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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1548 (2007)[1]

Progress of the Assembly's monitoring procedure

Parliamentary Assembly

1. The Parliamentary Assembly acknowledges the important work carried out by its Committee on the Honouring of Obligations and Commitments by Member States (Monitoring Committee). The tireless efforts of this committee to ensure full respect for democracy, the rule of law and protection of human rights have produced positive results in the 20 countries it has monitored in the ten years of its existence. At the moment, 13 countries are under a monitoring procedure or engaged in a post-monitoring dialogue. The committee is also investigating applications to initiate a monitoring procedure in respect of Italy and the United Kingdom and has actively participated in the accession procedure concerning Montenegro.

2. Over the years, constant dialogue with the authorities of the countries under monitoring has enabled the committee to set roadmaps often reflected in national action plans (for instance in Armenia, Azerbaijan, Moldova and Ukraine) to fulfil specific commitments entered into upon accession to the Council of Europe. Progress has been made everywhere, but there have also been setbacks due to changing circumstances or political stalemates.

3. The Assembly regrets that past wars and conflicts in Europe continue to hamper development towards fully-fledged, functioning democracies: several thousands of persons are still reported missing in the Caucasus and the Balkans; Georgia and Moldova have not been able to regain control over their separatist regions (Abkhazia and South Ossetia, Transnistria); and the Nagorno-Karabakh conflict between Azerbaijan and Armenia remains unresolved. These regions qualify as “black holes” with regard to the effective protection of human rights. The situation is similar in Chechnya in the Russian Federation. International stewardship is still needed in Bosnia and Herzegovina and Kosovo.

4. Although substantial progress has been made with regard to electoral reform, free and fair elections remain a problem in several member states. Elections were, however, considered globally free and fair in Bosnia and Herzegovina, Georgia, Montenegro, Serbia, “the former Yugoslav Republic of Macedonia” and Ukraine. Biased or insufficient media coverage of the electoral campaigns was of concern in Moldova and the Russian Federation. Concerns have also been voiced over postal voting fraud in the United Kingdom.

5. In a number of countries, political life in parliament is either monopolised by the strongest party (Armenia, Azerbaijan, Georgia, the Russian Federation and, to some extent, Moldova and Turkey), totally polarised between two parties or blocs (Albania) or so fragmented that fragile coalitions have to be formed (Bosnia and Herzegovina, Serbia). The abuse by opposition parties of boycott strategies or their refusal to participate in elections is not fostering the democratic process (Albania, Azerbaijan). The notion that a strong opposition is beneficial to every democracy and is not to be considered a nuisance has yet to take root everywhere. Electoral thresholds remain too high in Georgia, the Russian Federation and Turkey. The role of parliament as a necessary counterweight to the executive power is understood in principle but often not in practice, as parliaments lack the necessary structures, staff and legal expertise.

1. Assembly debate on 18 April 2007 (15th Sitting) (see Doc. 11214, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Mr Lintner). Text adopted by the Assembly on 18 April 2007 (15th Sitting).

6. Constitutional reform is still very much needed to ensure a properly functioning system of checks and balances. It has been achieved to some extent in Armenia, but is outstanding to various degrees in Azerbaijan, Bosnia and Herzegovina and Turkey. For some recently adopted constitutions (Serbia), draft constitutions (Montenegro) and constitutional amendments (Georgia, Liechtenstein and Ukraine), compatibility with European standards remains a topical and in some cases urgent issue.

7. The reform of local self-government, in particular sustainable decentralisation, is a difficult and lengthy process that is not yet complete in many countries. The minimum provisions of the European Charter of Local Self–Government (ETS N°. 122) are not yet fully implemented for example in Armenia, Azerbaijan, Moldova, Montenegro, the Russian Federation, Serbia and Ukraine.

8. Excessive media concentration and state or oligarchic control of media outlets (the Russian Federation) continue to be of concern. An application to initiate a monitoring procedure with regard to the monopolisation of electronic media and possible abuse of power in Italy is currently being investigated. Progress has, however, been made with the setting up of public service broadcasters, for example in Azerbaijan, Georgia and Moldova.

9. In a number of countries, civil society remains weak and unorganised and many scientists, lawyers, NGOs or human rights defenders face legal impediments in their work, harassment by the administrative authorities or costly lawsuits. In a welcome development, ombudsman institutions (including at regional level in the Russian Federation and “the former Yugoslav Republic of Macedonia”) exist now in almost all member states, but still lack in some cases full guarantees for their independence and effective functioning.

10. Full respect for the principle of the rule of law is the major challenge facing all countries under monitoring: the process of judicial reform has proved to be longer and more complex than initially envisaged. It involves reform of the education system, notably higher education; the creation of professional academies for future judges, lawyers and police officers; effective mechanisms, including at constitutional level, to guarantee the independence of the bodies responsible for the selection, career and disciplinary procedures of judges and prosecutors; the creation of bar associations; professional training; the drafting of codes of ethics; and substantial budgetary means. Judicial reform also requires revision or overhaul of substantial and procedural laws, especially in the field of criminal justice. The Assembly notes, with reference to the country reports of the Monitoring Committee, that progress has been made in all countries, but that much remains to be done to adopt and ensure the implementation of all relevant reforms.

