

*Shortly after each other, NATO and the Council of Europe celebrate their seventy-fifth anniversaries in 2024. Both organisations were founded on 4 April and 5 May 1949 respectively. Both aimed to ensure peace in Europe, NATO through political-military cooperation, the Council of Europe through protection of democracy and human rights. After the celebrations to mark NATO's anniversary, it is now time to pay more attention to the Council of Europe, which Queen Beatrix of the Netherlands - in her speech to the Council's Parliamentary Assembly in June 2002 - characterised as "the silent force of Europe".*

## The Council of Europe 75 years

5 May 1949-2024

The seventy-fifth anniversary of the Council of Europe on 5 May 2024 is an opportune occasion to pause and reflect on its significance for European citizens. Especially now, at a time of rising populism, of extremist movements, of increasingly frequent violations of the rule of law, of wars and conflicts almost everywhere in Europe, this oldest European institution is more crucial than ever for the preservation of democracy and the protection of the European citizen.

Unfortunately, the organisation is often confused with the European Council, which consists of the heads of government of the European Union (EU) member states. In turn, to add to the confusion, the European Council is confused not only with the Council of Europe but also with the Council of Ministers, which consists of the trade ministers of the EU member states. Because of this confusion, the position and task of the Council of Europe is often not well understood, and the organisation is in danger of falling into the background.

### Origin

The Council of Europe was the first political organisation with a European reach, founded four years after the United Nations. The founding states of this new organisation were driven by the firm political will to create greater unity among its members by "safeguarding and realising the ideals and principles which are their common heritage and promoting their economic and social progress" (Article 1 of the Statute). In post-World War II Europe, the founding fathers envisaged creating an organisation that would ensure that war would never again break out in Europe.

In a speech at the University of Zurich (19/09/1946), Churchill called for a more radical renewal of the community of nations in Europe. There he pronounced the words "Council of Europe" for the first time. The desire for such a renewal, which grew especially during the war, was expressed at the European Congress in The Hague in May 1948, which was attended by many politicians and civil movements. The final resolution of the Congress expressed the desire to set up a European parliamentary assembly, draw up a charter of human rights and create a Court of Justice (later the European Court of Human Rights) to promote compliance with this charter. After further negotiations - mainly on whether the new organisation would have supranational powers - and after a compromise was reached on this point, the Statute of the Council of Europe was signed in London on 5 May 1949 by 10 western European countries. Greece, Turkey and Iceland were added in the same year. About a year after its establishment, the Federal Republic of Germany could also be admitted. Since then, the Council has grown into a pan-European organisation of 46 member states. At the suggestion of British Foreign Secretary Ernest Bevin, the Council of Europe was established in Strasbourg.

As early as The Hague Congress, a clear contradiction emerged between those who advocated "supranational" or federal European organisations and those who wanted to promote European unity through the conclusion of agreements between the various national governments without compromising national independence. During subsequent discussions, the different views on the future united Europe clashed regularly.

It is curious to recall that even then, in the British view, the planned Council of Europe should not involve any erosion of national independence. In the end, the French foreign minister reached a compromise: The Council of Europe would consist of two bodies: a (Consultative) Parliamentary Assembly and a Committee of Ministers. This solution met those who did not want to go beyond close cooperation between like-minded independent states. The Council became an assembly between the Parliamentary Assembly - representing the Europe of citizens - and the Committee of Ministers, representing individual national governments. In practice, member states are permanently represented in Strasbourg by an ambassador.

History repeats itself: the United Kingdom withdrew from the EU on the "back home" argument of restoring sovereignty at home. Europe's populist parties - insofar as they are not advocating withdrawal from the EU - are also advocating à la carte cooperation between states limited to areas of common interest, especially economic, without encroaching on national sovereignty.

### **The gradual enlargement of the Council of Europe**

Only countries that respect the principles of democracy, human rights and the rule of law can become members of the Organisation. Portugal and Spain could therefore join only in 1977 after the abolition of dictatorship, the organisation of free elections and other essential reforms. Until 1989, all Western European and Mediterranean countries joined except for Monaco, which became a member only in 2004. After the fall of the Wall in Berlin, gradually all former communist countries in Central and Eastern Europe also became members except for Belarus [1]. They were able to join after they too were able to carry out the necessary reforms and committed to meeting all membership requirements, if necessary, with the help of the Council. Failure to fulfil the commitments made can lead to sanctions and, in extreme cases, exclusion from the Organisation.

