

Using the Summit to Breathe New Life into the Council of Europe

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☞ Council of Europe; Human rights; Judicial independence; Jurisprudence; Russia; Ukraine; War

Abstract

The Council of Europe (CoE) cannot look ahead and foster a recommitment to human rights among Member States at the 4th Summit without looking back and learning from the inadequate response to Russia's many transgressions and addressing Türkiye's flagrant disregard for its commitments under the European Convention on Human Rights. The 4th Summit should see all the institutions and mechanisms prioritise combating shrinking civic space, addressing attacks on the independence of the judiciary, countering the gender backlash, and pursuing accountability for violations in Russia's war against Ukraine. The summit should take a cautious approach towards institutional innovations, with the exception of the right to a healthy environment, but focus on making the existing toolkit more effective.

Introduction

The Council of Europe's 4th Summit is a rare opportunity for Europe to recommit to human rights and strengthen its resilience and solidarity in response to Russia's heinous aggression against Ukraine. Russia's invasion of Ukraine in February 2022 was the culmination of years of contempt for its statutory obligations as a Member State. In retrospect, Russia's many transgressions—the destruction of its own civic space, political persecution of opposition figures, laws and policies discriminating against LGBTI persons, undermining the authority of the European Court of Human Rights (ECtHR), non-cooperation with Council of Europe (CoE) mechanisms, as well as waging war and occupying swathes of its neighbours' territory—should have been met with a much stronger response long before its expulsion from the organisation in March 2022. Hence, it is essential that the summit builds on lessons learned from the experience with Russia by considering the key commitments it infringed and how the CoE failed to adequately address those warning signals.

Curbing the tide of human rights backsliding at a systemic level in various member states must be the priority for the 4th Summit. As the Statute of the CoE is increasingly challenged by other Member States, notably Türkiye, more resolute action is needed to address breaches of statutory commitments by those who undermine the organisation's vital work and defeat its purpose: to build a Europe whole, free and at peace. To do this, the CoE must combat all efforts in its Member States to restrict or suppress civil society, persecute political opponents, and undermine fair trial guarantees and the independence of the judiciary.

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The views expressed in the material contained in the *European Human Rights Law Review* are not necessarily those of the Editors, the Editorial Board, the publisher, or other contributors.

Combat shrinking civic space in Member States: towards a new holistic approach to civil society

A critical lesson from Russia’s suppression of dissent in the 10 years prior to its war on Ukraine is that shrinking civic space is both a symptom and an enabler of states’ systemic suppression of human rights. This realisation should lead to a new holistic approach to civil society by the CoE and its Member States by guaranteeing the enabling environment required for human rights work, including freedom of expression, freedom of peaceful assembly, freedom of association and the end to states’ judicial harassment of dissenting voices. The CoE should ensure this goal through a collective effort including the monitoring bodies and Commissioner for Human Rights, and critically, the Secretary General (SG), Parliamentary Assembly (PACE) and the Committee of Ministers (CM).

A critical turning point for civil society in Russia was the adoption of the Foreign Agents Law in 2012, which imposed arbitrary restrictions and implied that NGOs were spies and traitors. It was only in June 2022—10 years later—that the ECtHR finally delivered its judgment on the cases of various NGOs challenging the Foreign Agents Law, finding several violations. By then, Russia had already ceased to be a member.¹

As the ECtHR has noted in a growing number of judgments concerning not only Russia, but also Azerbaijan, Türkiye and Poland, human rights defenders, as well as lawyers and judges, have their rights restricted and in some cases their liberty, for ulterior motives. Amnesty International has been denouncing growing restrictions and attacks on human rights defenders and civil society organisations who report abuses of power, violations of the rights of migrants, women’s rights, LGBTI rights, environmental degradation, corruption, but also the independence of the judiciary, which is the ultimate guarantee against arbitrary interference by public authorities. Instead of stigmatising and criminalising their activities, governments should protect human rights defenders and recognise their crucial role.

