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## Defending the acquis of the Council of Europe: preserving 65 years of successful intergovernmental co-operation

### Report<sup>1</sup>

Committee on Rules of Procedure, Immunities and Institutional Affairs

Rapporteur: Mr Tiny KOX, Netherlands, Group of the Unified European Left

### Summary

For over 65 years, the Council of Europe conventions have substantially helped to improve the functioning of democratic institutions in Europe, develop the rule of law and protect and promote the rights of all European citizens. Today, democracy, the rule of law and human rights are under pressure and in dire need of revitalisation. The prospect of a Fourth Summit of Council of Europe Heads of State and Government should be a unique opportunity for reaffirming the need to strengthen the intergovernmental co-operation of the Council of Europe and its convention-based system.

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1. Reference to committee: [Doc. 13322](#), Reference 4009 of 2 October 2015.



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## A. Draft recommendation<sup>2</sup>

1. The *raison d'être* of the Council of Europe is “to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress” (Article 1 of the 1949 Statute of the Council of Europe (ETS No. 1)), focussing on the three major pillars of human rights, the rule of law and democracy.
2. To that end, the Statute established the principle of intergovernmental co-operation, which has since then been central to the Council of Europe’s operations. This co-operation between member States focuses on the development of common standards in conventions and their effective implementation in member States in order to ensure continuity in the achievement of the objective set out in the Statute.
3. For almost 70 years, the convention-based system has substantially helped to improve the functioning of democratic institutions in Europe, to develop the rule of law throughout Europe and to protect and promote the rights of all European citizens and inhabitants. These conventions are the main source of the Council of Europe *acquis*. They have a direct impact on the lives of European citizens and the legal framework of member States.
4. This unique common heritage must be recognised, asserted, defended and, as necessary, further developed, to the benefit of all European citizens and inhabitants – and others to whom these conventions are or could be applied.
5. Any initiative to draft a new treaty has to be formally approved by the Committee of Ministers, the Council of Europe’s executive organ. The Committee of Ministers may ask the Parliamentary Assembly for an opinion on any draft treaty (Article 23.a). Since 1998, it does consult the Assembly on all draft treaties. Article 15.a of the Statute states that conventions and agreements shall be considered by the Committee of Ministers on recommendation of the Assembly, or on the Committee’s own initiative. A large number of these treaties have been drawn up at the instigation of the Assembly, often referred to as the Council of Europe’s political engine.
6. The Assembly and the Committee of Ministers therefore bear – together with the member States – the responsibility for the creation, protection, implementation and further development of the convention-based system in Europe.
7. At the Third Summit of Heads of State and Government of the Council of Europe member States, in 2005 in Warsaw, the need to strengthen the effectiveness of the convention-based system was underlined and measures to achieve this goal were stipulated. Many steps have been taken since then and improvements have been made, such as a radical reform of the Organisation’s activities, as well as a substantial reform of the functioning of the European Court of Human Rights and a review of conventions.
8. Despite these reforms, big gaps remain between what the member States and the Organisation want and what is performed by them. Ratification of conventions is too often delayed, preventing their entry into force; implementation of conventions into domestic law is often slow and inaccurate and domestic legal frameworks too often dysfunctional.
9. Throughout Europe, democracy, the rule of law and human rights are under pressure and in dire need of revitalisation. In order to help to counter these developments and to continue to do what is agreed in Article 1 of the Statute of the Council of Europe, the instruments and institutions of the Organisation need to be modernised and made more effective. The upcoming Summit of Heads of State and Government, which is now under preparation, should therefore, on the basis of a thorough evaluation, discuss – amongst other issues – how to improve and reinforce the convention-based system of the Council of Europe.
10. The Assembly therefore calls on the Committee of Ministers and the Secretary General of the Council of Europe to:
  - 10.1. add the Council of Europe convention-based system and its future to the agenda of the upcoming Summit of Heads of State and Government;
  - 10.2. adequately prepare, in due time before the Summit:
    - 10.2.1. an in-depth evaluation of the effectiveness of the existing conventions and their monitoring mechanisms, and proposals to substantially strengthen the convention-based system, in the light of what is stated in Article 1 of the Statute of the Council of Europe;

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2. Draft recommendation adopted unanimously by the committee on 21 September 2017.

10.2.2. an evaluation of the effectiveness of the assistance programmes for the implementation of the standards set out in the conventions and an assessment of improvements needed;

10.2.3. proposals on how to strengthen the effectiveness of the European Court of Human Rights, by improving domestic judicial procedures to give justice to citizens, promoting effective implementation in all member States of judgments of the Court, and appropriate funding of the Court, in line with the decisions taken at the Third Summit in Warsaw;

10.2.4. proposals on how to broaden the scope of application of the European Social Charter (revised) (ETS No. 163) to all member States by having them ratify the Charter as soon as possible, how to expand its strong built-in monitoring mechanism (collective complaints system) to all member States, how to make the European Social Charter the main reference and common social rights benchmark for the European Union's Pillar of Social Rights and open it for signature by third Parties which are not member States of the Council of Europe;

10.2.5. a general evaluation of relations between the Council of Europe and the other main European organisations (European Union, Eurasian Economic Union, Nordic Council, Organization for Security and Co-operation in Europe (OSCE), Organisation for Economic Co-operation and Development (OECD)) with regard to the convention-based system;

10.2.6. a consideration of the desirability of a European Union–Council of Europe memorandum of understanding on the participation of the European Union in Council of Europe conventions which could provide for general operating rules (such as voting rights, speaking rights, reporting, and financial arrangements);

10.2.7. a road map for European Union accession to the European Convention on Human Rights (ETS No. 5), in line with the obligation formulated in the Lisbon Treaty;

10.2.8. proposals on how to reach out to citizens and let them participate more in the decision-making process of the Council of Europe;

10.3. ensure that sufficient financial and human resources be allocated to convention-based and intergovernmental activities in which all member States should be able to participate on an equal footing;

10.4. involve the Assembly in the preparatory activities of these evaluations and (re)considerations, in the light of Article 15.a of the Statute;

10.5. involve the Assembly in an appropriate way in the upcoming Summit of Heads of State and Government;

10.6. invite the Heads of State and Government, when participating in their upcoming Summit, to recognise, assert, defend and, as necessary, further develop and properly fund the Council of Europe's convention-based system, to the benefit of all European citizens and inhabitants – and all others to whom these conventions are or could be applied.

11. The prospect of a Fourth Summit of Council of Europe Heads of State and Government should be an opportunity for the Committee of Ministers to undertake proper reflection on our Organisation's future, bearing in mind that defending the Council of Europe's *acquis* depends on preserving its unique system of co-operation which enables all member States to agree on common positions and co-operate on an equal footing for the benefit of all. In this context, the Assembly calls on all Council of Europe member States to abstain from any voluntary actions which would result in the weakening of the intergovernmental co-operation which has contributed so much during the past decades to effectively uniting the European continent.

## B. Explanatory memorandum by Mr Tiny Kox, rapporteur

### 1. Introduction

1. The *raison d'être* of the Council of Europe is “to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress” (Article 1 of the 1949 Statute of the Council of Europe (ETS No. 1)). To that end, the Statute established the principle of intergovernmental co-operation, which has been central to the Council of Europe’s operations since then. This co-operation between member States focuses on the development of common standards via conventions, and their effective implementation in member States in order to ensure continuity in the achievement of the objective set out in the Statute.

2. For almost 70 years, these conventions have helped substantially to improve the functioning of democratic institutions, to develop the rule of law and to protect the rights of European citizens living in Council of Europe member States. Together, these conventions, which are multilateral treaties, are the main source of the Council of Europe *acquis*, and have substantially contributed to the current legal framework of all 47 member States. In [Resolution 1732 \(2010\)](#) on reinforcing the effectiveness of Council of Europe treaty law, the Parliamentary Assembly welcomed the fact that the Council of Europe has laid the foundations of an innovative and coherent body of European law, particularly in its special fields of expertise of human rights protection, democracy and the rule of law. It noted that this body of conventions, covering the entire continent, forms the basis for a Europe without dividing lines. In its reply to Assembly [Recommendation 1920 \(2010\)](#), the Committee of Ministers noted that the Council of Europe conventions constitute a unique integrated system of legal standards collectively defined within the Organisation and agreed upon by the member States.

3. In preparing this report on the need to defend this *acquis* of the Council of Europe’s intergovernmental co-operation, the rapporteur had exchanges of information about the past and the future of the convention-based system with several legal experts. He made fact-finding visits to Ukraine and Spain, countries which got access to the Council of Europe’s *acquis* after they succeeded in replacing authoritarian rule by pluralist democracy. Furthermore, two specific hearings, in Strasbourg and Paris, were organised on the issue of the convention-based system of the Council of Europe. The rapporteur wishes to thank all those who helped him to bring together the following information and proposals on the subject of the Council of Europe’s unique convention-based system.<sup>3</sup>

4. The Parliamentary Assembly and the Committee of Ministers play a most relevant role in the development and the monitoring of the convention-based system of the Organisation.

5. Article 15.a of the 1949 Statute states that conventions and agreements could be considered by the Committee of Ministers on recommendation of the Assembly, or on the Committee’s own initiative. A large number of these treaties have been drawn up at the instigation of the Assembly, often referred to as the Council of Europe’s political engine.

6. Any initiative to draft a new treaty has to be formally approved by the Committee of Ministers, the Council of Europe’s executive organ. The Committee of Ministers may ask the Assembly for an opinion on any draft treaty (Article 23.a of the Statute). Since 1998 it does consult the Assembly on all draft treaties.<sup>4</sup>

7. The Assembly and the Committee of Ministers therefore bear – together with the member States – the responsibility for the creation, protection and further development of the convention-based system in Europe.

