, with allegations of torture and/or inhuman or degrading treatment. In a number of cases, an immediate response was required from the Council of Europe. This was not always possible and, at times, the extended confidentiality of CPT ad hoc visits limited the overall ability of the Council of Europe to respond to urgent situations.

**A special mechanism should therefore be created for emergency situations. This should be done by means of a revision to the rules of procedure or by a possible protocol to the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.**

In doing so, consideration should be given to the fact that:

- ▶ as per Article 7.1. of the above-mentioned convention, the CPT is already entitled to organise visits – other than periodic visits – as it considers required by circumstances;
- ▶ as per Article 8.1, after having notified the authorities of the state concerned, the CPT may already visit, at any time, any place within its jurisdiction where persons are deprived of their liberty by a public authority.

Efforts should therefore focus on strengthening the procedure for initiating ad hoc visits, ensuring that emergency visits are carried out when necessary.

The report produced as a result of an emergency visit shall remain confidential but be disclosed immediately to the Secretary General and the Committee of Ministers. They should then propose any follow-up action, if required.

## **ENSURING THE SUSTAINABILITY OF THE ORGANISATION**

Promoting and protecting human rights, democracy and the rule of law is a long-term mission. The internal machinery of the Council of Europe must be fit for that purpose. Additional and urgent reforms are needed to ensure its sustainability.

### **Creating a special fund – The Helsinki Fund**

The Council of Europe is currently facing budgetary constraints that highlight the need for alternative funding sources for its activities. **Member states are therefore invited to express their support for the Organisation through non-earmarked voluntary contributions towards the Ordinary Budget.**

<sup>49</sup>. This does not imply any amendment to Resolution (99)50 of the Committee of Ministers.

The ministerial session of the Committee of Ministers in Helsinki in May 2019 provides an excellent opportunity to launch a special fund (the Helsinki Fund) for this purpose.

### **Increasing the Working Capital Fund**

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There is no solid mechanism in place to mitigate the absence of substantial income. The current working capital fund is €3.5 million (1.1% of the total assessed contributions to the budgets of the Council of Europe). Recent events have shown that this is not a sufficient base.

The External Auditor has previously recommended increasing this financial buffer. **A €30 million working capital fund would help to safeguard the financial liquidity of the Council of Europe's statutory activity in the event of a sudden and substantial loss of income.** This increase could be financed over several years using the year-end budgetary surplus.

### **Moving away from the zero nominal growth policy**

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The Council of Europe has been operating over the past several years in a “zero nominal growth” (ZNG) environment. This means that, in practice, the Organisation is gradually, but steadily reducing its budgeted activities and losing staff, year after year. Since 2010, over 230 posts have been frozen or cut from those funded by the Ordinary Budget. This amounts to a 12% reduction in those staff. The output, reputation and role of the Organisation are being affected negatively by this.

A continuation of the ZNG policy will lead to a further and constant erosion of the Organisation's capacity to deliver. This is in clear contradiction to the objectives set by our member states. The financial framework should match the Organisation's priorities.

**A return to the zero-real-growth (ZRG) model – where member states' contributions are adjusted by the rate of inflation in the host country – is a minimal step required to stop the ongoing erosion. It would also be better aligned with the concept of shared responsibility.**

### **Adapting the rules and scale applied to contributions**

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Recent events have highlighted a lack of guidance on obtaining and withdrawing from major contributor status.

More formalised rules in this area are in the interests of sound financial management. They could provide more predictability of resources over a given period of time. **This would involve defining a minimum period of membership in the group of major contributors and a minimum period of notification of withdrawal from that group.** It is proposed that:

- ▶ the member state taking the initiative to become a major contributor should commit to this for at least 10 years (five biennia);
- ▶ if the member state wishes to cease being a major contributor, notification to the Secretary General should be given at least two years before the start of the biennium in which withdrawal from major contributor status would become effective.

In practical terms this would mean that if a member state expressed its intent to become a major contributor for the 2020-2021 biennium, this commitment would last until the end of the 2028-2029 biennium. It would continue to be a major contributor until it gave notice of its decision to cease. If the notification was made before 1 January 2028, its major contributor status would cease with effect for the biennium 2030-2031. If notification was made during the biennium 2028-2029, its major contributor status would cease with effect from the biennium 2032-2033.

**In addition, it is proposed that a third category of membership between that of major contributor and normal contributor should be introduced.** This would make it possible for member states willing to contribute more to the Ordinary Budget to do so. The above-mentioned formalised rules for major contributors would apply to this category as well.

## **Towards a more sustainable economic model**

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In line with the spirit of previous proposals, **the Organisation should move away from the practice of providing certain services for free.** Today, the vast majority of conventions with follow-up mechanisms do not require a financial contribution to their running costs from non-member states. However, when a non-member state ratifies such a convention, this increases the cost of the follow-up mechanism (in terms of human and operational resources). The financial burden then falls solely on the Ordinary Budget. This should change.

