Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1619 (2008)[1]

State of democracy in Europe

Functioning of democratic institutions in Europe and progress of the Assembly's monitoring procedure

Parliamentary Assembly

1. The Parliamentary Assembly acknowledges the work carried out by its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) in accompanying 11 countries currently under monitoring (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Monaco, Montenegro, the Russian Federation, Serbia and Ukraine) and three countries engaged in a post-monitoring dialogue (Bulgaria, Turkey and "the former Yugoslav Republic of Macedonia") through the process of consolidating their democratic institutions in compliance with the principles of the rule of law and the protection of human rights.

2. The Assembly welcomes in particular the initiative of the Monitoring Committee to contribute to its debate on the state of democracy in Europe by focusing this year's progress report on the functioning of democratic institutions in the above-mentioned member states on the basis of its most recent country monitoring reports. Some of the latter were prepared under accelerated procedure in order to enable the Assembly to react quickly and efficiently to urgent and critical situations, such as:

2.1. the dissolution of parliament by presidential decree in Ukraine, in April 2007, after months of political crisis;

2.2. the pre-term presidential elections in Georgia, in January 2008, called in a bid to resolve the political crisis which erupted in the country after several days of political protest, and the declaration of the state of emergency in November 2007;

2.3. the post-electoral crisis in Armenia, in February 2008, which led to the declaration of the state of emergency, and the tragic events of 1 March, during which 10 people died and more than a hundred were wounded;

2.4. the preparation for the presidential elections in Azerbaijan, due in October 2008.

3. On the basis of its Monitoring Committee's reports, the following progress and major shortcomings are to be noted:

4. With respect to the separation of powers and the role of parliament:

4.1. although the role and influence in political life of parliaments has been gradually reinforced in two member states (Albania and Moldova), much remains to be done to strengthen parliamentary control over the executive and improve the checks and balances in Armenia, Azerbaijan, Georgia, the Russian Federation and Ukraine. A proper role and appropriate rights should be guaranteed for the opposition, in accordance also with Assembly Resolution 1601 (2008) on procedural guidelines on the

1. *Assembly debate* on 25 June 2008 (23rd Sitting) (see Doc. 11628Doc. 11628, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Mr Holovaty). *Text adopted by the Assembly* on 25 June 2008 (24th Sitting).

rights and responsibilities of the opposition in a democratic parliament, and political dialogue between the ruling majority and the opposition, both inside and outside parliament, must be initiated (Armenia and Azerbaijan) or improved (Georgia);

4.2. constitutional reform is strongly needed to ensure effective separation of powers and properly functioning democratic institutions in Bosnia and Herzegovina, Monaco and Ukraine. The new constitution has to be properly implemented in Montenegro. The assistance which the European Commission for Democracy through Law (Venice Commission) is offering or could offer to these member states in the process of constitutional revision, often upon the request of the Monitoring Committee, is of significant importance;

4.3. the independence of the judiciary from the other branches of power should be strengthened in Armenia, Azerbaijan, Bulgaria, Georgia, Monaco, Montenegro, Serbia, the Russian Federation and Ukraine;

4.4. regarding Monaco, the Assembly acknowledges that the constitutional reform of 2002, carried out on the basis of the recommendations of the Council of Europe, has given more powers to the National Council and has reinforced the balance between the branches of powers. The Assembly recommends not to stop and to continue the reform process in order to strengthen further the role of the National Council and to improve the system of checks and balances.

5. With respect to elections and electoral reform:

5.1. the Assembly, referring also to its Resolution 1547 (2007) on the state of human rights and democracy in Europe, reiterates that holding free and fair elections is an essential element of a democracy and a prerequisite for building democratic institutions;

5.2. throughout the reporting period (April 2007-June 2008), parliamentary or presidential elections have been held in most states under monitoring or engaged in a post-monitoring dialogue and were observed by an Assembly delegation: Armenia, Georgia, Monaco, Montenegro, the Russian Federation, Serbia, “the former Yugoslav Republic of Macedonia”, Turkey and Ukraine;

5.3. electoral reforms are still needed in Albania, Armenia, Azerbaijan, Georgia, Montenegro, Moldova, the Russian Federation, Serbia and Ukraine. The electoral threshold remains too high, in particular in the Russian Federation (7%) and Turkey (10%). In this respect, the Assembly welcomes the lowering of the electoral threshold to 3% in Bosnia and Herzegovina and to 5% in Georgia, whereas it regrets the recent decision of the Moldovan Parliament to raise this threshold for party lists to 6%;