8. Among the first Council of Europe conventions were the European Convention on Human Rights (ETS No. 5) and the European Social Charter (ETS No. 35), as well as, amongst others, the European Code of Social Security (ETS No. 48), the European Convention on Social and Medical Assistance (ETS No. 14), the European Cultural Convention (ETS No. 18), the European Convention on Extradition (ETS No. 24) and the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30).

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3. The rapporteur owes special gratitude to Professor Jörg Polakiewicz, Director of Legal Advice and Public International Law (Legal Adviser) of the Council of Europe, for his continuous assistance to the rapporteur while drafting this report.

4. Reply of the Committee of Ministers to [Recommendation 1361 \(1998\)](#), stating that “it will consult the Parliamentary Assembly in the future on all draft treaties. However, in practice, a small number of treaties, of an exclusively technical nature, may not require such a consultation”.

9. Due to the post-war division of Europe, for almost four decades conventions could only be applicable to the citizens of part of Europe. central and eastern European States were outside the Council of Europe. In southern Europe, Greece, Portugal and Spain only became participants in the convention-based system after the fall of fascism in the mid-seventies.

10. Although most of the Council of Europe conventions were created between 1949 and 1989, since the fall of the Berlin Wall in 1989 the Council of Europe convention system has seen its importance expand enormously. The Council of Europe was the first international organisation to bring together all European countries<sup>5</sup> in one body. Since 1989, its member States have more than doubled in number, to 47, and its citizens to over 835 million. Since then, the European Convention on Human Rights has entered into force in all 47 member States and many other Council of Europe conventions have been signed and ratified by member States, and entered into force, which has contributed to a large extent to an effective pan-European standardisation of norms based on common values.

## **2. Evaluations of the convention-based system**

11. On three occasions, in 1993, 1997 and 2005, the Heads of State and Government of the member States of the Council of Europe have evaluated the goals, achievements and future needs of the Organisation, including its convention-based system.

12. The First Summit of Heads of State and Government of the Council of Europe, held in Vienna in 1993, declared that the end of the division of Europe would offer a historic opportunity to consolidate peace and stability on the continent and to develop Europe as a vast area of democratic security. Accession of new democracies, created after the fall of communism, to the Council of Europe was considered to be a central factor in the process of European construction based on the Organisation's values. The Heads of State and Government decided to create a single European Court of Human Rights. The Summit also identified the need to address, amongst others, questions related to national minorities, which have become ever more relevant since the implosion of multi-national States such as the Soviet Union and Yugoslavia. Part of this was done by the European Charter for Regional or Minority Languages (ETS No.148), the Framework Convention for the Protection of National Minorities (ETS No.157) and the European Convention on Nationality (ETS No. 166). To tackle the other pressing challenges of the emerging new Europe at that time, the First Summit set up the European Commission against Racism and Intolerance (ECRI).

13. The Second Summit of Heads of State and Government of the Council of Europe, held in Strasbourg in 1997, and launched at the initiative of the President of the Parliamentary Assembly, underlined the essential standard-setting role of the Council of Europe in the field of human rights and its contribution to the development of international law through European conventions. The Summit welcomed the ratification of Protocol No. 11 to the European Convention on Human Rights (ETS No. 155) by all member States, making it possible to establish the new single Court of Human Rights, from 1998. The Summit also welcomed the proposal to create a Council of Europe Commissioner for Human Rights, as a dynamic link between the Committee of Ministers and the Assembly, and the various institutions at both national and international levels. The Summit reiterated the importance of the principle of honouring the commitments entered into by the member States, laid down by the Assembly in 1993 upon the accession of the countries of central and eastern Europe. The Summit underlined the need to promote social standards as embodied in the Social Charter and in other Council of Europe instruments and called for the widest possible adherence to these instruments. Furthermore, the Summit called for further measures to prevent and combat terrorism, corruption and organised crime. It called for the rapid completion of international legal instruments pursuant to the Council of Europe's Programme of action against corruption and decided to establish an appropriate and effective mechanism for monitoring observance of the guiding principles and implementation of the said international instruments.

14. At the Third Summit, in 2005 in Warsaw, it was agreed by the Heads of State and Government that all member States would ensure the long-term effectiveness of the European Convention on Human Rights by all appropriate means. To this end, the European Court of Human rights would be provided with the necessary support and adopted reform measures would be implemented.

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5. With the exception of Belarus and the Vatican City State. The special Council of Europe guest status which Belarus received after its independence was suspended in 1997. Belarus acceded to the European Cultural Convention, the Anti-Doping Convention and the Convention against Trafficking in Human Beings, and participates in the Group of States against Corruption (GRECO). Vatican City State was granted observer status with the Council of Europe in 1970. To date the Holy See has acceded to eight Council of Europe treaties.

15. At national level, it would be ensured that there would be appropriate and effective mechanisms in all member States for verifying the compatibility of legislation and administrative practice with the Convention; effective domestic remedies would exist for anyone with an arguable complaint of a Convention violation; and adequate training in Convention standards would be fully integrated into university education and professional training.

16. At the Summit in Warsaw, it was underlined that all member States should accelerate and fully execute the judgments of the Court; the Committee of Ministers was instructed to elaborate and implement all the necessary measures to achieve this, notably with regard to judgments revealing structural problems including those of a repetitive nature.

17. It was also underlined that as the primary forum for the protection and promotion of human rights in Europe, the Council of Europe should – through its various mechanisms and institutions – play a dynamic role in protecting the right of individuals and promoting the invaluable engagement of non-governmental organisations, to actively defend human rights. The institution of the Commissioner for Human Rights would be strengthened, support for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) would be continued. The Council of Europe was encouraged by the Heads of State and Government to continue its activities to protect national minorities, particularly through the Framework Convention for the Protection of National Minorities and to protect regional languages through the European Charter for Regional or Minority Languages. The Council of Europe should also step up its work in the social policy field on the basis of the European Social Charter and other relevant instruments. The Committee of Ministers was instructed to review the Council of Europe strategy to promote social cohesion in the 21st century. The importance of the effective operation of the Anti-Doping Convention (ETS No. 135) and the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (ETS No. 120) was emphasised. Lastly, in co-operation with the European Union, the Council of Europe would have to contribute to a more balanced management of migration Europe-wide.

18. Through the Council of Europe, member States should strive for the common goal of promoting democracy and good governance of the highest quality, nationally, regionally and locally for all citizens. Member States were called upon to make full use of the advice and assistance of the European Commission for Democracy through Law (Venice Commission) for further development of European standards. Member States should all fully use the Council of Europe's standard-setting potential and should promote implementation and further development of the Organisation's legal instruments and mechanisms for legal co-operation. The Summit's participants urged member States to continue common efforts to ensure strict compliance with the commitments of member States to the common standards to which they had subscribed. Standard-setting in the field of justice and other relevant areas of law as well as non-discriminatory monitoring processes should continue to be used to help member States address the problems and develop their legal systems. Monitoring should be, when necessary, accompanied by Council of Europe assistance and technical support.

19. Amongst the conventions created since then are the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198); the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 217); the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201); the European Convention on the Adoption of Children (revised) (CETS No. 202); the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (CETS No. 208); the Third and Fourth Additional Protocols to the European Convention on Extradition (CETS Nos. 209 and 212); the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210); the Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health (CETS No. 211). Several protocols to the European Convention on Human Rights were added. Amongst new conventions already open for accession but not yet entered into force, are the Council of Europe Convention on the Manipulation of Sports Competitions (CETS No. 215), the Council of Europe Convention against Trafficking in Human Organs (CETS No. 216) and the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events (CETS No. 218).

20. In 2012, the Council of Europe's Secretary General presented a review of Council of Europe conventions,<sup>6</sup> in which he drew up a list of key conventions which could provide a common legal platform for all member States in the fields of human rights, the rule of law and democracy.<sup>7</sup> He also identified the conventions which are obsolete, not in force, or with a limited application, as well as those conventions which needed updating to retain or increase their relevance. Furthermore, the Secretary General identified ways of promoting accession to the relevant conventions by non-member States in order to consolidate the leading

role of the Council of Europe in its priority fields of action, as well as ways of facilitating the European Union's accession to existing and future Council of Europe conventions in order to avoid, as far as possible, duplication in the fields of human rights, the rule of law and democracy.

21. As the Fourth Summit of Heads of State and Government is now under preparation,<sup>8</sup> the Assembly should propose that the Committee of Ministers place on the agenda again a thorough evaluation of the convention-based system of the Council of Europe, related to the 2012 evaluation of the Secretary General and his proposals to promote the conventions at international, national, European Union and non-member States level. When discussing the future of the Council of Europe, the unique common heritage of the convention-based system should be recognised, asserted, defended and, as necessary, further developed, to the benefit of all European citizens and inhabitants – and others to whom these conventions are or could be applied.

### 3. Range and impact of conventions

22. Article 3 of the Statute recognises “the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms” and establishes the principle of intergovernmental co-operation,<sup>9</sup> which lies at the heart of the Council of Europe's operations.

23. Ever since the Council of Europe was founded, it has been clear, given the intergovernmental nature of the Organisation, that the best way of achieving and consolidating the objective of greater unity between member States was to promote international law instruments, such as conventions and agreements, based on the principle that States should be free to become Parties or not. The treaties of the Council of Europe are not legal instruments of the Organisation as such, but owe their existence to the consent of those States and international organisations that sign and ratify them.

24. The drawing up of conventions and agreements has been one of the central activities of the Council of Europe. The strength of these treaties lies in their formality and the fact that they are legally binding on those States which have accepted them. A potential weakness of the Council of Europe treaties – as of all international treaties – is the slowness of the ratification process and the absence of an obligation to ratify after having voted in the Committee of Ministers in favour of it. However, compared with other international treaties, the record of ratifications of Council of Europe treaties is more favourable.

