

# ON THE COUNCIL OF EUROPE

## A GUIDE TO THE COUNCIL OF EUROPE



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*Throughout 2007 and 2008 Russian Novaya Gazeta Journalist Alexander Pumpyanskiy spent time with the leading figures in the Council of Europe, attempting to establish who the personalities behind the organisation are and how its mechanisms work. Here he starts the article with a meeting with Senator Marty, Chair of the Committee on Legal Affairs and Human Rights, who had just published his damning report providing evidence of the practice of rendition by the United States.*

**By Alexander PUMPYANSKY from Novaya Gazeta**

### **A HUNT FOR THE HUNTERS**

The work and conclusions of the Parliamentary Assembly investigation, led by Senator Marty, represent one of the Council of Europe's most significant achievements to date. A 'hunt for the hunters' is a way of describing the revelation of how the United States CIA in its anti-terrorist campaign, and in secret cooperation with several European countries, committed a certain number of crimes against humanity. We are talking about the secret detention of people suspected of being involved in international terrorism, and the illegal transfer of the detainees. What does this have to do with the Council of Europe? If we limit ourselves to strictly the official side of the case, then the accomplice-countries, through which the illegal transfers occurred, are members of the Council of Europe. The USA has observer status in the Council of Europe.

"What was previously just a set of allegations is now proven: large numbers of people have been abducted from various locations across the world and transferred to countries where they have been persecuted and where

it is known that torture is common practice. Others have been held in arbitrary detention, without any precise charges levelled against them and without any judicial oversight — denied the possibility of defending themselves. Still others have simply disappeared for indefinite periods and have been held in secret prisons, including in member states of the Council of Europe, the existence and operations of which have been concealed ever since."

This is a quote from Senator Marty's report, presented during the session of the Parliamentary Assembly of the Council of Europe (PACE). It continues:

"Some individuals were kept in secret detention centres for periods of several years, where they were subjected to degrading treatment and so-called 'enhanced interrogation techniques' (essentially a euphemism for a kind of torture), in the name of gathering information, however unsound, which the United States claims has protected our common security. Elsewhere, others have been transferred thousands of miles, into prisons whose locations they may never know, interrogated ceaselessly, physically and psychologically abused, before being released because they were plainly not the people being sought.... they were released without a word of apology or

any compensation ... These are the terrible consequences of what in some quarters is called the 'war on terror.'"

As the Marty committee says, everything started after the tragic events at the twin towers on September 11, 2001. In the context of the "war on terror" unveiled by President Bush, the US administration adopted a special CIA programme with the right to kill, capture, or detain high-value suspected terrorists. The programme was called High-Value Targets, and in the subsequent phase, High-Value Detainees. And it was not aimed at common terrorist insurgents; for people like that camps had already been built a long time ago on the US naval base in Guantanamo, in the Kabul Air Base in Bagram, and in the Abu Ghraib prison in Baghdad. Special secret prisons were set up in some European countries. Sometimes these countries are referred to in the report as "young democracies", not without a whiff of an offensive double meaning. Two countries are named specifically. One is Poland — Szymany Airport and the secret detention centre in Stare Kiejkuty. The other is Romania — the 86th Air Force Base (Mihail Kogalniceanu Airfield).

A precondition was that the Americans be given complete freedom of action within the area set aside for them. Local agents only guarded the perimeter. They weren't allowed to poke around inside. Who was being transported, where and why they were going there, and what was being done to them was under the sole jurisdiction of the CIA. At the same time, the project was officially conducted under the aegis of NATO and in the strictest secrecy. All participants in the operation were

working on the assumption (or protecting themselves with it) that the intelligence agencies were protecting the most important interests of their country, and that is why they had the right to act in secrecy and without oversight. The Marty report demolishes this claim completely. It vividly demonstrates what the permissive atmosphere of the intelligence agencies leads to. One of the conclusions was that no-one needs thorough comprehensive oversight from civil society more than the intelligence agencies.

"The rendition, abduction and detention of terrorist suspects have always taken place outside the territory of the United States, where such actions would no doubt have been ruled unlawful and unconstitutional. Obviously, these actions are also unacceptable under the laws of European countries, who nonetheless tolerated them or colluded actively in carrying them out. This export of illegal activities overseas is all the more shocking in that it shows fundamental contempt for the countries on whose territories it was decided to commit the relevant acts. The fact that the measures only apply to non-American citizens is just as disturbing: it reflects a kind of 'legal apartheid' and an exaggerated sense of superiority."