**New non-member states which participate as of right in the follow-up mechanism of a convention should be asked to contribute to the financing of that convention.** This should be a condition of ratification. Current non-member states should be invited to do the same.

**Furthermore, all new conventions should include a clause to the effect that non-member states must contribute to the financing of the follow-up mechanisms.**

There are ongoing discussions with the European Union about the possibility that it will make an un-earmarked contribution to the Council of Europe.

**An appropriate level of participation by the European Directorate for the Quality of Medicines & HealthCare (EDQM) and of the Council of Europe Development Bank (CEB) should be explored.**

**In principle, the Council of Europe should be funded by public money. However, there is scope for the Committee of Ministers to explore targeted private funding for specific tasks. The Committee of Ministers should define a framework for any such partnerships with private interests.** This framework would enable private companies and individuals to make grants to the Council of Europe. It would also ensure that any private contribution in no way biased the objectives or work of the Organisation.

## **Adopting a four-year strategic framework**

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**The Organisation's priorities should be set on the basis of a four-year strategic framework.** This would ensure more stability and therefore enable more impact.

Under a four-year framework, the Programme and Budget, grouped around a limited number of main thematic priorities, would focus on performance across the programme lines. There would be clearer objectives and a smaller set of high-quality performance indicators. The number of programme lines would be reviewed by, for example, bringing some together to increase flexibility, improve synergies, and allow greater responsiveness when faced with new challenges.

This way, political priorities would drive the budget, not the other way round.

Within this framework, the technical implementation should define two sets of expected results and/or indicators for each programme line and on a biennial basis:

- ▶ the first in accordance with the foreseen Ordinary Budget;
- ▶ the second open to additional funding towards the Ordinary Budget (viz the Helsinki Fund).

## **CONTINUING STRUCTURAL AND ADMINISTRATIVE REFORMS**

### **Functions and election procedure of the Deputy Secretary General**

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It is important that the Secretary General and the Deputy Secretary General continue to share the same vision and priorities for the Organisation.

The incumbent Deputy Secretary General has concentrated on issues related to the implementation of the Secretary General's reform agenda and the overall high-level management of the Organisation. **The priorities of the Deputy Secretary General include overseeing the Programme and Budget, as well as staff policy. We should ensure the continuity of this approach by amending the relevant rules of procedure accordingly.**

Experience has proven that the Secretary General benefits from the strong support of a Deputy who has an in-depth knowledge of the Organisation and comes from within it. **It should therefore also be agreed that only staff members are eligible for this post and that only the Secretary General has the competence to propose a candidate.**

It is current practice for serving staff members to seek election to the post of Deputy Secretary General. In practical terms, this requires proactive campaigning. This is highly unusual for an international organisation and an unhealthy situation.

## **Administrative reform and the People Strategy**

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The Council of Europe has implemented a succession of reforms over the past 10 years.

These have made the Organisation leaner and more efficient, with a clear focus on our priority activities.

By following this approach, the Council of Europe has been able to absorb a budget cut of almost 7% following Turkey's decision to stop being a major contributor from 1 January 2018, plus the cumulative impact of the ZNG policy that remains in place.

The ongoing administrative reform is guided by two principles: delivering value for money and maintaining a modern and attractive organisation.

In the human resources field, measures concern the revision of hierarchical structures and mobility within the Organisation. This has resulted in a reduced number of high-level posts and internal reorganisations.

A People Strategy for the period 2019-2023 is currently being finalised. It covers all aspects of human resources management (people management, and working environment and culture, as well as human resources policies, regulations and procedures). This strategy foresees fundamental changes to the way in which we work together within the Secretariat. Some of the main areas under consideration include:

- ▶ employment contract reform;
- ▶ enhanced workforce planning to ensure the continuous close alignment of staffing to organisational priorities in the short and medium term;
- ▶ a review of recruitment and development strategies and tools;
- ▶ further measures to increase staff mobility, in particular to the field offices;
- ▶ the streamlining and simplification of human resources regulations and procedures.

With regard to work procedures, measures already implemented include:

- ▶ initiatives for moving towards paperless working methods;
- ▶ a streamlining of the procedures linked to buildings;
- ▶ the introduction of an integrated procurement tool;
- ▶ the expansion of the use of videoconferencing and greening initiatives.

The main proposals for further reforms comprise:

- ▶ a review of the current travel procedures and practices to lower costs and administrative overhead;
- ▶ a review of the translation working methods to improve their efficiency and effectiveness while guaranteeing an acceptable standard of service;
- ▶ an analysis of the financial procedures of each entity in order to identify and cut red tape;
- ▶ use of remote interpretation and other cost-saving innovations;
- ▶ better usage of IT technologies across all working methods (a new IT strategy was adopted in July 2018).



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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.