25. These treaties – 221 to date – cover a wide range of subjects. The Statute names in particular human rights and fundamental freedoms, and economic, social, cultural, scientific, legal and administrative matters (Article 1.b). Many of these treaties have an immediate impact on the life of European citizens. This is most obvious for the European Convention on Human Rights and its protocols. Together, they set out inalienable rights and freedoms for each individual in all member States and commit all member States to guaranteeing these rights and freedoms to everyone within their jurisdiction.

26. The protection of human rights and fundamental freedoms has been extended by numerous other conventions, such as the European Social Charter, which protects fundamental social rights, and the Framework Convention for the Protection of National Minorities. Other important conventions are helping member States in the fight against crime (including cybercrime), and promote co-operation between judicial authorities all over Europe. They regulate in particular extradition and mutual assistance in criminal matters as well as money laundering and confiscation of the proceeds of crime. Important conventions have been created and updated with respect to combating terrorism, protecting women and children, countering human trafficking, as well as co-ordinating social security and eliminating discrimination in the field of social and medical assistance.

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6. Report by the Secretary General on the review of Council of Europe conventions, Information document SG/Inf(2012)12, 16 May 2012. See also Assembly [Resolution 1732 \(2010\)](#) and [Recommendation 1920 \(2010\)](#) “Reinforcing the effectiveness of Council of Europe treaty law”, as well as the report of the Committee on Legal Affairs and Human Rights, Doc. 12175 (rapporteur: Mr John Prescott, United Kingdom, SOC).

7. See Appendix.

8. See the report of the Committee on Political Affairs and Democracy on “Call for a Council of Europe Summit to reaffirm European unity and to defend and promote democratic security in Europe”, [Doc. 14396](#) (rapporteur: Mr Michele Nicoletti, Italy, SOC).

9. “Every member of the Council of Europe must ... collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I”.

27. As treaties concluded under the rules of international law, Council of Europe conventions are, at least from the point of view of international law, superior to any national enactment. Few of the treaties of the Council of Europe contain explicit provisions on the application of their provisions in domestic law. In some member States<sup>10</sup> a treaty acquires the status of domestic law upon its ratification. In other member States<sup>11</sup> a ratified treaty does not *ipso facto* enjoy the status of domestic law. There a separate legislative act is needed. There are also States which have a “mixed” system.<sup>12</sup> However, in all ratifying States, the provisions of the Council of Europe conventions, become part of the national legal framework and therewith play an important role in the lives of European citizens.

28. Today, the Council of Europe remains one of the very few multilateral forums able to quickly draft traditional international instruments (such as conventions) on a broad range of issues. For example, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence was drafted as an urgent response to the problem of domestic violence. It was drawn up within a year with the active participation of representatives from the member States, opened for ratification in 2011 and entered into force in 2014. In 2010, as part of the drive to combat tax evasion, the Organisation for Economic Co-operation and Development (OECD) turned to the Council of Europe to update and render more workable the Convention on Mutual Administrative Assistance in Tax Matters, the only instrument reconciling tax measures and respect for human rights. And an Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism was opened for ratification in 2015 and entered into force in July 2017.

#### **4. Impact of the access to the Council of Europe’s acquis. Four case studies: Ukraine, Spain, Russia and the European Union**

29. To assess the effects on national legal frameworks of accession of countries to the Council of Europe and therewith to the *acquis* of intergovernmental co-operation, the rapporteur carried out fact-finding visits to Ukraine and Spain. Both countries acceded to the convention-based system after a long period under authoritarian rule: communism in Ukraine and fascism in Spain. The impact of joining the Council of Europe for the Russian Federation, the biggest member State of the Organisation, after 70 years of communist rule, was also given special attention by the rapporteur. Furthermore, the rapporteur focused on the relation between the Council of Europe and its conventions and the European Union, of which all members are also members of the Council of Europe.

##### **4.1. Ukraine<sup>13</sup>**

30. According to the interlocutors the rapporteur met in Kyiv from 10 to 12 January 2017, after the emergence of the Ukrainian State in 1991, the country was faced with the challenge of constructing a new system of governance and reforming the legal system. The Soviet structure was only partially replaced, with a considerable number of dogmas in jurisprudence inherited from the former U.S.S.R. still being intact. A clear example given by the Ukrainian interlocutors was the absence in the Criminal Code of violations and offences related to corruption or the trafficking of human beings. In violation of the principle of the rule of law, the judicial system was characterised by a procedure of “supervisory review” – the possibility of cancelling court decisions which had acquired the force of *res judicata*. These institutional gaps persisted in Ukraine following its accession to the Council of Europe in 1995.

31. Co-operation in the area of criminal and civil matters, once built on agreements concluded within the framework of the Commonwealth of Independent States, has been gradually replaced by co-operation based on the Council of Europe conventions. In this way, the 2006 investigations into an airplane crash nearby Donetsk of a flight belonging to a Russian company “Pulkovo” were made possible thanks to the European Convention on Mutual Assistance in Criminal Matters.

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10. For example, Belgium, France, Germany, Italy, Luxembourg, Netherlands, Portugal, and most countries of central and eastern Europe).

11. For example, Ireland and the United Kingdom.

12. For example, Finland, Denmark, Norway and Sweden.

13. A more detailed account is provided in the information memorandum on the fact-finding visit to Kyiv (Ukraine), 11-12 January 2017 (document AS/Pro (2017 02)). The rapporteur is grateful for the information he received while visiting Kyiv on 11-12 January 2017, from the Vice Prime Minister for European Integration, the Deputy Ministers and representatives of the Ministry of Youth and Sport, the Ministry of Culture and the Ministry of Justice, the Office of the Ombudsman and the Council of Europe Office in Ukraine, as well as the participants of the round table “Two decades of the membership in the Council of Europe: results and perspectives”.

32. To date, Ukraine has ratified 87 conventions and signed – but not yet ratified – 24 conventions. Some of them will never be ratified as they have become obsolete or replaced by new conventions. Several conventions need more time before ratification, either to identify which type of domestic activities these conventions regulate or to organise the necessary financial means to realise their implementation. The European Convention on Human Rights was and still remains the main legal instrument for institutional and legal changes in all areas of public life in Ukraine. Important domestic reforms have been also triggered by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the CPT's conclusions which can be considered as a second irrefutable and appreciated set of standards. Opinions of the Venice Commission on draft laws are also seen as an indispensable tool in constitutional and legal matters. Even though these opinions are not binding, they give credibility to new legal acts in the eyes of the public and serve as a reference for the Committee of Ministers when assessment is made whether new legislation is in conformity with the criteria set out by the judgments of the European Court of Human Rights.

33. For the public authorities, the Council of Europe serves as a facilitator to fulfil the country's needs. However, in many cases the Council of Europe continues to be seen as a "standard setter", showing that there is a need to have Ukrainian representatives fully and continuously involved in the standard-setting process in Strasbourg. The presence of national representatives ensures that potential conflicts with national standards are avoided and increases the ownership with regard to future treaties by being a part of their creation. This assumes that the Council of Europe can guarantee continuity of the presence of Ukrainian representatives in steering committees and the allocation of resources necessary to enable them to attend meetings in Strasbourg. A treaty negotiation process in Strasbourg has to be accompanied by a national awareness-raising campaign to pave the way for a forthcoming ratification or the implementation of the instrument which could also facilitate its acceptance by society.

34. National authorities have difficulties in following up on the obligations undertaken by different government entities, primarily due to continuous changes in staff members of these bodies. Other countries of central and eastern Europe reportedly face similar problems. However, as certain structural shortcomings are being improved, the Council of Europe could also look into the possibility of creating programmes or working practices where Council of Europe experts could be sent to national ministries to facilitate the execution of Court judgments or to answer spontaneous requests regarding the execution and implementation of commitments and obligations which member States have taken up on them.

35. The Council of Europe has helped to conceptualise a reform programme and to identify the implementation stages for Ukraine. Concerning the current situation, according to many interlocutors in a number of areas, reforms should be refocused more on the implementation of standards than on the introduction of new ones. Effective implementation and monitoring of conventions to which Ukraine has acceded are considered as the most vulnerable part of the process.

36. Some interlocutors pointed out certain obstacles to efficient legal co-operation, which principally consist of insufficient resources being allocated from the Council of Europe's budget for the participation of national experts in working groups and steering committees. For instance, the European Committee on Crime Problems (CDPC) deals with matters and elaborates standards falling within the scope of two different Ukrainian authorities: the Ministry of Justice and the Prosecutor General. Given that the participation of only one expert is covered by the Council of Europe budget, national experts representing these institutions participate in the work of the Committee on a rotation basis, which undermines the continuity of the follow-up. Participation in the Monitoring Group of the Anti-Doping Convention (T-DO) and the Standing Committee of the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (T-RV), both important forums for exchanges of best practices, are not covered by the Council of Europe budget at all, thus preventing the Ukrainian representatives from attending meetings of these committees. During the drafting of the recently adopted criminal law convention to combat the illicit trafficking of cultural property by the Committee on Offences relating to Cultural Property (PC-IBC), the participation of only one expert per country was covered by the Council of Europe's budget while, at the same time, observations by two relevant Ukrainian authorities, the Ministry of Justice and the Ministry of Culture, were required to avoid potential future conflicts with national standards and to increase the feeling of ownership regarding the future treaty being prepared at that time.

37. Action plans elaborated by the Committee of Ministers on implementation of fundamental rights, execution of judgments and decisions and commitments to the Council of Europe help to foster ratifications of conventions and identify the needs for new conventions. However, the 5% of gross domestic product (GDP) spent on military expenses has seriously impacted the implementation of reforms concerning the social agenda which, moreover, often are not considered as the priority of the Action Plan. In this regard, some interlocutors pointed to the need for more efficient and adjustable Council of Europe mechanisms to deal with

new challenges. Conventions are a solid and long-lasting basis for legal unity among member States. However, the Committee of Ministers also has to be active in elaborating recommendations to adapt common standards to the constantly changing societal context.

