

The Hague Civil Society Declaration on Council of Europe Reform

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

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

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

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Preamble

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

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

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

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

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

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

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

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

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

- 2.1. additional funding allocated for both the ECtHR and the Department for the Execution of Judgements in order to tackle the case backlog and problems in judgement implementation;
- 2.2. the appointment of a high-level Special Representative on the Implementation of Judgements;

- 2.3. increased frequency and intensity of Committee of Ministers (CM) meetings concerning judgement implementation as well as its greater involvement in monitoring the implementation of interim measures;
- 2.4. application of infringement proceedings with greater speed and transparency and in a wider range of cases;
- 2.5. developing and applying new types of sanctions for continued non-implementation;
- 2.6. increased transparency of the implementation monitoring process and stronger engagement with NGOs and National Human Rights Institutions (NHRIs);
- 2.7. increased collaboration with other intergovernmental organisations to promote the implementation of ECtHR judgements.

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

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

3. Strengthen monitoring and preventive systems

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

- 3.1. the CM should provide strong political follow-up to the implementation of recommendations for individual member states issued by the CoE thematic monitoring mechanisms by including this issue in its regular agenda with a view to adopting specific decisions on follow-up;
- 3.2. improve access for citizens, civil society organisations and human rights defenders to systems of complaints, of providing input to monitoring bodies and of being informed about the outcome of monitoring processes;
- 3.3. ensure that this approach is also applied in the revision of existing systems such as the ongoing one for the European Social Charter;
- 3.4. consider introducing individual or collective complaints mechanisms for some of the CoE thematic conventions (e.g., the Framework Convention on National Minorities, the Charter for Regional and Minority Languages);
- 3.5. upgrade the post of the Venice Commission's President to the CoE Commissioner for the Rule of Law;
- 3.6. introduce the possibility for the CM, the PACE and the Secretary General (SG) to request the Venice Commission to conduct an assessment of the rule of law trends and patterns of democratic backsliding in a member state following a series of non-implemented Commission's opinions on specific legislative acts;
- 3.7. introduce a procedure for regular review of compliance by all member states with all CoE human rights, democracy and rule of law standards. This can be done in the form of a comparative "implementation index" or a "scorecard". NGOs and NHRIs should be given an opportunity to give input; the European Commission's Rule of Law annual reporting mechanism could be used as a model. The CM should closely examine the review and make it public;
- 3.8. stimulate the use of findings, conclusions and recommendations of the CoE bodies in mechanisms of other intergovernmental organisations such as the EU and the UN, as these may have different additional levers of influence.

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

The CoE has led pioneering work in developing strong legal standards on women's rights, gender equality and protection from gender-based violence. Since 2010, substantial progress has also been made in building the CoE's work on the protection of the rights of LGBTIQ+ people. However, a reactionary backlash targeting gender equality, sexual and reproductive rights, comprehensive sexuality education and the right to bodily autonomy of trans people is on the rise in many member states. It is facilitated by transnational right-wing conservative movements and supported by populist politicians. This backlash is manifested in the adoption of restrictive laws and policies and the spreading of sexist, patriarchal, homophobic/ transphobic views, gender- and SOGIESC¹-based discrimination, hate speech and violence. The CoE should vigorously oppose this dangerous backlash by taking concrete steps, including:

- 4.1. prioritise full ratification of the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), its effective implementation, and move to make ratification of the Istanbul Convention a political requirement for CoE membership;
- 4.2. develop a bold and effective Gender Equality Strategy (2024-2029) to address persistent problems and respond to new challenges, in particular the reactionary anti-gender backlash and its impact on the right to abortion, the right to bodily autonomy and self-determination of gender identity in member states;
- 4.3. consolidate CoE legal standards on gender equality, including the rights of LGBTIQ+ people, based on ECtHR case law and CM recommendations, produce guiding documents on their implementation into laws and practices, and ensure more systematic and regular monitoring of their implementation;
- 4.4. make the protection of LGBTIQ+ people from stigmatisation, exclusion, intolerance, hate speech, violence and discrimination a priority in line with the developing ECtHR case law, CM recommendations, Venice Commission opinions, PACE resolutions, and ECRI recommendations;
- 4.5. task the Venice Commission, with the support of the Group of Experts on Action against Violence against Women and Domestic Violence, the Gender Equality Commission, the Sexual Orientation and Gender Identity Unit and other relevant CoE bodies, to produce an overview of best practices and negative developments in policy and practice of CoE member states, including those leading to and justifying withdrawal from the Istanbul Convention or a refusal to ratify it, and the adoption of restrictive constitutional amendments and laws incompatible with CoE legal standards on gender equality and undermining the protection from gender- and SOGIESC-based discrimination and violence;
- 4.6. acknowledge that gender- and SOGIESC-based violence, hate speech and discrimination often lead to severe health and psychological consequences and represent a public health problem, including mental health. Public health systems, including public mental health systems, should be better equipped to recognise this problem and provide adequate help;
- 4.7. develop narratives promoting the importance of gender equality and the respect of rights of all people without discrimination, including the rights to bodily integrity and autonomy, to serve as a basis for public awareness raising campaigns to counter regressive narratives pushed by anti-gender movements.

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

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

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

¹ SOGIESC is an umbrella term for all people whose sexual orientations, gender identities, gender expressions and/ or sex characteristics place them outside culturally mainstream categories.

- 5.2. consistently emphasise the importance of ensuring access to these territories by the Commissioner for Human Rights, monitoring bodies on specific human rights issues and other relevant CoE bodies. Place particular emphasis on ensuring access by CoE bodies' representatives to places of detention in conflict-affected territories, including occupied territories. CoE bodies should have the possibility to issue recommendations to states involved, including *de jure* and *de facto* authorities, and ensure a follow-up to CM recommendations. Such access should be brought forward early on in any negotiations on conflict resolution and the status and future of these territories;
- 5.3. continue to insist on the importance of access to the ECtHR for persons who have suffered violations of human rights in these territories, and facilitate this access as much as possible; develop measures to allow access to remedy and reparations for violations of the ECHR in respect of persons who have suffered violations of human rights in these territories, including by developing the option of impounding assets of states that have been found in violation of the ECHR and are not fulfilling the just satisfaction element of Court judgements, including the states that ceased to be CoE members;
- 5.4. develop CoE information-gathering capacity in respect of conflict-affected territories, including by closely cooperating with monitoring mechanisms of other intergovernmental organisations such as the OSCE and with civil society organisations working with conflict-affected territories, and strengthening civil society's capacity to carry out independent monitoring in these territories;
- 5.5. recognise that massive human rights violations in the context of conflict and occupation have a major impact on the well-being and health of the affected people, including mental health. To remedy this, an infrastructure of the public health systems, including mental health, should be developed.

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

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

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

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

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

- 7.1. create a truly enabling environment for civil society within the CoE. The level of civil society participation in the work of CoE bodies should go beyond the provision of information and

consultation. Integrating civil society fully in the decision-making processes by CoE political bodies should be considered mandatory by making the consideration of civil society views a formal step in decision-making;

