Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**Recommendation 1763 (2006)**[1]

# The institutional balance at the Council of Europe

Parliamentary Assembly

1. The Statute of the Council of Europe (ETS No. 1), signed on 5 May 1949, created two political statutory organs of general competence: the Committee of Ministers and the Parliamentary Assembly. They are served by the Secretariat of the Council of Europe. According to Article 1 of the Statute, it is through these two organs that the aims of the Organisation are pursued. Both organs have a shared responsibility to the Organisation and their interaction is essential for the efficient fulfilment of its mission.

2. Since the founding of the Council of Europe, the following institutions have been created within the Organisation, without a formal amendment of its Statute:

2.1. the Congress of Local and Regional Authorities of the Council of Europe, which represents these authorities in the Organisation. The Congress ensures their participation in the implementation of the ideal of European unity as defined in Article 1 of the Statute of the Council of Europe as well as their representation and active involvement in the Council of Europe's work. The Committee of Ministers and the Parliamentary Assembly consult the Congress on issues which are likely to affect the responsibilities and interests of the local and/or regional authorities which the Congress represents. The Congress, which, under the form of the Conference of Local and Regional Authorities of Europe, has met since January 1957, was set up by Statutory Resolution (94) 3 of the Committee of Ministers;

2.2. the European Court of Human Rights (the Court), which was instituted by the 1950 European Convention on Human Rights (ECHR) (ETS No. 5) of the Council of Europe, has been operational since 1959. The Court has a close institutional and legal relationship with the Council of Europe, which is based on common values. Furthermore, the first condition for membership of the Organisation, introduced by the Parliamentary Assembly, is signature and ratification of the ECHR and its additional protocols. The Court therefore forms an essential part of the Council of Europe's legal system. However, the ECHR is not very explicit regarding the status of the European Court of Human Rights in general and the status of its judges in particular.

3. The report of the Committee of Wise Persons of the Council of Europe (Doc. 8261, 1998) rightly concluded that "the Council today has a three-pillar structure reflecting the governmental, parliamentary and judicial branches which should be recognised as such and further developed". The Wise Persons also noted that in its sphere of competence the Congress had become an important contributor to democratic development at local and regional level. Following the adoption of that report and after consulting the Assembly, the Committee of Ministers adopted Resolution (99) 50 which instituted the office of the Council of Europe Commissioner for Human Rights, who exercises his functions independently and impartially.

4. The Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe was established in January 2005 by the 400 INGOs enjoying participatory status with the Organisation. It builds on the long-standing experience of consultation and co-operation between the Council of Europe and INGOs as the organised part of civil society which started in 1952 with the creation of a consultative status.

5. More recently, Assembly Recommendation 1693 (2005) on the 3rd Summit of Heads of State and Government of the Council of Europe underlined the need to reorganise the institutional system of the Council of Europe and to strengthen all its main bodies. In its Recommendation 1756 (2006) on the implementation of

1. Assembly debate on 2 October 2006 (24th Sitting) (see Doc. 11017, report of the Committee on Rules of Procedure and Immunities, rapporteur: Mr Schieder). Text adopted by the Assembly on 2 October 2006 (24th Sitting).

the decisions of the 3rd Summit of the Council of Europe, the Assembly called on the Secretary General and the Committee of Ministers to continue efforts aimed at the strengthening of the Council of Europe's institutional system. Furthermore, it insisted that a set of measures be taken by the Committee of Ministers to reinforce the Parliamentary Assembly, in particular in the standard-setting and budgetary fields and to provide it with the right of legislative initiative.

6. On 11 April 2006, the Prime Minister of Luxembourg, Mr Juncker, presented to the Parliamentary Assembly his report entitled "Council of Europe – European Union: 'A sole ambition for the European continent'". This report offers an overall political vision for the Council of Europe and its relations with the European Union (EU). In the view of Mr Juncker, to achieve the necessary complementarity between the two institutions, inter alia, the Council of Europe's Commissioner for Human Rights, the parliamentary bodies and the Congress should be given a bigger role. This would have consequences for the institutional system of the Council of Europe.