In 2017, for the first time in Amnesty International’s long history, the president and director of an Amnesty Section became prisoners of conscience after being arbitrarily detained. That was in Türkiye, and despite a May 2022 ECtHR ruling finding a violation of arts 5 and 10 of the European Convention on Human Rights (ECHR) and denouncing an interference with Taner Kiliç’s right to freedom of expression for “actions that were directly linked to his activity as a human rights defender”,² he still faces the prospect of a prison sentence.

Political persecution is a red line crossed too often and for too long in Russia and other Member States such as Azerbaijan and Türkiye. The Court denounced the political motivation behind the detention of Alexey Navalny, finding a violation of art.18 of the ECHR, followed by multiple calls for his release.³ Azerbaijan and Türkiye have equally detained human rights defenders, lawyers, opposition leaders and journalists with the ulterior motive of silencing critical voices.

Infringement proceedings taken to the Court in *Mammadov v Azerbaijan*⁴ and in *Kavala v Türkiye*⁵ are the ultimate tools available in the ECHR, but ineffective in the absence of political will and weakened judiciaries. The most glaring example is the case of Osman Kavala, sentenced to life in prison in May 2022 despite the ECtHR’s ruling and infringement proceedings.⁶ Such cases of political persecution are evident when the court finds an art.18 ECHR violation involving ulterior motives, but also in the systemic nature of violations of arts 5 and 10 of the ECHR that, together and in such high numbers, indicate a clear political strategy for silencing critical voices. Such art.18 violations require a coordinated response at the

¹ *Ecodefence and others v Russia* (App. Nos 9988/13 and 9988/60 and others), judgment of 14 June 2022.

² *Taner Kiliç (No.2) v Turkey* (App. No.208/18), judgment of 31 May 2022.

³ *Navalnyye v Russia* (App. No.101/15), judgment of 17 October 2017.

⁴ *Mammadov v Azerbaijan* (App. No.15172/13), judgment of 29 May 2019; (2020) 70 E.H.R.R. 8.

⁵ *Kavala v Turkey* (App. No.28749/18), judgment of 11 July 2022; (2023) 76 E.H.R.R. 13.

⁶ *Kavala* (App. No.28749/18), judgment of 11 July 2022.

highest political level of the CoE to ensure an end to political persecution, respect for the ECHR system and the authority of the Strasbourg Court.

Shrinking civic space and the erosion of fair trial guarantees, including judicial independence, are mutually reinforcing. Without effective access to lawyers, independent and impartial judiciaries, the right of any individual to obtain justice is fundamentally undermined. Journalists, human rights defenders and academics are essential to denounce state overreach that impacts on human rights. Attacks on civil society are a symptom of a dysfunctional system, and where courts lack independence and impartiality they are no longer willing, let alone able, to safeguard against abuse, thus enabling ever more attacks on people's rights. In this vicious circle, weakened judiciaries facilitate political persecution, state overreach and arbitrary rule. The CoE must reinforce its efforts to address the independence and impartiality of the judiciary, strengthen the position of lawyers, and oppose the judicial harassment of critical voices. Judges in Türkiye, but also in Poland, Hungary and elsewhere, should have no doubts about the binding nature of the ECtHR's rulings, nor fear repercussions for applying the ECHR.⁷

Amnesty International's reporting shows that restrictions to freedom of association and freedom of peaceful assembly should equally be addressed.⁸ Several Member States imposed arbitrary or disproportionate bans on peaceful protests in 2022 and police continued to resort to excessive use of force against protestors, severe fines and arbitrary arrests. Many governments continue to prevent or arbitrarily punish acts of civil disobedience, especially by environmental protesters.