### **Structure of the Council of Europe**

Besides the main bodies already mentioned, the Committee of Ministers and the Parliamentary Assembly, there are other equally important bodies of the Council:

The European Court of Human Rights; the Commissioner for Human Rights; the Congress of Local and Regional Authorities and the Conference of International Non-Governmental Organisations. The Secretary-General heads the secretariat. He or she is elected for five years by the Parliamentary Assembly, as are the Deputy Secretary General and the Secretary General of the Parliamentary Assembly. The judges of the Court are also elected by the Parliamentary Assembly.

Although the Council is an intergovernmental organisation, over the years the Parliamentary Assembly has come to play an increasingly important role with limited but very essential powers, such as approving new treaties, appointing judges to the Court of Human Rights and admitting new member states. The role of the so-called third pillar, the Congress of Local and Regional Authorities, has also increased over the years especially about promoting local democracy. The Conference of International Non-Governmental Organisations also plays an important role. About four hundred international non-governmental organisations have participatory status with the Council and can contribute to certain activities within their area of competence.

## **The protection of human beings**

The uniqueness of the Council of Europe is that the protection of the individual citizen is central to all its work, from a legal, social, cultural and physical point of view. Unlike other European organisations and institutions, the Council does not pursue economic or military objectives. The Council's Statute is explicitly founded on respect for human rights and the rule of law. This implies that the dignity and freedom of the individual must be protected within the framework of a rule of law, which must be constantly strengthened. The Statute goes further by stating that a member state guilty of a serious human rights violation may be suspended or excluded from membership (see also below under “sanctions”).

Therefore, soon after its establishment in 1949, the Council of Europe drafted the important European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR), which entered into force in 1953. It has 13 provisions conferring rights and freedoms on everyone under the jurisdiction of a state party. In other words, any citizen in the territory of one of the member states can bring an appeal against violation of the convention (provided that all avenues for such an appeal at the national level have been exhausted). Added to this are the provisions, spread across the various protocols to the ECHR that were later adopted, such as the prohibition of the death penalty. This effectively abolished it in all 46 member states of the Council of Europe. A recent Court ruling proves the timeliness of the Convention with the finding of a violation of Swiss obligations on climate.

Among its many provisions, the right to life, to a fair trial, to freedom of expression, to freedom of thought, conscience and religion, to personal freedom and security, to freedom of assembly and association, to property, to found a family, prohibition of discrimination, etc. may serve as examples.

The ECHR, based on the voluntariness of member states, has evolved into a human dimension monitoring mechanism that is appreciated and admired worldwide and can be called unique. The convention is the organisation's most fundamental instrument. Signing and ratifying it is a prerequisite for membership. Monitoring its implementation in member states is in the hands of the European Court of Human Rights, based in Strasbourg. Member states are obliged to implement the Court's decisions. As a result, this binding jurisdiction has a major impact on legislation in the member states. After all, legislation - including constitutions - must comply with the ECHR.

## **Human rights compliance by other Council of Europe conventions**

But other Council treaties and instruments are also important, such as the Framework Convention for the Protection of National Minorities and the Convention against Trafficking in Human Beings. Also very important are the European Cultural Convention, the European Social Charter (ESC) and the revised Social Charter, which is a leading instrument for the protection and enforcement of fundamental trade union, labour and social rights and the improvement of working and living conditions of European citizens. Incidentally, rulings of the ESC Committee, while not binding, have considerable authority.

Recent treaties provide a framework to counter child exploitation, and still others relate to the fight against terrorism and cybercrime. Another important treaty, the Convention on Preventing and Combating Violence against Women and Domestic Violence, was opened for signature in 2011 in Istanbul. The irony of fate has beckoned that Turkey, the country that was one of the first signatories, suddenly withdrew from the convention. This withdrawal has led to many protests worldwide.

On 17 May 2022, the Committee of Ministers, while celebrating the Council's 75th anniversary, the first international treaty on artificial intelligence was adopted, aimed at ensuring the respect of human rights, the rule of law and democracy legal standards in the use of artificial intelligence (AI) systems. This important treaty, which is also open to non-European countries, sets out a legal framework that covers the entire lifecycle of AI systems and addresses the risks they may pose, while promoting responsible innovation. It will become no doubt of worldwide importance.