7. The principle of the institutional balance, at the level of an international organisation, expresses the distribution of powers and tasks between the organs and bodies of this organisation and their relations.

8. Since 1945, the borderline between what used to be regarded as "domestic" affairs on the one hand and "foreign" affairs on the other, has been increasingly blurred, especially in Europe, as a result of European integration. The nature of "international" law has profoundly changed and it deals more and more with issues that used to be governed by national law. Many international treaties, such as the Council of Europe conventions, concern areas that used to be regarded as belonging to the domestic affairs of states. A logical result of this trend has been a growing demand for democratising the conduct of international and European politics and law making and for strengthening the democratic control of European institutions. The Assembly considers that this should also apply mutatis mutandis to the Council of Europe.

9. Under the 1949 Statute, most of the decision-making power in the Council of Europe essentially lies in the hands of the Committee of Ministers (for example, adoption of legal instruments (Article 15 of the Statute), action on behalf of the Council of Europe by the sole Committee of Ministers (Article 13)). With a few exceptions, (for example, necessary assent of the Assembly to modify one third of the provisions of the Council of Europe's Statute, elective functions, adoption by the Assembly of its Rules of Procedure) the Assembly was conceived in 1949 mainly as a consultative organ.

10. Although there have been institutional improvements since 1949, they were not sufficient and did not substantively change the institutional system of the Council of Europe. They have kept pace neither with the fundamentally different political realities of the Organisation and its environment nor with the development of European integration, particularly within the EC/EU.

11. If one wants to prevent the Council of Europe from institutional backwardness and from turning, to a certain extent, into a "fossil", far-reaching institutional reforms will be required. The institutional structure of the Council of Europe and the distribution of prerogatives between its statutory organs and specialised institutions and bodies should be put in line with the democratic principles and values that our Organisation is meant to uphold. Failing that, it risks a growing deficit of democratic legitimacy, something which it needs to fulfil its statutory goals. The institutional balance in the Council of Europe should be improved, in particular by agreement between the Committee of Ministers and the Assembly and, where appropriate, by an updating of the Statute through statutory resolutions.

12. At the same time, the Assembly stresses that, while the improvement of the institutional balance at the Council of Europe is important for a more efficient functioning of the Organisation, it is essential that its member states demonstrate their commitment to the values that the Council of Europe is designed to protect by giving increased support to its action in favour of promoting democracy, respect for human rights and the rule of law.

I. Concerning the Parliamentary Assembly

13. Over the years the Assembly's position in the Council of Europe has considerably changed. It is generally acknowledged that the Assembly's active political role is a comparative advantage of the Council of Europe. The Assembly has played an important role in the enlargement process of the Organisation, which is now almost completed, by defining the frontiers of Europe, updating the political conditions for membership and negotiating to a large extent the conditions for membership. Through its debates, its action in the field, the observation of elections, its programmes of parliamentary co-operation, the Assembly makes a major contribution to stabilising and deepening democracy in the member states.

14. The Assembly also provides a forum for international organisations such as the Organisation for Economic Co-operation and Development (OECD), the European Bank for Reconstruction and Development (EBRD) and several of the United Nations' (UN) specialised agencies, and reviews their activities.

15. The introduction by the Assembly, as the first Council of Europe body, of a monitoring procedure – with a strong political dimension – for the obligations of and commitments made by European states on their accession to the Council of Europe has been of particular importance for the Organisation.

16. Through the improvement of its verification procedures for the credentials of national parliamentary delegations, the Assembly exerts a considerable political influence.