Freedom of expression continues to be under threat in various countries. Worryingly, politicians and businesses are increasingly resorting to the use of strategic lawsuits against public participation (SLAPPs) to silence human rights voices. SLAPP suits are used to intimidate, tire and deplete the financial and psychological resources of their target and to deter others, most often journalists, human rights defenders, civil society organisations, academics or other critical voices. In 2022, Amnesty International noted with concern the use of SLAPPs in Austria, Bosnia and Herzegovina, Bulgaria, Greece, Croatia, Serbia and Slovenia.⁹ The CoE is currently working on a recommendation to put in place mechanisms to tackle the impact of SLAPPs, which is planned to be adopted by the CM in early 2024. Amnesty International, along with the CASE Coalition, calls on the CM to adopt a strong anti-SLAPP recommendation that includes a broad definition of those targeted by SLAPPs (including not only journalists but also human rights defenders, protesters and other actors from civil society). Similarly, the recommendation should acknowledge that SLAPPs are weaponised by a wide range of actors, including state officials, politicians, religious leaders and corporate actors. It should foresee an effective procedure enabling courts to dismiss SLAPPs at an early stage, with the possibility to obtain the stay of the main proceedings, an accelerated procedure, and the reversal of the burden of proof. Further, the recommendation should envisage sanctions for those who repeatedly use SLAPPs or threaten to do so, and the establishment of a public registry of court decisions related to SLAPPs. Finally, the CoE recommendation should envisage financial and legal

⁷ On the chilling effect against judges, see in particular the letter by the CoE Secretary General to the Turkish Minister of Justice of 21 February 2020, expressing concern about Osman Kavala's re-arrest and the investigation against the judges who delivered the verdict of acquittal in favour of Osman Kavala and his co-accused: "The decision, to investigate the judges sends a strong chilling message to the Turkish judiciary. It also runs counter to one of the aims set out in the Judicial Reform Strategy and the recent circular of the Council of Judges and Prosecutors concerning the promotion of judges and prosecutors, which is to encourage judges to deliver judgments in conformity with the European Court's case-law". See also *Turkey: Weaponizing Counterterrorism: Turkey Exploits Terrorism Financing Assessment to Target Civil Society*, 18 June 2021, Index No.EUR44/4269/2021. See also *Poland: Third-party intervention to the European Court of Human Rights in the case of Igor Tuleya*, 20 January 2021, Index No.EUR 37/3548/202; *Juszczyszyn v Poland* (App. No.35599/20), judgment of 6 October 2022, finding a violation of arts 18 and 8 in the context of disciplinary measures leading to suspension of a judge predominantly aiming to sanction and dissuade him from verifying the lawfulness of appointment of judges; Amnesty International, *Poland: "They Treated Us Like Criminals": From Shrinking Space to Harassment of LGBTI Activists*, 20 July 2022, Index No.37/5882/2022. In Hungary, judges and prosecutors have been targeted with abusive disciplinary proceedings and suspensions. See the r.9(2) submissions to the CM in the case of *Baka v Hungary* by Amnesty International Hungary and the Hungarian Helsinki Committee.

⁸ See the relevant country entries in Amnesty International, *Amnesty International Report 2022/2023: The State of the World's Human Rights* (London: Amnesty International, forthcoming March 2023).

⁹ See the relevant country entries in Amnesty International, *Amnesty International Report 2022/2023: The State of the World's Human Rights* (London: Amnesty International, forthcoming March 2023).

support mechanisms for those targeted by SLAPPs to address the imbalance of power between parties that is characteristic of SLAPP suits.

The CoE's work on human rights defenders has been marred with indecision and even opposition by various Member States. Various ministerial decisions have pledged to strengthen the role of civil society and the CM has adopted a number of recommendations on civil society, as well as a Declaration on human rights defenders,¹⁰ but these have hardly been implemented in what concerns human rights defenders.¹¹ The CM Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe calls on Member States and on CoE bodies and institutions to pay special attention to issues concerning the enabling environment in which all human rights defenders, including National Human Rights Institutions and civil society organisations, can safely and freely operate in Europe. It calls on Member States to "remove any unnecessary, unlawful or arbitrary restrictions to civil society space, in particular with regards to freedom of association, peaceful assembly and expression". It requests "paying special attention within the CM to the execution of judgments of the European Court of Human Rights concerning human rights defenders and the enabling environment for human rights work, which have yet to be implemented". In line with this recommendation, the CM should organise a thematic debate on implementation of judgments concerning human rights defenders.

