

Reference No: **TIGO IOR 10/2023.3819**

Ms Thórdís Kolbrún Reykfjörð Gylfadóttir
Minister of Foreign Affairs
Iceland

17 February 2023

AMNESTY INTERNATIONAL'S SUBMISSION FOR THE CONSULTATION ON THE 4TH COUNCIL OF EUROPE SUMMIT

Dear Minister,

Ahead of the 4th Council of Europe Summit of Heads of State and Government to be held in Reykjavik on 16-17 May 2023, Amnesty International submits its observations and recommendations for the future of the Council of Europe, in response to the call for consultation launched by the Icelandic Presidency of the Committee of Ministers. Our recommendations are based on our close experience with the Council of Europe and on our monitoring and reporting on human rights in Europe.

Amnesty International has been directly involved in the work of the Council of Europe (CoE) for many years, in Strasbourg and through its 28 Sections in Europe. It has contributed to its standard setting including the drafting of various human rights instruments, such as the Istanbul Convention, and as an observer to the Steering Committee for Human Rights (CDDH) amongst other intergovernmental working groups; Amnesty International regularly submits third party interventions to the European Court of Human Rights (ECtHR), rule 9 (2) submissions to the Committee of Ministers (CM) on implementation of Court judgments, and it has made two collective complaints to the European Committee of Social Rights.

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

Curbing the tide of human rights backsliding at a systemic level must be the priority for the 4th Summit. As the 1949 Statute of the CoE faces increasing challenges by other member states, notably Türkiye, more resolute action is needed to address breaches of statutory commitments by those who undermine the organization's vital work and defeat its purpose - to build a Europe whole, free and at peace. To do this, the CoE must combat all efforts in its member states to restrict or suppress civil society, persecute political opponents, and undermine fair trial guarantees and the independence of the judiciary. Failure to do so risks pre-empting the Council of Europe's future.

Amnesty International recommendations ahead of the 4th Summit:

1. Combat shrinking civic space in member states: towards a new holistic approach to civil society

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

The Russian "Foreign Agents Law" of 2012, imposing arbitrary restrictions and implying that NGOs were spies and traitors, signalled the beginning of very hard times for Russian civil society and its implications echoed far and wide. Yet, it was only in June 2022 that the Court finally delivered its judgment on the cases of various NGOs concerning the Foreign Agents legislation finding several violations. By then, Russia had already ceased to be a CoE member. Amongst those NGOs was Memorial, awarded with the 2022 Nobel Peace Prize along with human rights advocate Ales Bialiatski from Belarus, and the Ukrainian human rights organisation Centre for Civil Liberties.

A growing number of Court judgments, in particular on Azerbaijan, Türkiye and Poland, indicate similar chilling trends: lawyers, judges and human rights defenders had their rights restricted and in some cases their liberty, for ulterior motives. Amnesty International has been denouncing growing restrictions and attacks on human rights defenders and civil society organizations who report abuse of power, violations of rights of migrants, women's rights, LGBTI rights, environmental degradation, corruption, but also attacks on the independence of the judiciary, the ultimate guarantee against arbitrary interference by public authorities. Instead of stigmatizing and criminalizing their activities, governments should protect human rights defenders and recognize their crucial role.

In 2017, for the first time in Amnesty International's long history, the president and director of an Amnesty Section became prisoners of conscience after being arbitrarily detained. That was in Türkiye and despite a May 2022 ECtHR's ruling finding a violation of articles 5 and 10 of the European Convention on Human Rights (ECHR) and denouncing an interference with Taner Kiliç's right to freedom of expression for "actions that were directly linked to his activity as a human rights defender", he still faces the prospect of a prison sentence.¹