- 7.2. make the work of CoE main bodies, in particular the CM, more transparent and open to civil society and the European public at large. Confidentiality of decision-making should become an exception rather than the rule;
- 7.3. ensure and facilitate formal channels for representatives of national NGOs to engage with the CoE both in Strasbourg and at the country level (e.g. through CoE field offices where they exist);
- 7.4. encourage the creation of broad civil society coalitions in support of CoE's work in member states;
- 7.5. strengthen the Conference of INGOs and give it sufficient support to carry out its mission; it should be integrated into CoE decision-making processes on a mandatory basis;
- 7.6. ensure that the Commissioner for Human Rights has enough resources and political support for its work to support human rights defenders, their protection and the development of an enabling environment for their activities. Member states should engage openly and in good faith with the Commissioner and other mechanisms for the protection of human rights defenders, including the UN Special Rapporteur on Human Rights Defenders and the OSCE/ ODIHR;
- 7.7. organise an annual meeting of the main CoE bodies and delegations of member states with civil society to discuss a broad range of issues of CoE work to better protect and promote human rights, democracy and rule of law and to ensure effective implementation of CoE standards and decisions of CoE bodies. For the effective organisation of such meetings, study the experience of regular meetings with civil society in other intergovernmental organisations such as the annual OSCE Human Dimension Implementation Meeting and the EU Fundamental Rights Forum;
- 7.8. regular domestic consultations between civil society and authorities on CoE-related matters should become the norm, organised by independent actors such as a CoE field office or an NHRI;
- 7.9. respond to the backlash against freedom of association in a number of member states, including by the adoption of "foreign agents" laws and other restrictive legislation. Ensure close monitoring by the CoE of the issue of space for civil society in member states and the ability of NGOs and human rights defenders supporting CoE values and norms, as well as civil society in general, to operate freely. This could be done by developing a special monitoring tool for freedom of association and the situation of human rights defenders, modelled on the CoE Platform for the Safety of Journalists. Member states should be required to report on their policies in respect of civil society. The existing procedure of reacting to instances of reprisals against human rights defenders for their engagement with the CoE should be strengthened and made more transparent, including public reporting on its work;
- 7.10. CoE is a frontrunner in integrating youth in its activities, but the youth perspective should be better mainstreamed in the entire work of the CoE, especially on themes related to emerging challenges, which younger generations will have to deal with. The Advisory Council on Youth and the co-management system in the Youth Sector could serve as a model for other arrangements for civil society engagement in the CoE.

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

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

- 8.1. institutional framework created for cooperation between the CoE and civil society and democratic actors of Belarus (the Contact Group on Belarus) should be encouraged to effectively implement planned

activities and to propose and implement new formats of engagement, going beyond the ones that have been traditionally used by the CoE in respect of this country;

- 8.2. similarly to Belarus, an institutional and programmatic framework should be created as soon as possible for coordinating the CoE's permanent engagement with independent Russian civil society, involving both the actors remaining in the country and those operating in exile;
- 8.3. member states should support CoE engagement with Belarusian and Russian NGOs and democratic actors, including by assisting them with the necessary funding, visa support, protection programmes, prevention from deportation, support for cooperation with peers in other countries, etc.;
- 8.4. CoE should support the continuous efforts by Russian NGOs and human rights defenders in submitting complaints to the ECtHR and providing information to the CM procedure on the implementation of the Court judgements;
- 8.5. CoE should develop and launch, in partnership with Belarusian and Russian civil society stakeholders, special outreach and awareness-raising programmes to promote CoE values among wider parts of their respective populations along with educational activities for lawyers, human rights defenders and other stakeholders, taking security risks into account.

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

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

- 9.1. speed up the process of adoption of the currently drafted CM Recommendations on the principles of good democratic governance and develop robust monitoring tools to ensure their effective implementation at all levels of government in all member states;
- 9.2. based on the future experiences of the implementation of the above Recommendations, start a discussion on developing standards contained therein into a Convention for Democracy;
- 9.3. amend Article 3 of Protocol 1 to the ECHR to extend the right to free elections to all types and levels of elections, to cover not only legislatures at the national and provincial levels but also elections of executive authorities on all levels (local, provincial and national) and of local councils;
- 9.4. compile ECtHR judgements on cases related to democracy as a benchmark for combatting backsliding in democracy, similar to the existing ECtHR guide on Article 3 of Protocol No. 1 and the Department of Execution of Judgements factsheet on the right to free elections;
- 9.5. develop an early warning mechanism to detect signs of democratic backsliding;
- 9.6. actively cooperate with civil society organisations monitoring the state of democracy and working to develop democracy, in order to receive first-hand information, raise the CoE profile with civil society and provide NGOs with advocacy tools to stimulate governments to implement reforms;
- 9.7. make translation and publication of CoE recommendations and guidelines on democracy into national languages mandatory for member states so that civil society has access to and knowledge of these instruments, can hold governments accountable and organise public education on democracy;
- 9.8. introduce a requirement for member states to follow up in a meaningful way on recommendations of International Election Observation Missions (IEOMs) led by the OSCE/ ODIHR and present implementation reports to the CM. In its turn, the CM should follow up on states' reports;
- 9.9. adopt sanctions against member states for repeatedly holding fraudulent elections that fail to meet international standards, as concluded by IEOMs. In particular, the PACE should challenge the credentials and suspend the voting rights of a member state's national parliamentary delegation in connection with the parliamentary elections that fail to meet international standards;