At this short notice, I cannot cover all, now 225, Council treaties or protocols thereto in detail. They cover many areas, human rights, justice, health, culture, education, sports, youth, media, environment, migration and cross-border cooperation. Some of the treaties are so-called closed treaties, meaning they can only be signed and ratified by member states of the Council of Europe such as the ECHR and the Convention for the Prevention of Torture. In addition, many Council of Europe treaties are open for signature worldwide, such as the one on artificial intelligence. As a result, many of its mechanisms apply throughout the world.

More than 100 non-European countries are parties to one or more Council of Europe conventions.

### **Partial agreements**

The Council also has several so-called partial agreements, 16 in total, which provide for specific forms of cooperation and to which member states and, for some of them, non-member states can accede on a voluntary basis. Examples are: the Council of Europe Development Bank (CEB), the European Pharmacopoeia, the so-called Pompidou Group which assists member states in their policies against drug addiction, Eurimages (financing of cinematographic productions), the Centre for Living Languages in Graz, Austria, the North-South Centre in Lisbon.

The European Directorate for the Quality of Medicines and Healthcare (EDQM) houses the European Pharmacopoeia (a set of general monographs for the preparation of medicines, general methods for analysing substances and medicines, and some general requirements for dosage forms).

The said Council of Europe Development Bank is based in Paris. This bank finances socially oriented projects in member states (schools, hospitals, housing for migrants, employment projects, etc.).

The Venice Commission, created in 1990 to meet the urgent need to help Central and Eastern European countries introduce new constitutions after the fall of the Berlin Wall, has played an important role in the democratisation of these countries seeking to join the European Union (after having joined the Council of Europe)..

The Reykjavik summit of heads of state and government (16-17 May 2023) decided to establish a new partial agreement, the "Register of damages caused by the Russian Federation's aggression against Ukraine". Based on an agreement with the Dutch government, the seat of this partial agreement was established in The Hague. Reykjavik also decided to further develop the Council's work on strengthening democratic security and "good governance" based on the Reykjavik Principles for Democracy adopted there.

### **Monitoring procedures (Monitoring)**

Yet another important aspect of the Council's work is the procedures of monitoring compliance with commitments made. The Parliamentary Assembly regularly examines the overall compliance of certain countries with their commitments and has set up a monitoring committee for this purpose. The member states concerned are asked to resolve identified shortcomings, seeking the assistance of the Council to do so if necessary. Rather, the

Committee of Ministers examines thematically whether there are certain problems in member states, for example regarding freedom of the press or the independence of judges. Countries that do not meet Council standards are called upon to carry out the necessary reforms, with or without Council help.

A third group of monitoring procedures is linked to several Council of Europe conventions. There are ten of these. They concern the fight against corruption (GRECO); prevention of torture and inhuman treatment (CPT); combating trafficking in human beings (GRETA); action against violence against women and domestic violence (GREVIO); promoting efficiency in justice (CEPEJ); measures against money laundering and the financing of terrorism (Moneyval); combating racism and intolerance (ECRI); protection of social rights, protection of national minorities, and finally the European Charter for Regional or Minority Languages. These monitoring bodies have their own procedures and methods of investigation and reporting and make recommendations to the countries concerned for compliance. In extreme cases, such a body can make its entire report public if the country concerned does not take the desired action, the conclusions and recommendations are always public.

Another important aspect of the Council is the help it provides to new member states to meet membership requirements. This is not always easy. Former communist countries had to bring their constitutions and other legislation into line with the Council of Europe's fundamental principles, enshrined in the Statute, the ECHR and other key instruments. Therefore, when new member states joined, the Council helped carry out the necessary reforms and adjustments. These aid programmes are largely co-financed by the EU. The Council also works closely with the United Nations, the OSCE and many others. The Council has observer status at the United Nations General Assembly in New York.

### **Sanctions**

As mentioned, countries with the most serious human rights violations expose themselves to sanctions or even exclusion as is now the case with Russia. On 16 March 2022, the Council of Europe expelled Russia from the Organisation with immediate effect. With the expulsion, all citizens in Russia lose the opportunity to seek justice at the European Court of Human Rights in Strasbourg.

Earlier, in 1969, Greece was expelled from the Council when a colonel regime took power there and had no intention of abiding by the Council's basic principles. It returned in 1974 when democracy was restored there. Past sanctions were also applied against Turkey when there was a coup d'etat in September 1980 by a general who established an authoritarian regime. The sanctions were lifted soon after the regime accepted to organise free elections again. Other countries have also violated its democratic principles in the past, exposing themselves to sanctions of varying degrees. Due to repeated violations of human rights and rule of law principles, the Parliamentary Assembly decided not to approve the credentials of Azerbaijan's delegation in January 2024, resulting in its exclusion from the Assembly.