5.4. in particular, such electoral reforms, possibly with the assistance of the Venice Commission, should ensure:

5.4.1. improved voters’ lists in Albania, Georgia, Montenegro and Ukraine and the abolition of provisions allowing for persons travelling abroad during the period prior to elections to be removed from the voters’ list in Ukraine;

5.4.2. an impartial and transparent election administration in Armenia and Azerbaijan with a view to restoring public confidence in the electoral process;

5.4.3. an effective election-related complaints and appeals procedure in Armenia, Azerbaijan, Georgia and Moldova;

5.4.4. a level playing field, including equal and unbiased campaign coverage, in Armenia, Azerbaijan, Moldova and the Russian Federation; in the latter, the absence of this condition led the Assembly observers to conclude that the parliamentary elections of December 2007 were free but not fair;

5.4.5. proper separation between the state and political parties/candidates in Montenegro and in the Russian Federation;

5.4.6. that harassment and intimidation of opposition candidates and supporters are eradicated in Armenia, Azerbaijan, Georgia and the Russian Federation;

5.4.7. that constitutional and legislative provisions providing for the recall of peoples’ representatives by the political parties (the so-called “imperative mandate”) should be abrogated in the Russian Federation, Serbia and Ukraine;

5.4.8. that the legislative provisions in Serbia and in Montenegro allowing political parties to change the order of the candidates on the party lists after the elections should be abolished as limiting transparency and misleading voters;

5.5. following investigation by the Monitoring Committee into an application to initiate a monitoring procedure with respect to electoral fraud in the United Kingdom, it was concluded that the electoral system in Great Britain is clearly open to electoral fraud, in particular as a result of the rather arcane system of voter registration without personal identifiers. This vulnerability was exacerbated by the introduction of postal voting on demand, especially under the arrangements as existed before the changes in the Electoral Code in 2006. However, despite these vulnerabilities in the electoral system, since elections in the United Kingdom are conducted democratically and represent the free expression of the will of the people, the Assembly decided not to open a monitoring procedure with respect to the United Kingdom.

6. With respect to political parties and their funding:

6.1. the Assembly reiterates that the recall of peoples' representatives by the political parties (the so-called "imperative mandate") is unacceptable and contrary to the principles of the rule of law and the separation of powers. Regulations on the registration of political parties and the prohibition of electoral blocs, combined with the 7% electoral threshold, make it extremely difficult for new and small parties to compete effectively in the Russian Federation;

6.2. with regard to financing, the Assembly refers to the initial results from the evaluations carried out by the Council of Europe's Group of States against Corruption (GRECO) in its Third Evaluation Round on transparency of party funding which show that, while member states have intensified their regulatory efforts in this area, domestic standards vary considerably among them and fall short, in some respects, of Council of Europe standards;

6.3. the Assembly thus recommends that all member states which have not yet established independent, specialised and strong mechanisms of control over political party funding should do so at their earliest opportunity;

6.4. the Assembly reiterates its recommendation that a law on political parties be adopted with a view to ensuring the transparency of party and campaign funding in Monaco and Montenegro.

7. With respect to the fight against corruption:

7.1. despite commendable efforts made by the authorities, with the assistance of the Council of Europe, the adoption of National Anti-Corruption Strategies and the implementation of action plans, corruption remains a major problem in practically all member states under monitoring;

7.2. the Assembly urges the authorities of the member states to implement the recommendations made by GRECO, in particular to improve domestic legislation and effectively implement the measures adopted. State efforts in eradicating corruption should include measures not only in the area of repression but also in prevention and policy co-ordination. In this respect, the Assembly recalls its recommendation that measures be taken to guarantee a professional civil service respectful of ethical rules in Albania, Georgia and Ukraine;

7.3. Ukraine should ratify the Council of Europe's Criminal Law Convention on Corruption (ETS No. 173).

8. With respect to media pluralism:

8.1. the absence of media pluralism has raised Assembly concerns to various degrees in Armenia, Azerbaijan, Moldova and the Russian Federation. Deficiencies caused by the monopolisation of some mass media by political groups and businessmen in Serbia have also given rise to concerns. The independence of media regulatory bodies should be guaranteed in Armenia and Azerbaijan;

8.2. despite efforts made with Council of Europe assistance, the creation of a genuinely public broadcasting service has not yet been completed in Albania, Armenia, Azerbaijan, Moldova, the Russian Federation and Ukraine. In Bosnia and Herzegovina, which has one of the most advanced self-regulatory mechanisms in Europe, the establishment of a unified public broadcasting service with state-level management is one of the requirements for signing the Stabilisation and Association Agreement with the European Union;