11. Corruption is a scourge affecting all European countries to various degrees. There can be no public confidence in state authorities if diplomas, judgments, positions, contracts or votes can be bought or traded. The Assembly therefore welcomes the adoption of anti-corruption strategies in almost all countries under monitoring, but reminds them that words must be matched by deeds. A stable, professional, competent and reasonably well paid civil service is of paramount importance in this respect.

12. As regards respect for human rights, the Assembly notes with satisfaction that the vast majority of countries under monitoring have ratified the relevant Council of Europe conventions in compliance with their accession commitments. The Russian Federation remains the only Council of Europe member state which has not ratified Protocol No. 6 to the European Convention on Human Rights (the Convention) on the abolition of the death penalty (ETS N°. 114). It is also the only member state which has not ratified Protocol N°. 14 amending the control system of the Convention (CETS N°. 194), thus delaying its entry into force. The Assembly is also particularly concerned by the slow pace of ratification of Protocol No. 12 to the Convention (ETS N°. 177) and of the European Charter for Regional or Minority Languages (ETS No. 148). Although ratifying conventions and enacting legislation is a prerequisite, implementation on the ground and in practice remains the main stumbling block everywhere for the protection of human rights. This is a question of political will but also of administrative capacity and budgetary means. Also, the process of democratisation has to be accompanied by serious and lasting efforts in the field of education and human rights awareness raising. Again the Assembly refers to the relevant resolutions it has adopted for each country upon proposal by the Monitoring Committee.

13. Prison conditions, in particular overcrowding, are of concern throughout Europe. The Assembly welcomes in this respect the commendable efforts made, for example, by the Russian Federation and Georgia, although much more needs to be done to abide by the standards set by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in particular with regard to medical care. Experience has shown that the situation improves as soon as prisons are placed under the responsibility of the ministry of justice rather than the ministry of the interior. Torture and ill treatment, in particular during police custody and pre-trial detention, have not yet been eradicated; neither has hazing of young conscripts. Although progress has undoubtedly been made in recent years, for example with regard to

zero-tolerance policies towards torture (Georgia, Turkey), the Assembly deplores that the CPT has had to resort, for the third time, to the exceptional measure of issuing a public statement about the situation in the Chechen Republic, given the Russian Federation's failure to co-operate or refusal to improve the situation in the light of the CPT's recommendations.

14. Censorship, numerous prosecutions, intimidation or even physical threats to journalists still occur in the Russian Federation, Turkey and Azerbaijan. Freedom of the press has improved in Ukraine. Some countries have completely (Bosnia and Herzegovina, Georgia, Ukraine) or partly (Moldova and "the former Yugoslav Republic of Macedonia") decriminalised defamation, which is a welcome development. Professional ethics of journalism, however, still need to be improved in most countries. The Assembly welcomes the anti-discrimination action plans for Roma (Albania, Bulgaria, Czech Republic, Romania, Slovakia), the recognition of religious minorities (Armenia, Azerbaijan) and the introduction of conscientious objection (Armenia, the Russian Federation, but not yet Turkey or Azerbaijan). Problems remain regarding the legal status of churches, for example in Bulgaria, Moldova or Montenegro.

15. The Assembly urges all states currently under a monitoring procedure or engaged in a post-monitoring dialogue to continue their co-operation with the Monitoring Committee and to implement all the recommendations contained in the specific resolutions adopted by the Assembly. It stands ready to provide all the necessary support to the countries concerned through its parliamentary co-operation and assistance programmes.

16. The Assembly is aware that the shortcomings identified by its Monitoring Committee in the 13 states currently under a monitoring procedure or engaged in a post-monitoring dialogue are sometimes misconstrued as unfair finger pointing by countries which have undergone tremendous changes, often in less than a decade. The Assembly is also aware that democracy, the rule of law and respect for human rights are never achieved once and for all and that the other 33 member states of the Council of Europe also need to be reminded of the need to respect their statutory obligations as member states of this Organisation.

17. The Assembly therefore welcomes the initiative taken by its Monitoring Committee in 2006 with a view to monitoring also the record of member states not currently placed under the Assembly's monitoring or post-monitoring procedure to append to its annual progress report to the Assembly periodic reports on groups of states containing summaries of the findings of other Council of Europe bodies and institutions.

18. On the basis of periodic reports attached to the 2006 progress report of the Monitoring Committee on the first group of 11 member states (Andorra, Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France and Germany), the Assembly, in its Resolution 1515 (2006) on the progress of the Assembly's monitoring procedure (May 2005-June 2006), invited the states concerned to ratify a number of Council of Europe conventions providing for a monitoring mechanism. The Assembly regrets that since adoption of this resolution Belgium has not yet completed the legislative reforms required to ensure full execution of the judgment of the European Court of Human Rights (the Court) in the case of Čonka v. Belgium of 5 February 2002.

19. The Assembly welcomes the fact that a few months later the authorities of two member states, namely Austria and Germany, informed the President of the Assembly of follow-up measures or explained the position of their government. It urges the authorities of the other member states concerned also to provide information on follow-up measures.