Amnesty International welcomes the work of the Commissioner for Human Rights in raising the alarm and denouncing abuses against human rights defenders, including via r.9 submissions to the CM on execution of relevant judgments. Yet, the recommendations of the Commissioner are not given sufficient follow up by Member States. Despite the Hamburg and Helsinki ministerial decisions on civil society, and the SG's pledge to organise an annual exchange with civil society, no significant efforts have been made. No thematic meeting in the CM on human rights defenders or judgments concerning human rights defenders has been organised, and no report has yet been published since the establishment of the CoE SG mechanism on retaliation against human rights defenders for contacts with the CoE in 2017. It is time to end such reluctance in responding to threats to civil society in Member States with a new holistic approach to civil society.

It is worrying that both the PACE recommendation on the 4th Summit¹² and the High-level Reflection Group's report¹³ fail to address the serious issues civil society faces in Member States, but rather focus only on the need to strengthen consultation, participation and communication with civil society. Although important, such approach is manifestly insufficient when shrinking civic space is an integral part of the problems Europe is facing today.

¹⁰ See in particular, Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe, 28 November 2018 and *Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities*, 6 February 2008.

¹¹ See Helsinki Ministerial Decision CM/Del/Dec(2019)129/2 on a shared responsibility for democratic security in Europe:

"The Committee of Ministers agreed to:

1. examine further options for strengthening the role and meaningful participation of civil society organisations, and national human rights institutions in the Organisation, with the view to increasing its openness and transparency towards civil society, including access to information, activities and events;
2. further strengthen the Organisation's mechanisms for the protection of human rights defenders, including the Secretary General's Private Office procedure on human rights defenders;
3. invite the Secretary General to explore the possibilities of inviting the relevant human rights NGOs to a regular exchange with a view to further enhancing co-operation between civil society and the Council of Europe and enriching the discussions of the Committee of Ministers and other Council of Europe bodies";

see also Hamburg Ministerial Decision CM/Del/Dec(2021)131/2a:

"...12. reiterated the importance of further strengthening the role and meaningful participation of civil society organisations as well as national human rights institutions in the Organisation, in line with, inter alia, the Helsinki Ministerial decisions on civil society; instructed its Deputies and invited the Secretary General to vigorously pursue the work to this end, implement the Secretary General's follow-up proposals to the Helsinki decisions and report back on the results at the Ministerial Session in May 2022";

see also Secretary General's Information Document SG/Inf(2022)13 on Follow-up to the Helsinki decisions on civil society.

¹² Parliamentary Assembly Recommendation 2245 (2023) on the Reykjavik Summit of the Council of Europe: United around values in the face of extraordinary challenges.

¹³ *Report of the High-Level Reflection Group of the Council of Europe* (October 2022), Council of Europe, <https://rm.coe.int/report-of-the-high-level-reflection-group-of-the-council-of-europe-/1680a85cf1> [Accessed 25 February 2023].

Protect and strengthen independent judiciaries to safeguard human rights

The ECtHR is a key guarantor of the rule of law in Europe as demonstrated by its growing case law condemning threats to the independence and impartiality of national judiciaries. Yet, the Court itself and the ECHR system have also been directly challenged and threatened by Member States.

In December 2015, a law amending the Law on the Constitutional Court of Russia gave that court the power to declare an international decision, including a judgment of the ECtHR, non-enforceable if it did not conform with the Russian Constitution, contrary to Russia's obligations under the ECHR.¹⁴ Such a serious challenge to the system was met with only mild criticism, which no doubt encouraged other countries to follow suit. Similar challenges to the system have been evident in Poland, and most prominently in Türkiye.