17. The Assembly elects the key political figures of the Council of Europe, the judges at the European Court of Human Rights and the Commissioner for Human Rights of the Council of Europe. In addition, it makes a valuable contribution to the work of the Organisation, particularly in the legal and human rights fields, and has initiated the main legal instruments of the Council of Europe. It thus gives democratic legitimacy to the Organisation. Furthermore, the Assembly, because of the dual mandate (national and European) of its members is a natural partner of the Committee of Ministers for any follow-up action on Council of Europe decisions in national parliaments.

18. The political and media reaction to some of its reports shows the relevance and impact of the Assembly's work on the profile of the Council of Europe as a whole.

19. The Assembly considers and has stated repeatedly that its powers are by no means in line with its actual weight and potential as a driving force of the Organisation. It is necessary to strengthen the parliamentary dimension of the Council of Europe and to increase its participation in the decision-making process of the Organisation. This would achieve more transparency, democratic legitimacy and accountability within the Organisation.

20. Consequently, the Assembly invites the Committee of Ministers:

1. to reach an agreement with it on:
    1. strengthening the Assembly's involvement concerning the elaboration, adoption and implementation of the conventions and other legal instruments of the Organisation;
    2. improving interaction with the Assembly in the decision-making process of the Organisation, including:
        1. the adoption of major political declarations or resolutions on the Council of Europe in general or on its main mechanisms;
        2. the elaboration of co-operation agreements with other European institutions and international organisations;
    3. strengthening the Assembly's role concerning:
        1. the adoption of the budget of the Council of Europe and of its own budgetary appropriations;
        2. supervisory functions over Council of Europe activities, including the elaboration of the priorities for the Organisation's intergovernmental activities and their implementation; the Assembly should in particular receive the reports of the internal auditor and the external auditor;
2. in the light of such an agreement, to update and complete a series of resolutions and decisions of the Committee of Ministers concerning the role and powers of the Assembly on the basis of the list included in the appendix to the present recommendation.

21. Furthermore, the Assembly calls on the Committee of Ministers to:

1. consider with it if and how the Assembly should be able to bring before the European Court of Human Rights serious violations by one of the Contracting Parties of the rights guaranteed by the European Convention on Human Rights and its additional protocols;
2. codify by a statutory resolution its decision of February 1994 concerning the utilisation of the name of the Assembly;
3. consult the Assembly, also with respect to its involvement, before adopting or amending texts setting up new Council of Europe bodies and institutions;

4. give the Assembly more advance information on policy matters, programming of activities and budgetary issues;

5. ensure an efficient follow-up to the Assembly's statutory opinions and inform the Assembly on a regular basis on action taken on these opinions.

II. Concerning the Committee of Ministers

22. The Assembly welcomes the action taken so far by the Committee of Ministers to implement Chapter V of the Warsaw Summit Action Plan: a transparent and more efficient Council of Europe. Furthermore, it welcomes:

1. the document which summarises the Council of Europe reform efforts from 1999 to 2005;

2. the efforts of the Committee of Ministers to involve increasingly Assembly representatives in the work of its rapporteur groups and other subsidiary bodies.

23. The Assembly invites in particular the Committee of Ministers to:

1. make greater use of the Council of Europe as a pan-European political platform for dialogue between member and non-member states of the European Union and to ensure that the Council of Europe's expertise is taken into account in the EU's European Neighbourhood Policy;

2. give more political responsibility to its chairperson, in particular in crisis situations;

3. increase the role of the Council of Europe as a think tank to meet the challenges of the 21st century and, in particular, concerning the promotion of democracy; in this connection, the Assembly recalls its proposal in Recommendation 1756 (2006) that the Forum for the Future of Democracy should be made a real tool for promoting the values of the Council of Europe with the full involvement of the Assembly;

4. increase the transparency of the Council of Europe both internally and externally and to give information to the Assembly on member states which are blocking:

    1. the adoption of draft Council of Europe legal instruments;

    2. decisions on replies to Assembly or Congress recommendations, when more than six months have lapsed after their adoption by the Assembly or the Congress;

5. examine the possibility of other national ministries than those of foreign affairs contributing to the Council of Europe's budget;

6. enhance the role of the conferences of specialised ministers;

7. take action on Prime Minister Juncker's proposal that foreign ministers, and particularly those of European Union member states, should involve themselves more in the Council of Europe's work;

8. examine with the Assembly possibilities to enhance the role of the Joint Committee to make it a more effective instrument of dialogue between the two statutory organs, in particular by setting up mixed working parties on major issues.