Political persecution has no place in the ECHR system. Yet, it is a red line crossed too often and for too long in Russia and in other member states such as Azerbaijan and Türkiye. The Court denounced the political motivation behind the detention of Alexey Navalny finding a violation of article 18 of the ECHR followed by multiple calls for his release. Azerbaijan and Türkiye have equally detained human rights defenders, lawyers, opposition leaders and journalists with the ulterior motive of silencing critical voices. Article 18 violations require a coordinated response at the highest political level of the CoE to ensure an end to the violation, and by addressing the lack of safeguards against political persecution. This is needed to ensure respect for the ECHR system and the authority of the Strasbourg Court. Cases of political persecution are evident when the Court finds an article 18 ECHR violation, i.e., ulterior motives, but also in the systemic nature of violations of article 5 and 10 of the ECHR that, together and in high numbers, indicate a clear political strategy for silencing critical voices.

Infringement proceedings taken to the Court in Ilgar Mammadov v. Azerbaijan and in Kavala v. Türkiye under article 46.4 of the ECHR are the ultimate tools available in the ECHR, but ineffective in the absence of political will and weakened judiciaries. The most glaring example is the case of Osman Kavala, sentenced to life in prison in May 2022 despite the ECtHR's 2019 ruling denouncing the chilling effect of his detention on human rights defenders and calling for his release. The violations found by the Court were confirmed in the July 2022 Grand Chamber judgment following infringement proceedings intended to verify the refusal by Türkiye to comply with the binding judgment.

Shrinking civic space and the erosion of fair trial guarantees, including judicial independence, are mutually reinforcing. Without effective access to lawyers, independent and impartial judiciaries, the right of any individual to obtain justice is fundamentally undermined. Journalists, human rights defenders and academics are essential to denounce state overreach that impacts on human rights. Attacks on civil society are a symptom of a dysfunctional system, and where Courts lack independence and impartiality, they are no longer willing or able to safeguard against abuse, thus enabling

ever more attacks on people's rights. In this vicious circle, weakened judiciaries facilitate political persecution, state overreach and arbitrary rule. The Council of Europe must reinforce its efforts to address independence and impartiality of the judiciary, strengthen the position of lawyers, and oppose the judicial harassment of critical voices. Judges in Türkiye, Poland, Hungary and elsewhere should have no doubts about the binding nature of ECtHR's rulings, nor fear repercussions for applying the ECHR.²

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

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

The Council of Europe's work on human rights defenders has been marred with indecision and even opposition by various member states. Several Ministerial Decisions have pledged to strengthen the role of civil society and the Committee of Ministers has adopted a number of Recommendations on civil society³, as well as a Declaration on human rights defenders, but these have hardly been implemented in what concerns human rights defenders.⁴

The Committee of Ministers Recommendation CM/Rec(2018)11 *on the need to strengthen the protection and promotion of civil society space in Europe* calls on member states and on CoE bodies and institutions to pay special attention to issues concerning the enabling environment in which all human rights defenders, including National Human Rights Institutions and civil society organisations, can safely and freely operate in Europe. It calls on member states to “*remove any unnecessary, unlawful or arbitrary restrictions to civil society space, in particular with regards to freedom of association, peaceful assembly and expression*”. It requests “*paying special attention within the Committee of Ministers to the execution of judgments of the European Court of Human Rights concerning human rights defenders and the enabling environment for human rights work, which have yet to be implemented.*” In line with this Recommendation, the Committee of Ministers should organize a thematic debate on implementation of judgments concerning human rights defenders.

Amnesty International welcomes the work of the Commissioner for Human Rights in raising the alarm and denouncing abuses against human rights defenders, including via Rule 9 submissions to the CM on execution of relevant judgments. Yet, the recommendations of the Commissioner are not given sufficient follow up by member states.

