

# THE EUROPEAN COUNCIL AND ITS ROLE IN PROMOTING AND DEFENDING HUMAN RIGHTS IN THE EUROPEAN AREA

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## Abstract:

*The Council of Europe advocates freedom of expression and of the media, freedom of assembly, equality, and the protection of minorities. It has launched campaigns on issues such as child protection, online hate speech, and the rights of the Roma, Europe's largest minority. The Council of Europe helps member states fight corruption and terrorism and undertake necessary judicial reforms. Its group of constitutional experts, known as the Venice Commission, offers legal advice to countries throughout the world.*

*The Council of Europe promotes human rights through international conventions, such as the Convention on Preventing and Combating Violence against Women and Domestic Violence and the Convention on Cybercrime. It monitors member states' progress in these areas and makes recommendations through independent expert monitoring bodies. All Council of Europe member states have abolished the death penalty.*

**Keywords:** *freedom, rights, equality, member, states, minority.*

The complex of factors that led United Nations Organization to the special concern for the protection of human rights had a similar effect in Europe. One of these factors was, specifically, the reaction against the fascist systems that caused the Second World War. Denial of the existence of human rights was not just an incidental result of these systems, but "a deliberate instrument of national policy and even a precondition of their ascent" (Robertson, Merrills, 1994). Another factor was the need to protect the democratic systems of Western Europe, not only against a revival of fascist dictatorships, but also against another kind of regimes that had taken control of half of the continent: the communist regimes.

In August 1941, the Atlantic Charter proclaimed the famous "Four Freedoms" (the freedom of speech, freedom of religion, individual liberty and security of a person, the freedom not to fear, freedom from poverty) and also the right to self-determination. These principles were reaffirmed in the "Declaration of the 26 United Nations" on 1 January 1942 and three years later came the familiar provisions of the United Nations Charter. In May 1948, the Hague Congress announced at Hague, the following:

"We want a united Europe in which the free movement of people, ideas and goods is restored;

We want a Charter of Human Rights which guarantees freedom of thought, assembly and expression, and the right to form political opposition;

Want a Court of Justice with adequate sanctions for the implementation of the Charter;

We want a European Assembly where the live forces of all our nations are represented"

This statement of principles requires an organized system to be applied. The task of creating such a system belongs to the Consultative Assembly of the Council of Europe during its first session in August-September 1949. The birth certificate of the Council of Europe - the Statute of the Council of Europe, signed in London on 5 May 1949 and entered into force on 3 August 1949 - provided in art. 1 that the maintenance and realization of human rights were one of the means to fulfill the purpose of the Council and specifically a greater unity between its members for the protection and realizing the ideals and principles that formed their common spiritual heritage and facilitating economic and social progress.

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Article 3 of the Statute has strengthened this requirement, making the respect for human rights a condition of membership.

The quality of Member State of the European Council is conditioned by the acceptance of the rule of law and the principle that every person within its jurisdiction must enjoy human rights and fundamental freedoms. Also, joining the Council of Europe involves a commitment of the state to collaborate sincerely and effectively to achieve its goals.

Violation of these obligations of art. 3 of the Statute can attract penalties, according to art. 8: suspension of representation rights; the request made the Committee of Ministers to retire from the Council of Europe; termination of membership of the Council of Europe through the Committee of Ministers' decision.

The Council of Europe is the main intergovernmental international organization, at European regional level that has as main task, the consecration and defence of human rights.

The constitutive Treaty of this international organization is the Statute of the Council of Europe. In the preamble of the Treaty it is shown that party States reaffirm their commitment to spiritual and moral values which are the common heritage of their people and the true source of individual freedom, the political freedom and of the rule of law, principles which form the basis of all genuine democracy.

The purpose of the Council of Europe, as defined by the Statute, is "to achieve greater unity between its members for safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress, this goal being pursued through the organs of the Council of Europe by discussing the issues of common concern and by concluding agreements and the adoption of joint actions in the economic, social, cultural, scientific, legal and administrative matters as well as in the maintenance and further respect of rights and fundamental freedoms".

