Strengthening the Ability of the Council of Europe to Pursue Its Mission and Restoring Its Credibility: Recommendations on Pertinent Reforms

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Introduction

This position paper presents specific recommendations in ten areas of the work of the Council of Europe (CoE) where reforms are needed in order to strengthen the organisation's ability to pursue its mission and restore its credibility after several crises negatively affected it in 2014-2019. The recommendations are addressed to various actors, first and foremost the member states, the Committee of Ministers (CM), the Parliamentary Assembly (PACE) and the Secretary General (SG).

The paper reflects the views of the authors, endorsed by the Board of the EU-Russia Civil Society Forum[2], and draws inspiration from reflections on the part of a number of civil society experts and ideas put forward during a series of discussions involving civil society organisations (CSOs) from various countries, representatives of various CoE bodies and diplomats from member states over the last few years.

Analysis of the challenges the CoE faces and justification of the recommendations made in this paper are elaborated in more detail in a more extensive discussion paper produced by the same authors, *Strengthening the Ability of the Council of Europe to Pursue Its Mission and Restoring Its Credibility: Discussion of Pertinent Reforms*, which is due to be released in early 2021.

2 The authors are grateful to the EU-Russia Civil Society Forum for its support and to colleagues who have commented on the earlier drafts of the paper, including members of the Forum's Board and Advocacy Taskforce and the participants of the Legal Dialogue Symposium "Role of Civil Society in the Council of Europe: Strengthening the Mechanisms to Address Current Challenges in Human Rights and Rule of Law", held by the EU-Russia Civil Society Forum on 31 October – 1 November 2019 in Berlin.

Recommendations

1. Prioritise the use of legal tools and ensure that political decisions are based on expert assessment

The CoE's main strength lies in its well-elaborated legal framework and the professionalism of its expert bodies and institutions such as the European Court of Human Rights (ECtHR), the Commissioner for Human Rights and the specialised monitoring and advisory bodies, mandated to draw conclusions on the member states' compliance with this framework.

Political bodies are better equipped for a fast reaction to negative developments with regard to human rights, democracy and the rule of law in member states, as evaluations by expert mechanisms can take months or even years to be submitted (particularly in the case of ECtHR judgements). However, any political decisions taken by CoE statutory organs (the CM and the PACE) to address alleged violations by member states would be more credible and carry more weight if based on legal and expert assessments. This would help to mitigate potential accusations of "political bias" and "double standards". Thus, we propose the following recommendations:

• Political action by CoE statutory organs should build upon a decision on an alleged norms violation passed by judicial and quasi-judicial bodies (in particular, the ECtHR and the European Committee for Social Rights) and / or an expert assessment of the respective situation issued by monitoring and advisory bodies and institutions (Committee for the Prevention of Torture – CPT, Commissioner for Human Rights, Venice Commission, etc.).

• The role of political bodies should be to raise initial concerns and seek a speedy assessment of the situation by the respective expert mechanism to determine whether a violation of a state's obligations took place and what should be done to remedy it. After such an expert assessment, it is up to the political bodies to define necessary steps in response and ensure a proper follow-up.

• In some cases, political bodies may decide to create an ad-hoc expert mechanism for providing them with advice on a specific country situation (as was the case with the International Advisory Panel on Ukraine, constituted in 2014 by the SG to oversee investigations into the violent incidents which took place in the country from 30 November 2013 onwards).

• The precedent of the CoE's reaction in 1968-1969 to violations by Greece under the military junta, in which political action by the PACE and the CM followed consideration by the Court of an inter-state complaint, could serve as a model in this regard.

• In general, member states should give priority to employing legal tools instead of relying too much on adopting and promoting political declarations and resolutions. Such legal tools could include:

— submission of inter-state complaints to the ECtHR in serious cases involving mass human rights violations;
— third-party interventions on complaints submitted by other states;
— a more active and effective engagement in the procedure for supervision of execution of ECtHR judgements at the CM;
— triggering more often, where appropriate, the infringement procedure in the CM under Article 46.4 of the Convention (sending the case back to the Court to determine if a state has persistently failed to implement the judgement and thus violated its binding obligation under Article 46.1). The positive experience of applying the procedure in the case of Ilgar Mammadov vs. Azerbaijan should be encouraging. The CM should define and implement clear criteria for selecting cases in which the infringement procedure should be triggered.

• Member states should strongly support the work of judicial and expert bodies both financially and politically (see para. 2 and 7).

• Legal decisions and expert conclusions by CoE mechanisms can also serve as a stronger basis for political actions by individual member states in their bilateral relations, as well as for actions by the European Union in respect of the third countries (see para. 10).