Despite the Hamburg and Helsinki Ministerial Decisions on civil society, and the SG's pledge to organize an annual exchange with civil society, no significant efforts have been made. No thematic meeting on human rights defenders or judgments concerning human rights defenders has been organized by the Committee of Ministers; and no report has yet been published since the establishment in 2017 of the Secretary General's mechanism on retaliation against human rights defenders. One case that deserves the urgent attention of this mechanism is the situation of Hakan Altınay, Director of the Council of Europe Turkish School of Political Studies, who was sentenced to 18 years in prison in 2022

along with 6 others, for allegedly organising the “Gezi park” protests in 2013.⁵ Amnesty International denounced the politically-motivated prosecution that led to these unfair convictions as a “chronicle of a chilling injustice”, and is calling for the immediate release of these prisoners of conscience. The close working links between Mr Altınay and the CoE are undisputable and surely this individual case requires the SG’s intervention.

It is worrying that both the PACE Recommendation on the 4th Summit⁶ and the High-level Reflection group’s Report⁷ fail to address the serious issues civil society faces in member states, but rather focus only on the need to strengthen consultation, participation and communication with civil society. Although important, such an approach is manifestly insufficient when shrinking civic space is an integral part of the problems Europe is facing today. It is high time for the Council of Europe to end such reluctance in responding to threats to civil society in member states with a new holistic approach to civil society.

Recommendations

The Council of Europe should adopt a new holistic approach to civil society and human rights defenders: all parts of the organisation should strive to eradicate restrictions to the enabling environment by ensuring the implementation of relevant Court judgments, recommendations of the Commissioner for Human Rights, Venice Commission, PACE, and when necessary, through the intervention of the Secretary General and the Committee of Ministers. The CM key Recommendations on civil society and human rights defenders, including Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe, should be implemented by member states and CoE bodies. CM/Rec (2018) calls on member states to “remove any unnecessary, unlawful or arbitrary restrictions to civil society space, in particular with regards to freedom of association, peaceful assembly and expression” and requests “paying special attention within the Committee of Ministers to the execution of judgments of the European Court of Human Rights concerning human rights defenders and the enabling environment for human rights work”.

Recommendations to the Committee of Ministers:

- Organize a thematic debate on implementation of judgments concerning human rights defenders and address the root causes of the violations found by the Court.
- Give priority to the implementation of judgments concerning freedom of expression, association, and assembly along with the independence and impartiality of the judiciary.
- Action Plans for member states and their review should address the enabling environment for human rights defenders.
- *Adopt a strong Recommendation on SLAPPs* which includes: a broad definition of those targeted by SLAPPs; the recognition that SLAPPs are weaponized by a wide range of actors including state officials, politicians, religious leaders and corporate actors; an effective procedure enabling courts to dismiss SLAPPs at an early stage, with the possibility to obtain the stay of the main proceedings, an accelerated procedure, and the reversal of the burden of proof; sanctions for those who repeatedly use SLAPPs or threaten to do so, and the establishment of a public registry of court decisions related to SLAPPs; financial and legal support mechanisms for those targeted by SLAPPs.

Recommendations to the Secretary General:

- Strengthen the Mechanism on Retaliations against Human Rights Defenders; publish a report on the use of the mechanism and organise an exchange of views with NGOs working to protect human rights defenders; urgently consider an intervention in the case of prisoner of conscience Hakan Altınay, Director of the Turkish School of political studies.
- Convene an annual exchange with civil society.
- Improve meaningful consultation of civil society in the Council of Europe and in member states.

2. Protect and strengthen independent judiciaries to safeguard human rights

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

In 2015, the law on Russia's Constitutional Court was amended, giving the Constitutional Court the power to declare that judgments by the Strasbourg Court could only be implemented if they conformed with the Russian Constitution, allowing Russia to declare certain decisions "non-executable", contrary to their obligations under the ECHR.⁸ Such a serious challenge to the system was arguably met with only mild criticism, which no doubt encouraged other countries to follow the Russian example. The Russian challenge to the system has been compounded by similar challenges by Poland, Hungary, and most prominently – Türkiye.