And here is perhaps the main conclusion: "We are fully aware of the seriousness of the terrorist threat and the danger it poses to our societies. However, we believe that the end does not justify the means in this area either. The fight against terrorism must not serve as an excuse for systematic recourse to illegal acts, massive violation of fundamental human rights and contempt for the rule of law."

Today Senator Marty and his report are the Council of Europe's main calling card. This example shows most vividly what the organisation is about and what it stands for.

— *Many people believe we should fight terrorism by whatever means necessary.*

— That's a mistake. Even during a real war not everything is permitted. Certain rules of conduct apply. The Geneva Conventions put limits on barbarity during military activities — and this is the cornerstone of international humanitarian law — they clearly ban secret detention centres. The fact that these methods go against the constitutional order of all civilised countries and are ethically unacceptable is obvious even to a small-time provincial lawyer like me. But in the report we intentionally point out another important fact. If we talk about a long term response to the challenge that terrorism represents, these kinds of methods are simply ineffective. I am afraid that they can lead to the diametrically opposite result. Terrorists appear to be the victims. It turns out they are fighting against an unjust system. This arouses involuntary sympathy for them. I am not even talking about anti-Americanism, which is also stirred up like this.

— *Senator Marty, in contentious exposés people always look for who is behind it. Not a single discussion about Chechnya in the Council of Europe goes by without accusations that it serves special interests. What was your mission?*

— That is a rather strange logic. I did not have any preconceived notions. We tried to establish objective facts. Some even called me Don Quixote. We asked for clear answers to very tough questions from many governments. And they stubbornly denied everything. Incidentally, without understanding one essential thing. When you completely deny facts like this, it irrefutably indicates that there's a collective cover-up.

— *You have an expression "the dynamics of truth". It is put this way in the report: "each drop of truth will lead forward to another drop of truth, and that a steady trickle will ultimately develop into an irreversible flow." And if you were to put it less poetically?*

— People in democratic societies have the right to the truth. It is bad if only individual whistle blowers have access to it, whose voices, to top it off, are silenced. We owe people the truth, especially since it is knowingly cov-

ered up and hidden from civil society. But our committee is not the only one seeking the truth. Once we outlined the issue. Now our search has become part of the collective investigation conducted by journalists and NGOs. The work has never stopped. It is only this type of work all over the world can bring down the strong walls that have been built around this secret programme.

## HOW THE EUROPEAN COURT WORKS

### WHEN A STATE IS ON TRIAL

When Jean-Paul Costa, President of the European Court of Human Rights or anyone else in the European Court or the Council of Europe in general speaks of the "Convention", they are referring to a one particular document — the European Convention on Human Rights. It is referred to as if it were the Ten Commandments.

The European Convention for the Protection of Human Rights and Fundamental Freedoms — that is its full title — was opened for signature in Rome on November 4, 1950 and entered into force in 1953.

The European Convention is an offshoot of the Universal Declaration of Human Rights, adopted by the UN in 1948. But there is one notable difference. The offshoot went even further. The rights and freedoms no longer have a declarative nature. From that point on, abiding by them has no longer been just a question of good will on the part of signatory states (if I want to I'll enforce it, if not I'll interpret it as I please). Compliance is ensured by a supranational body, established by the Convention. The second section of the Convention is entitled the "European Court of Human Rights", and its 32 articles, from article 19 to 51, specify its powers and activity in very precise terms.

A citizen, believing that his rights and freedoms have been violated, can bring the state — his own or a foreign one — before the international court. And they — the individual and the state — will be equal before the court. The international court can decide that the individual is right, and the state is in breach, in which case it must rectify its violation and possibly pay damages. What is more, there is no appeal; the state must enforce this judgment to the letter.

— *In my country (Russia) you are often accused of judgments being politically-motivated, instead of being dictated by the law.*

— Not just in your country. This is something I will never agree with. The world is politicized and mediated to the extreme, but our work and our product is justice. Of course, justice is based on the law — it is not an exact science, and fairness is entirely a subjective concept. But the men and women who make up the court do not accept double or triple standards. We can make mistakes, but we will not allow any sort of politicization.

— *So why are you accused of this?*

— We are not a criminal court. We do not examine crimes committed by individuals. We examine crimes committed by states. And we can only find a state guilty or not guilty. This can rub countries up the wrong way. But we cannot do anything about it. What can the Court's decision be, let us say, on cases involving disappearances or torture? For example, in Chechnya, in your country? Yet there are no anti-Russian sentiments expressed in the verdicts. Similar crimes can occur in any country. Let us not forget that France waged a war in Algeria. The same thing happened there, on both sides at that. Or the following situation: Turkey and the Kurds. Governments have to react appropriately to our decisions.