Should be noted that the organization is not competent to deal with matters relating to national defense, which, as known, is the competence of other bodies. The Statute of the Council of Europe provides a number of conditions that must be met by countries that wish to become members of this organization. Membership in the Council of Europe, according to art. 3 is related to the acceptance by them of the rule of law and the principle where each person within its jurisdiction must enjoy human rights and fundamental freedoms, and commitment to collaborate sincerely and effectively, to accomplish the purpose of the Council of Europe.

The Council of Europe has an outstanding activity in the human rights field, both in terms of their consecration by conventional acts and declaratory as well as in their protection.

The objectives of the Council of Europe are:

- protection of human rights, pluralist democracy and the rule of law;
- enhancement of the cultural identity of Europe and its diversity;
- the search for some common solutions social issues such as discrimination against minorities, xenophobia, intolerance, bioethics and cloning, human trafficking, terrorism, organized crime, cybercrime, violence against children;
- development and democratic stability in Europe, supporting political, legislative and conventional reforms(Moroianu Zlătescu Irina, 2010).

In the field of Human Rights the Convention for Protection of Human Rights and Fundamental Freedoms is the most important document of the Council of Europe<sup>1</sup>.

In the matter of human rights, we distinguish: bodies that have, under their general powers also duties in this area; bodies specialized in the matter of human rights.

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<sup>1</sup> Law no. 30 of 18 May 1994 on the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Additional Protocols to the Convention, published in the Official Gazette of Romania, Part I, no. 135 of May 31, 1994

The Council of Europe's bodies that do not have exclusive competences in human rights, but which have intervened in this area, within their general competences are the main organs of the organization, namely: the Committee of Ministers; The Parliamentary Assembly and the Secretariat.

*The Committee of Ministers (<http://www.coe.ro/comitetul.html>)*

The Committee of Ministers represent the decision-making body of the Council of Europe. It is composed of foreign affairs ministers of the 47 member states or their permanent diplomatic representatives in Strasbourg. It constitutes a governmental body and a collective forum (Selejan-Guțan, 2011) where, on equal terms, can be discussed national approaches, regarding problems faced by the European society and a forum to develop European responses to these challenges. In collaboration with the Parliamentary Assembly, it represent the guardian of the fundamental values of the Council of Europe and is vested with the task of monitoring compliance with the commitments taken by Member States.

The Committee of Ministers decides Council of Europe activities. It decides also how it must be acted on recommendations of the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe and on the proposals from various intergovernmental committees and conferences of specialized ministers. It adopts the program of activities and budget of the Council of Europe.

In this respect we mention, for example, that, according to the activity report for 2014 at the 1205<sup>th</sup> meeting of July 9, 2014 the Declaration was adopted by the Committee of Ministers on banning all forms of trading human organs.

The discussions in the Committee of Ministers refer to all political issues of common interest except defense: the political aspects of European integration, operation, safeguarding of democratic institutions and protecting human rights, in other words, all problems which require concerted solutions, at pan-European level.

Foreign Ministers of the Member States meet once a year to discuss European cooperation and political issues and to give the necessary political impetus to the organization's activities. Each minister presides the Committee for a period of six months. Permanent Representatives (ambassadors) have weekly meetings, the meetings are supplemented by meetings of groups of rapporteurs or working groups responsible for developing certain issues before decisions are taken.

If projects are not supported by all Member States, the Committee of Ministers may launch them under partial agreements which allow some members to pursue joint activities in various fields.

On the other hand, enlarged agreements enable some countries which are not members of the Council of Europe to associate with certain Member States benefiting thus of the permanent structures of the organization. The Committee's decisions are passed to the governments as recommendations or are being European conventions and agreements legally binding for States that have ratified them.

The Committee also adopts declarations and resolutions on current political issues. Most of the decisions of the Committee of Ministers, need in order to be adopted a two-thirds majority of the casted votes (Purdă, Diaconu, 2011), a simple majority is not sufficient for procedural matters either.

Conventions and recommendations are drafted by committees of governmental experts, appointed by the Committee of Ministers, thereby generating a dialogue on global political vision and technical considerations. Many political initiatives are also taken at ministry meetings, held regularly.