38. Finally, ratification and implementation of a number of Council of Europe treaties has been a direct consequence of various agreements between Ukraine and the European Union. For instance, the 2014 EU–Ukraine Association Agreement explicitly mentions the adoption of Council of Europe treaties and recommendations or ensuring the implementation of already adopted standards in areas of national minority rights, police reforms, the judiciary, the fight against corruption, judicial co-operation in criminal matters, tackling illicit drugs and money laundering. The influence of the European Union, especially in the context of visa liberalisation talks, and important funds deployed to support EU programmes (€11 billion from 2014 to 2020) have accelerated the adoption and implementation of Council of Europe standards which have been identified by the European Union as part of its *acquis*.

#### 4.2. Spain<sup>14</sup>

39. According to the rapporteur's interlocutors in Spain on 8 March 2017, Spain's celebration of the 40th anniversary of its membership in the Council of Europe has provided an opportunity to reiterate the country's full commitment to the system of human rights protection established by the Organisation. The country's rapid accession to the Council of Europe, emerging from almost 40 years of dictatorship under Franco, is an interesting "model" of swift democratic transition.

40. In August 1950, the Assembly became the first European institution to explicitly make Spain's democratisation a precondition of membership when it expressed the hope that "in the near future the Spanish people may be able to hold free elections and set up a constitutional regime, whose members will be eligible to serve as representatives in this Assembly". In 1974, an Assembly resolution "On the situation in Spain" observed that Spain was still "a long way from meeting the conditions necessary for full membership of the Council of Europe, as it has no democratic and representative democracy". The rapporteur, Mr Reale, after having visited Spain, highlighted the lack of individual liberties, censorship, harsh repression of political opponents and absence of democratic elections. He also reported that the majority of Spaniards were convinced that any change in institutional structures should be brought about without recourse to revolution. Spain's possible future membership of European institutions would provide guarantees and reassurances to those who faced a post-authoritarian future with apprehension, in particular those who feared that Franco's death might lead to a violent overthrowing of the established socio-economic order.

41. In 1977, Spain did indeed become a member of the Council of Europe, even before it had adopted the new Constitution of 1978. This enabled fundamental rights, as referred to in the European Convention on Human Rights, to be included in the new Constitution. Article 10.2 states henceforth that "provisions relating to the fundamental rights and liberties recognised by the Constitution shall be construed in conformity with ... international treaties and agreements thereon ratified by Spain".

42. Since the demise of the Franco regime, Spain has undertaken the challenging task of creating a new legal order respectful of human rights. A new judicial procedure was created which led to the interpretation of fundamental rights, as enriched in the Constitution and interpreted by the European Court of Human Rights, being rapidly transposed into the case law of Spanish courts. The old institutional system melted into the new one whose culture was respectful of human rights. Fundamental rights became binding for public authorities and were subject to a remedy "amparo", with the Constitutional Tribunal being the last remedy in reviewing human rights disputes, including on merits. Such a system sent a strong signal about the importance of human rights. The Spanish Parliament took on the task of translating judgments of the European Court of Human Rights against Spain and made them available to judges in a legal data base. Translation of the Court's case law has been included in the university curriculum of the last year of studies in law and linguistics. It allows young professionals to be trained and the Court's case law to be fed into the Spanish interface of the legal data base. Examples were discussed showing that the implementation of the Court's decisions sometimes require time in order to adjust national legislation, solve technical problems or communicate the case to the government.

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14. The rapporteur is grateful for the information received while visiting Spain in March 2017, from former Secretary General of the Council of Europe (and former Minister for Foreign Affairs and European Commissioner) Mr Marcelino Oreja, as well as from Mr Rafael Andres Leon Cavero, Agent of the Kingdom of Spain before the European Court of Human Rights, Senior State Attorney Head of the Human Rights Department.

43. Thirty years after the system was established, the main body of rights granted by the European Convention on Human Rights, as interpreted by the Court of Strasbourg, has been incorporated into the Spanish judicial system and is rooted in the legal mentality. This progressive construction of a new legal culture has been done in full respect of the principle of subsidiarity. It has also allowed issues which are sensitive from a human rights perspective, such as the fight against terrorism in the framework of ordinary legislation, to be addressed. That being said, the latest case law of the Court on new issues, such as surrogacy, has to be more consistent and based on common standards.

44. If the European Convention on Human Rights and the related case law were vital while addressing current pitfalls, numerous Council of Europe Conventions and resolutions of the Assembly have guided the Spanish authorities in elaborating new legislation. The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) was an important source of inspiration in building the system of data protection. The Convention on Access to Official Documents (CETS No. 205) inspired the new law on a related topic even though Spain has not yet ratified that convention. Council of Europe standards continue to serve as a “clearing house” for new draft laws. Any new draft prepared by the government has to pass through the Council of State which assesses the compatibility of drafts with Council of Europe standards. The Spanish interlocutors praised the convention on organ trafficking which was quickly adopted when there was a need and thanks to which Spain is – according to the interlocutors – currently the most advanced country in the world in the domain of organ transplantation.

45. Furthermore, my interlocutors noted that numerous steering committees of the Council of Europe work to both identify new practices and new possible challenges related to human rights. They also help to keep human rights on the agenda, which can easily be neglected in times of economic crises. In particular, the Steering Committee on Human Rights addresses issues of human rights and economic crises, human rights and business, the mutilation of women and the paid transplantation of organs.

46. According to the interlocutors in Madrid, the standard-setting activities of the Council of Europe have to continue targeting issues in need of regulation at international level. However, developing conventions is complex and is constrained by budgets. That is why resources must also be allocated to identifying best practices in the implementation of already existing standards in order to take full advantage of existing conventions. The technical assistance which the Council of Europe provides is extremely useful, the Spanish interlocutors stated.

### **4.3. The Russian Federation<sup>15</sup>**

47. On 6 July 1989, Mikhail Gorbachev, then first Secretary of the Communist Party of the Soviet Union, addressed the Assembly in Strasbourg with his famous plea for “a common European home”,<sup>16</sup> therewith opening the prospect, after decades of divide and confrontation, of European unification and the possibility of creating a pan-European legal space. To show his readiness to overcome the European divide, by using the convention-based system of the Council of Europe, Gorbachev proposed that the Soviet Union accede to some of the Council of Europe’s conventions that were open to other States.

48. Four months later, the Berlin Wall came down, and two years later the Soviet Union dissolved into independent States. Five years after this dissolution, the Russian Federation acceded to the Council of Europe, preceded and followed by the other former parts of the Soviet Union, and the idea of a pan-European legal space, as proposed by Gorbachev in 1989 when addressing the Assembly, was starting to materialise.

49. Two years after its accession, the Russian Federation ratified the European Convention on Human Rights, which brought all Russian citizens under the Convention’s protection. Two decades after accession, the Russian Federation has ratified a large number of major conventions. The Russian Constitution states that the European Convention is part of the Russian legal system and has supremacy over national legislation. The Federal Law on ratification of the Convention and its Protocols recognises as binding the jurisdiction of the European Court of Human Rights in interpretation and application of the Convention. Particularly since the

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15. In an expert meeting in Paris on 2 December 2016, the rapporteur was informed about the effects of Russia joining the Council of Europe’s *acquis* by Professor Mark Entin, Head of the Department of European Law, Vice-President of the Russian Association of European Studies and International Law of the MGIMO University of Moscow. The Head of the Council of Europe Office in Moscow, Mr Petr Sich, also helped to evaluate the impact of Russia’s accession. The Staff provided the rapporteur with further detailed information on the effects of Russia’s accession on Russian legislation.

16. Address of Mikhail Gorbachev, “Europe as a common home”, 6 July 1989, Council of Europe, Strasbourg, <https://chnm.gmu.edu>.

early years of the 21st century, Russia's membership has, according to Professor Entin at the round table on 2 December 2016, given rise to fundamental institutional and legal changes, especially in terms of judicial reform and amendments to the main legal codes.

50. Today, the impact of Council of Europe standards can be found in all areas of national law be it constitutional, criminal or other. For instance, the Russian Federation ratified the European Charter of Local Self-Governance (ETS No. 122) in April 1998. The Charter is still one of the most important international documents that define the fundamental principles of the formation and functioning of local governance institutions in Russia. Virtually all the key provisions of the Preamble of the Charter have been transposed into articles of the Constitution and the Federal Law on general principles on the organisation of self-governance. Following the ratification of a number of Council of Europe conventions, new principles or offences have been introduced into national criminal law. In this regard, one could mention the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Criminal Law Convention on Corruption (ETS No. 173). The generally recognised principles and norms of international law and international treaties are a part of Russia's criminal legal proceedings which include various instruments on mutual international co-operation. The Convention on Mutual Assistance in Criminal Matters, the Convention on the Transfer of Sentenced Persons (ETS No. 112) and the European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 73) have been widely used by national authorities. Concerning civil proceedings, several reforms of the code have been carried out having regard to the case law of the Court and the standards of the Council of Europe. Implementation of Council of Europe standards is done either directly by transposing treaties principles into national legislation or through decisions of the Constitutional Court of Russia inspired by Council of Europe standards, in particular the case law of the European Court of Human Rights. According to statistics in 2005, the Constitutional Court of Russia made reference to the European Convention on Human Rights in 90 cases and this number has increased since.