20. The Assembly in particular welcomes the fact that, following the adoption of Resolution 1515 (2006), Austria and Belgium ratified the Civil Law Convention on Corruption (ETS N°. 174), and Austria joined the Group of States Against Corruption (GRECO); Andorra and Belgium ratified Protocol N°. 14 to the Convention; France ratified the European Charter of Local Self Government; and the Czech Republic ratified the European Charter for Regional or Minority Languages.

21. For 2007, the Monitoring Committee has prepared periodic reports on the second group of 11 member states which are neither under a monitoring procedure nor involved in a post-monitoring dialogue: Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta and the Netherlands. As last year, they are based on the country-by-country assessments made by the Commissioner for Human Rights and other Council of Europe monitoring mechanisms or institutions.

22. On the basis of these reports, which are appended to this year's progress report of the Monitoring Committee, the Assembly:

22.1. invites the national parliaments of the countries concerned to:

22.1.1. use these reports as the basis for a debate on their country's record with regard to the fulfilment of their statutory and conventional obligations as member states of the Council of Europe;

22.1.2. promote execution of the judgments of the Court and compliance with recommendations made by the Commissioner for Human Rights and other Council of Europe specific monitoring bodies, both by provoking and accelerating necessary legislative initiatives and exercising their role of oversight with respect to government action;

22.2. invites the European Union bodies, as far as applicable, to use these reports and take into account the findings of the Council of Europe human rights institutions and monitoring mechanisms, such as the judgments of the Court and reports of the Commissioner for Human Rights and of the Assembly's Monitoring Committee, as well as the relevant resolutions and recommendations adopted by the Assembly;

22.3. notes that:

22.3.1. in Greece, the failure to ensure full execution of the Dougoz and Peers judgments concerning overcrowding in detention facilities led to the adoption by the Committee of Ministers of an interim resolution in 2005 (ResDH(2005)21). On 7 June 2006, the Committee of Ministers adopted another interim resolution (ResDH(2006)27) on two judgments of the Court concerning issues of reafforestation and violations of property rights in Greece;

22.3.2. in Italy, despite repeated calls by the Assembly, most recently in its Resolution 1516 (2006) on the implementation of judgments of the European Court of Human Rights, and the Committee of Ministers (ResDH(2007)2), structural deficiencies continue to cause repetitive findings of violations of the Convention for excessive length of judicial proceedings. The lack of progress towards the solution to the systemic violations of the right to the peaceful enjoyment of possessions through "indirect expropriation" by Italy led to the adoption of yet another interim resolution by the Committee of Ministers on 14 February 2007 (ResDH(2007)3). Moreover, the Italian legislation still does not allow the reopening of domestic criminal proceedings impugned by the Court and no other measures have been taken to restore the right to a fair trial (ResDH(2005)85);

22.4. thus urges Greece and Italy to accelerate the adoption of general measures necessary to ensure full execution of the judgments of the Court and effectively prevent similar violations of the Convention.

23. The Assembly, noting that a number of the member states under consideration are not yet subject to certain specific monitoring mechanisms of the Organisation because they have not ratified the relevant conventions or joined the relevant bodies, invites the member states concerned to take the necessary steps within three years. Again, a special responsibility is placed on national parliaments to promote ratification. The Assembly notably urges:

23.1. Liechtenstein and the Netherlands to sign and ratify, and Iceland, Ireland and Italy to ratify the Civil Law Convention on Corruption;

23.2. Liechtenstein to sign and ratify, and Greece and Italy to ratify the Criminal Law Convention on Corruption (ETS N°. 173);

23.3. Hungary, Ireland, Liechtenstein and Lithuania to sign and ratify, and Greece, Iceland, Italy, Latvia, Luxembourg, Malta and the Netherlands to ratify the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS N°. 198), noting that all of them have ratified the 1990 convention on the same subject matter;

23.4. Lithuania and Malta to sign and ratify, and Greece, Hungary, Iceland, Ireland, Italy, Latvia and Liechtenstein to ratify Protocol No. 12 to the European Convention on Human Rights;

23.5. Italy and Latvia to ratify Protocol N°. 13 to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances (ETS No. 187);

23.6. Latvia and Liechtenstein to sign and ratify, and Greece, Hungary, Iceland and Luxembourg to ratify the revised European Social Charter (ETS N°. 163);

23.7. Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg and Malta to sign and ratify, and Hungary to ratify the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS N°. 158);

23.8. Greece, Iceland and Luxembourg to ratify the Framework Convention for the Protection of National Minorities (ETS N°. 157);

23.9. Greece, Ireland, Latvia and Lithuania to sign and ratify, and Iceland, Italy and Malta to ratify the European Charter for Regional or Minority Languages;

23.10. Italy and Liechtenstein to join the Group of States against Corruption (GRECO).

24. The Assembly looks forward to the next progress report of the Monitoring Committee which will contain periodic reports on the 11 remaining states which are neither under a monitoring procedure nor involved in a post-monitoring dialogue (Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom). It expects full co-operation of all member states in this exercise.