2. Ensure that the main priorities of the CoE are appropriately reflected in its programmatic and budgetary framework

In view of the deteriorating observance of its norms and standards by member states and serious challenges posed to the European normative framework, the CoE should review its current priorities and refocus them to the core goals of its mandate – protecting human rights, the rule of law and democracy – with a clear emphasis on activities aimed at monitoring the observance by member states of their statutory and conventional obligations and ensuring their implementation. These priorities should be clearly reflected in the organisation's programmatic and budgetary framework. To this end,

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- it is mandatory that the CoE's convention-based bodies (in particular the ECtHR and the CPT), other specialised monitoring bodies (such as the European Commission against Racism and Intolerance – ECRI – and the Group of States against Corruption – GRECO), as well as such key institutions as the Commissioner for Human Rights and the Venice Commission, are granted sufficient human and financial resources to fulfil their mandates and to address specific country situations and cases in a timely and efficient manner;

- funding allocated to these bodies and institutions should under no circumstances be cut. At the very least, this would mean that a policy of "zero real growth" be consistently applied to the organisation's budget to take account of inflation[3];

- to strengthen these bodies and institutions, their funding should be significantly increased. Engaged member states should increase earmarked voluntary contributions. If these contributions are not sufficient, available funds in the Ordinary Budget should be redistributed from technical assistance and capacity-building programmes to standard-setting and monitoring activities. Decisions on launching and / or continuing technical assistance programmes should be taken on a strict basis of impact assessment and conditionality.

Lessons should also be learnt from the severe budgetary crisis, which shook the organisation in 2017–2019 when Russia froze its CoE contributions for almost two years and Turkey decided in 2018 to withdraw as one of the six major contributor states:

- Specific proposals on ensuring the CoE's financial sustainability made in 2019 by the PACE[4] and the previous SG[5] should be seriously considered in discussions on further reforms, in particular:

— setting minimum scales for member states' contributions to cover at least the administrative cost of a judge at the ECtHR;
— opening a reserve account funded by the unspent balance at the close of each financial year / biennium;
— creating a special fund for non-earmarked voluntary contributions by member states;
— tightening rules on obtaining and withdrawing from the "major contributor" status by member states to ensure better predictability of funding
— introducing a third category of membership (between that of "major contributor" and "normal contributor" states) for states willing to contribute more to the Ordinary Budget;
— a requirement for non-member states participating in CoE enlarged agreements to contribute to the financing of follow-up mechanisms of these agreements.

3 In November 2019, the Committee of Ministers succeeded in adopting the CoE Programme and Budget for 2020-2021, which finally moved to the policy of "zero real growth" after six years of no adjustments for inflation ("zero nominal growth"). See: Council of Europe Programme and Budget 2020–2021, CM(2020)1, 20 December 2019, https://rm.coe.int/0900001680994ffd.

4 Opinion 297 (2019) Budget and Priorities of the Council of Europe for the Biennium 2020-2021, adopted on 25 June 2019, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=27992&lang=en.

5 "Ready for Future Challenges – Reinforcing the Council of Europe". Report by the Secretary General for the Ministerial Session in Helsinki, 16-17 May 2019, https://rm.coe.int/native/090000168093af03, pp. 49-51.

In addition, a reserve fund to ensure the continued activity of the CoE in crisis situations could be established out of "significant savings" in the organisation's budget as a result of the cancellation of meetings due to the COVID-19 pandemic, as proposed by a group of PACE members in June 2020[6].

3. Continue efforts to strengthen the system of the European Convention on Human Rights (ECHR)

The 10-year process of reforms of the system of the European Convention has come to an end. While the evaluation of its achievements and the assessment of future perspectives is yet to be done by the CM, a broader discussion is necessary and should involve all parties concerned. We agree with the conclusions of the CM's Steering Committee for Human Rights[7] that the reform has had a positive impact on increasing the efficiency of two elements of the system – the work of the Court and the supervision of the execution of judgements. However, two other key problems persist: poor implementation of the Convention at the national level and inadequate execution of the Court's judgements by member states.

Implementation of the Convention norms at the national level must be an urgent priority

- Without effective national implementation, the principle of subsidiarity remains theoretical, while the problem of the Court's caseload cannot be sustainably resolved. Member states should improve effective domestic remedies for violations of Convention rights, ensure that policies and legislation comply fully with the Convention in light of the Court's jurisprudence, and underpin close cooperation among executive authorities, judiciary authorities, members of parliament and national human rights institutions (NHRIs).