51. At the end of 2016, Russian President Putin, when meeting the Secretary General of the Council of Europe, Thorbjørn Jagland, in Moscow, recalled that his country had already been a member of the Council of Europe for 20 years and had already joined 60 treaties and protocols. According to the Ministry of Foreign Affairs, Russia has covered, during its two decades of membership, a long path towards a State ruled by law with a pluralist democracy and respect for human rights. It has implemented large-scale reforms in all social spheres. Russia is a signatory of the Council of Europe conventions and treaties and is also involved in the drafting of new Council of Europe conventions as an equal member contributing to the creation of a common European legal space. Russia has ratified 61 of the Council of Europe's 221 legally binding conventions, including the Council of Europe Statute and the European Convention on Human Rights and has signed but not yet ratified 19 conventions. Some of the not (yet) ratified conventions, such as the Convention on the Counterfeiting of Medical Products and Similar Crimes Involving Threats to Public Health (Medicrime Convention), opened for negotiation during the 2006 Russian Chairmanship of the Council of Europe and opened for signature in Moscow in 2011, have already led to substantive changes in national legislation. Russia became one of the first States to sign the Convention on the Manipulation of Sports Competitions in September 2014, and it signed the Convention against Trafficking in Human Organs in September 2015, the Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers (ETS No. 63) in January 2016 and the Convention on an integrated Safety, Security and Service Approach at Football Matches and other Sports Events in July 2016.

52. During his visit to Russia in December 2016, Secretary General Jagland called Russia an important, even essential member of the Council of Europe. He recalled the important effects of Russia joining the Council of Europe and its conventions, and the fact that the Organisation had supported important reforms in Russian legislation, including the civil and penal codes. It assisted in establishing the Russian Federation's Courts of Appeal, and the building up of the important institution of Federal and Regional Ombudspersons. Much had been done to translate European standards into Russian law, through the ratification of the European Convention on Human Rights and 60 other treaties.

53. In 2016, the European Court of Human Rights dealt with 7 010 applications concerning the Russian Federation, of which 6 365 were declared inadmissible or struck out. The Court delivered 228 judgments, concerning 645 applications, 222 of which found at least one violation of the European Convention on Human Rights.

54. Recently, Russia adopted a law on the priority of national law over international court rulings, although the Russian Constitution and laws repeatedly acknowledge the binding nature of international law and treaty organisations. This development causes great concern and has been the subject of several efforts by the Secretary General of the Council of Europe to reverse this development. The same goes for the "Foreign

Agents” law, which targets NGOs in receipt of foreign funding and who conduct so-called “political activities”. According to the Secretary General, this is discriminatory, regressive and has a chilling effect on civil society at large – and is damaging Russia’s international reputation.

55. Although the country is still a fully fledged member of the Committee of Ministers, it did not send a parliamentary delegation to the Assembly in 2017, so Russian parliamentarians are not able to participate in important decisions of the Assembly, such as the election of judges to the Court. If this absence continues, the Russian Parliament will have no say in the election of the new Commissioner for Human Rights and a new Secretary General and Deputy Secretary General of the Council of Europe. This would certainly undermine the relevance of Court judgments in Russia and the willingness of the country to work with the different monitoring mechanisms of the Council of Europe, first and foremost the instruments created by the Assembly. A recent unilateral decision of the Russian Government to suspend the payment of a substantial part of its annual contribution to the budget of the Council of Europe because of the current absence of a Russian delegation in the Assembly is not in line with its obligations to the Organisation and therefore very much to be deplored. It is to be hoped that the Russian Parliament will present a new delegation to the Assembly at the January 2018 part-session.

#### **4.4. The European Union<sup>17</sup>**

56. Participation in most Council of Europe treaties is not exclusively limited to the member States of the Council of Europe or only relevant to European citizens. Non-member States, also outside Europe, can accede to “open” treaties, provided that they have been formally invited to accede by the Committee of Ministers. Today, over 160 conventions are open to non-member States and some have acceded to a number of these conventions. However, actual participation of States which are not Council of Europe members to these open conventions is rather low.<sup>18</sup>

57. Nevertheless, several of these conventions have the potential to become worldwide conventions. The Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, which entered into force three decades ago, still remains the only binding international legal instrument in the field, with a potential worldwide scope of application. And the Convention on Cybercrime (ETS No. 185), whose purpose is to protect societies against cybercrime at global level, is the first international treaty on crimes committed via the internet and other computer networks, dealing particularly with infringements of copyright, computer-related fraud, child pornography and violations of network security. Several non-European States such as Australia, the Dominican Republic, Israel, Japan, Mauritius, Panama, Sri Lanka and the United States have signed and ratified it.

58. In the past years, the United Nations have not shown adequate capabilities to create, implement and monitor international treaties, whereas the Council of Europe has shown that it is – through its open conventions and open mechanisms (such as the Venice Commission) – able to act more effectively in international standard-setting. Broader ratification of existing conventions, which deal with today’s needs, should therefore be encouraged, both in member States and in other parts of the world. To name but a few areas where Council of Europe conventions are operative and could become standard-setting worldwide: data protection, cybercrime, money laundering, terrorism, doping, match-fixing. New, open conventions to counter new challenges, like for example in the broad field of emerging technologies, could be developed by the Council of Europe, and the Assembly could again be the driving force, as it has been in the past. However, according to the Secretary General of the Council of Europe, this will need a review of the conditions for accession to these conventions<sup>19</sup>.

59. One of the international organisations which could accede to the Council of Europe’s open conventions is the European Union. Out of the 47 member States which are involved in the convention-based system of the Council of Europe, 28 are also members of the European Union. Both the Council of Europe and the European Union are international organisations by birth, but the European Union has become highly constitutionalised and combines features of both an international organisation and a State.<sup>20</sup>

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17. The rapporteur is grateful for the contribution to this part of his report from Professor Katja Ziegler, professor of International Law of the University of Leicester, Director of the Centre of European Law and Internationalisation (CELI), when participating in an expert meeting in Paris on 2 December 2016.

18. Canada ratified five out of 27 conventions to which it has full right to accede, Japan four out of 20, the Holy See six out of 34, Mexico five out of 18 and the United States of America three out of 26; 33 other States have full right to participate or have been invited to do so in one or more conventions. There are only a few conventions to which more than 10 other States have the full right to participate or have been invited to do so. See Report by the Secretary General on the review of Council of Europe conventions, SG/Inf (2012)12, pp. 24-26.

19. Ibid., p. 27.

60. There has been long-standing political co-operation between these two institutions. An initial arrangement was signed in 1959, followed in 1974 by the establishment of a Council of Europe liaison office<sup>21</sup> in Brussels, tasked with facilitating contacts and exchange of information between the Council of Europe and the Communities. The 1959 arrangement was replaced in 1987 by an Arrangement between the two institutions, supplemented in 1996 by an exchange of letters between the Secretary General of the Council of Europe and the President of the European Commission, then, in 2001, by a joint declaration on co-operation and partnership between the two institutions and, in 2007, by a Memorandum of Understanding. Lastly, on 1 April 2014, the Commission and the Council of Europe signed a “Statement of Intent” putting in place a new framework for co-operation in the EU Enlargement and Neighbourhood Regions for the period 2014-2020.

61. Already in 1985, the Committee of Ministers expressed its determination to foster European solidarity by strengthening and consolidating institutional ties between the Council of Europe and the European Community, while fully respecting the differences in the respective nature and procedures of each organisation. According to the Committee of Ministers, the Council of Europe and the European Community were essential organs of European construction and emphasised the desirability of establishing a flexible framework for co-operation between the organisations. Both European treaty organisations aim to create greater unity between its members.

62. Ten years later, the European Union’s Council recognised that “the Council of Europe has a crucial role to play in upholding human rights standards and supporting pluralist democracy”. With regard to accession of new countries to the European Union, it is widely acknowledged that membership in the Council of Europe and ratification of the European Convention on Human Rights is of significant relevance for accession. Since the coming into effect of the Treaty on European Union, co-operation between the European Union and the Council of Europe has intensified, notably in the fields of justice and home affairs. The European Union acknowledges that reports drawn up within the Council of Europe on the implementation of Council of Europe conventions and recommendations have to be taken into account when evaluating the enactment, application and effective implementation by the applicant countries of the *acquis* of the European Union in the field of justice and home affairs.<sup>22</sup>

63. At the Third Summit in 2005 in Warsaw, the Council of Europe Heads of State and Government agreed that its co-operation with the European Union was to be strengthened so that the Council of Europe’s and the European Union’s achievements and future standard-setting work were to be taken into account, as appropriate, in each other’s activities, especially in the field of human rights and fundamental freedoms, the promotion of pluralistic democracy and the rule of law. A Memorandum of Understanding<sup>23</sup> would be drafted between the Council of Europe and the European Union to create a new framework of enhanced co-operation and political dialogue. Particular focus was to be put on how the European Union and its member States could make better use of available Council of Europe instruments and institutions, and how all Council of Europe members could benefit from closer links with the European Union. In the Memorandum, it was stipulated that “the Council of Europe will remain the benchmark for human rights, the rule of law and democracy in Europe”.

64. The European Union is entitled to accede to several open Council of Europe conventions.<sup>24</sup> However, overall participation of the European Union in these conventions is rather low. Among the 54 conventions open to the European Union, 11 have been ratified, almost all before 2005. Six other conventions have been signed but not yet ratified. The European Union ratified in particular the Convention on the Elaboration of a European Pharmacopoeia (ETS No. 50) and several animal-related conventions. Amongst others, it signed the European Convention on the Prevention of Terrorism and its additional protocol and, in 2017, the European Convention on Preventing and Combating Violence against Women and Domestic Violence. It could accede to the Data Protection Convention of the Council of Europe but negotiations appear to be rather difficult.

65. The Lisbon Treaty obliges the European Union to accede to the European Convention on Human rights. Accession would be a major step forward towards a stronger and more coherent system of fundamental rights protection. Accession of the European Union to the Convention will enhance consistency

20. Katja Ziegler, The relationship between EU law and international law, in Dennis Patterson and Anna Södersten (eds), *Blackwell Companion for European Union Law and International Law* (Wiley-Blackwell 2016, 42-61).

21. Committee of Ministers [Resolution 74](#) (13) on the establishment of a Liaison Office of the Council of Europe in Brussels.

22. Article 3.2 Joint Action of 29 June 1998.

23. Memorandum of Understanding between the Council of Europe and the European Union, 2007, <https://rm.coe.int/16804e437b>.