In Poland, the Constitutional Court, whose independence has been eviscerated by the government since 2015, has ruled that art.6 of the ECHR on the right to a fair trial is incompatible with the Constitution, prompting a rare art.52 ECHR inquiry by the CoE Secretary General Marjia Pejčinović Burić. In a damning report, she found that the ECtHR's competence had been challenged.¹⁵ The Secretary General stressed that Poland's shortcomings in the execution of judgments of the ECtHR needed to be addressed by the CM.¹⁶

In Türkiye, the judiciary continues to enable the pursuit of baseless investigations, prosecutions and convictions. In various cases, the ECtHR has found an ulterior motive behind the restriction of rights, such as to undermine the work of human rights defenders and create a chilling effect to silence their criticism. In the cases of Osman Kavala, the CM has asked for reforms to "ensure the full independence and impartiality of the Turkish judiciary, including from the executive branch" to put an end to recurring violations of the ECHR, including political persecution, arbitrary detention and unfair trials.¹⁷ Following the July infringement judgment of the Grand Chamber under art.46(4) of the ECHR and numerous CM calls to immediately release Osman Kavala, Türkiye has attained a new level of non-compliance. The implications for the ECHR system are enormous, as this is an unprecedented attack on the credibility of the Court. Non-compliance with ECtHR judgments cannot be normalised, as it can put at risk the whole system, which is based on the binding nature of judgments. The refusal of Türkiye to abide by its commitments under the Convention should be condemned in the strongest possible terms at the Reykjavik Summit. *Indeed, the Summit must address in particular Member States' systematic non-compliance with their obligation to abide by the Strasbourg rulings, such as Türkiye, otherwise all talk of "recommitting to human rights" will ring hollow.*

Clearly, infringement proceedings under art.46(4) of the ECHR should automatically trigger a collective response of the statutory bodies of the CoE, as well as Member States. The SG, CM and PACE should engage in high-level efforts to ensure the implementation of those judgments. The implementation of infringement proceedings should be included in every ministerial meeting at the end of a presidency, and in particular feature in the agenda of the 4th Summit as a stand-alone point. Each upcoming presidency of the CM should take the initiative of implementing at least three judgments under enhanced procedure ahead of the presidency as a sign of commitment to the ECHR.

¹⁴ The Venice Commission found that: "The provision that no execution measure may be taken if the Constitutional Court finds that a judgment is non-enforceable is in direct conflict with Russia's international obligations under the Vienna Convention on the Law of Treaties and Article 46 ECHR and should be removed." See *Russian Federation—Final Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court adopted by the Venice Commission at its 107th Plenary Session* (Venice, 10–11 June 2016, DL-AD(2016)016-e), para.42. See also *Russian Federation—Opinion on draft amendments to the Constitution (as signed by the President of the Russian Federation on 14 March 2020) related to the execution in the Russian Federation of decisions by the European Court of Human Rights, adopted by the Venice Commission on 18 June 2020 by a written procedure replacing the 123rd Plenary Session* (CDL-AD(2020)009-e).

¹⁵ Secretary General Information Documents SG/Inf(2022)39 on Report by the Secretary General under Article 52 of the European Convention on Human Rights on the consequences of decisions K 6/21 and K 7/21 of the Constitutional Court of the Republic of Poland.

¹⁶ Secretary General Information Documents SG/Inf(2022)39 on Report by the Secretary General under Article 52 of the European Convention on Human Rights on the consequences of decisions K 6/21 and K 7/21 of the Constitutional Court of the Republic of Poland.

¹⁷ See CM, 1451st meeting, 6–8 December 2022, (DH)H46-40 and *Kavala* (App. No.28749/18), judgment of 11 May 2020.