Member states should prioritise full, effective and swift implementation of ECtHR judgements by

- effectively cooperating with the Court, the CM and the Department for the Execution of Judgements (DEJ); submitting action plans, action reports and information on the payment of just satisfaction to the CM in a timely manner; and providing replies to submissions made by applicants, NHRIs and non-governmental organisations (NGOs) under Rule 9;

- paying particular attention to cases raising structural or complex problems identified by the Court or the CM;

- abstaining from adopting laws, including amendments to constitutions, that would hinder execution of the Court's judgements;

- taking into account the relevant opinions of the Venice Commission when taking measures aimed at executing judgements;

- providing sufficient resources to relevant CoE bodies and national stakeholders responsible for implementing Court judgements.

Supervision of the execution of judgements by the CM should become more effective

- Peer pressure and political action are essential for prompting member states to abide by the final judgements of the Court in any case to which they are parties (Article 46 of the Convention). All actors should reiterate that this legal obligation is binding on all branches of state authority and cannot be avoided through the invocation of obstacles due to a lack of political will or resources or changes in national legislation.

6 (Doc. 15118) Motion for a recommendation "Creation of a reserve fund out of unused funds of the Parliamentary Assembly", 18 June 2020, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28662&lang=en.

7 CDDH Report on the place of the European Convention on Human Rights in the European and international legal order, CDDH(2019)R92 Addendum 2, 29 November 2019, https://rm.coe.int/steering-committee-for-human-rights-cddh-cddh-report-on-the-place-of-t/1680994279.

• The CM should use all tools at its disposal for supervising the execution of judgements, including interim resolutions and a more active application of the infringement procedure under Article 46 (3) and (4) of the Convention (see para. 1). The notion of using these tools 'sparingly and in exceptional circumstances' should be critically reviewed.

• The Court and the CM should explore ways to handle more effectively cases related to inter-state disputes, as well as individual applications arising out of situations of inter-state conflicts.

• Resources of the supervisory framework, particularly of the DEJ, should be increased to allow it to fulfil its primary role and to ensure co-operation and bilateral dialogue with the states.

The role of civil society in the implementation of the Convention should be enhanced

• NGOs working with the Court and the super-vision procedure should be involved in the discussion on the future of the Convention system. One possibility to ensure this would be by creating an Advisory Group composed of civil society representatives and members of the academia.

• The CM should hold bi-annual meetings with NGOs, as the Court currently does.

• The CM should introduce a stipulation that Action Plans of states parties include reports on how NGOs and NHRIs have been involved in identifying and implementing measures needed to execute a judgement.

• The DEJ should produce an accessible webpage devoted to NGO / NHRI participation in the implementation process.

4. Make full use of the existing monitoring procedures at the PACE and the CM

Monitoring of the implementation of obligations by member states is key to ensuring their compliance with CoE norms and standards and serves as a basis for decisions and recommendations by the organisation's statutory organs. There is no lack of monitoring procedures and reports in the CoE; the problem is the lack of implementation of the recommendations contained therein. To address the problem,

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• a stronger role for the statutory organs is mandatory to achieve a stronger impact. Better coordination between these statutory organs and their joint follow-up actions are essential, notably in crisis situations. To ensure this, meetings of the Joint Committee between the CM and the PACE could be used to facilitate discussions between the two organs. More active engagement by the SG in facilitating joint actions would be also welcome;

• the PACE should adopt recommendations to the CM to accompany its resolutions under its monitoring procedure and on reports on particular situations of concern. This would stimulate discussion at the CM on country situations causing particular concern and generate a reaction on its part, since the CM is obliged to reply to all recommendations by the PACE. This would be particularly relevant in cases of persistent non-implementation of obligations by member states;

• the PACE should expand its existing practice of initiating ad-hoc reports on the "functioning of democratic institutions" in member states not covered by a full monitoring procedure or post-monitoring dialogue, but demonstrating troubling developments, as it has recently done in the cases of Turkey and Poland;

• the CM should apply its own monitoring procedures[8] more actively. In the past, the CM monitoring procedures were opened either at the time of accession of a new member state, or on an ad hoc basis in reaction to particular situations or PACE recommendations. Currently, this instrument is used only in a limited way[9]. Given growing challenges to human rights, the rule of law and democracy across the region, the CM should open these procedures more consistently with regard to all member states failing to comply with their obligations.

5. Put the new complementary joint procedure of reaction to serious violations to work

In reaction to the crisis in the CoE's relations with Russia, a new joint complementary procedure for a coordinated response to situations 'where a member state violates its statutory obligations or does not respect the standards, fundamental principles and values upheld by the Council of Europe' was adopted by the PACE[10] and the CM[11] in early 2020. The procedure includes an "enhanced dialogue" with the state in question with a view to eliminating the violations and a possibility of suspension and / or expulsion of a member state from the organisation in case this dialogue does not lead to substantive change. The two statutory organs should now put this procedure to use together, with support of the SG, to address serious violations.