24. See list of treaties open to the European Union: [http://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/openings/EU?p\\_auth=eeEQgoeB](http://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/openings/EU?p_auth=eeEQgoeB).

in the application of human rights, fostering a harmonious development of the relevant case law of the European Court of Human Rights and the European Court of Justice (ECJ). However, while the EU Charter could deploy its legal effects immediately upon entry into force of the Lisbon Treaty (1 December 2009), the European Union's accession has still not been realised. A draft accession agreement was presented on 5 April 2013, introducing a co-respondent mechanism including the ECJ's prior involvement, which is needed because the legal systems of the European Union and its member States not only overlap, but are intrinsically intertwined. The European Union constitutes a legal order of its own that applies to a certain territory, with comprehensive legislative and treaty-making powers, deriving from transfer of competence from the member States to the Union.<sup>25</sup> Following a ruling of the ECJ of 18 December 2014 (Opinion 2/13) holding the Accession Agreement to be incompatible with EU law, there is now no clear indication if and when the European Union's accession to the Convention will take place.<sup>26</sup>

66. The European Union uses the Council of Europe conventions as the basis for establishing its own standards. For instance, the 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse directly inspired the adoption of EC Directive 2011/95. Similarly, some EC directives have influenced certain Council of Europe conventions; for instance, the 2001 Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data was influenced by Directive 94/46/EC. In some instances, however, the European Union advises EU member States not to ratify certain Council of Europe conventions which have been signed by many Parties. For instance, the 2001 European Convention on the Legal Protection of Services, based on, or consisting of, Conditional Access (ETS No. 178), which has been ratified by seven EU member States, has been denounced by four of them as the European Union had recommended that its member States stop the process of accession to this convention. This "duty of abstention" has come into play in cases where the European Union has substantial authority to enact regulations in the same field – for example the Additional Protocol to the Council of Europe Convention for the Prevention of Terrorism, which had been signed by a number of EU States and by the European Union itself, until the European Commission decided to draw up a specific directive in this field. This counterproductive measure was all the more regrettable as the Council of Europe had a unique position in this field on account of the number of member States concerned by the problems of foreign terrorist fighters. Another example of the counterproductive approach of the European Union is the 2014 Macolin Convention (Council of Europe Convention on the Manipulation of Sports Competitions), which has until now been signed by 19 EU member States but ratified by only one, thereby blocking its implementation not only in European Union member States but also in the rest of Europe.<sup>27</sup>

67. Taking into consideration the attractiveness of the Council of Europe conventions to non-member States of the Council of Europe and some challenges in regard to co-operation with the European Union, the Assembly should also propose that the Committee of Ministers clarify the rules covering the entire process of drawing up or revising conventions to take greater account for example of the needs of non-member States and of the European Union's executive powers so as to avoid any blocking of the process of preparing and ratifying conventions.

68. Some structures set up by the European Union, such as the Agency for Fundamental Rights and the EU Social Pillar, run the risk of duplicating specific convention-based activities of the Council of Europe.<sup>28</sup> This should urge both treaty organisations to closely co-operate in order to avoid duplication and to foster synergy of activities, as was already agreed in the Memorandum of Understanding in 2007: "The co-operation will take due account of the comparative advantages, the respective competences and expertise of the Council of Europe and the European Union – avoiding duplication and fostering synergy –, search for added value and make better use of existing resources. The Council of Europe and the European Union will acknowledge each other's experience and standard-setting work, as appropriate, in their respective activities."<sup>29</sup>

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25. Jörg Polakiewicz, EU law and the ECHR, 2013.

26. The Committee on Legal Affairs and Human Rights, which has been seized of the matter since 2010, decided on 18 May 2017 "to suspend work on this issue until further notice and to submit a new motion when justified in light of progress made with the EU accession process".

27. Based on the statement by Professor Katja Ziegler at the round table on 2 December in Paris (document AS/Pro (2017) 08).

28. See also [Resolution 1756 \(2010\)](#) and [Recommendation 1935 \(2010\)](#) "The need to avoid duplication of the work of the Council of Europe by the European Union Agency for Fundamental Rights" and the report of the Committee on Legal Affairs and Human Rights ([Doc. 12272](#), rapporteur: Mr Boriss Cilevičs, Latvia, SOC); [Recommendation 2027 \(2013\)](#) "European Union and Council of Europe human rights agendas: synergies not duplication!" and the report of the Committee on Legal Affairs and Human Rights ([Doc. 13321](#), rapporteur: Mr Michael McNamara, Ireland, SOC); [Resolution 2041 \(2015\)](#) and [Recommendation 2065 \(2015\)](#) "European institutions and human rights in Europe" and the report of the Committee on Legal Affairs and Human Rights ([Doc. 13714](#), rapporteur: Mr Michael McNamara, Ireland, SOC).

## 5. Standard setting, monitoring and assistance

69. The effectiveness of the convention-based system of the Council of Europe depends on a close link between the setting of standards by conventions, the monitoring mechanisms, aimed at ensuring compliance with the commitments made by the member States when acceding to the conventions, and technical co-operation and assistance, conducted in the field to help member States to integrate and introduce in practice the standards set by the Council of Europe.

70. Although the Statute of the Council of Europe does not contain a provision of a general nature conferring upon the Committee of Ministers or any other organs a task of monitoring the implementation of treaties, it was realised that having common standards was not in itself sufficient to achieve unity in practice. Norms need active supervision of compliance with these norms.

71. Both the Committee of Ministers and the Assembly have established procedures to monitor member States' compliance with commitments, including conventions. The Assembly has a general monitoring procedure for all member States which are not subject to monitoring *stricto sensu* and specified monitoring and post-monitoring procedures for some of the member States which it carries out in co-operation with the parliamentary delegations of the States concerned. While the Committee of Ministers procedures are confidential, based principally on persuasion, peer pressure and diplomatic negotiation, the work of the Assembly consisting of parliamentary debate and the adoption of reports following fact-finding visits by majority vote, significantly complements the system of verification and assessment of the fulfilment of obligations and specific commitments assumed and undertaken by member States.

72. Promoting the effective and efficient application of the Council of Europe standards also required the setting up of intergovernmental co-operation bodies in order to ensure continuity in the achievement of the objective set out in the statute – drawing up standards, ensuring their incorporation into domestic legislation and, if the mechanism in question so required, carrying out monitoring.

73. Monitoring of European standards is carried out by several specialised mechanisms which make it possible for the Council of Europe to supervise the implementation of its standards, discern cases of non-compliance, and propose solutions or address recommendations to each of its member States.<sup>30</sup>

74. The application of many European treaties is also followed by several intergovernmental committees. These steering committees (governed by Article 17 of the Statute) may be entrusted with the task of examining the functioning and implementation of European treaties. These committees<sup>31</sup> bring together representatives from member States and possibly from organisations or non-member and observer States, which operate according to specific rules and whose terms of reference are set out by the Committee of Ministers. In certain cases, these activities can be conducted by independent mechanisms which States have set up with the task of supervising the functioning, application and implementation of international instruments or by the Partial Agreements which are a particular type of intergovernmental co-operation within the Organisation that enable some member States not to take part in certain activities which other States wish to maintain. Several other committees have been set up directly under a treaty and are thereby not governed by Article 17 of the Statute.<sup>32</sup>

75. In the past, the Assembly made several attempts to establish a judicial organ which would generally be competent for the interpretation of Council of Europe treaties. Although none of these proposals were taken up by the Committee of Ministers, the Committee of Wise Persons, set up after the Second Summit in 1997, considered that it would be useful if future Council of Europe conventions would include specific provisions concerning their interpretation. It referred to the possibility of asking the Venice Commission, a consultative body within the Council of Europe, to give non-binding opinions on the interpretation of existing treaties for which interpretation mechanisms are not available.

29. Memorandum of Understanding COE–EU, 2007, paragraph 12.

30. Practical impact of the Council of Europe monitoring mechanisms, Directorate General Human Rights and Rule of Law Council of Europe, 2015, p. 7.

31. The European Committee on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC), the European Committee for Social Cohesion (CDCS) and the Steering Committee on Local and Regional Democracy (CDLR).

32. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; the Monitoring Group of the Anti-doping Convention; the Advisory Committee of the Framework Convention for the Protection of National Minorities.

## **5.1. Specific monitoring mechanisms<sup>33</sup>**

### **5.1.1. European Court of Human Rights**

76. In the European Convention on Human Rights, the Organisation's main treaty, an international enforcement machinery was established. To ensure the observance of the engagements undertaken by member States, the European Court of Human Rights was set up in Strasbourg. The Court, which is considered the most effective international human rights control mechanism in existence today, deals with individual and inter-State petitions. At the request of the Committee of Ministers, the Court may also give advisory opinions concerning the interpretation of the Convention and its protocols. The Committee of Ministers has also the power to ask the Court for an interpretation of a judgment. The parties to a case must abide by the judgments of the Court and take all necessary measures to comply with them. The Committee of Ministers supervises the execution of judgments which are binding on States Parties. The Secretary General of the Council of Europe may request parties to provide explanations regarding the manner in which their domestic law ensures the effective implementation of the Convention.

77. States enjoy certain discretion as to how to give effect to the Court's judgments by means of corrective measures, which may include constitutional and legislative amendments, organisational and administrative reforms, as well as adjustments reflected in the case law of the highest judicial organs. Convention standards, enriched by the Court's case law, create a dynamic and continuously evolving body of law which reflects the "common European standards".