The Council of Europe has developed cooperation and assistance programs for new member states to allow them to benefit from its experience. These are based on results of

intergovernmental collaboration of the Council : reference tools, expert networks as well as cooperation structures and mechanisms. Their purpose is to consolidate, strengthen and accelerate democratic reform in these countries so that they can integrate gradually and harmoniously into the processes and structures of European cooperation and, above all, in the Council of Europe.

It has been adopted and a program regarding measures of trust, to support initiatives of the civil society , initiatives aimed at improving knowledge and mutual cooperation between majority and minority communities.

Also at the 1207th Meeting of the Ministers delegated from the 17<sup>th</sup> of September 2014 in Strasbourg, it was adopted 'A strategy to prevent racism and intolerance in Europe "The report supports the idea of open political dialogue regarding racism and intolerance, gathering information and promoting parliamentary initiatives to combat intolerance and discrimination, and to identify solutions to the Council of Europe to combat it<sup>1</sup>.

The European countries that joined the Council of Europe Statute undertake to recognize the rule of law, and the one under which persons under their jurisdiction must enjoy human rights and fundamental freedoms. They also undertake to collaborate sincerely and effectively to achieve greater unity and to facilitate their economic and social progress. Each member state must honor these commitments and the Committee of Ministers ensures that they do.

In case of serious breach of the statutory obligations by a Member State, the Committee of Ministers may suspend the right of representation of that State, it may ask it to withdraw or even suspend its membership.

The Committee of Ministers watches also on the effective application of conventions and agreements concluded between Member States. This is crucial for human rights conventions, of which the most important (European Convention on Human Rights, the revised European Social Charter, the European Convention for the Prevention of Torture, the Framework Convention for the Protection of National Minorities) have their own supervisory mechanisms.

The responsibility of the Committee of Ministers on the European Convention on Human Rights reflects the importance of this convention, which is the cornerstone of the system of human rights protection in Europe. Supervising execution of the judgments of the European Court of Human Rights by member states, the Committee of Ministers plays an essential role in maintaining the credibility of a system without equivalent in the world.

Faithful to the philosophy that led to the widening of the Council of Europe after the fall of the Berlin Wall, the Committee of Ministers has exercised its responsibilities in an impartial and constructive spirit, emphasizing dialogue and the gradual establishment of political and material conditions conducive to positive developments. It has introduced a control procedure, called "monitoring" which ensures the compliance with the commitments made by all Member States. It offers all members the conditions and resources needed to nurture the Council's founding values.

In this respect we mention that, according to the 2014 Progress Report (Activity Report 2014) on the 1197th Meeting of the Ministers delegated from the 16th of April 2014 in Strasbourg, it has been reiterated the appeal to the Russian Federation, as the only Member State that has not yet abolished the death penalty to take, without delay, all necessary steps to transform the existing moratorium on the death penalty, in the elimination by law of this penalty, and ratify Protocol 6.

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<sup>1</sup> Activity Report 2014 published on <http://www.coe.int>

*The Parliamentary Assembly (<http://www.coe.ro/adunarea.html>)*

The Parliamentary Assembly of the Council of Europe was the first European meeting of the continent's history (Selejan-Guțan, 2011). With delegates from 47 national parliaments, it remains the largest truly European gathering.

The Assembly shall adopt its agenda, addresses current issues and themes of a prospective nature, dealing particularly with problems of society and international policy issues.

Its deliberations play an important role in guiding the work of the Committee of Ministers and intergovernmental sectors of the Council of Europe. It is reflected also on governments when members relay them to their national parliaments.

The Assembly meets four times a year for a week in public plenary session in the auditorium of the Palace of Europe in Strasbourg. It also holds a spring meeting in one of the Member States of the Council of Europe.

The Assembly shall elect its chairman from among its members, traditionally for three consecutive terms, with a duration of one year. The President, the Vice-Presidents (19 at present), the presidents of the five political groups and the chairmen of the 10 committees form the Bureau of the Assembly. The Assembly elects also the Secretary General and Deputy Secretary General of the Council of Europe, the Secretary General of the Assembly, the judges of the European Court of Human Rights Commissioner for Human Rights of the Council of Europe.