In Poland, the Constitutional Court, whose independence has been eviscerated by the government since 2015, has ruled that art. 6 of the ECHR on the right to a fair trial is incompatible with the Constitution, prompting a rare art. 52 ECHR inquiry by Secretary General Marjia Pejčinović Burić. In a damning report, the SG found that the ECtHR's competence had been challenged and indicated that Poland's shortcomings in the execution of judgments of the ECtHR needed to be addressed by the Committee of Ministers.⁹

In Hungary, judges and prosecutors have been targeted with abusive disciplinary proceedings and suspensions. A prominent example of such practice was condemned in the ECtHR ruling *Baka v. Hungary* which has not yet been implemented. In Türkiye, the judiciary continues to enable the pursuit of baseless investigations, prosecutions and convictions. In various cases, the ECtHR has found an ulterior motive behind the restriction of rights, such as to undermine the work of human rights defenders and create a chilling effect to silence their criticism. In the case of *Osman Kavala*¹⁰, the CM has asked for reforms to "ensure the full independence and impartiality of the Turkish judiciary, including from the executive branch" to put an end to recurring violations of the ECHR, including political persecution, arbitrary detention and unfair trials. Following the July infringement judgment of the Grand Chamber under article 46.4 ECHR and numerous CM calls to immediately release Osman Kavala, Türkiye has attained a new level of non-compliance. The implications for the ECHR system are enormous, as this is an unprecedented attack on the credibility of the Court. Non-compliance with ECtHR judgments cannot be normalised, as it can put at risk the whole system, which is based on the binding nature of judgments. This refusal of Türkiye to abide by its commitments under the Convention should be condemned in the strongest possible terms at the Reykiavik Summit.

Indeed, the Summit must address in particular member states, such as Türkiye's, systematic non-compliance with their obligation to abide by the Strasbourg Court's rulings, otherwise all talk of "recommitting to human rights" will ring hollow.

Recommendations:

- Infringement Proceedings under art 46.4 of the ECHR should automatically trigger a collective response of the statutory bodies of the CoE, as well as Member states. The Secretary General, Committee of Ministers and the Parliamentary Assembly should engage in high level efforts to ensure the implementation of those judgments.
- The implementation of infringement proceedings should be included in every Ministerial Meeting at the end of a Presidency, and in particular feature in the agenda of the 4th Summit as a stand-alone point.
- Each upcoming Presidency of the Committee of Ministers should take the initiative of implementing at least three judgments under enhanced procedure ahead of the Presidency as a sign of commitment to the ECHR system.
- The refusal of Türkiye to release Osman Kavala in implementation of the Court's judgment and infringement decision should be condemned in the strongest possible terms at the Reykiavik Summit.

- The Secretary General, the Presidency of the Committee of Ministers and the President of PACE should visit Osman Kavala in prison, discuss implementation with the highest levels of the judiciary, and express support for the work of human rights defenders in Türkiye.

3. Counter the Gender Backlash

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

The backlash against women’s rights has reached unprecedented proportions in recent years. Restrictions on abortion are of unimagined cruelty for women in Poland, and in Türkiye the President issued a decree to withdraw the country from the Istanbul Convention in the dark of night. In Poland, a Constitutional Tribunal’s ruling banned access to abortion in almost all circumstances, while NGOs helped 44,000 people to access abortion services, mostly abroad.¹¹ Hungary adopted new rules requiring those seeking an abortion to show a clinician’s report that they had listened to the “foetal heartbeat.” Political forces in Slovakia and Italy introduced legislation to limit access to abortion. On the positive side, several countries began removing barriers to abortion, including the Netherlands, Germany and Spain.

Recommendations:

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

4. New initiatives to enhance the effectiveness of the Council of Europe?

The PACE, the High-level Reflection Group and other stakeholders have proposed to create a set of new mechanisms including a Commissioner for Democracy and Special Representatives. In Amnesty International’s view, the Council of Europe should resist creating additional mechanisms without a proper impact assessment, as this could lead to patchwork solutions which merely mask the lack of political will among member states. As seen with Russia and the whole PACE debate on the sanctions of the Russian delegation following the illegal annexation of Crimea and the creation of a new Joint Procedure, it is ultimately for the statutory bodies to forcefully and decisively protect the CoE Statute and for the CM to supervise the execution of judgments.