8.3. censorship, prosecution, imprisonment and intimidation of or even physical threats against journalists continue to occur in Azerbaijan and the Russian Federation. The Assembly welcomes the fact that defamation has been decriminalised in Bosnia and Herzegovina, Georgia and Ukraine and partially decriminalised in Moldova and in "the former Yugoslav Republic of Macedonia". It urges other

member states concerned to continue the process of decriminalisation of defamation. At the same time, professional ethics of journalism must be improved in many member states, possibly with Council of Europe assistance;

8.4. an investigation by the Monitoring Committee into an application to initiate a monitoring procedure with respect to the monopolisation of the electronic media and possible abuse of power in Italy confirmed that Italy's media spectrum was clearly experiencing an anomaly in its television sector, with one of the highest levels of concentration on the national level in Europe. However, Italian citizens generally have access to a wide variety of information sources and content diversity across the media landscape. Therefore, the Assembly concluded that the anomaly in one of its electronic media sectors did not in itself warrant the initiation of a fully fledged monitoring procedure with respect to Italy but that the legislative developments in Italy should be followed in the Monitoring Committee's periodic reports.

9. With respect to local and regional democracy:

9.1. the Assembly notes that in many member states under monitoring or engaged in a post-monitoring dialogue, decentralisation reforms should be stepped up. The lack of clear assignment of competences to local authorities is an obstacle to effective decentralisation in Armenia, Azerbaijan, Bosnia and Herzegovina, Moldova and Serbia. Moreover, revenues devolved to local authorities often do not match the decentralised competences and are unevenly distributed (Armenia, Bosnia and Herzegovina, Moldova, Serbia, "the former Yugoslav Republic of Macedonia" and Ukraine). The unsettled issue of devolution of property prevents local authorities from exercising their competences effectively in Bosnia and Herzegovina, Montenegro, Serbia and "the former Yugoslav Republic of Macedonia". Supervisory procedures are often complex and unclear, thus creating the risk of undue interference of central authorities in the activities of local and regional authorities (Armenia, Azerbaijan and Moldova);

9.2. in some member states, local authorities are too small and weak to take over substantial competences in the provision of the main public services (Armenia, Azerbaijan, Moldova). The Assembly therefore welcomes and further encourages the efforts of the authorities of these countries to establish mechanisms of intermunicipal co-operation, for instance in Armenia and Moldova. Furthermore, the Assembly encourages member states to consider drawing up and implementing territorial reforms to establish stronger and financially more sustainable communities. Where appropriate, such reforms should include the establishment of autonomous regional structures with increased operational and financial capacity;

9.3. furthermore, effective decentralisation requires the building of capacities at both national and local level. This entails for the central government to work in the context of decentralised service provision and, for the local authorities, to participate fully in the implementation of decentralisation policies and continually improve their performance by boosting the standards of their leadership and strategic management, service provision, community participation and public ethics (Armenia, Azerbaijan, Bosnia and Herzegovina, Moldova, Serbia, "the former Yugoslav Republic of Macedonia" and Ukraine).

10. With respect to the continuing existence of unresolved conflicts in member states under monitoring:

10.1. the Assembly considers that democratic developments in Azerbaijan, Georgia and Moldova cannot be consolidated as long as their territorial integrity is not restored;

10.2. the Assembly welcomes the Monitoring Committee's initiative to organise a hearing "on frozen conflicts" with respect to the conflicts of Nagorno-Karabakh, Abkhazia, South Ossetia and Transnistria in Berlin, in November 2007. In this respect, the Assembly reaffirms the role that national parliaments can play in promoting confidence building as a prerequisite for the peaceful settlement of conflicts. The Assembly itself can also help foster a positive negotiating climate, through dialogue at the parliamentary level. Therefore, the Assembly encourages the organisation of further hearings on the above-mentioned conflicts;

10.3. at the same time, the Assembly regrets that no significant positive developments have been registered during the reporting period (April 2007-June 2008) with respect to any of the above-mentioned conflicts; tension has recently escalated with respect to the Abkhaz and South-Ossetian conflicts.

11. The Assembly urges all states currently under monitoring 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 country-specific resolutions adopted by the Assembly. It reaffirms its readiness to provide necessary support to the countries concerned through its parliamentary co-operation and assistance programmes.