III. Concerning the European Court of Human Rights

24. The Court has witnessed a most spectacular evolution. The success of individual applications has lead to a continuous increase in the Court's caseload. It is now the largest and busiest international court and its case law has reached the roots of the national legal systems. An increasing number of the Court's judgments raise questions which attract great legal, political and media interest in the states concerned. Due to the enlargement of the Council of Europe and the obligation of new member states to ratify the European Convention on Human Rights, the European human rights area and the jurisdiction of the Court have been continuously extended, for the greatest benefit of human security and democratic stability on the continent.

25. The Committee of Ministers has repeatedly declared that the ECHR must remain the essential reference point for the protection of human rights of 800 million Europeans. The 3rd Summit of the Council of Europe in Warsaw in May 2005 set up a Group of Wise Persons to draw up a comprehensive strategy to secure the effectiveness of the ECHR's control system in the longer term. An interim report was submitted to the Committee of Ministers on 19 May 2006. The group has not yet discussed institutional issues. The Ministers asked the group to pursue its efforts in order to present them with a final report before the end of 2006.

26. However, the major role of the Court and its function as one of the three pillars in the Council of Europe's structure are not adequately reflected in the institutional system and practice of the Organisation. In particular, the Assembly underlines the importance of finding the right balance between the operational and institutional

needs of the permanent and consolidated Court and the need for it to remain fully integrated in the Council of Europe. Better synergies between the Court and other institutions and bodies of the Council of Europe have also to be developed. The need notably arises for closer co-operation between the Court and the Committee of Ministers in the context of the execution of the Court's judgments and the supervision thereof. The Assembly considers that a clarification of the status of the Court, of its relationship with other authorities of the Council of Europe, and of its prerogatives, would recognise the new institutional reality and further enhance the major role played by the Court in the Council of Europe institutional framework.

27. Therefore the Assembly invites the Committee of Ministers:

1. to ask urgently the Group of Wise Persons created by the 3rd Summit to examine also the following questions:
    1. the Court's status in the Council of Europe institutional framework;
    2. its relationship with the Committee of Ministers in the context of the execution of judgments;
    3. the status of the judges;
    4. the administrative functioning of the Court, including its budgetary needs, in order to guarantee its effectiveness and the position of the Court's Registry, while preserving the structural and functional coherence and the organisational integrity of the Council of Europe;
    5. the role of the Parliamentary Assembly and also that of the national parliaments which are represented in the Assembly in assisting the Committee of Ministers in its capacity of supervising the execution of judgments of the Court (Article 46 of the ECHR);
2. to send the final report of the Group of Wise Persons to the Assembly and consult it before taking final decisions on the reform;
3. in the light of the findings of the Group of Wise Persons, to include an appropriate provision on the institutional status of the European Court of Human Rights either in an additional protocol to the Statute of the Council of Europe or in a statutory resolution.

IV. Concerning the Congress of Local and Regional Authorities of the Council of Europe

28. Over the past ten years Europe has been witnessing a significant shift in the national and local balance which resulted in an increased role of local and regional authorities in Council of Europe member states, in the Congress and in European integration in general. The Congress now is the most representative body of the 200 000 local and regional authorities on the continent. Furthermore, it has become a key interlocutor in the dialogue with member states on the issues of local and regional democracy.

29. Since 2000, when a new statutory resolution on the Congress was adopted by the Committee of Ministers, the political role of the Congress has continued to grow. This is in particular due to the monitoring process of the state of development of local and regional democracy in Council of Europe member states.