78. The general acceptance of the Convention by all member States and its compulsory supervision mechanism in the 1990s has made an essential contribution to the development of confidence in European relations through the development of a real common standard of governance in to the whole of Europe, based on democracy, the rule of law and respect for human rights.<sup>34</sup> The evolving interpretation of the Convention by the Court and the effective supervision of the execution of its judgments ensure a constant improvement of the legal systems of member States.<sup>35</sup> However, several countries – i.e. Azerbaijan, Italy and the United Kingdom – were or are challenging the Court's authority, in relation to judgments of their national constitutional courts. Recently, Russia adopted a law on the priority of national law over international court rulings, although the Russian Constitution and laws repeatedly acknowledge the binding nature of international law and treaty organisations. Overcoming these conflicting opinions on the binding nature of judgments of the Court should be one of the priorities of the Council of Europe.

### **5.1.2. Council of Europe Commissioner for Human Rights**

79. The Commissioner for Human Rights is an independent and impartial non-judicial institution within the Council of Europe, mandated to promote awareness of and respect for human rights in the 47 member States. The Commissioner's activities focus on three major, closely-related areas: on a system of country visits and dialogue with national authorities and civil society; thematic reporting and advising on the systematic implementation of human rights; and awareness-raising activities.<sup>36</sup> The Commissioner carries out visits to member States to monitor and evaluate the human rights situation. He meets not only with the highest representatives of government and parliament and the judiciary, but also with ordinary people, in prisons, centres for asylum seekers, schools, orphanages and settlements populated by vulnerable groups. The Commissioner has the right to intervene *ex officio* as a third party in the proceedings of the European Court of Human Rights.

### **5.1.3. European Committee on Social Rights**

80. The European Social Charter, the counterpart of the European Convention on Human Rights in the sphere of economic and social rights, has set up an international system of supervision of its application by the Parties based on national reports. Every year the Parties submit a report on some of the accepted provisions of the Charter indicating how they implement the Charter in law and in practice. The European Committee on Social Rights, an independent quasi-judicial body, examines the reports and decides whether

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33. Most useful information on the specific monitoring mechanisms was provided to the rapporteur by the Directorate General Human Rights and Rule of Law of the Council of Europe. In its 2015 report on the practical impact of the Council of Europe monitoring mechanisms in improving respect for human rights and the rule of law in member States, a precise oversight is given of the monitoring mechanisms as well as of their impact on member States.

34. Practical impact of the Council of Europe monitoring mechanisms, p. 8.

35. Ibid., p. 9.

36. Ibid., p. 13.

or not the situations in the countries concerned are in conformity with the Charter by adopting conclusions. The ECSR adopts also decisions regarding collective complaints of violations. If a Party takes no action on a decision of non-conformity of the European Committee on Social Rights, the Committee of Ministers may address a recommendation to that member State, asking that the situation be changed in law and in practice. In 2014, the Secretary General launched the Turin Process which aims at strengthening the normative system of the Charter within the Organisation and in its relationship with EU law. In order to reach its objective, namely that of improving the implementation of social rights at national level, the European Social Charter should become the central column of the newly adopted European Pillar of Social Rights with the collective complaints procedure provided for in the Additional Protocol to the Charter crowning the whole.

#### 5.1.4. CPT

81. The Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment provides for the setting up of an international committee empowered to visit all places where persons are deprived of their liberty by a public authority. This committee of independent experts may make recommendations and suggest improvements in order to strengthen, if necessary, the protection of persons visited from torture and from inhuman or degrading treatment or punishment. This preventive, non-judicial mechanism is an important addition to the system of protection already existing under the European Convention on Human Rights.

#### 5.1.5. Other monitoring mechanisms

82. ECRI, the European Commission on Combating Racism and Intolerance, is the Council of Europe's monitoring body which specialises in questions relating to the fight against racism, discrimination, xenophobia, anti-Semitism and intolerance. It carries out country monitoring activities, in five-year cycles, nine or ten countries being covered every year. Before publication of a country report, the commission engages in a confidential dialogue with the national authorities.

83. GRECO, the Group of States against Corruption, was established by the Council of Europe to monitor member States' compliance with the organisation's anti-corruption standards. Currently it comprises 49 member States (48 European countries and the United States). Its objective is to improve the capacity of its members to fight corruption by monitoring their compliance with the Council of Europe anti-corruption instruments, such as the Criminal and Civil Law Conventions on Corruption.

84. GRETA, the Group of Experts on Action against Trafficking in Human Beings is responsible for monitoring the implementations of the Council of Europe's Convention on Action against Trafficking in Human Beings. Member States which do not fully respect the measures contained in the Convention will be required to step up their action.

85. MONEYVAL, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures, is a Council of Europe anti-money laundering evaluation and peer pressure mechanism. Its objective is to improve the capacities of its States to defend themselves, the international community and the global financial system against the threats from money laundering and terrorist financing, to be achieved through rigorous cycles of mutual evaluations and regular country-by-country follow-up processes for deficiencies identified by MONEYVAL reports.

86. GREVIO, the Group of Experts on Action against Violence against Women and Domestic Violence, is the independent expert body which together with the Committee of the Parties – a political body which is composed of representatives of the Parties to the Istanbul Convention and is also responsible for the election of GREVIO members – monitors the implementation of this Convention. The Istanbul Convention provides for two types of monitoring procedures: a country-by-country evaluation procedure and a special inquiry procedure.

87. The Advisory Committee of the Framework Convention for the Protection of National Minorities is the dynamic monitoring mechanism for that Convention. It involves country visits and country-specific opinions by the Committee, which consists of independent experts.

88. The Committee of Experts of the Charter of Regional and Minority Languages monitors the application of the Charter. The Charter provides for a monitoring mechanism to evaluate at three-year intervals how the treaty is applied in a member State. Until now the Charter has been ratified by 25 States, and signed by eight; six States have committed themselves to ratifying it but have not yet done so.<sup>37</sup>

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37. Ibid., p. 11.

## **5.2. Programmes and action plans**

89. Over the years, the Council of Europe has gradually set up a large number of intergovernmental programmes and action plans<sup>38</sup> covering fields as varied as the functioning of democratic institutions, the efficiency and independence of judicial systems, social rights and health, culture, education, youth and sport. These programmes should support the implementation of conventions, ratified by the countries involved, as well as enhance the capacities of national institutions to establish practices in line with Council of Europe standards. These action plans try to reflect the priorities defined jointly by a member State and the Council of Europe's Secretariat, as is the case for example in the Action Plan for Ukraine 2015-2017 and the Action Plan for Azerbaijan 2014-2016.

90. National action plans should be drawn up to address shortcomings identified in the member States concerned by the various Council of Europe monitoring mechanisms and its political organs: the Assembly and the Committee of Ministers. To ameliorate this process, there should be greater consultation between departments in the Secretariat over the drawing up of targeted co-operation programmes in order to identify the key problems to be solved, also taking into consideration the information provided by parliament (and its national delegations to the Assembly) and civil society. Overall, the results of concrete national actions plans should contribute more to general strategic action plans for all member States.

91. Bearing in mind the endemic problems in many member States, in particular corruption, joint action plans could be developed, open to all member States which are engaged in the fight against corruption as an absolute need to build a sustainable rule of law-based society. The development of such joint action plans also has the potential to show that many problems are not limited to only one or a few member States and therefore require attention in all member States. Action plans should not therefore be limited to a small number of countries but become widespread.

92. Effective action plans need effective and sufficient funding. Therefore, it is necessary to find innovative ways to attract enough interested partners to provide the necessary funding while avoiding that particular interests lead to a imbalance in action plans.

93. Since the 1990s, the Council of Europe receives support from the European Commission for these programmes. Since the 2005 Warsaw Summit, and the Memorandum of Understanding between the two organisations, the European Union contributes to a large number of specific programmes of the Council of Europe. However, sometimes contradictions appear between the ideas of the Council of Europe how to help best member States in implementing their convention-based obligations and the priorities of the European Union, or more precisely: the European Commission, with regard to these countries. Thanks to the European Commission, substantial funds are available for programmes and action plans in member States which are subject to the EU neighbourhood policy<sup>39</sup> or other EU priorities.<sup>40</sup> For other member States<sup>41</sup> which are in this respect not a priority for the European Commission, funding for programmes and action plans is not as easy to obtain.

## **6. Conclusions and proposals**

94. The Council of Europe's convention-based system of collective guarantees has substantially helped to improve the functioning of democratic institutions, to develop the rule of law and to protect and promote human rights as required by the Council of Europe Statute. As a result, common solutions to many common problems and challenges have been found. The Council of Europe has thus been a key player in the efforts to maintain and develop democratic security and stability on our continent. However, there are still huge gaps between the texts adopted and the reality of our societies, notably as regards the human rights formulated in key Council of Europe conventions and their realisation in practice.

95. Because of these gaps, notably caused by the non-effective implementation of these rights at the national level, thousands of those placed under the jurisdiction of State Parties to the Convention apply each year to the European Court of Human Rights, a procedure frequently requiring considerable time before justice is effectively achieved. Additional means and powers could also significantly benefit other monitoring bodies such as the European Committee for Social Rights, the CPT, and the different steering committees.

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38. The intergovernmental programmes include the various activity programmes drawn up in line with the priorities laid down by the Committee of Ministers.

39. For example, Ukraine.

40. For example, Turkey.

41. For example, the Russian Federation.

Therefore, additional support from member States would be much welcomed to foster the recent reform by the Secretary General of the Council of Europe which aims at distributing resources where they are the most needed.

96. Several reforms of the Court have been agreed to by the member States, but without sufficient improvements of procedures at all levels, including in the member States themselves to ensure speedy compliance with the Court's judgments and reinforcement of the Committee of Ministers' supervision so that States really abide by them, these gaps between formulating and guaranteeing rights will remain. This will inevitably undermine the fundamental guarantees provided by the Council of Europe's convention-based system in Europe. More resources should be provided for concrete co-operation programmes to support member States in implementing the Court's judgments at national level, such as the European Programme for Human Rights Education for Legal Professionals (HELP), large-scale tailor-made projects agreed with specific countries, or specific activities aimed directly at facilitating the implementation of complex judgments. Co-operation projects have proved to be an efficient platform to exchange good practices on the implementation of Council of Europe standards and this should be further encouraged. Also the Committee of Ministers must improve the effectiveness of its support through supervision. Recent efforts in this regard, notably improved co-ordination with other Council of Europe bodies, better visibility of positive results obtained and better exchanges of good practices (thematic debates), are developments to be welcomed.