Civil society contributed to the deliberations on the new procedure with various proposals, some of which were taken into account. There remains room for improvement, however. We make the following recommendations:

• The procedure should be applied in a transparent manner, including a public announcement of its triggering and publishing the official communication with the state in question. Currently, PACE resolutions only state that 'in the course of the implementation of the roadmap, the three parties may agree to make joint public statements.' This is not sufficient for ensuring transparency.

• The statutory organs and the SG should make wider use of the expertise of CoE monitoring and advisory bodies, the Commissioner for Human Rights and relevant PACE committees at all stages of the procedure. The expertise and opinions of these bodies would make decisions taken under the procedure solid,

8 See the Declaration on Compliance with commitments accepted by member states of the Council of Europe (adopted by the Committee of Ministers on 10 November 1994 at its 95th Session) and the Procedure for implementing the Declaration of 10 November 1994 on compliance with commitments accepted by member states of the Council of Europe (adopted by the Committee of Ministers on 20 April 1995 at the 535th meeting of the Ministers' Deputies), https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168053661f.

9 According to the SG annual report of 2019, these procedures have effectively been applied only to three member states (Armenia, Azerbaijan, Bosnia and Herzegovina), while in respect of a number of other states (including Croatia, Georgia, the Republic of Moldova, Montenegro, the Russian Federation (Chechen Republic), Serbia and Ukraine) they had been discontinued 'in light of the progress achieved.' For details, please, see: "Ready for Future Challenges – Reinforcing the Council of Europe", Report by the Secretary General for the Ministerial Session in Helsinki, 16-17 May 2019: https://rm.coe.int/native/090000168093af03, p. 44; "Update on the Overview of the Country-Specific Monitoring Procedures under the Responsibility of the Committee of Ministers", an information document prepared by the Directorate of Political Affairs, GR-DEM(2016)15, 8 June 2016, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680665647.

10 PACE Resolution 2319 (2020), "Complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations", adopted on 29 January 2020, http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=28568.

11 CM decision CM/Del/Dec(2020)1366/1.7-app, "Complementary procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member state of its statutory obligations", adopted on 5 February 2020, https://rm.coe.int/09000016809a65cf.

unbiased and less prone to political pressure. Moreover, CoE monitoring and advisory bodies' documents, as well as ECtHR judgements may serve as a "trigger" for launching the procedure and help to overcome the ambiguity of what should be considered as a "serious violation" of statutory obligations.

• Input from civil society and NHRIs is not even mentioned in either of the decisions on the new procedure. It would be a grave omission if the important potential of CSOs' expertise were to remain untapped in its application. Apart from having unique access to information from the ground, CSOs are often the first to alert the CoE to serious problems in implementation.

• Given that the application of the new procedure may eventually lead to the expulsion of a member state, the scope of violations that may serve as the grounds for launching the procedure remains a difficult and potentially divisive issue. A definition of the scope of violations was narrowed down considerably during the discussions in the CoE statutory organs[12]. In our view, further clarity regarding the necessary scope of violations needs to be reached. The threshold does not have to be exceptionally high; otherwise, the application of the procedure would remain merely a theoretical question. Experience of other inter-governmental bodies might be useful to look at for deciding on the scope of violations sufficient for triggering the procedure, its timing, developing a roadmap, etc.[13]

• Member states, the PACE and the SG should take the new procedure seriously, treat it as a working tool and start using it in practice. The political will of all parties concerned to apply the procedure will serve as a test of the seriousness of their attitude. Should the procedure remain only "words on paper", it would only further undermine trust in the CoE.

6. Strengthen the impact of specialised CoE bodies and institutions performing monitoring and advisory functions

In addition to the CM and the PACE, monitoring functions are performed by a number of specialised CoE bodies and institutions, which also provide advice to member states on implementation of their obligations. Some were set up by specific CoE treaties[14], while others were established by CM resolutions[15]. Their mandates are different and capacities vary, but they have a common main strength: they conduct periodic, thorough assessments of all member states, in line with clear legal norms and established criteria, which sets them above political controversies.

12 The definition of a scope of violations sufficient for launching the new procedure changed from 'where a member State violates its statutory obligations or does not respect the standards, fundamental principles and values upheld by the Council of Europe' (PACE Resolution 2277(2019) Role and mission of the Parliamentary Assembly: main challenges for the future, 10 April 2019, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=27662&lang=en,%20para.%2015.3. to 'only the most serious violations of fundamental principles and values enshrined in the Statute of the Council of Europe, namely Article 3 of, and the Preamble to, the Statute' (PACE Resolution 2319 (2020), "Complementary joint procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member state of its statutory obligations", 29 January 2020, http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=28568) and even further to 'a new, emerging and most severe crisis facing the Organisation' (Committee of Ministers decision CM/Del/Dec(2020)1366/1.7-app, "Complementary procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member state of its statutory obligations", 5 February 2020, par. B, https://rm.coe.int/09000016809a65cf).