30. Monitoring and continuous political dialogue by the Congress with member states' authorities on issues of local and regional democracy have helped to further develop principles enshrined in the European Charter of Local Self-Government (ETS No. 122) and to shape a vision of what should be democratic local authorities and how they should operate in democracy.

31. The Congress plays an important role in observing elections at local and regional level. Based on the conclusions of election observation missions, the Congress addresses recommendations to the authorities of the countries concerned and subsequently takes measures aimed at assessing the state of their implementation.

32. To involve regions in the process of European integration, the Congress has promoted the creation of euroregions of a new type, including the national, regional and local level of government from both member states and non-member states of the European Union.

33. The Congress, together with the Russian authorities, was at the origin of the idea to set up in St Petersburg a Council of Europe centre for interregional and cross-border co-operation. The creation of this centre would encourage the spread of local and regional self-government and constitute an additional opportunity for promoting and strengthening co-operation between the regions of Europe. The Congress has also decided to relaunch the study on a new draft legal instrument on regionalisation in Europe.

34. All this prompts the conclusion that the place of the Congress in the Council of Europe's institutional system no longer is the same as twelve years ago when it was instituted by Statutory Resolution (94) 3 of the Committee of Ministers, which was updated in 2000 (Statutory Resolution (2000) 1). The Congress has progressively gone beyond the consultative nature which was originally devised for it in the statutory texts. The Congress now plays a truly representative role within the Organisation. That is why the Congress has proposed that Statutory Resolution (2000) 1 and the charter of the Congress be revised to bring them more in line with the Congress's current role within the Council of Europe.

35. The Assembly invites the Committee of Ministers to:

1. implement Recommendation 162 (2005) on the revision of Statutory Resolution (2000) 1 on the Congress and of its charter and to make the Congress an institution entirely composed of elected members;
2. make full use of the Congress's potential to promote decentralisation of powers and increased local autonomy in Europe;
3. seek the opinion of the Congress more regularly before taking decisions on matters within its remit.

V. Concerning the Conference of INGOs of the Council of Europe

36. International Non-Governmental Organisations have been closely linked to the Council of Europe since 1952, when a consultative status with the Organisation was created. With a view to promoting interaction with the Council of Europe, the INGOs created their own structures, that is, a liaison committee and thematic groups.

37. In accordance with Resolution Res(2003)8 of the Committee of Ministers, the status of the INGOs within the Council of Europe was enhanced; this corresponded to an upgrade from consultative to participatory status.

38. The 400 INGOs holding participatory status constituted the Conference of INGOs of the Council of Europe in January 2005. This conference is the voice of European civil society at the Council of Europe. It co-operates with other bodies of the Organisation and its INGO members, disseminates information about the aims and activities of the Council among their constituencies and supports the promotion and application of the Organisation's legal instruments.

39. The Assembly invites its committees to enhance dialogue and co-operation with the Conference of INGOs of the Council of Europe and its relevant member organisations.

40. The Assembly invites the Committee of Ministers to seek more regularly the opinion of the Conference of INGOs before taking decisions on matters within its remit.

VI. Concerning follow-up action

41. Finally, the Assembly invites the Committee of Ministers to examine the above-made proposals with it in the Joint Committee and in a mixed working party. The European Court of Human Rights and the Congress should be closely associated with this work.

42. It also suggests that a permanent group of wise persons should be established with the mandate to give advice on institutional issues and to mediate between the organs and institutions of the Council of Europe.

1. This group should be composed of seven members:
    1. two members (one male, one female) appointed by the Committee of Ministers;
    2. two members (one male, one female) appointed by the Parliamentary Assembly;
    3. one member appointed by the European Court of Human Rights;
    4. one member appointed by the Congress of Local and Regional Authorities of the Council of Europe;
    5. one member (being the chairperson of the group) appointed by the Secretary General of the Council of Europe;
2. members should be outstanding personalities – no one of them should be an active member of the Committee of Ministers, the Assembly, the Court, the Congress, or belong to the staff of the Council of Europe.