Recommendations for procedural innovations

While institutional innovations should be approached with caution, a number of procedural innovations should be considered to improve the CoE system and make it more dynamic and effective:

- **Infringement proceedings under art. 46.4 ECHR** , as the ultimate measure under the ECHR, should prompt a commensurate extraordinary response in the form of an International Conference of the member states on the refusal to implement the judgment by the relevant state.
- The rare deployment of an **Art 52 ECHR inquiry** by the SG should give rise to an automatic follow up at the highest level with the national authorities concerned.
- Member States should affirm their good faith cooperation with CoE institutions by extending **standing invitations** to CM, PACE, and Congress of Local and Regional Authorities in Europe (CLRAE) delegations, to the monitoring mechanisms, other treaty-based bodies, the Commissioner for Human Rights, and Special Representatives of the Secretary General. It is unacceptable that some states refuse to cooperate with certain bodies, preventing their visits and reporting. Such lack of cooperation should be a standing item on the CM agenda, including of its Annual Ministerial meetings.

Recommendations for the European Union

It is crucial that the European Union (EU) accedes to the ECHR in line with its Lisbon Treaty obligations, to close the human rights accountability gap. Meanwhile, the EU should remind its member states of their obligation to implement ECtHR judgments, including in the annual Rule of Law Report and dialogues. Equally, the EU should call for the implementation of judgments in the framework of its relations with non-EU member states, in particular those in the path to accession.

The European Union should ratify the Istanbul Convention and ensure that its member states also ratify the Convention. The Directive on Violence against Women and Domestic Violence, currently under negotiation, should guarantee the Istanbul Convention as a minimum standard.

Recommendations on the right to a clean, healthy and sustainable environment

One area of work which will require some additional instruments and mechanisms, as it has gained new urgency but has been historically neglected, is the right to a clean, healthy and sustainable environment. Amnesty welcomes the Committee of Ministers Recommendation on the right to a healthy environment adopted on 27 September 2022. It is essential for this right to be formally recognized through a legally binding protocol to the ECHR, -for a more solid and coherent legal basis to the ECtHR's jurisprudence on environmental matters that facilitates implementation and enforcement of the right to a clean, healthy and sustainable environment in member states.

In parallel, member states could consider establishing a Commission on the right to a healthy environment on the model of the European Commission against Racism and Intolerance (ECRI) which would gather independent experts from member states, with a mandate to develop policy recommendations to member states and monitor implementation at national level through country reports.

5. Rejecting war crimes and pursuing accountability

Soon after it joined the Council of Europe, Russia engaged in a brutal second war in Chechnya, clearly defeating the objectives of the CoE Statute it had willingly signed up to. The ECtHR has delivered hundreds of judgments against Russia for violations during that war but only a few have been partially implemented, notably because many implicate actions of the security forces which benefited from impunity. This caselaw concerns “killings notably as a result of indiscriminate bombings and failures to properly organise safe passages for civilians, disappearances, ineffective investigation thereof and the resulting mental suffering of the victims' relatives during counter-terrorism operations in the Chechen Republic and neighbouring regions”.¹² In June 2022, when the Committee of Ministers last reviewed the implementation of these judgments, it “exhorted the authorities (...) to spare the civilians from the fighting and to allow them to safely flee the fighting through the safe passages, to investigate all alleged atrocities and to identify and punish those responsible, as well as to take other necessary measures”. The CM “deplored again, with regard to the more recent abductions by the state agents in Chechnya, the continuing serious human rights violations in the region”.¹³