12. Furthermore, the Assembly takes note of the periodic reports on the third and last group of 11 member states among those member states which are not subject to a monitoring procedure or involved in a post-monitoring dialogue: Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom. As in the previous two years, 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.

13. On the basis of these reports, which are appended to the Monitoring Committee's 2008 progress report, the Assembly:

13.1. urges the national parliaments of the countries concerned to:

13.1.1. 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;

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

13.2. 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;

13.3. urges:

13.3.1. Sweden, Switzerland and the United Kingdom to sign and ratify, and Norway, Portugal, Slovakia, Slovenia and Spain to ratify, Protocol No. 12 to the European Convention on Human Rights (ETS No. 177);

13.3.2. Poland and Spain to ratify Protocol No. 13 to the European Convention on Human Rights (ETS No. 187);

13.3.3. Switzerland to sign, and Poland, Slovakia, Spain, and the United Kingdom to ratify, the revised European Social Charter (ETS No. 163);

13.3.4. Poland, Romania, Spain, Switzerland and the United Kingdom to sign and ratify, and Slovakia and Slovenia to ratify, the Additional Protocol to European Social Charter Providing for a System of Collective Complaints (ETS No. 158);

13.3.5. Portugal, San Marino and Switzerland to sign and ratify, and Spain and the United Kingdom to ratify, the Civil Law Convention on Corruption (ETS No. 174);

13.3.6. San Marino and Spain to ratify the Criminal Law Convention on Corruption (ETS No. 173);

13.3.7. Switzerland to adopt a law on political parties with a view to ensuring the transparency of party funding.

14. The Assembly notes that the year 2008 marks the end of the first three-year cycle of periodic reporting carried out by its Monitoring Committee on all member states not subject to a monitoring procedure or involved in a postmonitoring dialogue.

15. In carrying out this periodic reporting, as well as its own country-specific monitoring procedure through its Monitoring Committee, the Assembly has continued to benefit from the work carried out by other Council of Europe institutions and monitoring bodies, in particular: the Court; the Committee of Ministers in its supervisory function of the execution of the Court's judgments; the European Committee of Social Rights; the Commissioner for Human Rights; the Congress of Local and Regional Authorities of the Council of Europe;

the Group of States against Corruption (GRECO); the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and Financing of Terrorism (MONEYVAL); the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT); the Advisory Committee on the Framework Convention for the Protection of National Minorities; the Committee of Experts of the European Charter for Regional or Minority Languages and the European Commission against Racism and Intolerance (ECRI). The European Commission for Democracy through Law (Venice Commission) is of special importance since, with its expertise, it significantly assists both the Monitoring Committee's rapporteurs in their tasks and the member states in honouring their obligations and commitments. The work of the European Commission for the Efficiency of Justice (CEPEJ) is also of relevance.

16. At the same time, the Assembly has continued to promote the work of all these institutions and monitoring bodies, in particular by calling for the execution of judgments of the Court or the implementation of the recommendations of those instruments and bodies in all countries subject to monitoring, post-monitoring dialogue or periodic reporting.

17. The Assembly commends the remarkable work carried out by the Council of Europe human rights institutions and monitoring bodies and the acquis they have established over the years. In this respect, the Assembly believes that the efficiency of this unique monitoring machinery can be further enhanced by defining tools aimed at optimising synergies and enhancing co-operation among the various bodies, while preserving their independence and respecting their mandates, distinct working methods and priorities.

18. Since this would be beneficial to its own work, the Assembly therefore welcomes the Monitoring Committee's initiative to organise a hearing as a forum for exchanging ideas and identifying ways and means to improve synergies among all those primarily concerned, namely the Council of Europe institutions, bodies and mechanisms referred to above in paragraph 15.

19. With a view to ensuring increased efficiency, the Assembly also calls on member states to set up or enhance national mechanisms in charge of ensuring that appropriate follow-up is given to findings of Council of Europe monitoring bodies.

20. The Assembly stresses that national parliaments should be regularly informed of measures taken by the governments to implement recommendations by Council of Europe monitoring bodies, as well as to ensure execution of the judgments of the Strasbourg Court.

21. The Assembly reiterates that national parliaments have a special role of democratic oversight of governmental action. This includes the need to ensure that:

21.1. recommendations of Council of Europe monitoring bodies are complied with;

21.2. judgments of the Strasbourg Court are speedily and fully implemented, especially where legislative corrective measures are required;

21.3. neither national security nor state secrecy be invoked indiscriminately to shield unlawful activity of state officials from robust parliamentary and judicial scrutiny.