— *The number of complaints lodged from various countries is far from evenly-balanced. Based on this, can we talk about countries that are the worst violators?*

— If you take population into account, the numbers become more balanced. But the issue, of course, is not only one of arithmetic. The question is the extent to which the national judicial system is capable of dealing with the situation. We adhere to the principle of subsidiarity. If the Russian courts do their job, we have no reason to interfere. In some places, there is a long tradition of protecting rights and freedoms. In Russia and Eastern Europe, it would obviously be premature to say that such a tradition has taken root. That is the crux of the problem. And the number of applications from there is snowballing.

Protocol 14 is a programme to reform the work of the Court, intended to improve its performance. The current structure of the court is too cumbersome. 90 000 applications are awaiting their time in court (65 000 of them are ready to be examined, but the Court has not been able to get to them), and the unacceptable waiting times (six to eight years on average) — is irrefutable proof of this. Forty-seven judges (corresponding to the number of

member states of the Council of Europe) are divided into five sections. To do the actual work of the court, there are committees of three judges, chambers with seven judges, and a Grand Chamber with seventeen judges. The purpose of the planned reforms, in part, is to give more of the decision-making powers to the most mobile link in the system — the three judges, and the filtering function (whether or not an application is admissible) — would be given to a single judge more often. This is justified by the fact that statistically speaking, the majority of cases are relatively simple, and they raise the same type of issues. These are the so called "clone cases". Ninety-five percent of applications turn out to be inadmissible on clear-cut, at times technical grounds...However, the Chamber with seven judges, and especially the Grand Chamber, should be involved in more complicated cases dealing with fundamental principles.

Russia is in some ways the European Court's main client — around 22% of applications awaiting examination have been lodged by citizens of the Russian Federation. That perhaps explains why it is the only signatory country to have failed to ratify Protocol 14 thus blocking its implementation. The top five, after Russia, are Romania, Turkey, Ukraine, and Poland.

### RUSSIAN SHOW-CASE

— *Anatoly Ivanovich, — here I am addressing the Russian judge Kovler, — If I were to ask you to give us an example of a representative Russian case, what would it be?*

— What are you expecting me to say? The current Khodorkovsky case? Or the old Gussinsky case? Nikitin? Or Trepashkin? Or some other case linked to a name that everyone is talking about? Wouldn't you like to hear about the "Znamenskaya vs. The Russian Federation" case instead? Here is the case in a nutshell. A young woman was struck by a terrible misfortune — her baby was stillborn. As if that was not enough, she was not able to bury the baby. The authorities refused to grant her the required certificate. On strictly technical grounds. A person acquires legal rights at the moment of birth, that is, when a baby utters its first cry. But in this case the baby was stillborn. That is, according to their interpretation — it is almost like he had not been born all, which means, he could not have died.... It was that kind of completely paradoxical situation that the Chertanovskiy Court was dealing with, and in such a way that the woman was forced to lodge an application in Strasbourg.

Shall I continue? I could highlight a whole series of cases about unpaid pensions in the Voronezh district. People over 80 years old have not been paid their pitance, which they had earned with their own sweat and blood, for two to four years. Kovalenko, born in 1912, had not been paid for 51 months; Matrena Fedorovna Polupanova, born in 1908, for 48 months; Shiryeva, 1904, 47 months. She died, and did not live long enough to see it... The cases are as simple as can be, completely obvious. But for some reason, sorting them out in Novovoronezhsk was completely impossible. They simply could not do without Strasbourg.

Incidentally, there is something new about the way the European Court works — Jean-Paul Costa was pleased to tell us about it himself. Henceforth hearings will be openly broadcast on-line. This will be done thanks to a grant from the Irish Government. Henceforth you do not have to go to Strasbourg to follow the hearings of a given case. You can now do it from your own home or office. All current cases that are found admissible will also be available on the Court's website along with the essential file (the application, questions asked by the court to both parties). For judges and lawyers from different countries this is professional training. What is more it provides a precedent or case law that national courts must use as a model. All this will now be available to them.

### THE HEADSCARF CASE AND OTHER TURKISH CASES

In 2008 the European Court had 80 000 cases pending. Turkey follows Russia in terms of cases outstanding; between them they account for close to 40% of the total. These former empires, the two largest countries, two countries with a foot in both Europe and Asia, are troubled by similar problems, torn between nostalgia and indecision.