Counter the gender backlash

Governments across Europe have used discriminatory restrictions on the rights of women and LGBTI persons to distract from other policy shortcomings and to galvanise populist responses. Here also the Russian experience is of interest. Over the last 10 years, the Russian authorities increasingly championed “traditional values” narratives, underlined by sexist and homophobic stereotypes despite ECtHR rulings finding that differential treatment of men and women regarding parental leave from the armed forces cannot be justified by gender stereotyping, that Pride events should not be banned and that laws criminalising “propaganda of homosexuality” violated the Convention. The authorities strongly resisted implementing these judgments. Yet, Russia’s examples of discrimination against LGBTI persons have regrettably been turned into badges of honour in other parts of Europe, with similar legislation and policy copied in other Member States. In Hungary, for instance, the government rolled out Russia-style anti-LGBTI legislation and even organised a referendum seeking to bolster its position. NGOs which successfully advocated against the referendum faced fines.

The backlash against women’s rights has reached unprecedented proportions in recent years. Restrictions on abortion are of unimagined cruelty for Polish women, and in Türkiye the President issued a decree to withdraw the country from the Istanbul Convention in the dark of night.¹⁸ In Poland, the Constitutional Tribunal ruled in October 2020 that abortion on grounds of “severe and irreversible fetal defect or incurable illness that threatens the foetus’ life” was unconstitutional.¹⁹ Given that the ECtHR has found that the Constitutional Tribunal does not meet fair trial requirements due to its lack of independence, this ruling exposed the direct impact of the erosion of the rule of law in Poland on the human rights of women and girls and reproductive rights.²⁰ Meanwhile, NGOs helped 44,000 people to access abortion services, mostly abroad.²¹ Hungary adopted new rules requiring those seeking an abortion to show a clinician’s report that they had listened to the “foetal heartbeat”,²² political forces in Slovakia and Italy introduced legislation to limit access to abortion, on the positive side, several countries began removing barriers to abortion, including the Netherlands, Germany and Spain.²³

All Member States should commit to ratify, as appropriate, and to implement the Istanbul Convention at the 4th Summit. The Istanbul Convention should be part of the core commitments of the CoE and be a requirement for future membership of the Organisation. The withdrawal by Türkiye of the Istanbul Convention in 2021, as well as the opposition of certain CoE members to the core principles of the Istanbul Convention, should be addressed in regular high-level meetings of the CM to ensure their adherence. The CM should organise thematic debates on the implementation of ECtHR judgments concerning violence against women.

New initiatives to enhance the effectiveness of the CoE?

The PACE, the High-level Reflection Group and other stakeholders have proposed creating a set of new mechanisms, including a Commissioner for Democracy and Special Representatives. In Amnesty International’s view, the CoE should resist creating additional mechanisms without a proper impact

¹⁸ Amnesty International, *Turkey: “Turn words into actions: Duty-bound to end violence against women”*, 22 December 2021, Index No.EUR 44/5109/2021.

¹⁹ “Poland’s Constitutional Tribunal Rolls Back Reproductive Rights” (22 October 2020), Amnesty International, <https://www.amnesty.org/en/latest/press-release/2020/10/polands-constitutional-tribunal-rolls-back-reproductive-rights/#:~:text=Poland%E2%80%99s%20Constitutional%20Tribunal%20Rolls%20Back%20Reproductive%20Rights.%2022,Reproductive%20Rights%20and%20Human%20Rights%20Watch%20said%20today>.

²⁰ *Case of Xero Flor w Polsce sp. z o.o. v Poland* (App. No.4907/18), judgment of 7 May 2021.

²¹ See “Poland: Regression on abortion access harms women” (26 January 2022), Amnesty International, <https://www.amnesty.org/en/latest/news/2022/01/poland-regression-on-abortion-access-harms-women/> [Accessed 2 March 2023].