97. Attempts to increase the powers of other bodies set up to secure respect for human rights such as the European Committee on Social Rights and the CPT have not materialised to date. Because of financial and organisational restraints, intergovernmental steering committees, which have to follow up the consequences of shortcomings identified by monitoring mechanisms, are less active and effective as would be needed to optimise the convention-based system.<sup>42</sup>

98. The Council of Europe *acquis* after seven decades of intergovernmental co-operation via the convention-based system is not entirely a success story. Indeed, many important conventions have been developed, but formulating rights without guaranteeing them effectively creates cynical citizens and encourages a lack of trust towards national authorities, and in the value of the collective guarantees set up by the Council of Europe and by other international organisations.

99. To ensure in the future the effective continuation and the strengthening of the convention-based system, member States will have to provide the Council of Europe with additional resources. In exchange, member States are entitled to demand clear results from the Council of Europe, including its instruments and its mechanisms. This said, a basic fact remains. The main responsibility for guaranteeing that rights are protected rests on national authorities. A reinforcement of Council of Europe resources in no way obviates the need for providing domestically the resources required for an effective implementation of these rights.

100. The Assembly and the Committee of Ministers, bear – together with the member States – the responsibility for the convention-based system in Europe, as stated in Article 15.a of the 1949 Statute. These two statutory organs of the Council of Europe should therefore advocate that the upcoming Summit of Heads of State and Government, which is now under preparation,<sup>43</sup> should discuss the future of the convention-based system of the Council of Europe, on the basis of a thorough evaluation.

101. Meanwhile, the Assembly should reinforce its role as the political engine of the Council of Europe in the examination of the need for new conventions to address new challengers, like the ones in the field of emerging technologies and their convergence, as well as a facilitator of ratification and implementation processes. It should foster its relations with the Committee of Ministers, the other statutory body of the Organisation, to achieve more synergy in ideas and activities (like in the "One in five" campaign to stop sexual violence against children for the Lanzarote Convention). The Assembly should review its working methods and monitoring mechanisms in order to increase its effectiveness, as well as its credibility and visibility, as the pan-European platform for parliamentary dialogue.

102. The Assembly should therefore call on the Committee of Ministers and the Secretary General of the Council of Europe to:

- add the future of the Council of Europe convention-based system to the agenda of the upcoming Summit of Heads of State and Government;

42. Expert meeting, Committee on Rules of Procedure, Immunities and Institutional Affairs, Strasbourg, 23 June 2016.

43. See the report of the Committee on Political Affairs and Democracy on a "Call for a Council of Europe Summit to reaffirm European unity and to defend and promote democratic security in Europe", *op. cit.*

- adequately prepare, in due time before the Summit:
  - a. an in-depth evaluation of the effectiveness of the existing conventions and their monitoring mechanisms, and proposals to substantially strengthen the convention-based system, in the light of what is stated in Article 1 of the Statute of the Council of Europe;
  - b. an evaluation of the effectiveness of the assistance programmes for the implementation of the standards set out in the conventions and an assessment of improvements needed;
  - c. proposals on how to strengthen the effectiveness of the European Court of Human Rights, by improving domestic judicial procedures to give justice to citizens, promoting effective implementation in all member States of judgments of the Court, and appropriate funding of the Court, in line with decisions taken at the Third Summit in Warsaw;
  - d. proposals on how to broaden the scope of application of the European Social Charter to all member States by having them ratify the Charter as soon as possible, how to expand its strong built-in monitoring mechanism (collective complaints system) to all member States and how to make the revised European Social Charter the main reference and common social rights benchmark for the European Pillar of Social Rights;
  - e. a general evaluation of relations between the Council of Europe and the other main European organisations (European Union, Eurasian Economic Union, Nordic Council, Organization for Security and Co-operation in Europe (OSCE), Organisation for Economic Co-operation and Development (OECD)) with regard to the convention-based system;
  - f. a consideration of the desirability of a European–Council of Europe Memorandum of Understanding on the participation of the European Union in Council of Europe conventions which could provide general operating rules (such as voting rights, speaking rights, reporting, and financial arrangements);
  - g. a road map for EU accession to the European Convention on Human Rights, in line with the obligation formulated in the Lisbon Treaty;
- ensure that sufficient financial and human resources be allocated to convention-based and intergovernmental activities in which all member States should be able to participate on an equal footing;
- involve the Parliamentary Assembly in the preparatory activities of these evaluations and (re)considerations, in line with Article 15.a of the Statute;
- involve the Parliamentary Assembly in an appropriate way in the upcoming Summit of Heads of State or Government;
- invite the Heads of State and Government, when participating in their upcoming Summit, to recognise, assert, defend and, as necessary, further develop and properly fund the convention-based system, to the benefit of all European citizens and inhabitants – and all others to whom these conventions are or could be applied.

**Appendix – Conventions with numerous ratifications and considered as key (source SG/Inf(2012)12)**

No.	Title, year	Comments	Parties
<b>Subject matter 1: Human Rights</b>			
005	Convention for the Protection of Human Rights and Fundamental Freedoms – ECHR (1950)	Referred to in the Appendix to PACE Resolution 1732 (2010).	47
009	Protocol to the ECHR (1954)	Referred to in the Appendix to PACE Resolution 1732 (2010).	45
046	Protocol No. 4 to the ECHR, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (1963)	Referred to in the Appendix to PACE Resolution 1732 (2010).	43
108	Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981)	Referred to in the Appendix to PACE Resolution 1732 (2010).	44
114	Protocol No. 6 to the ECHR concerning the Abolition of the Death Penalty (1983)	Referred to in the Appendix to PACE Resolution 1732 (2010).	46
117	Protocol No. 7 to the ECHR (1984)	Referred to in the Appendix to PACE Resolution 1732 (2010).	43
126	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)	Referred to in the Appendix to PACE Resolution 1732 (2010).	47
181	Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (2001)	Considered as key by the Bureau of the CDCJ in its comments on the draft classification of conventions (6-7 July 2011).	32
177	Protocol No. 12 to the ECHR (2000)	Referred to in the Appendix to PACE Resolution 1732 (2010).	18
187	Protocol No. 13 to the ECHR, concerning the abolition of the death penalty in all circumstances (2002)	Referred to in the Appendix to PACE Resolution 1732 (2010).	43
<b>Subject matter 2: Rule of Law and Judicial Co-operation</b>			
024	European Convention on Extradition (1957)	Referred to in the Appendix to PACE Resolution 1732 (2010).	50
030	European Convention on Mutual Assistance in Criminal Matters (1959)	Referred to in the Appendix to PACE Resolution 1732 (2010).	50
062	European Convention on Information on Foreign Law (1968)	Considered as key by the Bureau of the CDCJ in its comments on the draft classification of conventions (6-7 July 2011).	43
086	Additional Protocol to the European Convention on Extradition (1975)	Referred to in the Appendix to PACE Resolution 1732 (2010).	39
090	European Convention on the Suppression of Terrorism (1977)	Referred to in the Appendix to PACE Resolution 1732 (2010).	46
098	Second Additional Protocol to the European Convention on Extradition (1978)	Referred to in the Appendix to PACE Resolution 1732 (2010).	42
099	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (1978)	Referred to in the Appendix to PACE Resolution 1732 (2010).	43
112	Convention on the Transfer of Sentenced Persons (1983)	Considered as key by the CDCP in its comments on the draft classification of conventions (CDPC(2011)13 of 7 July 2011).	64
141	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990)	Considered as key by the CDCP in its comments on the draft classification of conventions (CDPC(2011)13 of 7 July 2011).	48
173	Criminal Law Convention on Corruption (1999)	Referred to in the Appendix to PACE Resolution 1732 (2010).	43

182	Second additional protocol to the European Convention on Mutual Assistance in Criminal Matters (2001)	Referred to in the Appendix to PACE Resolution 1732 (2010).	27
190	Protocol amending the European Convention on the Suppression of Terrorism (2003)	Referred to in the Appendix to PACE Resolution 1732 (2010).	31
191	Additional Protocol to the Criminal Law Convention on Corruption (2003)	Referred to in the Appendix to PACE Resolution 1732 (2010).	28
<b>Subject matter 3: Democracy- 1: Local democracy</b>			
122	European Charter of Local Self-Government (1985)	Considered as key by the Bureau of the Congress in its comments on the draft classification of conventions (16 June 2011).	45
<b>Subject matter 3: Democracy – 2: Environmental and Social affairs</b>			
104	Convention on the Conservation of European Wildlife and Natural Habitats (1979)	Considered as key by the Bureau of the CDCULT in its comments on the draft classification of conventions (8 July 2011).	50
<b>Subject matter 3: Democracy – 3: Education, culture, media and sport</b>			
018	European Cultural Convention (1954)	Considered as key by the Bureau of the CDCULT in its comments on the draft classification of conventions (8 July 2011).	50
147	European Convention on Cinematographic Co-Production (1992)	Considered as key by the Bureau of the CDCULT in its comments on the draft classification of conventions (8 July 2011).	43
165	Convention on the Recognition of Qualifications concerning Higher Education in the European Region (1997)	Considered as key by the Lisbon Convention Bureau (21 June 2011) and the Bureau of the CDESR in their comments on the draft classification of conventions (July 2011).	53
<b>Subject matter 3: Democracy – 4: Quality of the living environment of citizens</b>			
143	European Convention on the Protection of the Archaeological Heritage (Revised) (1992)	Considered as key by the Bureau of the CDPATEP in its comments on the draft classification of conventions (22-23 June 2011).	42