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

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

The December 2022 CM Decision regarding cases pending against Russia¹⁴, recalling Russia's obligation to execute the binding judgments of the ECtHR, and the Court's announcement on 3 February of its procedure for future processing of applications against Russia¹⁵ are very important steps. These will require additional resources for the Court and for the Committee of Ministers. The Council of Europe Action Plan for Ukraine "Resilience, Recovery and Reconstruction" 2023-2026 has the potential of bringing the support that victims of crimes under international law need and of assisting the functioning of the Ukrainian justice system. It will require close monitoring, effective implementation with participation of civil society, and a victims rights' approach. The Secretary General's Information Note on "Accountability for human rights violations as a result of the aggression of the Russian Federation against Ukraine" of 31 January 2023, indicating the Council of Europe's key role in establishing accountability and securing justice for victims, positions the CoE as a leading voice in pursuing justice and will equally require strong political and financial support from all member states.¹⁶

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

Of concern to the Council of Europe is also the conflict between Armenia and Azerbaijan. No progress has been made in investigating violations of international humanitarian law during the 2020 conflict or in bringing suspected perpetrators to justice.

Recommendations:


- The Committee of Ministers decision to continue monitoring the execution of judgments concerning Russia , and the Court's procedure for future processing of applications against Russia will require additional resources for the Court and for the Committee of Ministers that should be provided, along with political support, by member states.
- The Council of Europe Action Plan for Ukraine "Resilience, Recovery and Reconstruction" 2023-2026 requires close monitoring, effective implementation with participation of civil society, and a victim's rights approach.
- Support the European Committee for the Prevention of Torture, to which Russia is still a party, and to the Commissioner for Human Rights should be granted. They should have unimpeded access to all CoE covered territory, and the CPT should visit Russia. The monitoring by these bodies is an essential tool against impunity.

Conclusion

The 4th Summit is an opportunity for the Council of Europe to take a step towards accountability for Russia's war of aggression and the many violations of international humanitarian and human rights law in the conflict. However, for the Summit to be a success and to breathe new life into the CoE, member states need to prioritize addressing Türkiye's flagrant disregard for its commitments. They should also use the Summit to prioritize combating efforts to shrink civic space, protecting and strengthening independent and impartial judiciaries, and countering the gender backlash. With the possible exception of the right to a healthy environment, the Summit should focus less on creating new institutions than on making the existing toolkit (e.g., infringement proceedings, article 52 inquiries, monitoring visits, etc.) more effective and resourced.

Amnesty International thanks the Icelandic Presidency for the consultation in view of the Declaration to be adopted at the Reykjavik Summit and remains available for any other exchange on any of these proposals.

Yours sincerely,



A handwritten signature in black ink, reading "Nils Muižnieks", followed by a horizontal line extending to the right.

Nils Muižnieks

Director

Europe Regional Office

Amnesty International

¹ Taner Kılıç (no. 2) v. Turkey (application no. 208/18); see also on the Court of Cassation's decision of November 2022 to overturn the 2020 conviction of Taner Kılıç. On the grounds of "incomplete investigation", the court referred the case back to the first instance court. A hearing is expected on 8 March: [Türkiye: Justice prevails as convictions of four human rights defenders overturned - Amnesty International](#).

² On the chilling effect against judges, see in particular the [letter](#) by the CoE Secretary General to the Turkish Minister of Justice, 21 February 2020, expressing concern about Osman Kavala's re-arrest and the investigation against the judges who delivered the verdict of acquittal in favour of Osman Kavala and his co-accused. "The decision, to investigate the judges sends a strong chilling message to the Turkish judiciary. It also runs counter to one of the aims set out in the Judicial Reform Strategy and the recent circular of the Council of Judges and Prosecutors concerning the promotion of judges and prosecutors, which is to encourage judges to deliver judgments in conformity with the European Court's case-law". See also: Turkey: Weaponizing Counterterrorism: Turkey Exploits Terrorism Financing Assessment to Target Civil Society, June 18, 2021, Index No.