13 In particular, the problematic experience of applying the EU Rule of Law Mechanism may be a useful case to study.

14 The Committee for the Prevention of Torture (CPT), European Committee of Social Rights (ESCR), Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), Advisory Committee of the Framework Convention on National Minorities, Committee of Experts of the European Charter for Regional or Minority Languages, etc.

15 The European Commission for Democracy through Law (Venice Commission), European Commission on Racism and Intolerance (ECRI), Group of States against Corruption (GRECO).

Unfortunately, the potential of these specialised bodies is not used to its full extent. Firstly, they do not possess formal powers and leverage to push for implementation of their own findings and recommendations and address non-compliance by member states with CoE standards. Thus, the effectiveness of their work is dependent on strong and continued political and financial support by CoE member states and political bodies. Second, beyond regular monitoring, which normally has a cyclic nature, these bodies need to become more flexible to increase their capacity for rapid reaction by developing mechanisms for ad hoc actions. In our opinion, the following steps could allow these bodies to increase the practical impact of their work:

• Member states should ensure a strong political follow-up to country-specific conclusions and recommendations of CoE specialised bodies (notably those that are not convention-based) by discussing the cases of specific states' non-compliance with recommendations at the CM meetings and deciding on actions to be taken.

• Specialised monitoring bodies should expand their practice of making public statements on persistent non-compliance by member states. The bodies that do not yet have such a practice should consider possibilities for introducing one. After every such statement, the CM should hold a discussion on the follow-up action required.

• The PACE and the CM should seek a closer coordination of their own monitoring procedures with country monitoring conducted by specialised bodies to ensure synergy and reinforce actions. Thus, in their dialogue with representatives of member states, PACE monitoring rapporteurs should reiterate concerns raised and recommendations made in country reports produced by specialised bodies.

Political bodies need to become more flexible to increase their capacity for rapid reaction by developing mechanisms for ad hoc actions

7. Develop a more systemic and coherent approach to addressing situations in "grey zones"

Impediments to addressing human rights issues in conflict-affected territories of member states (so-called "grey zones")[16] are one of the most problematic issues the CoE is currently facing. All people living in CoE member states should enjoy equal protection under the European Convention and other CoE mechanisms, regardless of the de-facto political status of their territory. Member states, the PACE and the Commissioner for Human Rights should all play their roles in addressing this issue:

• Member states need to agree on unlimited access for the Commissioner for Human Rights and the specialised monitoring bodies to carry out their work in conflict-affected territories (including visits to these territories and necessary contacts with *de facto* authorities). Such work by independent non-political institutions, carried out in conformity with their mandates, should in no way be perceived as recognition of a certain political status of the territory. Member states concerned should facilitate this work, recognising the protection of the rights of individuals living there as a top priority. While the CM at its annual session in 2019 reiterated that 'the Commissioner for Human Rights <...> shall have full and free access to all member states'[17], it remains to be seen to what extent this political commitment will be applied in practice. So far, no visit by the Commissioner or monitoring bodies to any "grey zone" has been held following this CM decision.

• The existing PACE monitoring procedure fails to properly cover conflict-affected territories which are not under the control of the member state to which they pertain. In 2016, a Sub-Committee on conflicts between CoE member states was created within the

16 Including Abkhazia, Crimea, East of Ukraine, Nagorno-Karabakh, Northern Cyprus, South Ossetia and Transnistria.

17 Decision CM/Del/Dec(2019)129/2a "A shared responsibility for democratic security in Europe – Report by the Secretary General "Ready for future challenges – Reinforcing the Council of Europe", adopted at the 129th Session of the Committee of Ministers (Helsinki, 17 May 2019), https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680947f1, para. 4.

PACE Monitoring Committee to address this issue. This Sub-Committee should not only try to discuss situations in these territories on a case-by-case basis, but also work towards elaborating a uniform approach to conducting monitoring in "grey zones". Monitoring on such a territory by rapporteurs on the state having official jurisdiction over it is often seen as politically sensitive and encounters opposition from other sides of the conflict. This indicates that *ad hoc* monitoring rapporteurs for these territories may present the best solution. Another option is creating a joint monitoring taskforce composed of rapporteurs on both the member state having official jurisdiction over the territory and on the one exercising effective control over it.