Its work is prepared by specialist committees in the areas of political, legal and human rights, social, health and family, culture, science and education, environment and agriculture, local and regional issues, economic affairs and development, migration, refugees and demography, equal opportunities for women and men, rules and immunities, compliance obligations and commitments of Member States.

The Assembly adopts four types of texts: recommendations, resolutions, notices and guidelines. Recommendations contain proposals to the Committee of Ministers to be implemented within the competence of governments. The resolutions contain Assembly decisions on matters which it is empowered to regulate, or in respect of which expresses opinions which employs only its responsibility. Opinions are mostly expressed by the Assembly on matters referred to it by the Committee of Ministers, such as the admission of new member states in the Council of Europe conventions and draft budget or application of the European Social Charter. Directives are generally the assembly instructions to its committees.

In 2014 were adopted responses to recommendations on status and rights of national minorities in Europe, Combating discrimination based on sexual orientation and gender identity, The responsibility of international organizations for violations of human rights, European Convention on Human Rights: the need to improve the training of legal professionals, monitoring return of illegal immigrants and asylum seekers rejected by land, sea and air, Violence against women in Europe, national security and access to information.

At each session there are discussions of the events in Europe and the world, focusing in particular on matters requiring action at European level.

Outstanding personalities from around the world have contributed to these debates (John Paul II, Mihail Gorbaciov, Vaclav Havel, Viktor Iuscenko and others).

The Assembly is also a forum for other international organizations such as the Organization for Economic Co-operation and Development (OECD), European Bank for Reconstruction and Development (EBRD) and several specialized agencies of the United Nations.

NGOs participate as observers in the work of certain committees, making its contribution to important events organized by the Assembly.

*The Secretary General (<http://www.coe.ro/secretarul.html>)*

In 2014, the Council of Europe's Parliamentary Assembly re-elected as Secretary General Mr. Thorbjørn Jagland (Norway) for a period of five years. He is responsible for

the strategic direction of the program and budget of the Council of Europe activities and supervision of daily management of the organization.

The Secretary General defines the priorities and establishes an Intergovernmental Work Program, the annual approval for the Committee of Ministers. The Secretary General is responsible for carrying out the program, using the Secretariat. Intergovernmental cooperation programs are coordinated primarily through directorates covering the main areas of activity of the Council of Europe.

The Secretary-General has exposed the priorities and strategies defined by the Council of Europe to build a new and united Europe, based on democracy, human rights and the rule of law and for peace and stability in Europe.

These priorities are:

- The definition, together with Member States, of the role and responsibilities of the Council of Europe and a clear mandate of the organization;
- Strengthening democratic standards and ensuring that states respect them;
- Consideration of security and crime in the Member States, in particular corruption, money laundering, cybercrime, human trafficking and drug trafficking;
- Specific programs on human rights, democracy, refugees, social, cultural and environmental issues;
- Developing new initiatives to fight against international terrorism;
- The fight against torture and degrading treatment;
- Combating racism, anti-Semitism and Islamophobia;
- Promoting equality and equal treatment irrespective of sex, ethnicity, religious or political beliefs;
- Treatment of a fair and equitable manner of all countries, regardless of size, wealth or geographical location;
- Build effective relationships with the European Union, United Nations, Organization for Security and Co-operation in Europe (OSCE) and regional organizations and non-governmental and
- Evaluating the results of actions taken to improve the effectiveness and visibility of the Council of Europe.

Therefore, the Council of Europe supports freedom of expression of the press, freedom of assembly, equality and protection of minorities. The Council of Europe launched campaigns on child protection issues and the rights of Rromes, the largest minority in Europe. Council of Europe Member States to help fight corruption and terrorism and undertake the necessary judicial reforms. Its group of experts in constitutional matters, known as the Venice Commission, offer legal advice in countries around the world. The Council of Europe promotes human rights through international conventions such as the Convention on preventing and combating violence against women and domestic violence and the Convention on Cybercrime.

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