**Appendix Appendix**

**Proposals for updating or completing resolutions and decisions of the Committee of Ministers concerning the role and powers of the Assembly**

1. Statutory Resolution (51) 30 A on the admission of new members, by providing that:

1.1. the Assembly shall also be consulted before a member shall be suspended from its right of representation under Articles 8 and 9 of the Statute;

1.2. the Assembly shall be consulted on the number of seats to be allocated to a new member in the Assembly and on its contribution to the budget of the Council of Europe;

1.3. according to existing practice the Committee of Ministers would await the Assembly's concurring opinion before deciding on the admission of new member states or taking measures under Articles 8 and 9 of the Statute.

2. Statutory Resolution (93) 26 on observer status by providing for the consultation of the Assembly also before any suspension of the status.

3. Resolution (52) 26 on the consultation of the Assembly, which should also specify that:

3.1. the Assembly shall be consulted on all draft Council of Europe treaties, it being understood that a small number of treaties of an exclusively technical nature may not require such consultation (decision of the Committee of Ministers of 1999, Document CM (99) 64 and Document 8388 of the Assembly);

3.2. the Assembly shall, unless otherwise agreed with the Committee of Ministers, have at least three months for preparing and adopting its statutory opinion on a draft treaty;

3.3. the Committee of Ministers shall arrange to start the consultation of the Assembly before the last meeting of the intergovernmental expert committee where it will agree on the draft treaty;

3.4. the details of the consultation shall be fixed by agreement between the Committee of Ministers and the Assembly, in the light of the indications given in Assembly Document 8388.

4. Resolution (53) 38 on the budgetary system of the Assembly which, taking into account Recommendation 1728 (2005)[2] on the budgetary powers of the Parliamentary Assembly should also specify:

4.1. with respect to the Assembly's own operational expenditure, the latter shall fix the amount of its expenditure, the annual increment being determined by agreement between the Committee of Ministers and the Assembly;

4.2. with respect to the budgets of the Council of Europe, the Assembly shall be consulted by the Committee of Ministers before the latter fixes the amount of the overall budget of the Council of Europe for the coming year. This consultation shall take place at the earliest possible stage in order to allow the Assembly to take it into account in its opinion on the budget;

4.3. with respect to member states' contributions, the Assembly shall be consulted by an ad hoc urgent procedure if and when a member state has not made its due contribution to the budget for a period in excess of six months.

5. Resolution (53) 38 should also specify that the Assembly shall receive the final audited accounts for the previous financial year, any reports of the Council of Europe external auditor and the reports of the intergovernmental Budget Committee of the Council of Europe; this shall enable the Assembly to express, if appropriate, its views on the expenditure of the Council of Europe.

6. Statutory Resolution (51) 30 F on relations with international organisations, both governmental (IGOs) and non-governmental (INGOs) by providing for:

6.1. appropriate Assembly consultation concerning IGOs, the Assembly being already consulted on the granting and withdrawal of participatory status of INGOs (Resolution Res(2003)8);

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2. It is recalled that Recommendation 1728 called on the Committee of Ministers to recognise such budgetary powers of the Assembly by amending Article 38 of the Statute (according to the simplified procedure foreseen in Article 41.d of the Statute) by adding two new paragraphs after paragraph c.

6.2. Assembly representation at all high level co-ordination meetings between the Council of Europe and the European Union, the Organization for Security and Co-operation in Europe (OSCE) and the UN.

7. Statutory Resolution (93) 27 on majorities required for decisions of the Committee of Ministers by integrating in it the agreement of the Committee of Ministers of November 1994 to adopt replies to Assembly recommendations by a two-thirds majority of the Representatives casting a vote and a majority of the Representatives entitled to sit on the Committee of Ministers, considering that every effort would be made to reach a consensus within a reasonable period of time.