- 9.10. adopt an agreement between the CoE and the OSCE on cooperation on ensuring the right to free and fair elections, including through election monitoring, and explore the possibility of incorporating OSCE/ODIHR standards on holding free and fair elections into CoE legal standards;
- 9.11. strengthen democratic infrastructure in member states by supporting the implementation of CoE standards on citizens' engagement in political deliberations and decision-making at all levels;
- 9.12. strengthen CoE work on democratic citizenship, including by actively promoting implementation by member states of the Charter on Education for Democratic Citizenship and Human Rights Education, and make the work of the CoE better known to the European public;
- 9.13. create a mandate of the Commissioner on Democracy to oversee the aforementioned measures;
- 9.14. the increasing inequality in our societies is one of the greatest dangers which undermines public confidence in democracy and the rule of law. This challenge must be moved to the forefront of policies and become a matter of serious attention to the CoE.

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

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

- 10.1. expand its recording, in cooperation with specialised NGOs, of the persecution of journalists, bloggers, human rights defenders and others providing information of social interest, and of those pursuing academic research and discussion. SLAPPs² and similar forms of intimidation and silencing should also be covered under the concept of "persecution". CoE reaction to and follow-up on the information recorded must be actively pursued;
- 10.2. pay particular attention to the situation of journalists and media workers imprisoned for political reasons, including in occupied and conflict-affected territories. CoE bodies and member states should develop a mechanism of sending urgent inquiries to de-facto authorities about their condition in order to prevent arbitrariness, torture, inhuman conditions and the lack of access to lawyers or medical personnel, and to end politically motivated detention;
- 10.3. step up efforts to stimulate the development of standards on production of and access to information that is free from one-sided political interference from the state or state-aligned interests and free from commercial considerations that favour sensationalism over quality and polarisation over the balanced presentation of facts and arguments;
- 10.4. pay due attention to limits that should be put on the use of artificial intelligence and algorithmic amplification. All artificial intelligence instrument settings need to be firmly embedded in CoE standards on the rule of law, human rights and democratic governance, including in the Charter on Artificial Intelligence and its subsidiary instruments that are currently being elaborated;
- 10.5. make academic freedom and institutional autonomy of universities a part of CoE work to further human rights and democracy by adopting standards, policies and effective monitoring tools;
- 10.6. favour giving a dominant role to professional associations in the development and application of quality and ethical standards that can limit the production and distribution of information;
- 10.7. tackle the problem of abuse of freedom of expression by propaganda and hate speech, especially during war and in ethnic conflicts, in a human rights-compliant way. This requires applying different measures to two distinct groups of abuse: states have an obligation to combat and prosecute expressions prohibited under international law, while other types of expression, which stand against ethical standards but do not violate international law, should be tackled by the journalistic community and civil society.

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² Strategic Lawsuits against Public Participation (SLAPPs) are lawsuits alleging defamation that are in reality brought for the purpose of censoring, intimidating, harassing, and silencing critics for speaking out against the plaintiff on matters of public interest by burdening them with the cost of a legal defense until they abandon their criticism or opposition.