Hasan Bakirci has been an expert at the European Court since 1996. I talked to him about Turkish cases.

“Up until the beginning of the 1990s the main respondent state in Europe was Great Britain”, Bakirci explains, “the Ulster cases weighing heavily. During the 1990s Turkey came out top. Pole position goes to Russia this decade.” Once he had explained that, Bakirci got stuck into his subject.

The lion's share of Turkish cases are Kurdish ones and they concern the most serious crimes: arbitrary killings, disappearances, torture, destruction of homes as a result of villages being bombed. Ankara has had some difficulties in Strasbourg. Arguments about struggling

to protect territorial integrity, against separatism and against terrorism in no way detracted from the reality of these violent crimes.

Cyprus-related cases come second. In 1974, in response to the Greek “black colonels”<sup>1</sup> daring attempt to bring “enosis” to the island, it was as if the Turkish generals took a scimitar to cleave the island in two; into North and South. Thirty years on the human tragedy has left raw wounds... and a raft of cases in the Strasbourg Court. As a result of rigorous ethnic cleansing, Greek Cypriots were forced to flee from northern (Turkish) Cyprus, abandoning their homes and land. Now they are lodging applications relating to their property. In the highly-publicized *Loizidou v. Turkey* case the Strasbourg Court delivered the following judgment. The Court found that Ms Titina Loizidou, a Cypriot national, was still the legal owner of her property in the area occupied by the Turkish army. The Court recognized Turkey as the occupying power responsible for the policies and actions of the authorities in the occupied areas. Turkey was found in breach because it blocked the applicant's access to her property, which was de facto expropriation without compensation. The Court ordered Turkey to pay damages to Ms Loizidou. Turkey refused to recognize the court judgment. Then the Committee of Ministers of the Council of Europe adopted resolutions which condemned the failure of Turkey to honour its commitments and which reminded Turkey that it had recognized the Council of Europe Convention as well as the legally binding Court. The Committee of Ministers called upon the Council of Europe to take steps to ensure that Turkey honoured its commitments. In December 2003, having in mind its application to join the European Union, Turkey paid Ms Loizidou 641,000 Cyprus pounds (US \$ 1.5 million).

### THE WRONG LANGUAGE

What do Belgium and Turkey have in common? Don't be too hasty with your “nothing”.

The mayor of Sur in south-east Anatolia was dismissed and the municipal council dissolved. Why? Because they had published information leaflets in Kurdish. This administrative reprimand was immediately upheld by a court judgment, stating that the mayor and the municipal council had violated the country's constitution. It stipulates that Turkey only has one official language — Turkish. Thus it was an attack on the state's territorial in-

<sup>1</sup> Soviet term for Greek military junta of 1967-1974.

tegrity. And there's the rub. The overwhelming majority of the town's inhabitant's are Kurds. Moreover they are people who recently moved to town from rural areas and don't speak any other language.

.... At that very same time three municipalities on the outskirts of Brussels had just held elections for mayors. However, the candidates who were the outright winners were left empty-handed. The Minister of the Interior refused to appoint them. The reason was that they used the wrong language to write to their voters.

The details are important here. The three municipalities are French-speaking, but in administrative and territorial terms they are in Flanders. In actual fact the future mayors, or the non-mayors, or the half-mayors, wrote to their voters in two languages. They wrote to the French-speakers in French and the Flemish-speakers in Flemish. Despite this, the Flemish Minister of the Interior explained that the law states that all voting papers must initially be sent in Flemish. It is only once the voter himself makes a request that further correspondence can be sent in French. Obviously it was a gross violation of Flemish law.

What do these stories have in common apart from being idiotic? They share the fact that the Council of Europe and in particular one of its institutions, the Congress of Local and Regional Authorities, received complaints about both of them. The Congress sent two fact-finding missions to both places to make recommendations once their investigations had taken place. No, the word “idiotic” was not in the summary, everything was legally sound. But that was the nub of it. The conclusions went further than just the specific cases. Wherever they may be mayors are elected representatives. Yet they were removed from office by an administrative decision. This is a fundamental breach of the law. The conclusions also highlighted the fact that, because Belgium was carved up along linguistic lines eons ago, there is absolutely no authoritative federal level which could have arbitrated in the disputes. Turkey was advised to amend both its existing legislation and the Constitution without delay.

### THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

The “Parliamentary Assembly of the Council of Europe” is now embedded in our consciousness. The Congress of Local and Regional Authorities is a lesser known phenomenon, although it is almost the same kind

of Council of Europe forum as the Parliamentary Assembly. It has similar representation and annual sessions. However, in one instance the main players are national parliamentarians and in the other they are regional and local elected representatives. They meet in two chambers, the Chamber of the Regions and the Chamber of Local Authorities.

The distance separating local authorities from citizens is much shorter than at the national (federal) level. The people are more directly affected. The lower the level of the authority, the greater people's involvement in making and taking decisions. We can draw a broad conclusion from this logical thinking: there is no democracy without local democracy. That is the main postulate of the Congress of Local and Regional Authorities. What does that actually mean in practice?

The Congress' Secretary General Ulrich Bohner guided me round the Congress. “That means that the powers of the different authority levels should be clearly divided,” he answered. “The rights and powers of local authorities should be enshrined in countries' laws and constitutions. If necessary they should be defended in court. Furthermore, local authorities should have appropriate financial resources. In other words their financial independence should be guaranteed within their remit.”

“It is called subsidiarity” says Ulrich Bohner, who is a lawyer and has to use the right term. The powers that can be devolved should not be held on to by the top. This is an extension of the principle that no decision should be taken without asking the people who are directly affected by it ... The Congress (or rather its predecessor — the Conference) introduced the concept of subsidiarity into the European debate in the 1950s.

All of these principles are enshrined in the European Charter of Local Self-Government, which was drafted and adopted by the Congress, and signed by member states of the Council of Europe. So they are essentially binding.

So moving on from processes and ideas to practice. What does the Congress' daily work involve?

“We observe elections and monitor local democracy. Pretty much like in the Turkish and Belgian cases” Ulrich Bohner explains. “A *rappporteur* is appointed and a specialist on constitutional law is chosen. We invite along

two or three experienced people; mayors or members of parliament from different countries, as well as our staff. We go to the place and meet with people from the different sides. Then we draft a report and recommendations which are sent out. We also always invite a senior representative from that country to account for how our recommendations have been implemented. We use dialogue. And no diktats.”

Monitoring the culture of governance and the state of democracy at the grass-roots level is an important part of the work of the Congress. Another part of it, perhaps the main part, is drafting these very standards.

The Charter of Local Self-Government has already been mentioned. Much more arduous work is being done on the Charter of Regional Self-Government. The topic, being bedevilled by separatism, is sensitive for many countries. Twice the Congress submitted completed drafts of the Charter to the Committee of Ministers (the highest deliberative body of the Council of Europe) and twice the Committee of Ministers returned the draft. It changed the title. It is now called the Charter of Regional Democracy. They introduced a proviso saying that states are entitled to ratify the Charter only in part and not fully. The compromises do not necessarily improve the quality of the document, but reaching consensus is equally important.

As well as these two seminal documents there is a whole raft of standard-setting documents that are narrower in scope.

For example the European Charter for Regional or Minority Languages. Europe, by the way, has 230 languages, including ones spoken by not more than 100 people. They are protected. The Charter places particular emphasis on people’s right to use these languages in all dealings with the administration — bravo! to the Turkish court and the Minister of the Interior of Flanders. Moreover this right should be extended to migrants as well. For example, Kurds and Turks living in Germany or Switzerland should be able to speak in Kurdish or Turkish in court if necessary — bravo! once again to the Turkish court.

There is the European Convention on the Participation of Foreigners in Public Life at Local Level. It provides the possibility for immigrants living in a country for more than five years to vote in local elections. Only about a dozen countries have ratified the convention. It

has been agreed that it can also be ratified without that article, but the standard is there, and it is slowly gaining recognition.

There is also the European Landscape Convention. It uses wonderful phrases like “high quality landscapes” and “landscape democracy”. “Landscape democracy” is when people living in cities, being the main stakeholders in their city, have a casting vote in relation to building construction that changes the landscape.

All this constitutes the law-book on local and regional democracy, which is an important part of what shapes the European way of life. Is all this binding for all states? Yes, if a country has put its name to the documents. No, if someone wants to flout the rules. You cannot force love. You cannot force anyone to be a European.

### **THE SMELL OF A PRISON**

Thomas Hammarberg, who became the Council of Europe’s Commissioner for Human Rights in April 2006, is a gentle man, with whom conversation does not flow easily. For one reason. The giddy heights of his moral and ethical position are unattainable. And his is a very difficult position. He is always on the side of the weak.