²² W. Strzyżyńska, “Hungary tightens abortion access with listen to ‘foetal heartbeat’ rule” (13 September 2022), *The Guardian*, https://www.theguardian.com/global-development/2022/sep/13/hungary-tightens-abortion-access-with-listen-to-foetal-heartbeat-rule?CMP=share_btn_link [2 March 2023].

²³ See the relevant country entries in Amnesty International, *Amnesty International Report 2022/2023: The State of the World’s Human Rights* (London: Amnesty International, forthcoming March 2023).

assessment, as this could lead to patchwork solutions which merely mask the lack of political will among Member States. However, as seen with Russia and the whole PACE debate on the sanctions on the Russian delegation following the illegal annexation of Crimea and the creation of a new Joint Procedure, it is ultimately for the statutory bodies to forcefully and decisively protect the Statute of the CoE and for the CM to supervise the execution of judgments.

One area of work which will require some additional instruments and mechanisms, as it has gained new urgency but has been historically neglected, is the right to a clean, healthy and sustainable environment. Amnesty welcomes the CM recommendation on the right to a healthy environment adopted on 27 September 2022. It is essential for this right to be formally recognised through a legally binding protocol to the ECHR, for a more solid and coherent legal basis to the ECtHR's jurisprudence on environmental matters that facilitates implementation and enforcement of the right to a clean, healthy and sustainable environment in Member States. In parallel, Member States could consider establishing a commission on the right to a healthy environment on the model of the European Commission against Racism and Intolerance (ECRI) which would gather independent experts from Member States, with a mandate to develop policy recommendations to States and monitor implementation at national level through country reports.

While institutional innovations should be approached with caution, a number of procedural innovations should be considered to improve the CoE system and make it more dynamic and effective. Thus, for example, infringement proceedings as the ultimate measure should prompt a commensurate extraordinary response. An appropriate response could be an international conference of the Member States on the refusal to implement the judgment by the relevant state. The rare deployment of an art.52 inquiry by the SG should likewise give rise to an automatic follow up at the highest level with the national authorities concerned.

In addition, if Member States want to affirm their good faith cooperation with CoE institutions, they could extend standing invitations to the CM, PACE and Congress of Local and Regional Authorities in Europe (CLRAE) delegations, the monitoring mechanisms, other treaty-based bodies, the Commissioner for Human Rights, and Special Representatives of the Secretary General. It is unacceptable that some states have refused to cooperate with certain bodies, preventing their visits and reporting. Such lack of cooperation should be a standing item on the CM agenda, including of its annual ministerial meetings.

Rejecting war crimes and pursuing accountability

Soon after it joined the CoE, Russia engaged in a brutal second war in Chechnya, clearly defeating the objectives of the CoE Statute it had willingly signed up to. The ECtHR has delivered hundreds of judgments against Russia for violations during that war, but only a few have been partially implemented, notably because many implicate actions of the security forces which benefited from impunity. This case law concerns “killings notably as a result of indiscriminate bombings and failures to properly organise safe passages for civilians, disappearances, ineffective investigation thereof and the resulting mental suffering of the victims’ relatives during counter-terrorism operations in the Chechen Republic and neighbouring regions”.²⁴ In June 2022, when the CM last reviewed the CoE Statute, it:

“reiterated, with regard to the conduct of the Russian armed forces, the necessity to comply with the requirements of the Convention and respective international standards, including international humanitarian law, and exhorted the authorities ... to spare the civilians from the fighting and to allow them to safely flee the fighting through the safe passages, to investigate all alleged atrocities and to identify and punish those responsible.”²⁵

²⁴ See CM case description for *Khashiyev v Russia* (App. No. 57942/00), judgment of 24 February 2005; (2006) 42 E.H.R.R. 20.

²⁵ See 1436th meeting, 8–10 June 2022 (DH), H46-24, *Khashiyev* (App. No.57942/00) at [5].