EUR44/4269/2021.; Poland: Third-party intervention to the European Court of Human Rights in the case of Igor Tuleya, January 20, 2021, Index Number: EUR 37/3548/202.

³ See in particular Recommendation CM/Rec(2018)11 of 28 November 2018 on the need to strengthen the protection and promotion of civil society space in Europe and Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, 6 February 2008.

⁴ See CM/Del/Dec(2019)129/2, Helsinki Ministerial Decision, A shared responsibility for democratic security in Europe, The need to strengthen the protection and promotion of civil society space in Europe. (...) "*The Committee of Ministers agreed to: 1. examine further options for strengthening the role and meaningful participation of civil society organisations, and national human rights institutions in the Organisation, with the view to increasing its openness and transparency towards civil society, including access to information, activities and events; 2. further strengthen the Organisation's mechanisms for the protection of human rights defenders, including the Secretary General's Private Office procedure on human rights defenders; 3. invite the Secretary General to explore the possibilities of inviting the relevant human rights NGOs to a regular exchange with a view to further enhancing co-operation between civil society and the Council of Europe and enriching the discussions of the Committee of Ministers and other Council of Europe bodies*".

See also (CM/Del/Dec(2021)131/2a Hamburg Ministerial Decision, May 2020: "12. reiterated the importance of further strengthening the role and meaningful participation of civil society organisations as well as national human rights institutions in the Organisation, in line with, inter alia, the Helsinki Ministerial decisions on civil society; instructed its Deputies and invited the Secretary General to vigorously pursue the work to this end, implement the Secretary General's follow-up proposals to the Helsinki decisions and report back on the results at the Ministerial Session in May 2022."

See also SG/Inf(2022)13 12 April 2022, Secretary General's Information Document on Follow-up to the Helsinki decisions on civil society: implementation of the Secretary General's proposals -Final Report, [1680a62b47 \(coe.int\)](#)

⁵ See [Türkiye: Free The Gezi 7 - Amnesty International](#), June 2022.

⁶ January 2023, PACE Recommendation on the 4th Summit 2245.pdf (coe.int).

⁷ Doc. 1680a85cf1 (coe.int), Report of the High-Level Reflection Group of the Council of Europe, October 2022.

⁸ The Venice Commission found that "*The provision that no execution measure may be taken if the Constitutional Court finds that a judgment is non-enforceable is in direct conflict with Russia's international obligations under the Vienna Convention on the Law of Treaties and Article 46 ECHR and should be removed.*" , para 42, DL-AD(2016)016-e, Russian Federation - Final Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court adopted by the Venice Commission at its 107th Plenary Session (Venice, 10-11 June 2016) . See also Opinion CDL-AD(2020)009-e.

⁹ Poland's implementation of the European Convention on Human Rights: Secretary General's Report - Portal (coe.int), 23 November 2022.

¹⁰ See CM [1451st meeting](#), 6-8 December 2022 (DH)H46-40 Kavala v. Türkiye (Application No. [28749/18](#)).

¹¹ See [Poland: Regression on abortion access harms women - Amnesty International](#), January 26, 2022. See also third party interventions by Amnesty International and other NGOs "[Center and Partners File Third-Party Submissions to European Court of Human Rights in Cases Challenging Poland's Abortion Restrictions](#)", June 2022.

¹² See [Committee of Ministers case description for KHASHIYEV AND AKAYEVA v. Russia](#)

¹³ 1436th meeting, 8-10 June 2022 (DH), H46-24 Khashiyev and Akayeva group v. Russian Federation (Application No. [57942/00](#)).

¹⁴ CM/Del/Dec(2022)1451/A2a.

¹⁵ [Future processing of applications against Russia \(coe.int\)](#).

¹⁶ *SG Inf(2020)7 Speaking Notes SG 1370 Deputies (coe.int), 31 January 2023.