— *Why did our (Russian) General Secretary dislike you so much?*

— I was the head of Amnesty International, and we had published a report on political prisoners in the USSR. Sakharov was at the top of the list. The Politburo did not like this. I had been to Moscow twice before that. We had some disagreements when we were setting up the Russian section. Some people said that it would be perceived as an act of provocation. We realized that our Russian colleagues would never ever be allowed to work on Soviet political prisoners; they would just be added to the list themselves. That is why the members of the Amnesty International Russian section campaigned for foreign political prisoners: a Uruguayan communist, for example. That put the authorities in a sticky situation. The KGB did not know what to do. Clearly we were enemies of the people. But we were nevertheless campaigning for a communist. So we managed to pull off our “act of provocation”.

There are two portraits hanging in the most prominent position in the Commissioner’s office — Sakharov



and Dag Hammarskjöld. The latter was Secretary General of the UN in the 1960s, and died tragically. His plane crashed in Southern Rhodesia in circumstances that remain unclear.

— *And as for Dag Hammarskjöld, your compatriot...*

He was a fervent supporter of the principle of the independence of civil servants. UN staff members from the Eastern bloc were often spies. This was no secret to anyone, least of all the UN Secretary General. But he considered it his duty to make the situation clear to everyone who took up a post at the UN. From now on, went his standard speech, you are no longer serving your country, but the international community. You have one loyalty and one alone — to the UN. Of course that oath was way ahead of its time, but for him it was the principle that prevailed. I really cherish this international idea of his. What is the main aim of the Council of Europe? The uniform protection of indivisible rights throughout the whole of Europe. These are the very “ideals and principles” that make up the “common heritage” of member states of the Council of Europe.

— *These are fine words. Until they are confronted with realpolitik. You yourself admit that states resist moral pressure, and monitoring procedures are viewed with a degree of hostility.*

There is always a gap between ideals and political reality. What is important is for this to narrow. Human rights’ rhetoric has now become part of official political discourse, and this is an achievement in and of itself. Of course one could argue that this is like the laws in the USSR. They were intrinsically good, but the issue was how they were enforced. Ultimately everything boils down to the degree of civil and political awareness in society.

The crux of our work is to monitor situations: this requires constructive dialogue; criticism, balanced advice and feasible solutions. We work with ombudsmen and human rights organisations. Our goal is to ensure human rights approaches become part of the mainstream political decision-making process.

Idealism is at the very core of human rights. Of course we want ideals to be above politics, meaning that all the different parties — be they conservative, liberal, or socialist, irrespective of their different opinions, should

recognize that human rights are inviolable. That is the situation today in theory. Of course, the real test is in the extent to which they are respected. If you are involved in trade that does not mean that you have the right to ignore different abuses.

— *Is a lot of pressure exerted on you?*

— We are on our guard. My status protects me. The Commissioner is elected for a six-year non-renewable term. I can neither be dislodged, nor re-elected. So I do not even depend on votes.

### **A BOY’S LEGACY FROM 1669 AND OTHER CAMPAIGNS**

...“There are two schools of thought,” says Gabriella Battaini. “One, that all our efforts must be directed towards building democratic institutions. The other is that the most important thing is the culture of democracy. I am a proponent of the latter.”

Gabriella Battaini — a temperamental, very determined Italian who has a great talent for getting her ideas across — is the Director General of Education, Culture and Heritage, Youth and Sport. In fact, she doesn’t pit the two areas of the Council of Europe’s work against each other. A democratic society cannot exist without strong democratic institutions — that’s basic. But my interviewee sharpens an idea that’s dear to her to a point. Implanting the culture of democracy from the outset: that is the only foundation on which it can be built, otherwise it won’t take root.

“We need an education system for human rights and obligations and we need to invest in teaching democratic citizenship,” says Gabriella Battaini.

Where do we start? From the beginning.

“For example educational programmes, laws on education, teachers — and even earlier — with those who train teachers,” says Gabriella Battaini. “We start with a subject like history, by writing new textbooks and teaching aids. The price of a mistake in a history textbook is that of creating an enemy. We try to help national governments in all of these areas.”

By the way, even as early as 1996, the Parliamentary Assembly of the Council of Europe (PACE) adopted a recommendation on teaching history in Europe. “Teaching history should be free of politics. History is for historians, and not politicians and ideologues.” Expert Tatiana Minkina-Milko familiarized me with the relevant Council of Europe documents.