- The Commissioner for Human Rights, apart from arranging visits to the "grey zones", should also consider establishing field presences of her / his Office in these territories for conducting permanent monitoring of the situation on the ground.

Apart from access to conflict-affected territories for human rights mechanisms, the lack of a coherent political approach to these situations by the CM and the PACE also remains an issue. So far, the reaction is purely ad hoc and provides a pretext for calling it "politically biased" and based on "double standards". We recommend that:

- both bodies should reflect upon past experiences in different conflicts to identify the strengths and weaknesses of various types of actions and develop coherent universal approaches;

- the CM could consider adopting a general practice of including a discussion of human rights and the rule of law in all "grey zones" as a permanent item on the agenda of its meetings (as is already the case with the situation in Northern Cyprus and conflict-affected regions of Georgia).

8. Develop stronger mechanisms ensuring the transparency, accountability and integrity of the CoE bodies in order to prevent corruption, unlawful fostering of interests and unethical behaviour

Prompted by pressure from civil society, investigative media and some PACE members in response to the "caviar diplomacy scandal"[18], the PACE and the previous SG have taken a number of positive steps since 2017 to strengthen the CoE's ethical and anti-corruption framework[19]. However, further, more substantial changes to the CoE regulatory and ethical framework are necessary to ensure stronger safeguards – a fact which has been also recognised by the PACE itself[20]. These would include the following:

18 See reports "European Values Bought and Sold: An exploration into Azerbaijan's sophisticated system of projecting its international influence, buying Western politicians and capturing intergovernmental organisations", Freedom Files, March 2017, www.civicsolidarity.org/article/1457/european-values-bought-and-sold-exploration-azerbaijans-sophisticated-system-projecting, and "The European Swamp (Caviar Diplomacy Part 2) – Prosecutors, corruption and the Council of Europe", European Stability Initiative, December 2016, https://esiweb.org/publications/european-swamp-caviar-diplomacy-part-2-prosecutors-corruption-and-council-europe.

19 Follow-up to Resolution 1903 (2012): promoting and strengthening transparency, accountability and integrity of Parliamentary Assembly members. PACE Resolution 2182 (2017), 10 October 2017, http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=24171, and Follow-up to the report of the Independent Investigation Body on the allegations of corruption within the Parliamentary Assembly, PACE Resolution 2216 (2018), 26 April 2018, http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=24751; Speaking Notes of the Secretary General to the 1332nd meeting of the Ministers' Deputies (12 December 2018), item 1.3, Follow up to the IBAC Report, SG/Inf(2018)37, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809022b7&fbclid=IwAR189aMuD7hp-7R_fU7J-g8kKKRA2ytoyZeMIUIpKBC4LC8BLY0QupmIz-rA; Speaking Notes of the Secretary General to the 1338th meeting of the Ministers' Deputies (27 February 2019), item 1.3, Ethics Officer, SG/Inf(2019)6, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=-0900001680933fea&fbclid=IwAR2UK3MP7E4qQA6lpdALVOgidYZ60VaXmQPJ2BeQaf9q1ONEKQ_akWfajf4.

20 Report of the Independent Investigation Body on the allegations of corruption within the Parliamentary Assembly: Assessment of the follow-up given by the committee to the conclusions and recommendations, Progress report by the PACE Committee on Rules of Procedure, Immunities and Institutional Affairs, 27 June 2019, www.assembly.coe.int/LifeRay/PRO/Pdf/DocsAndDecs/2019/AS-PRO-2019-11-EN.pdf.

• The establishment by the CM of a permanent external independent investigation body to review allegations of corruption and conflict of interest in the CoE[21]. The current mechanism in the PACE introduced in 2017 where the review of allegations is the responsibility of both the President of the Assembly and the Rules Committee was a step forward but is not sufficient. The Rules Committee does not possess enough capacity and expertise, lacks an investigation mandate, and may not be perceived as acting in an entirely unbiased manner since its members have to review the actions of their peers.

• Introducing criteria and requirements by the PACE Rules Committee for complaints requesting an investigation into alleged corruption or unethical behaviour lodged by persons who are not members of the Assembly, similar to the existing requirements for requests submitted by Assembly members.

More substantial changes to the CoE regulatory and ethical framework are necessary to ensure stronger safeguards

• Developing a new system of scrutiny for the declarations of interests on the part of PACE members. The Rules Committee does not have the capacity to review declarations, and the only effective monitoring tool currently appears to be public scrutiny or a peer review, which may lead to selective scrutiny and an uneven, ad hoc implementation of the ethical framework.

• Application of standards in the examination of allegations of misconduct by former PACE members should be as high and rigorous as in the case of current members, since allegations of systematic corrupting behaviour made in respect of former members from certain countries have been even stronger than in respect of current members.