The exclusion of the Russian Federation proves that the Organisation does not let itself be walked over when it comes to crystal clear gross violations of human rights. There have of course been instances when new but also old member states have not exactly complied with certain obligations under the ECHR or other Council treaties. In most, if not all, cases, they have managed to solve the problems under the Council's urging and with its help. ECHR violations have not always been intentional either. Almost all Member States have been condemned by the Court at one time or another. By way of illustration, the case in which the Netherlands was condemned by the Court and the subsequent necessary adjustment of legislation may serve as an example. The Court's condemnation

led, among other things, to amendments in the Netherlands to military criminal law and legislation on the detention of psychiatric patients.

### **Close ties with the EU**

Institutional relations between the EU and the Council of Europe have developed significantly into a strategic partnership. Cooperation with the EU is of great importance and is based on an agreement. The EU has acceded to key Council conventions, largely funds aid programmes, participates in various Council of Europe bodies and evaluates candidate countries' progress towards accession, largely on standards developed by the Council of Europe. The Lisbon Treaty (2009) required the EU to accede to the ECHR. Unfortunately, this has still not happened. The EU Court of Justice in Luxembourg ruled negatively on whether the accession agreement would be in line with the EU treaties. Nevertheless, the Council of Europe hopes that an agreement can be found so that it will significantly strengthen the protection of human rights in Europe and contribute to the creation of a single European legal area. The Council of Europe summit in Reykjavik renewed its call for early EU accession to this important convention, and the European Parliament and the European Commission also support the idea. A resolution adopted by the European Parliament in April 2023 calls for the further improvement of institutional cooperation between the EU and the Council of Europe notably through the EU's accession to more conventions, such as the ECHR, the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the conventions on corruption, the revised Social Charter, etc.

### **Finally, some facts about the Council of Europe**

In total, the Organisation employs about 2,500 people, about 400 of whom work outside Strasbourg (i) in the many offices implementing the aforementioned aid programmes, in the countries of Eastern Europe, in Ankara, Rabat and Tunis.

(ii) in the Council's liaison offices at the EU in Brussels, at the United Nations in Geneva and at the OSCE in Vienna and Warsaw; and (iii) at the European Centre for Living Languages in Graz, Austria, the European Youth Centre in Budapest, the North-South Centre in Lisbon, and other bodies elsewhere in Europe. The Moscow office is now closed. About 200 people work at the Council Development Bank (CEB) in Paris.

The total amount of funds available to the Council of Europe in 2024 is €625 million.

### **The European flag and the European anthem**

On 9 December 1955, the famous blue flag with its 12 stars was officially adopted by the Committee of Ministers of the Council of Europe. The European Community (now EU) also adopted this flag as its own in 1986 with the Council's approval. So, the flag belongs to the Council of Europe "borrowed" by the EU. The number 12 symbolises perfection.

In 1971, the Parliamentary Assembly chose the Ode à la Joie (Ode to Joy) as its European anthem. This proposal was endorsed by the Committee of Ministers in 1972, a version without words arranged by Herbert von Karajan. In turn, the EC (now EU) - with Council approval - adopted the anthem in 1986. Both the flag and the anthem are thus the joint symbols of the two organisations.

The Council of Europe plays an increasingly important role on the European continent to protect human rights, democracy and the rule of law. This makes the Council today of such vital importance not only for all citizens in Europe but also beyond. For this reason, the Organisation is indispensable in fighting all attempts to undermine

these principles. If the Council of Europe did not exist, all populist or fascist parties or movements would have free rein to establish undemocratic forms of governance, violate human rights, fundamental freedoms and the rule of law.

The Council of Europe is indispensable in today's Europe. The organisation's seventy-fifth anniversary is therefore the perfect opportunity to account for the great significance for European citizens of this silent force in Europe.

Hans de Jonge

[1] Because it falls far short of the criteria for accession, Belarus could not become a member.

After Russia's exit, the Council of Europe has 46 member States. In addition, Canada, Japan, Mexico, the Holy See and the United States have gained official observer status at the Council. Israel's parliament has observer status only at the Parliamentary Assembly. Several North African and Central Asian countries - the so-called neighbouring countries - have entered into special partnerships with the Council.