I was surprised to learn that the Committee of Ministers of the Council of Europe has also drawn up a Recommendation on history teaching in twenty-first century Europe (2001) with very simple and clear wording: It is necessary to foster the “development of students’ critical faculties, ability to think for themselves, objectivity and resistance to being manipulated”. “Helping pupils to develop knowledge and awareness of... the darkest shadows on European and world history... Thinking about the ideologies which led to them and how to prevent any recurrence of them.”

There is a list of what we cannot allow to happen: “Falsification or creation of false evidence, doctored statistics, faked images, etc.; fixation on one event to justify or conceal another; distortion of the past for the purposes of propaganda. An excessively nationalistic version of the past...”

“The Council of Europe believes in a pluralistic and tolerant vision of teaching history and in an approach encompassing multiple viewpoints”, Tatiana Minkina-Milko sums up. What does this mean? “From the very beginning you need to realize that there may be different world views and they’re not at all wrong. It is, as one philosopher expressed it, the desire to try on another person’s shoes, the ability to see the world through different eyes. This can be very difficult, especially when we enter into the area of human pain, and after conflicts painful memories linger on. But it’s essential to try.”

History is an ideal vehicle for national values, but similarly for prejudices and stereotypes. All too often it has been used to create dividing lines, to divide the world into “us” and “them”.

“85% of the content of traditional history textbooks is descriptions of wars and conflicts, but what about culture, trade, and social history? Of course, the emphasis should be different. History should be multi-levelled, but not belligerent,” says Tatiana Minkina-Milko.

The slogan of another campaign is “Building a Europe for and with children”. Its aim is the universal prohibition of corporal punishment.

It’s a long story, although not too long. Everything began in England in 1669. A “very lively” English boy presented Parliament with a petition “on behalf of the children of his country” with the request to ban corporal punishment in schools. His petition was granted, albeit only three centuries later in the Law on Education of 1983.

The first country to ban corporal punishment completely was Sweden in 1979.

And now the Council of Europe intends to make the entire continent more humane. Children have inal-

ienable rights just like adults. These rights are stipulated in the UN Convention on the Rights of the Child, The European Convention on Human Rights and in the European Social Charter.

### **VENICE COMMISSION AND CONSTITUTIONS**

A court, scrutiny, monitoring... The Venice Commission does not deal with anything of the kind. It is a very special institution, but for an entirely different reason. Its capital consists of the world’s most authoritative lawyers, including judges from the constitutional courts of various countries who bring their experience to it. Its product is legal expertise of the highest order.

The Venice Commission is jokingly called the “constitutional repair workshop” or the “constitutional emergency service”. It deals with the most delicate matters in the world.

— The spread of democratic standards — and that is the Council of Europe’s main goal — also takes place through the harmonisation of legislation, — explains Gianni Buquicchio, the head of the Commission. After the fall of the Berlin Wall, a new area of work emerged — helping young democracies to become established in the most diverse areas, including lawmaking... And so we, our commission, work with constitutions. This fundamental law is the foundation of sovereignty, the holy of holies of any state. It is in this sensitive sphere that we provide assistance.

— What makes a good constitution?

— In a constitution, there should be a balance among three branches of power. And it should contain instruments to solve problems when they arise.

Three years ago, we were invited to Ukraine. We said to them: your constitution needs to be amended. If there is a crisis of power, the constitution will not be able to serve as an instrument to solve it. And that is exactly what happened.

We advised legislators from Bosnia and Herzegovina. This state was created out of the crucible of war. There, really, the constitution was actually drawn from Dayton. It could not have been otherwise in those circumstances. But it is bad when a constitution is imposed. A constitution should be ‘composed’ by the different political forces and, of course, with the participation of the population. It was clear that, in that form, the constitution would not work. We suggested amendments. I hope that, sooner or later, the politicians of Bosnia and Herzegovina representing the various



ethnic groups will come to an agreement and make it a working state.

On the other hand, in South Africa after the renunciation of apartheid, they drew up one of the best constitutions in the world. And now — and we told them this — they no longer need our assistance.

#### A GENTLEMAN'S CLUB

The Council of Europe's problem is that people confuse it with the European Union; it tends to get lost in the giant's shadow. The names of their basic institutions are like twins, too. The Parliamentary Assembly (Council of Europe) and the European Parliament (European Union). The European Court and the European Court of Justice. In Strasbourg, the buildings of the Council of Europe and the European Union are close to one another. (True, the giant building of the European Union is quite often empty, since most of the work is carried out at the Brussels headquarters.) And they have a common flag and anthem. Go ahead and find the difference. The difference, though, can and must be found.