• Strengthening the system of individual sanctions for a breach of the Code of conduct. The limited effectiveness of the current system is particularly evident in respect of former PACE members, who may face only weak measures such as having their honorary membership of the Assembly withdrawn and their access to CoE premises prohibited during the activities of the PACE and its committees.

• Developing stronger cooperation on the part of the Assembly with national law enforcement bodies, including issuing recommendations for legal proceedings against current or former members found in breach of the Code of conduct, possibly including criminal actions.

• Introducing in the guidelines on election observation a clear provision banning PACE members from participating in Assembly election observation missions if they have participated in unofficial missions. This is an urgent issue given the proliferation of "fake election observation missions" serving to legitimise fraudulent elections, often with direct or indirect funding or other benefits from governments in question.

• Adopting mechanisms to protect whistle-blowers, including those who submit allegations of misconduct or illegal practices and act as witnesses during examination of cases. This should be a matter of priority in view of growing reprisals by governments against civil society activists and investigative journalists for cooperating with international bodies and possible retaliation against Assembly staff.

• Making necessary changes beyond the PACE. The previous SG took certain steps, including holding internal investigations of allegations of several cases of misconduct by staff members and the establishment of a new position of a CoE Ethics Officer. The successful development and implementation of these measures and the initiative for taking further steps depend on the current SG.

21 As recommended in the evaluation report by GRECO (June 2017) and by the PACE rapporteur Ian Liddel-Granger (Follow-up to Resolution 1903 (2012): promoting and strengthening transparency, accountability and integrity of Parliamentary Assembly members. Report by the Committee on Rules of Procedure, Immunities and Institutional Affairs. Rapporteur: Mr Ian Liddel-Grainger. 28 September 2017, http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=24035 and demanded by a large group of PACE members (Investigating and preventing corruption at the Council of Europe. Written declaration by the PACE members No. 677, 15 October 2019, https://pace.coe.int/en/files/28261).

9. Facilitate meaningful participation of civil society

Over the years, the CoE has developed a significant framework for cooperation with civil society, including granting participatory status to international NGOs and recognising the Conference of INGOs as one of its official bodies. However, opportunities for civil society to give a meaningful input in the CoE's work (including conducting monitoring of member states' compliance with their obligations and proposing effective measures to address violations) still remain limited, as the existing working procedures of its bodies and institutions do not always provide sufficient channels for effective engagement by NGOs. In contrast with the CoE itself being at the forefront among other international governmental organisations (IGOs) with regard to developing and promoting new progressive human rights and democracy standards, the organisation's framework for cooperation with civil society looks quite conservative and restrictive.

The CM is criticised for being the least transparent and accessible CoE body, as most of its deliberations and decision-making are confidential. Apart from accepting submissions from NGOs under its procedure for the supervision of the execution of ECtHR judgements (see para. 3) and its interaction with the leadership of the Conference of INGOs, the CM has barely any other channels for civil society engagement. It rarely seeks a formal input from NGOs on matters it deals with, and when it does, there is usually no feedback and no clarity on whether the input was taken into account.

We believe that channels for civil society engagement with CoE bodies (notably, the CM) should not be restricted to the officials of the Conference of INGOs, which speaks as the "single voice" of its members and cannot represent all existing positions. Instead, the CoE should open up to a variety of NGO views.

The CoE should open up to a variety of NGO views

In response to the CM decision of 2019 to 'examine further options for strengthening the role and meaningful participation of civil society organisations <...>, including access to information, activities and events'[22], in June 2020, Secretary General Marija Pejčinović Burić presented her proposals in this regard, which are mostly of a technical nature (such as the publication of a handbook for NGOs on different forms of access to and co-operation with the CoE; the development of a civil society portal and setting up of an online calendar with CoE events and initiatives open for CSO engagement, etc.)[23].

Unfortunately, even if implemented fully, these proposals would hardly solve the main problems preventing effective civil society participation. A real solution is impossible without political decisions by the CM introducing changes to its rules and procedures.

The official CoE *participatory status for international NGOs*[24] is currently not used to its full potential. This could only be achieved by improving the access of NGOs with this status to documents of CoE bodies, CoE premises and meetings. Regulations set up by UN bodies for INGOs having the Economic and Social Council (ECOSOC) consultative status could be considered as a model in this regard:

- Access to information:

— representatives of INGOs with participatory status should be granted timely access to the agendas of meetings of CM rapporteur groups and other subordinate bodies, giving them a chance to submit relevant information to member states before the meetings;

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

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

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

— representatives of INGOs should also be given access to drafts of documents prepared for discussion at CM meetings (at least to those related to developing new standards or monitoring implementation of existing ones);
— information sharing with representatives of INGOs can be regulated by providing them with restricted access to the CoE online documents database through a registered account.