The CM further “deplored again, with regard to the more recent abductions by the state agents in Chechnya, the continuing serious human rights violations in the region”.²⁶

Russia’s subsequent warfare in Georgia and Syria and its occupation of Crimea and involvement in the conflict in eastern Ukraine foretold its full-scale invasion of Ukraine, with the use of the same brutal indiscriminate attacks on civilians and civilian infrastructure, and other serious violations amongst a myriad of war crimes. Yet, the gross human rights violations committed during the Chechen wars were only patchily addressed by the CM which, despite much condemnation, never brought infringement proceedings against Russia for its complete disregard of judgments that required investigations of actions by security forces, allowing impunity to prevail. More forceful action on these cases would have benefited the credibility of the CM and perhaps forced Russia to consider the need for accountability and reforms in order to remain a member of the CoE. The CM’s failure to act more forcefully arguably contributed to Russia’s increasingly lawless actions which have taken such a high toll on human rights in Europe and particularly for Ukraine, and beyond.

Russia’s war in Ukraine has seen crimes under international law committed on a mass scale. Amnesty International calls for all perpetrators to be brought to justice through independent, impartial, and fair trials for all crimes under international law, including the crime of aggression. The rights of victims of crimes under international law must be at the forefront of investigations and prosecutions, and victims must be able to fully realise their rights to truth, justice and reparations.

The December 2022 CM *decision regarding cases pending against Russia*, recalling Russia’s obligation to execute the binding judgments of the ECtHR and the Court’s announcement on 3 February of its procedure for future processing of applications against Russia *are very important steps*.²⁷ These will require additional resources for the Court and for the CM. The CoE Action Plan for Ukraine, “Resilience, Recovery and Reconstruction” (2023–2026), has the potential of bringing the support that victims of crimes under international law need and of supporting the improved functioning of the Ukrainian justice system. It will require close monitoring, effective implementation with participation of civil society, and a victims rights’ approach. The Secretary General’s information note on “Accountability for human rights violations as a result of the aggression of the Russian Federation against Ukraine” of 31 January 2023, and the CM’s decision of 24 February 2023 indicating the CoE’s key role in establishing accountability and securing justice for victims, positions the CoE as a leading voice in pursuing justice and will equally require strong political and financial support from all Member States.²⁸

Given the scale of violations since the full-scale invasion of Ukraine in February 2022, it is likely that a large number of applications will be filed at the ECtHR both individually as well as on an inter-state basis. These cases, along those from the start of the conflict in 2014, will constitute an important part of the growing evidence being gathered by various international and national justice mechanisms about violations of international humanitarian and human rights law. Monitoring by those mechanisms to which Russia is still a party—for example, the Committee for the Prevention of Torture (CPT)—should continue. Monitoring is an essential tool against impunity.

Conclusion

The 4th Summit is an opportunity for the CoE to take a step towards accountability for Russia’s war of aggression and the many violations of international humanitarian and human rights law in the conflict. However, for the summit to be a success and to breathe new life into the CoE, Member States need to

²⁶ See 1436th meeting, 8–10 June 2022 (DH), H46-24, *Khashiyev* (App. No.57942/00) at [9].

²⁷ CM, 1451st meeting, 6–8 December 2022.

²⁸ Secretary General Information Documents SG/Inf(2023)7 on Accountability for human rights violations as a result of the aggression of the Russian Federation against Ukraine: role of the international community, including the Council of Europe; CM/Del/Dec(2023)1457bis/2.3, Decision on the consequences of the aggression of the Russian Federation against Ukraine, 24 February 2023.

prioritise addressing Türkiye's flagrant disregard for its commitments. They should also use the summit to prioritise combating efforts to shrink civic space, protecting and strengthening independent and impartial judiciaries, and countering the gender backlash. With the possible exception of the right to a healthy environment, the summit should focus less on creating new institutions than on making the existing toolkit (e.g. infringement proceedings, art.52 inquiries, monitoring visits, etc) more effective and better resourced.