"The main difference is the size," Rene van der Linden, the President of the Parliamentary Assembly of the Council of Europe, says to me. "In the Council of Europe, there are 47 states. In the European Union — 28. We are a genuinely universal organisation. 'We' is Europe as a whole. Issues concerning Europe as a whole are discussed in our forum."

The two European courts (one in Strasbourg and the other in Luxembourg) have different competencies. Complaints on violations of human rights and basic freedoms can only go to Strasbourg. The parliaments are also formed differently. In the European Parliament (European Union), there are direct elections. In the Council's Parliamentary Assembly, delegations from national parliaments (in proportion to the size of the population and based on the range of parties in the national parliament) meet for four sessions a year.

"The European Union is about the standard of living. The Council of Europe is about the quality of life. What makes life worth living." That's how the current Secretary General, Terry Davis, answered my "comparative" question. His idea needs some explanation.

"The Council of Europe and the European Union were the products of a single idea, a united spirit and a shared hope," says Jean-Claude Juncker, the Prime Minister of Luxembourg, a fervent supporter of the two organisations joining forces. "The maxim: 'A divided Europe leads to war, oppression and disasters. A united Europe will lead to peace and prosperity,' has become the common motto of both the Council and the Union".

Both organisations cite the very same names as their forerunners — 'the founding fathers of Europe': Winston Churchill, Konrad Adenauer, Robert Schuman... But the actual formation and development of the European idea took different paths. Economic integration, crossing over into the political, is that of the European Union. Democracy, rights and freedoms and the rule of law — the Council of Europe.

The European Union is a super-state. (Some European bureaucrats from the Council of Europe eye their colleagues in the European Union enviously. A standard line is: "Our annual budget equals what they spend in nine hours.")

The Council of Europe is more of a super-idea. Soul and flesh. Matter and spirit...

"Democracy is not an event, but a process," Terry Davis likes to repeat. And then he adds: "The European Convention on Human Rights is not an à la carte menu. Our governments do not have the right to choose which dishes they like and which are not to their taste."

"Democracy is a living thing," Jean-Claude Juncker echoes him. "It has solid foundations, but it needs to adapt and reinvent itself anew at every turn"... That is what the Council of Europe deals with — monitoring to see to it that states do not violate rights and freedoms, the adaptation and invention of democracy anew. Because time is insatiable, the needs of free people grow — toward the quality of their rights and freedoms first and foremost. And that is not to mention people who are not free.

Jean-Claude Juncker is in favour of the European Union signing the European Convention on Human Rights. And further still, in the end, joining the Council of Europe. At the moment that sounds somewhat fantastical. But his reasoning itself is highly convincing. "A pan-European legal and judicial space is in the interests of

all Europeans. With its very roots, it reaches into the underlying values and the constitutional and legal heritage shared by all — the two pillars of European identity and unity." That is, into the sphere of influence of the Council of Europe. Jean-Claude Juncker wants the standards of democracy and law developed by the Council of Europe and its supervisory institutions to be legally recognised and functionally assimilated by the European Union.

The questions I posed to my interlocutors in the halls and offices of the Council of Europe included two standard ones. What is the Council of Europe? Give me a one line answer. And name the greatest achievements of the Council of Europe, what it is proud of.

The answers to the second question differed slightly, but the European Court of Human Rights was invariably named in first place. "A truly unique mechanism. 800 million Europeans have direct access to the international court, the role of which is to be the last recourse and guarantor of the protection of their most fundamental rights."

And here are the answers to the first question.

Terry Davis: "The Council of Europe is the main source of human rights standards and their interpretations."

"But what is the source of your strength? Can you punish a state?" Here, I could no longer resist an additional barbed question.

"Just not through sanctions. Suppose we exclude a state. What do we achieve? This state will leave the area covered by the European Convention on Human Rights. Citizens of this state will no longer be able to bring a complaint against it to the European Court. For whom would we make things worse? We would rather try to encourage states to do away with their undemocratic practice."

"A democracy factory. A school of democracy. A place where parliamentary practices are studied. A nursery from which 'soft power' and dialogue in politics spread throughout Europe..." That is Juncker's formula.

And the head of the Venice Commission, Gianni Buquicchio, answered in one word:

"Club". A club where democracies get together, speak in the same language and pursue a common goal — wise democratic development. ■