- Access to premises:

— providing a physical working space for INGO representatives in the CoE buildings (similarly to the existing media room);
— introducing a clear and transparent procedure for booking rooms in CoE premises for side-events organised by INGOs, particularly during PACE and CM meetings.

- Access to meetings:

— inviting representatives of INGOs to participate in thematic debates held at the CM meetings and relevant thematic discussions within its rapporteur groups;
— admitting representatives of interested INGOs as observers to the annual CM sessions, as well as thematic conferences of specialised ministers, and allowing them to organise their own side events before and during the meetings;
— opening up opportunities for INGOs to participate in the work of intergovernmental steering committees as observers;
— organising broadcasting / web-streaming of CM meetings, at least certain parts of them or with restricted access for registered INGO representatives.

The existing *partnership status for national NGOs*[25], which has barely ever been used and mostly remains "dormant", should be made more instrumental:

- It should be reviewed in order to grant national NGOs holding this status at least some of the rights that INGOs with participatory status currently enjoy, such as a regular access to the CoE premises.

- National NGOs should also be widely consulted in the process of developing and implementing CoE action plans for their respective countries and in planning the activities of the CoE field offices.

"Dialogue" and "assistance" can have an impact only when there is leverage, i.e. a positive or a negative stimulus; otherwise, the offending state tends to engage in an imitation of dialogue to cover up violations.

10. Ensure correlation between assessments by the CoE bodies and the foreign policy of its member states

It is increasingly common that critical reports, resolutions and recommendations of inter-governmental organisations, including the CoE, are not followed up by actions making real impact on the ground and instead remain ignored by an offending state.

"Dialogue" and "assistance" can have an impact only when there is leverage, i.e. a positive or a negative stimulus; otherwise, the offending state tends to engage in an imitation of dialogue to cover up violations. Progress has better chances when a state in question has to meet specific measurable benchmarks to be "awarded" a positive stimulus – or is alternatively deprived of benefits in the case of making no progress.

Not only resolutions but also procedures of the sanction type in inter-governmental organisations, including the CoE, often have limited impact. This means that other tools to address the actions of violating states should be sought, such as in bilateral relations between states. Otherwise, the negative impact of the continued membership of states that systematically and fragrantly violate their obligations will seriously undermine the integrity of the CoE and leave victims of abuse unprotected. Relevant measures could include the following:

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

- Effective leverage of influence on violating states lies in the diplomatic and economic relations of other states with them. Applying this approach effectively would require a much stronger correlation of member states' bilateral relations with states committing serious violations of CoE obligations with assessments and conclusions of CoE bodies. The same applies to political and economic relations in other multilateral fora.

- This approach would ensure a proper place for human rights, the rule of law and democracy in diplomatic relations and economic cooperation between CoE member states, and create coherence in their actions inside and outside of the organisation. This would also allow avoiding the application of double standards and a selective approach in upholding CoE values in foreign policy. In practical terms, this would require moving human rights, the rule of law and democracy higher up on the foreign policy agenda of states and overcoming inconsistencies in policies and actions between regional and human rights departments in foreign affairs ministries.

- Bilateral economic relations, diplomatic negotiations and cooperation frameworks should be used as widely as possible to push for the implementation of the ECtHR judgements and recommendations by other CoE bodies.

- Preparations in the ministries of foreign affairs (MFAs) for diplomatic visits to other CoE member states (or hosting their delegations) should always include a briefing on the situation regarding human rights and the rule-of-law situation in the country in question by the human rights department and the department responsible for cooperation with the CoE in foreign affairs ministries.

- CoE assessments should also be taken up by the European Union in its relations with third countries, but also in addressing the rule-of-law issues in its own member states.

Conclusion

Strengthening pan-European institutions and legal frameworks, first and foremost the Council of Europe and its legal and political instruments, is an important part of the EU-Russia Civil Society Forum's mission. The Forum and its member and supporter organisations have deep sympathy with the CoE regarding the challenges it has faced in recent years, including in the context of the crisis in its relations with Russia. The issuance of this position paper aims to support the CoE's important work and contribute to making this unique organisation stronger and more effective in the implementation of its mission to protect and develop human rights, the rule of law and democracy across the European continent.

We very much hope that this paper will be of interest to representatives of various CoE bodies, its member states and civil society organisations and experts cooperating with the CoE. The authors would appreciate feedback from all interested parties, including any indication of specific areas and recommendations that they are willing to discuss. On our part, we are very much interested in engaging in discussions about possible ways forward.

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